Data Retention in the EU
5 years after the directive

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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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

erased or made anonymous when no longer needed for the purpose of the transmission of a communication, except for the data necessary for billing or interconnection payments. Subject to consent, certain data may also be processed for marketing purposes and the provision of value-added services.

(4) Article 15(1) of Directive 2002/58/EC sets out the condi-

22nd Chaos Communication Congress

Private Investigations

We lost the war

Welcome to the world of tomorrow

Come to terms with the imminent loss of privacy and civil rights without going lethargic. We will analyse current events, how we think they will affect the issues we care about and how we can be most effective given the new circumstances. Or possibly how to simply survive the times ahead.

During this lecture, we will first analyse what is happening on a global scale with regards to privacy, civil rights, democracy, corporate control of the media and related issues. We will try to highlight trends and the interests and motivations behind them, and we will try to analyse which strategies work well and which ones don't, both from the Luke Skywalker and from the Darth Vader

SPEAKERS	
	Rop Gonggrijp
	Frank Rieger

SCHEDULE	
Day	**1**
Room	**Saal 1**
Start time	**19:00**
Duration	**01:00**

INFO	
ID	**920**
Event type	**Lecture**
Track	**Society**
Language	**English**


Freiheit statt Angst
KEIN 4. REICH
PRIVAT SPHÄRE IST KEIN VERBRECHEN

Directive 2006/24/EC

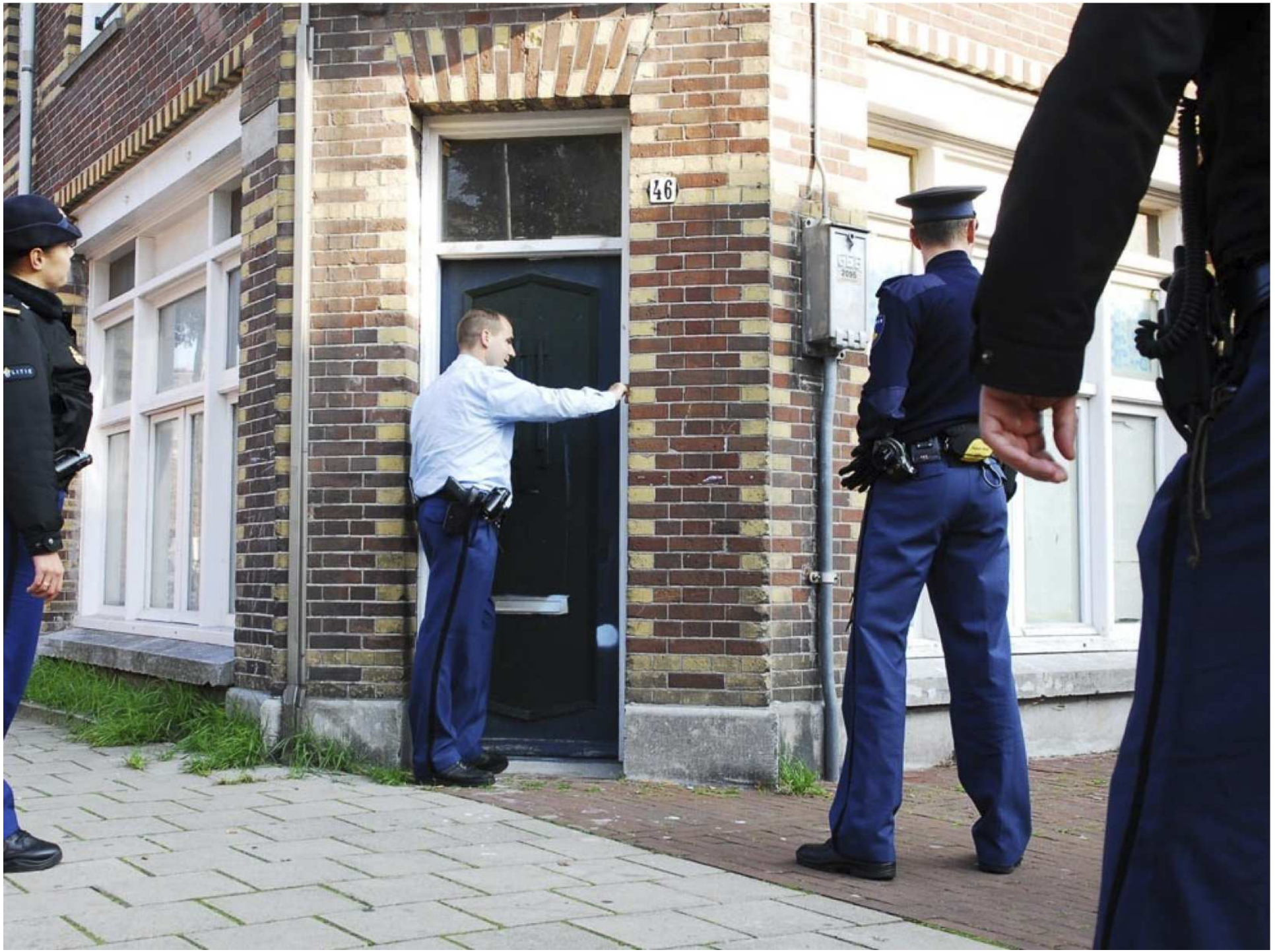
- Telcos must retain 6-24 months:
  - IP address
  - Mail traffic data
  - Phone call data
  - Location data
- for everybody
- In case it may be needed later…


