

[CZ] New Regulation on Data Retention

IRIS 2012-9:1/15

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On 18 July 2012, the Czech Parliament adopted the Act No. 275/2012 Coll., amending Act No. 127/2005 Coll. on electronic communications (the Electronic Communications Act) and some related acts.

The Electronic Communications Act transposed Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and implemented Directive 2002/58/EC (the "Directive on privacy and electronic communications") into the Czech legal order.

On 26 March 2010 a group of 51 Members of the Chamber of Deputies of the Czech Republic delivered a submission to the Constitutional Court to annul Art. 97 paragraphs 3 and 4 of the Electronic Communications Act and the Decree No. 485/2005 Coll. regulating details of the retention of traffic and location data. The petitioners argued that both the contested provisions in the Act and the Decree were inconsistent with the constitutional order of the Czech Republic. On 31 March 2011, the Constitutional Court fully upheld the complaint and annulled the contested provisions (see IRIS 2011-6/10). The Constitutional Court held that the rules violated the constitutional rights, that they did not meet the requirements arising from the rule of law and that they were in conflict with requirements on the limitation of the fundamental right to privacy and of the right to informational self-determination.

For the above reasons, the Ministry of Interior in cooperation with the Ministry of Industry and Trade and the Ministry of Justice prepared an amendment to the Electronic Communications Act and to some other acts.

The bill is divided into five parts. The first part amends the Electronic Communications Act so that it tightens the technical and organisational measures in order to protect traffic and location data. The provisions of the Electronic Communications Act are extended to the stakeholders to which operators will be required to provide traffic and location data, for the purpose and under the conditions according to which entities are entitled to require the provision of traffic and location data.

The second part amends Art. 88a of the Penal Code, by setting out stricter conditions for obtaining a permit to detect traffic and location data, and defines

the crimes and offenses for which it is possible to require traffic and location data.

The third and fifth part amend the Act on the Security Intelligence Service and the Law on Military Intelligence, respectively. Security Intelligence Service and Military Intelligence can require traffic and location data under conditions identical to wiretapping, i.e. after the permission of the presiding judge of the Supreme Court.

The fourth part amends the Act on the Supervision of the capital market so that it specifies the purpose for which the Czech National Bank in exercising supervision over the capital market may request traffic and location data. This respects the decision of the Constitutional Court that required the principle of proportionality and subsidiarity, and the need to complement the prior written consent (permission) of the presiding judge of the High Court in Prague to demand data.

Zákon č. 275/2012 Sb., kterým se mění zákon č. 127/2005 Sb., o elektronických komunikacích, ve znění pozdějších předpisů a některé další zákony

<http://www.sbirka.cz/POSL4TYD/12-0950.htm>

Act No. 275/2012 Coll. amending Act No. 127/2005 Coll., on electronic communications and amending some related Acts, as amended

