[AT] Data Retention Bill

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The Austrian *Bundesministerium für Verkehr, Innovation und Technologie* (Federal Ministry for Traffic, Innovation and Technology) has published a bill transposing the Data Retention Directive 2006/24/EC into national law. The public had until 15 January 2010 to submit opinions on the bill as part of the consultation procedure.

The bill amending the *Telekommunikationsgesetz* (Telecommunications Act), drafted on the ministry's behalf by the *Ludwig Boltzmann Institut für Menschenrechte* (Ludwig Boltzmann Institute for Human Rights - BIM) sticks very closely to the provisions of the Directive. The data retention period of six months required under the bill is the minimum allowed under the Directive.

In contrast to the situation in Germany, for example, the bill only authorises access to retained data for the purposes of the prosecution of "serious criminal offences"; such offences are to be defined in a decree by the Austrian *Bundesjustizministerium* (Federal Ministry of Justice). The German *Telekommunikationsgesetz* goes beyond the Directive's main regulatory objective by also allowing data to be used for the prevention of danger and for secret service purposes.

According to the Austrian draft, a decree must also be issued guaranteeing that the telecommunications companies concerned will be reimbursed not only for the cost of providing individual pieces of information to the relevant authorities, but also for the cost of the necessary surveillance infrastructure. The rules on the reimbursement of investment costs are designed to take into account a 2003 ruling of the *Verfassungsgerichtshof* (Constitutional Court), which declared that a legal requirement to make such equipment available without compensation was unconstitutional.

The bill also stipulates that micro and small enterprises, as defined in Commission Recommendation 2003/361/EC, can apply for exemption from the data retention obligation. It also includes provisions on secure data storage and the separation of this data from other data.

Austria should have already fully transposed Directive 2006/24/EC by 15 March 2009 at the latest. The European Commission has therefore already brought an action before the Court of Justice of the European Union for an infringement of the EC Treaty (C-189/09).

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Gesetzentwurf des Bundesministeriums für Verkehr, Innovation und Technologie

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