

Transposing the Data Retention Directive in Greece: Lessons from Karlsruhe

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Abstract

Directive 2006/24/EC ('the Data Retention Directive'), a product of political compromises following terrorist attacks in New York, Madrid and London, reflects growing trends of serious limitations to privacy in combating organized crime.

In the winter of 2011 the Greek Legislator will finally transpose this controversial Directive. Following months of speculation, this transposition is influenced by a landmark decision of the German Federal Constitutional Court. On March 2010, the *Bundesverfassungsgericht* ruled against the constitutionality of several national provisions implementing the Data Retention Directive in Germany. Among others, provisions challenging the proportionality of data retention, its scope and guarantees of telecommunications privacy. While the Court did not judge the merits of the Data Retention Directive, it did find that several German law provisions went far beyond the Directive's requirements. Moreover, it underlined the importance of traffic and location data in the construction of social profiles, a threat to informational self-determination.

The Greek legislator introduces a number of important safeguards regarding telecommunications privacy, such as limited duration and location of data retention, data security and strict penalties in case of data security breach. On the other hand, it fails to provide a clear supervisory authority guarantee, by allocating overlapping responsibilities to two independent administrative authorities (D.P.A. and A.D.A.E.).

This paper aims to address the crucial points of the BVerfGe decision and make suggestions as to what the Greek legislator should learn from Karlsruhe.