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### Frame of the cards: identical structure for each country

<b>THEME</b>	<b>Interpersonal communications</b>	
<b>Identification of technology</b>	<b>Data retention</b>	
<b>Technology used/tool</b> (For each teams, a card pro tool)	<b>Retention of a data on electronic communication</b>	
Country/ use area	Czech republic/	
Frame of use	On 1 September 2008, the amendment to Act No. 127/2005 Coll., on Electronic Communications entered into force, which completed implementation of the European Directive on Data Retention <sup>1</sup> . Latest amendment includes obligation to retain operational and localisation data of unsuccessful calls in both fixed and mobile telephone networks. Obligation to archive the mentioned data of unsuccessful telephone calls is effective since 2005 already. <sup>2</sup>	
Population concerned: target and age	General population, users of electronic communication (mobile phones, land line, emails etc.)	
% of users/of young users	Unknown	
Trends (measured / supposed)	Extend of data stored in databases created since 2006 is not revealed. According to the data of Czech police it	

<sup>1</sup> see Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 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 amending Directive 2002/58/EC, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006L0024:EN:HTML>

	<p>have used location and traffic data in 35300 cases in 2007.<sup>3</sup> New proposal of Ordinance of the Ministry of Industry and Trade defines extend of the collected data. These include data as defined in European Directive on Data retention and above that: pre-paid phone card identifier and other data related to its use, public phone box identification (number and geographic position data), IP addresses of terminals from which were sent SMS (service of sending SMS from web form, quite widespread service in the Czech Rep.), every link between MSISDN and IMEI used together in the network, ID of mobile phone credit coupon and its link to mobile phone number (at anonymous SIMs), "additional information" not more specified, with the email and internet communication, use of secured communication, identifier of user's device, status of event (e.g. fail/success, usual/unusual termination of connection), "identifiers of interest" (except IP address is named as example port number), method and status requests for service, transport protocols etc. New Ordinance also proposes data retention period of 6 months. New Ordinance is due to take effect from September 2009.<sup>4</sup> For overview of current practice on data retention in the Czech republic see Overview of national data retention policies by AK Vorrat.<sup>5</sup></p>	
<p>Known or potentials dangers /Risks</p>	<p>"Traffic data retention interferes with the fundamental right to confidential communications guaranteed to the individuals by Article 8 of the European Convention on Human Rights. In a democratic society, any interference with this fundamental right can be justified if it is necessary in the interests of national security. It can ultimately result in keeping track of and charting all contacts and relationships held by individuals as well as the places in which this happens and the means used for such purposes. The European Court of Human Rights has also stressed that secret surveillance</p>	

<sup>2</sup> see document of Ministry of Industry and Trade : Operational and Localisation Data Retention, 2008/09/25, <http://www.mpo.cz/dokument50249.html>

<sup>3</sup> Response of press department of the Czech police presidium of 2008/01/31 to the request of Filip Pospíšil

<sup>4</sup> see proposal of the Ordinance at web pages of the Czech Chamber of Commerce, [http://www.komora.cz/hk-cr-top-02-sede/podpora-podnikani-v-cr/pripominkovani-legislativy/art\\_29852/88-09-navrh-vyhlaskey-o-uchovavani-a-predavani-provoznich-a-lokalizacnich-udaju-t-15-5-2009.aspx](http://www.komora.cz/hk-cr-top-02-sede/podpora-podnikani-v-cr/pripominkovani-legislativy/art_29852/88-09-navrh-vyhlaskey-o-uchovavani-a-predavani-provoznich-a-lokalizacnich-udaju-t-15-5-2009.aspx)