500 Mio suspects in Europe

Just Traffic Data?

- Traffic data allow to reveal **who are your colleagues, acquaintances and friends** in 90% of the cases.
- Traffic data allow to predict **if you will meet a person** in the next 12 hours in 90% of the cases.
- Traffic data of the last month allow to predict **where you will be** in the next 12 hours in 95% of all cases.
- Traffic data allow a prediction of **your activities** within the next 12 hours in 80% of the cases.

Source:
Nathan Eagle et al, Massachusetts Institute of Technology (MIT),
Relationship Inference, http://reality.media.mit.edu/dyads.php


46

Access?

- for fighting „serious crime“
  - no common EU definition yet
- no rules on judge approval etc.
  - in some EU countries, police can just do it
- no rules on how & where to store data
  - central databases in several EU countries

Implementation

Case Law

- Supreme Court Rulings in
  - Germany
  - Czech Republic
  - Bulgaria
  - Cyprus
  - Romania
- Pending
  - Hungary, Poland, Ireland, …


Bundesverfassungsgericht
„absolute cumulative limit“


“continuous limitation of privacy [...]
makes the **essence** of the right disappear.”

Evaluation

Mistakes by EU Commission and Member States

- Wrong questions
  - „useful?“ - not „strictly necessary?“
- Wrong data
  - too late and only partial
  - anecdotal evidence & wrong cases
  - statistics on access, not crime clearances
  - no evaluation of countries w/o data retention
- Political conclusion way too early


„data retention is here to stay“, December 2010

EUROPEAN COMMISSION

Brussels, 18.4.2011
COM(2011) 225 final

REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

Evaluation report on the Data Retention Directive (Directive 2006/24/EC)

Shadow evaluation report on

the Data Retention Directive (2006/24/EC)

17 April 2011

Die Grünen | Europäische Freie Allianz
im Europäischen Parlament

Jan Philipp Albrecht, MdEP

Vorratsdatenspeicherung – notwendig, effektiv und verhältnismäßig?

Bewertung des Evaluationsberichtes der EU-Kommission vom 18.4.2011

EUROPEAN DATA PROTECTION SUPERVISOR

Opinion of the European Data Protection Supervisor

on the Evaluation report from the Commission to the Council and the European Parliament on the Data Retention Directive (Directive 2006/24/EC)

THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16 thereof,

Having regard to the Charter of Fundamental Rights of the European Union, and in particular Article 7 and 8 thereof,

Having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[1],

Having regard to Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector[2],

EU-Bericht

VORRATSDATENSPEICHERUNG

Stand: 14.06.2011

Centrum für Europäische Politik

KERNPUNKTE

Ziel des Berichts: Die Kommission bewertet die Anwendung der Richtlinie zur Vorratsdatenspeicherung durch die Mitgliedstaaten, den Nutzen der Maßnahme sowie ihre Auswirkungen.

Betroffene: Anbieter und Nutzer von Telekommunikationsdienstleistungen.

Pro: –

Contra: (1) Die Vorratsdatenspeicherung verstößt gegen die Grundrechte auf Achtung des Privatlebens (Art. 7 ChGR) und auf Datenschutz (Art. 8 ChGR) sowie gegen die Berufs- und wirtschaftliche Betätigungsfreiheit (Art. 15 und 16 ChGR).

