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
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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,

(4) Article 15(1) of Directive 2002/58/EC sets out the condi-
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
Freiheit statt Angst
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
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, ...
„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

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

17 April 2011
Vorratsdatenspeicherung – notwendig, effektiv und verhältnismäßig?
Bewertung des Evaluationsberichtes der EU-Kommission vom 18.4.2011
Opinion of the European Data Protection Supervisor


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\(^1\).

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
Crime clearance rate in Austria

- 2003 (no data retention): 38.5
- 2004 (no data retention): 38.1
- 2005 (no data retention): 39.6
- 2006 (no data retention): 38.9
- 2007 (no data retention): 39.4
- 2008 (no data retention): 38.3
- 2009 (no data retention): 39.9

Legend:
- Total crime