[AT] National Assembly Adopts Data Retention Laws

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On 28 April 2011, the Austrian Nationalrat (National Assembly) approved, with only minor amendments, government bills designed to implement Data Retention Directive 2006/24/EC (see IRIS 2011-4/9). The regulations should enter into force on 1 April 2012.

Following controversial debates in the relevant committees, the bill amending the 2003 Telekommunikationsgesetz (Telecommunications Act - TKG) was submitted to the plenary session for a vote on 7 April 2011 and was adopted with the support of the government coalition parties (ÖVP and SPÖ). The opposition parties (FPÖ, Greens and BZÖ) voted unanimously against the bill, raising serious concerns about the infringement of basic rights. They also criticised the fact that the bill went far beyond the requirements of the Directive. However, the Transport Minister argued that it only represented the minimum level of implementation. She referred to rules and requirements such as the short data retention period and the provision of a serious criminal offence and a judicial decision designed to guarantee the greatest possible protection of basic rights. According to a committee conclusion that had been accepted by the government majority, the committee assumed that a full record of access to data would be kept. In this context, there was support for the creation of a specific body to deal with all information requests.

The government bill amending the 1975 Strafprozessordnung (Code of Criminal Procedure - StPO) and the Sicherheitspolizeigesetz (Police Act - SPG), which the Justizausschuss (Justice Committee) had already approved with minor amendments on 23 March 2011, was also adopted. The amendments to these acts are designed to regulate the authorities' access to stored data. Prior to the decision, a public hearing had been held with five chosen experts, the majority of whom were critical of the proposed text. For example, the Scientific Director of the Ludwig Boltzmann Institute of Human Rights (BIM), which had prepared the original draft, described it as "terminological juggling, in view of the opacity of the wording and references in the version under discussion. The only expert to speak in favour of the draft was the Vice-President of the Supreme Court. He thought it upheld the rule of law and referred to the need for effective criminal prosecution as a condition for the exercise of basic rights.

Both acts must now be approved by the Bundesrat (upper house of parliament), although this is unlikely to pose a problem in view of the large majority held by

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the government parties in the lower house. The Greens announced plans to lodge an individual complaint to the Verfassungsgerichtshof (Constitutional Court) against the new regulations.

Entwurf zur Änderung des TKG-2003

http://www.parlament.gv.at/PAKT/VHG/XXIV/BNR/BNR_00360/index.shtml

Bill amending the 2003 TKG

Entwurf zur Änderung der StPO und des SPG

http://www.parlament.gv.at/PAKT/VHG/XXIV/BNR/BNR_00361/index.shtml

Bill amending the StPO and SPG

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