[DE] Bundestag Publishes Data Retention Report

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In a recently published report, the Wissenschaftliche Dienst (research office) of the German Bundestag (lower house of parliament) concluded that the EU's Data Retention Directive 2006/24/EC was incompatible with the Charter of Fundamental Rights of the European Union (see IRIS 2010-4/12). The report stated that there was "definitely no way of interpreting this Directive [...] in a way that is compatible with the Charter."

The Wissenschaftliche Dienst began by recognising the legitimacy of the purpose, suitability and necessity of the Directive. The objectives of protecting public order, preventing and prosecuting criminal offences and safeguarding the rights and freedoms of others were "legitimate aims because they are in the public interest, and should meet the requirement set out in Article 8(2) ECHR". The Directive was suitable because it provided abstract, general scope for decision-making. It was also necessary, firstly because "the storage of data for no reason is more extensive and therefore more secure and effective than individual suspicion-based storage requests". Secondly, it could not be assumed with any certainty that the more lenient "quick-freeze procedure" was as effective, especially as it could be rendered ineffective by the generally strict data protection laws in this part of the world.

However, with regard to reasonableness, the Wissenschaftliche Dienst declared that the Directive was incompatible with the Charter of Fundamental Rights. Aspects relevant to basic rights were data usage, the type of data stored, the length of period of storage and the burden placed on service providers by the cost of storing data. In view of an "only marginal 0.006%" improvement in the crime detection rate, the purpose of the Directive and the means used to achieve it were not proportionately balanced. The Wissenschaftliche Dienst paid particular attention to telecommunications providers in this regard, considering that the heavy burden placed on them by the Directive in its current form constituted an unreasonable infringement of their basic right to professional and economic freedom.

The future of data retention remains uncertain, pending a review by the ECJ. According to the Bundestag report, it represents one of the most controversial fields of security-related legislation. Its supporters, for example, believe that data retention for a minimum storage period of six months is an indispensable tool for "identifying terrorist networks". Critics, on the other hand, claim that the data is

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unlikely to be used very often and warn of the risk of data misuse and profiling.

Gutachten (Az. WD 11 - 3000 - 18/11) vom 25. Februar 2011

http://www.vorratsdatenspeicherung.de/images/rechtsgutachten_grundrechtecharta.pdf

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