<sup>5</sup> [http://wiki.vorratsdatenspeicherung.de/Overview\\_of\\_national\\_data\\_retention\\_policies](http://wiki.vorratsdatenspeicherung.de/Overview_of_national_data_retention_policies)

	poses a danger of undermining or even destroying democracy on the ground of defending it; additionally, the Court has affirmed that States may not, in the name of the struggle against espionage and terrorism, adopt whatever measures they deem appropriate." <sup>6</sup> For detail legal analysis see also study of Francesca Bignami. <sup>7</sup>	
Others		
<b>Generated data bases</b>		
Associated data base/ creation (a line pro database)	Databases of electronic communications services' providers	
What justifies the inscription in the file /Risks?	Billing purposes of the telecommunication and internet service providing companies and Act No. 127/2005 Coll. on Electronic Communications in the wording of its later amendments,	
Purposes /contents, main data included / Risks?	Billing purposes of ISP and telecommunication companies, purposes of investigation, detection and prosecution of serious crime by national authorities./ see Article 5 of Data retention directive <sup>8</sup> and column Trends (measured / supposed) of this table	
File masters? Risks?	ISPs and telecommunication providers	
Who accesses the files/ Sharing of the data base? Access limits? /Risks	Data are transferred on the request of the authorised department of Police in electronical form. Some details are set in Ordinance 285/2005 of Ministry of Informatics and Ministry of Interior / Security arrangements of providers and Police are not revealed/impossible to asses	
Data retention delays/ risks	New proposal of Ordinance of the Ministry if Industry and Trade defines as	

<sup>6</sup> see Opinion of Article 29 Data Protection Working Party 4/2005 on the Proposal for a Directive of the European Parliament and of the Council on the Retention of Data Processed in Connection with the Provision of Public Electronic Communication Services and Amending Directive 2002/58/EC (COM(2005)438 final of 21.09.2005), adopted on 21st October 2005,  
[http://ec.europa.eu/justice\\_home/fsj/privacy/docs/wpdocs/2005/wp113\\_en.pdf](http://ec.europa.eu/justice_home/fsj/privacy/docs/wpdocs/2005/wp113_en.pdf)

<sup>7</sup> Bignami, Francesca E. (2007) *Privacy and Law Enforcement in the European Union: The Data Retention Directive*. Chicago Journal of International Law, 8 . pp. 233-255.  
[http://eprints.law.duke.edu/1602/1/8\\_Chi.\\_J.\\_Int%27I\\_L.\\_233\\_\(2007\).pdf](http://eprints.law.duke.edu/1602/1/8_Chi._J._Int%27I_L._233_(2007).pdf)

<sup>8</sup> Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 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 amending Directive 2002/58/EC, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006L0024:EN:NOT>

Right to be forgotten	general retention period 6 months, data that were passed on authorised national security personell and data on connections between telephone numbers and identifiers of the user are to be stored by providers for 12 months. <sup>9</sup>	
Rights to know or to modify data?	Regarding the data passed onto the Police applies regulation of the § 83 of new Police act. <sup>10</sup> It provides for the right of a citizen to be informed within 60 days after submitting of written request about the data police collects or processes on him. Police has also to delete, modify or block inaccurate, wrong data upon the request. These rights will not apply in broadly defined cases when police considers submitting of such information would jeopardize prevention, investigation of criminal offences and protection of the security and public order, jeopardize state secrets or interests of the third persons.	
Covert purposes/ Risks/uncontrolled future evolution	Information stored by providers police already uses in investigation of the minor offences according to the information of the czech lawyers. In the 2008 the Electronic Communications Act was amended in a way that left a backdoor for intelligence services to use the providers databases. <sup>11</sup>	
Others (interconnections...)		
<b>Legislation in application</b>		
Law /rules / others (?) (implemented for this data base or this technology)	Act No. 127/2005 Coll., on Electronic Communications and its amendments, Ordinance 285/2005 of Ministry of Informatics and Ministry of Interior,	
Risks for freedoms despite the law	See column Known or potentials dangers /Risks	
If revision of the regulation: reasons? Result: improvement or aggravation (compared to the protection of the DP)	Not foreseen	
Conformity with the European right (Charter of fundamental rights, directives...)	Procession of the data probably not meeting european standards set by:	