(2) Die Kommission zieht keine Schlüsse aus ihrer Bewertung der Auswirkungen der Vorratsdatenspeicherung auf die Grundrechte.

(3) Die Kommission will Vertragsverletzungsverfahren gegen Mitgliedstaaten einleiten, die die – selbst nach Kommissionsansicht – unzureichende Richtlinie noch nicht umgesetzt haben.

Main Problem

„Reliable quantitative and qualitative data are crucial in **demonstrating the necessity** and value of security measures such as data retention. (…)

It has **not been possible to meet this objective**"

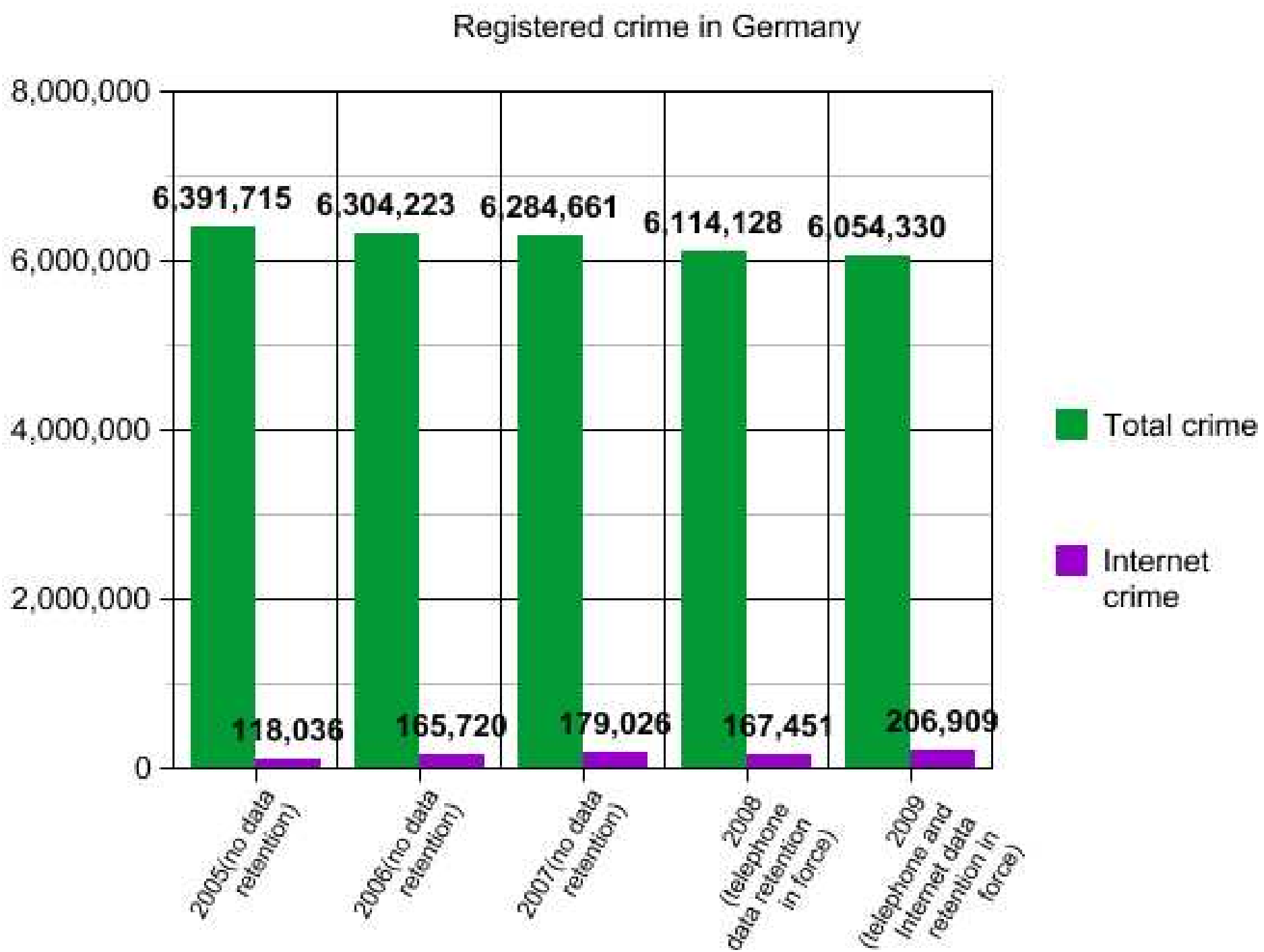
Commission evaluation report, p. 19

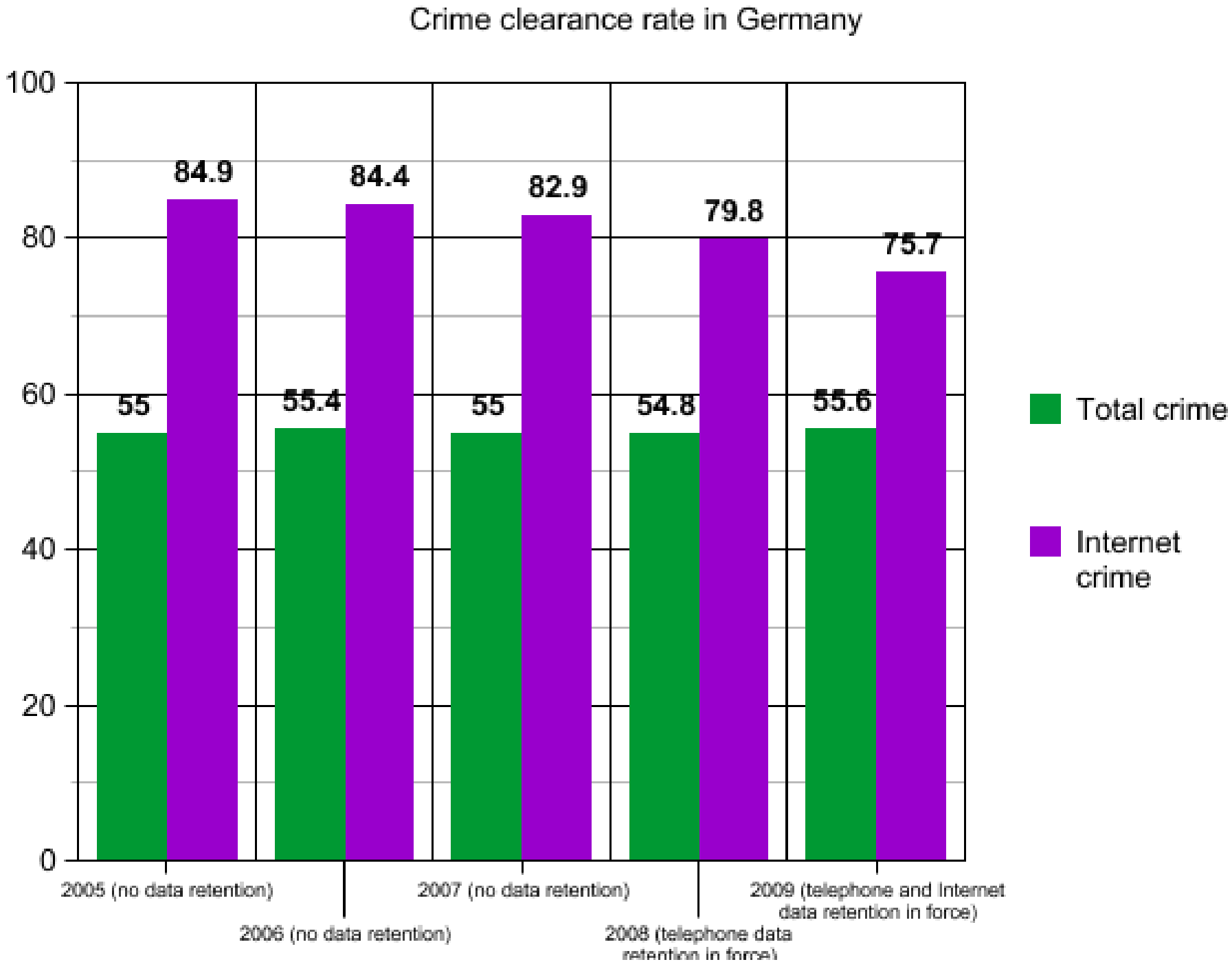
Status Update: Commission

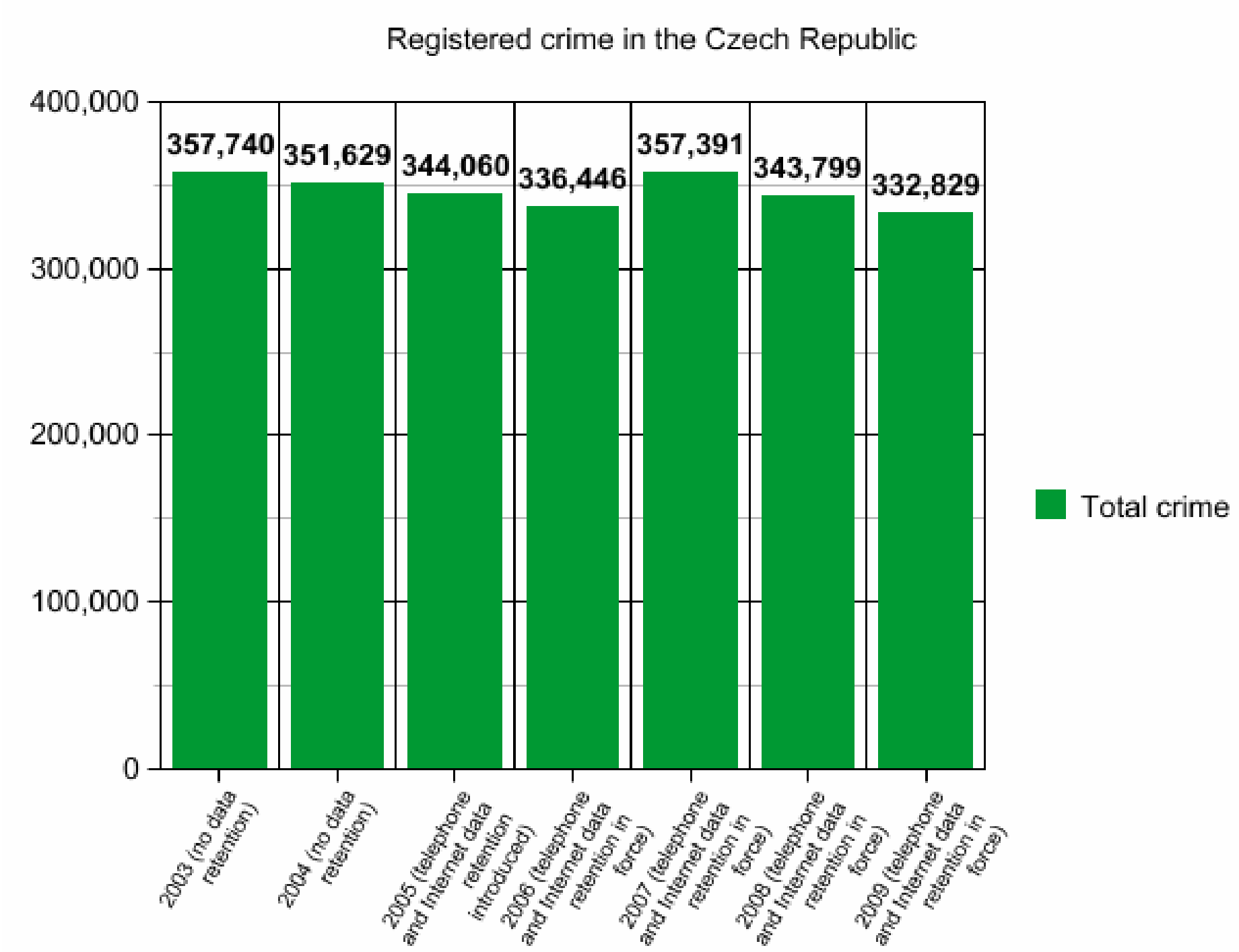
Next Steps

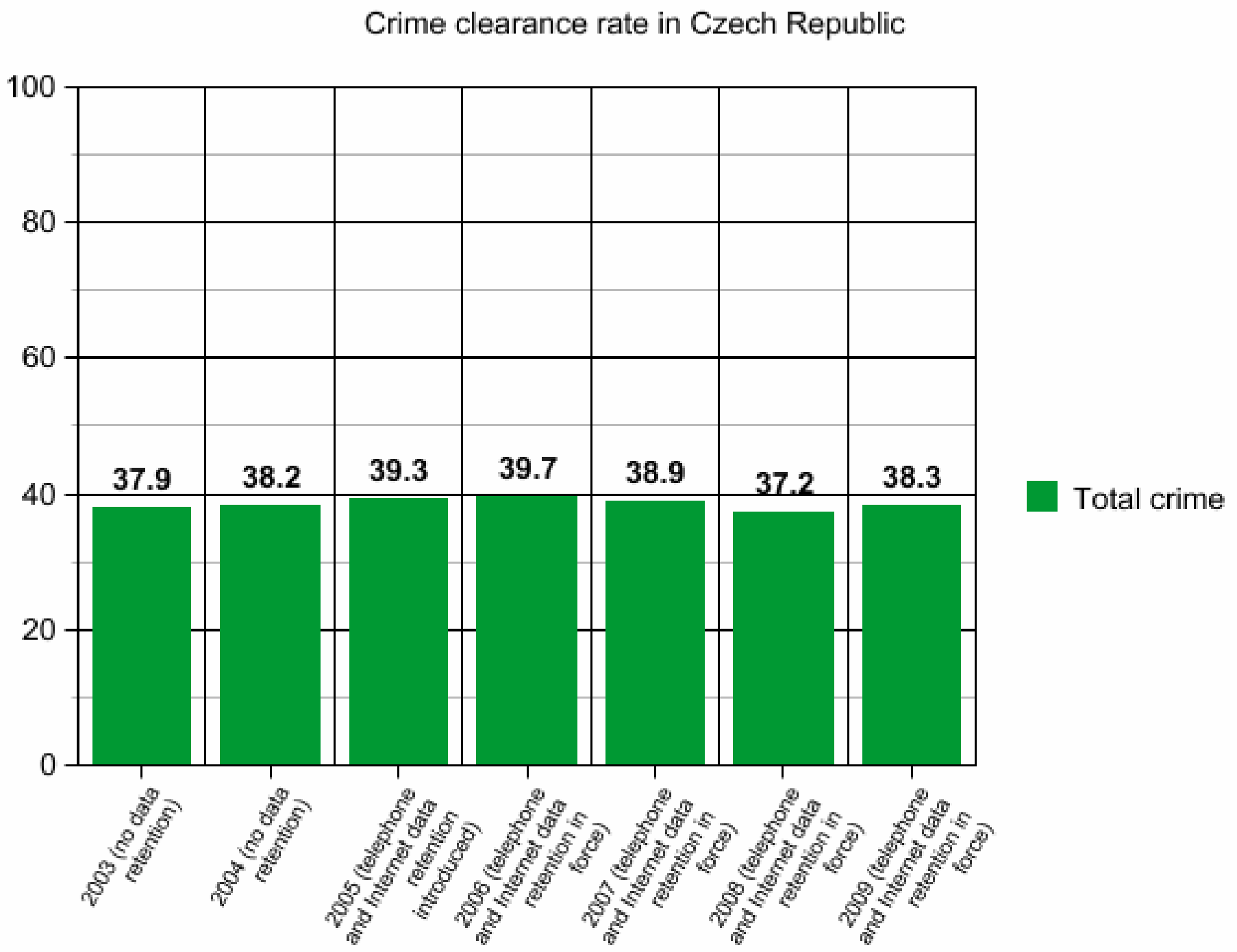
- Impact assessment on options:
  - stricter harmonisation
    - shorter retention periods / clear rules on access
  - abolish directive / make it optional
    - national laws not mandatory / need upper limits?
  - alternatives: quick freeze
- legislative proposal from Commission
  - expected in 2012