<sup>9</sup> see proposal of the Ordinance at web pages of the Czech Chamber of Commerce, [http://www.komora.cz/hk-cr-top-02-sede/podpora-podnikani-v-cr/pripominkovani-legislativy/art\\_29852/88-09-navrh-vyhlasiky-o-uchovavani-a-predavani-provoznich-a-lokalizacnich-udaju-t-15-5-2009.aspx](http://www.komora.cz/hk-cr-top-02-sede/podpora-podnikani-v-cr/pripominkovani-legislativy/art_29852/88-09-navrh-vyhlasiky-o-uchovavani-a-predavani-provoznich-a-lokalizacnich-udaju-t-15-5-2009.aspx)

<sup>10</sup> Act No. 273/2008 Coll., on the Police of the Czech Republic, [http://portal.gov.cz/wps/portal/\\_s.155/701/.cmd/ad/.c/313/.ce/10821/.p/8411/\\_s.155/701?PC\\_8411\\_number1=273&PC\\_8411\\_p=83&PC\\_8411\\_name=o%20policii&PC\\_8411\\_l=273/2008&PC\\_8411\\_ps=10#10821](http://portal.gov.cz/wps/portal/_s.155/701/.cmd/ad/.c/313/.ce/10821/.p/8411/_s.155/701?PC_8411_number1=273&PC_8411_p=83&PC_8411_name=o%20policii&PC_8411_l=273/2008&PC_8411_ps=10#10821)

	<p>Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Council of Europe, CETS No. 108), The Czech Republic ratified the Convention CETS No. 108 on 9 July 2001 and it entered into force in the Czech Republic on 1 November 2001.</p> <p>Data retention directive is currently constitutionally challenged in several countries. In Germany Administrative Court of Wiesbaden found already the blanket recording of the entire population's traffic data on telephone, mobile phone, e-mail and Internet usage is disproportionate.<sup>12</sup> In the Czech republic NGO Iuridicum Remedium is collecting signatures of the parliamentarians for challenge at the Czech Constitutional Court</p>	
Implementation (or not) of the legislation? / Risks	Legislation is being implemented	
Others		
<b>This tools and young public or young adults</b>		
How far are young people concerned?	Data not available	
Awareness of issues or of risks	None public opinion research into this matter done so far	
Indifference or reaction	None	
Awareness campaigns/ results	Czech NGO has publicised several articles and also established web pages informing of the risks of unlimited collection of communication data. It has also several time approached members of EP and Czech parliament with a letters asking amendments of the legislation in an attempt to ensure more balanced approach towards the data protection. <sup>13</sup>	
Good practises	See chapter Awareness campaigns	
Campaign to be led. On which	Awareness campaign on fundamental right to confidential communications	

<sup>11</sup> see Czech Parliament - close in implementing data retention directive in Edrigran of 2008/06/04, <http://www.edri.org/edrigran/number6.11/czech-data-retention>

<sup>12</sup> see Germany: Data retention is disproportionate, Edrigran 2009/03/25, <http://www.edri.org/edri-gram/number7.6/data-retention-court-case-germany>

<sup>13</sup> for details see web pages of the campaign of Iuridicum Remedium [http://www.slidilove.cz/kampan/16/data\\_retention.html](http://www.slidilove.cz/kampan/16/data_retention.html), Czech Parliament - close in implementing data retention directive in Edrigran of 2008/06/04, <http://www.edri.org/edrigran/number6.11/czech-data-retention>

themes?	guaranteed to the individuals by Article 8 of the European Convention on Human Rights, awareness campaign on actual practice and extend of a traffic and location data stored by ISP and telecommunication providers and transferred to the Police.	
Others		
<b>Conclusions</b>		
Recommendations	The issue of data retention should be a subject of broader public discussion which was so far avoided in the national context. Constitutionality of the provisions and practice of the data retention should be assessed by Constitutional court.	

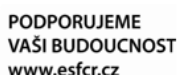
Podpořili nás:



Ministerstvo práce a sociálních věcí

Trust for Civil Society in Central & Eastern Europe

Open Society Fund Praha



Lichtenštejska a Norska v rámci

Podpořeno grantem z Islandu,

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