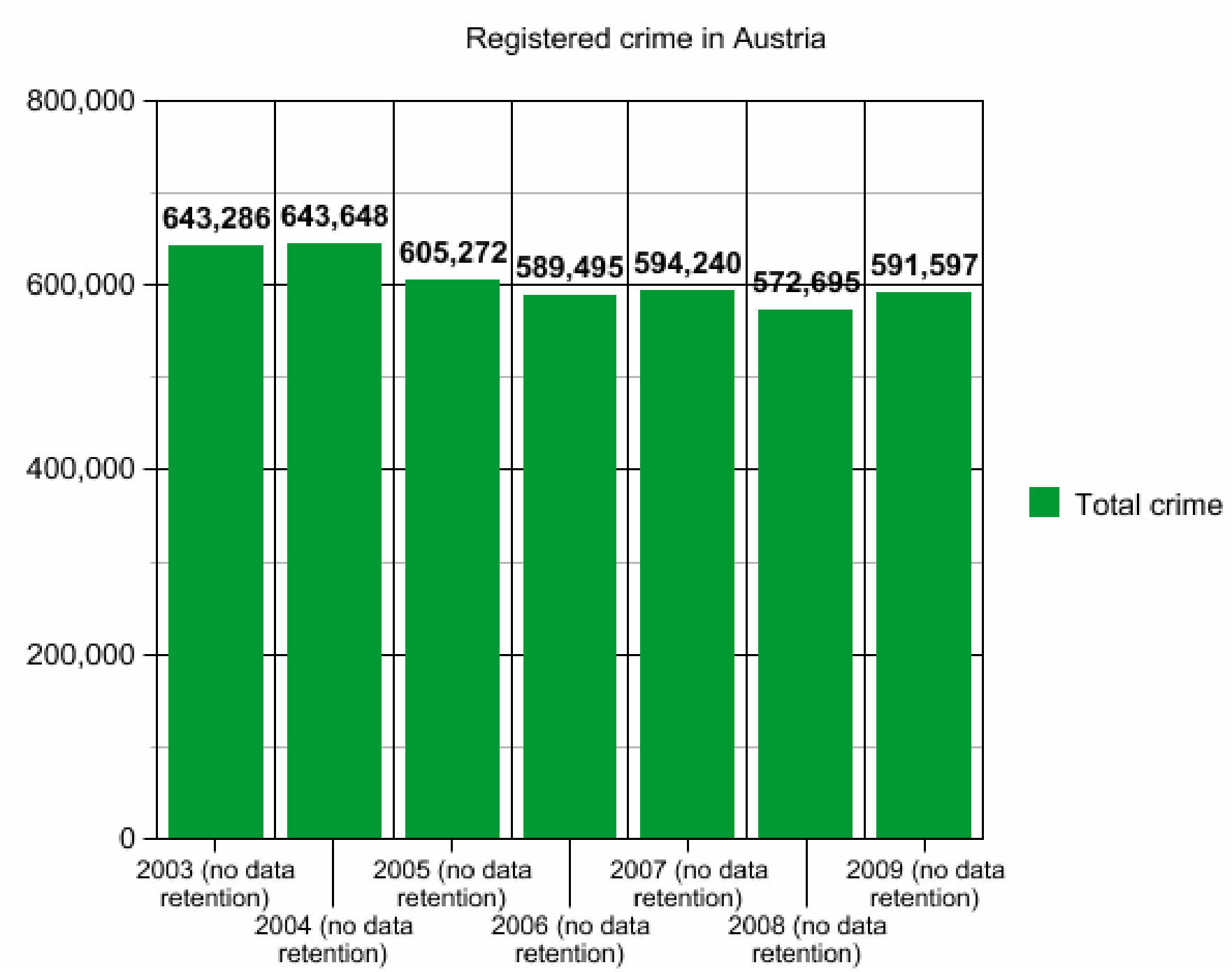
For the number nerds

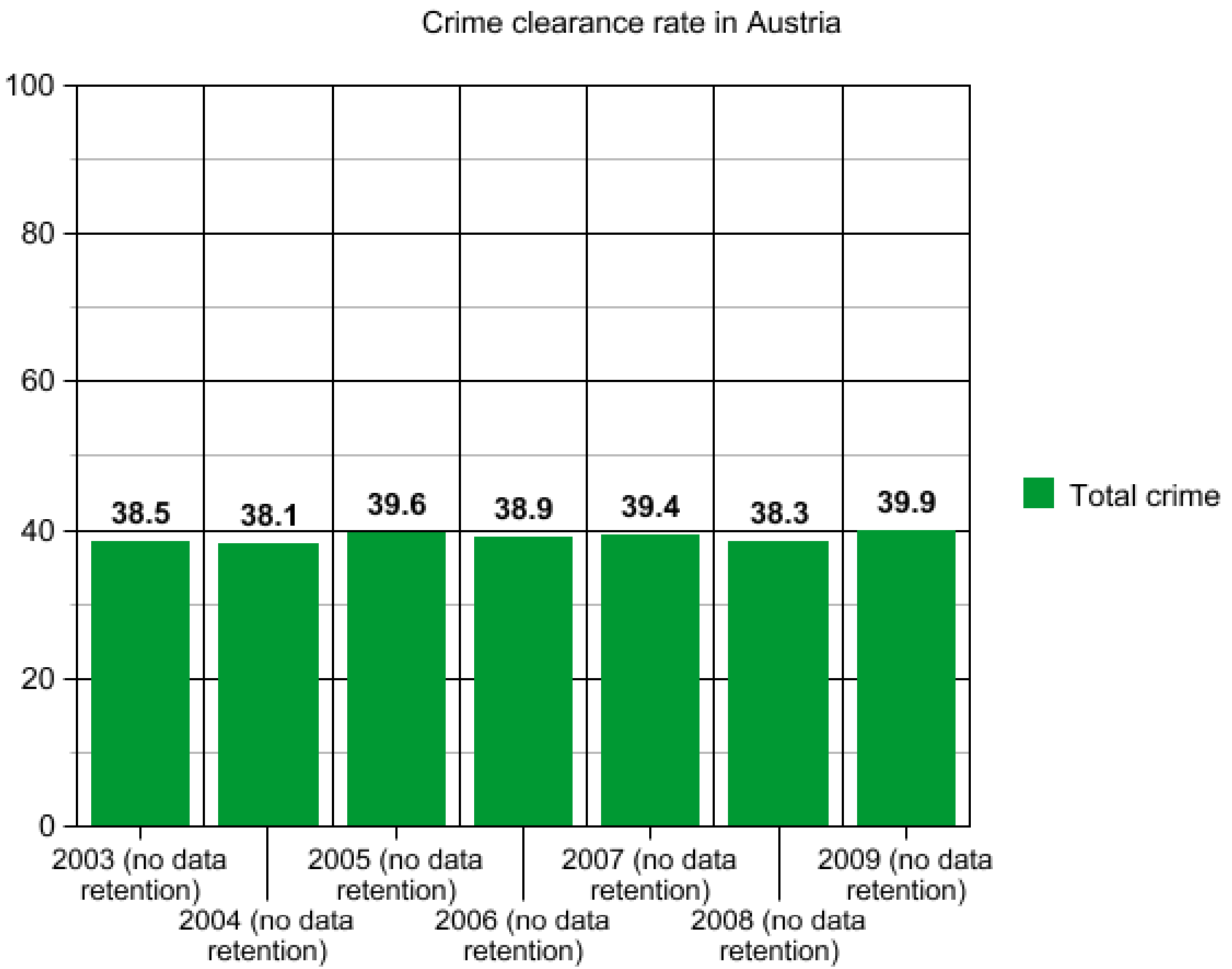

Registered crime in Germany
8,000,000
6,000,000
4,000,000
2,000,000
0
6,391,715
6,304,223
6,284,661
6,114,128
6,054,330
118,036
165,720
179,026
167,451
206,909
2005(no data retention)
2006(no data retention)
2007(no data retention)
2008 (telephone data retention in force)
2009 (telephone and Internet data retention in force)
Total crime
Internet crime


Crime clearance rate in Germany
100
80
60
40
20
0
84.9
84.4
82.9
79.8
75.7
55
55.4
55
54.8
55.6
2005 (no data retention)
2006 (no data retention)
2007 (no data retention)
2008 (telephone data
2009 (telephone and Internet
data retention in force)
Total crime
Internet
crime


Registered crime in the Czech Republic
400,000
300,000
200,000
100,000
0
357,740
351,629
344,060
336,446
357,391
343,799
332,829
2003 (no data retention)
2004 (no data retention)
2005 (telephone and Internet data retention introduced)
2006 (telephone and Internet data retention in force)
2007 (telephone and Internet data retention in force)
2008 (telephone and Internet data retention in force)
2009 (telephone and Internet data retention in force)
Total crime


Crime clearance rate in Czech Republic
100
80
60
40
20
0
37.9
38.2
39.3
39.7
38.9
37.2
38.3
2003 (no data retention)
2004 (no data retention)
2005 (telephone and Internet data retention introduced)
2006 (telephone and Internet data retention in force)
2007 (telephone and Internet data retention in force)
2008 (telephone and Internet data retention in force)
2009 (telephone and Internet data retention in force)
Total crime


Registered crime in Austria
800,000
600,000
400,000
200,000
0
643,286
643,648
605,272
589,495
594,240
572,695
591,597
Total crime
2003 (no data retention)
2004 (no data retention)
2005 (no data retention)
2006 (no data retention)
2007 (no data retention)
2008 (no data retention)
2009 (no data retention)


Crime clearance rate in Austria
100
80
60
40
20
0
38.5
38.1
39.6
38.9
39.4
38.3
39.9
Total crime
2003 (no data retention)
2004 (no data retention)
2005 (no data retention)
2006 (no data retention)
2007 (no data retention)
2008 (no data retention)
2009 (no data retention)