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(Acts whose publication is obligatory)

DIRECTIVE 97/66/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 December 1997

concerning the processing of personal data and the protection of privacy in the telecommunications sector

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 189b of the Treaty [3], in the light of the joint text approved by the Conciliation Committee on 6 November 1997,

(1) Whereas 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 [4] requires Member States to ensure the rights and freedoms of natural persons with regard to the processing of personal data, and in particular their right to privacy, in order to ensure the free flow of personal data in the Community;

(2) Whereas confidentiality of communications is guaranteed in accordance with the international instruments relating to human rights (in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms) and the constitutions of the Member States;

(3) Whereas currently in the Community new advanced digital technologies are introduced in public telecommunications networks, which give rise to specific requirements concerning the protection of personal data and privacy of the user; whereas the development of the information society is characterised by the introduction of new telecommunications services; whereas the successful cross-border development of these services, such as video-on-demand, interactive television, is partly dependent on the confidence of the users that their privacy will not be at risk;

(4) Whereas this is the case, in particular, with the introduction of the Integrated Services Digital Network (ISDN) and digital mobile networks;

(5) Whereas the Council, in its Resolution of 30 June 1988 on the development of the common market for telecommunications services and equipment up to 1992 [5], called for steps to be taken to protect personal data, in order to create an appropriate environment for the future development of telecommunications in the Community; whereas the Council re-emphasised the importance of the protection of personal data and privacy in its Resolution of 18 July 1989 on the strengthening of the coordination for the introduction of the Integrated Services Digital Network (ISDN) in the European Community up to 1992 [6];

(6) Whereas the European Parliament has underlined the importance of the protection of personal data and privacy in the telecommunications networks, in particular with regard to the introduction of the Integrated Services Digital Network (ISDN);

(7) Whereas, in the case of public telecommunications networks, specific legal, regulatory, and technical

[1] OJ C 200, 22.7.1994, p. 4.
[2] OJ C 159, 17.6.1991, p. 38.
[3] Opinion of the European Parliament of 11 March 1992 (OJ C 94, 13.4.1992, p. 198). Council Common Position of 12 September 1996 (OJ C 315, 24.10.1996, p. 30) and Decision of the European Parliament of 16 January 1997 (OJ C 33, 3.2.1997, p. 78). Decision of the European Parliament of 20 November 1997 (OJ C 371, 8.12.1997). Council Decision of 1 December 1997.
[4] OJ L 281, 23.11.1995, p. 31.
[5] OJ C 257, 4.10.1988, p. 1.
[6] OJ C 196, 1.8.1989, p. 4.

provisions must be made in order to protect fundamental rights and freedoms of natural persons and legitimate interests of legal persons, in particular with regard to the increasing risk connected with automated storage and processing of data relating to subscribers and users;

(8) Whereas legal, regulatory, and technical provisions adopted by the Member States concerning the protection of personal data, privacy and the legitimate interest of legal persons, in the telecommunications sector, must be harmonised in order to avoid obstacles to the internal market for telecommunications in conformity with the objective set out in Article 7a of the Treaty; whereas the harmonisation is limited to requirements that are necessary to guarantee that the promotion and development of new telecommunications services and networks between Member States will not be hindered;

(9) Whereas the Member States, providers and users concerned, together with the competent Community bodies, should cooperate in introducing and developing the relevant technologies where this is necessary to apply the guarantees provided for by the provisions of this Directive.

(10) Whereas these new services include interactive television and video on demand;

(11) Whereas, in the telecommunications sector, in particular for all matters concerning protection of fundamental rights and freedoms, which are not specifically covered by the provisions of this Directive, including the obligations on the controller and the rights of individuals, Directive 95/46/EC applies; whereas Directive 95/46/EC applies to non-publicly available telecommunications services;

(12) Whereas this Directive, similarly to what is provided for by Article 3 of Directive 95/46/EC, does not address issues of protection of fundamental rights and freedoms related to activities which are not governed by Community law; whereas it is for Member States to take such measures as they consider necessary for the protection of public security, defence, State security (including the economic well-being of the State when the activities relate to State security matters) and the enforcement of criminal law; whereas this Directive shall not affect the ability of Member States to carry out lawful interception of telecommunications, for any of these purposes;

(13) Whereas subscribers of a publicly available telecommunications service may be natural or legal persons; whereas the provisions of this Directive are aimed to protect, by supplementing Directive 95/46/EC, the fundamental rights of natural persons and particularly their right to privacy, as well as the legitimate interests of legal persons; whereas these provisions may in no case entail an obligation for Member States to extend the application of Directive 95/46/EC to the protection of the legitimate interests of legal persons; whereas this protection is ensured within the framework of the applicable Community and national legislation;

(14) Whereas the application of certain requirements relating to presentation and restriction of calling and connected line identification and to automatic call forwarding to subscriber lines connected to analogue exchanges must not be made mandatory in specific cases where such application would prove to be technically impossible or would require a disproportionate economic effort; whereas it is important for interested parties to be informed of such cases and the Member States should therefore notify them to the Commission;

(15) Whereas service providers must take appropriate measures to safeguard the security of their services, if necessary in conjunction with the provider of the network, and inform subscribers of any special risks of a breach of the security of the network; whereas security is appraised in the light of the provision of Article 17 of Directive 95/46/EC;

(16) Whereas measures must be taken to prevent the unauthorised access to communications in order to protect the confidentiality of communications by means of public telecommunications networks and publicly available telecommunications services; whereas national legislation in some Member States only prohibits intentional unauthorized access to communications;

(17) Whereas the data relating to subscribers processed to establish calls contain information on the private life of natural persons and concern the right to respect for their correspondence or concern the legitimate interests of legal persons; whereas such data may only be stored to the extent that is necessary for the provision of the service for the purpose of billing and for interconnection payments, and for a limited time; whereas any further processing which the provider of the publicly available telecommunications services may want to perform for the marketing of its own telecommunications services may only be allowed if the subscriber has agreed to this on the basis of accurate and full information given by the provider of the publicly available telecommunications services about the types of further processing he intends to perform;

(18) Whereas the introduction of itemized bills has improved the possibilities for the subscriber to verify the correctness of the fees charged by the service provider; whereas, at the same time, it may jeopardise the privacy of the users of publicly available telecommunications services; whereas therefore, in order to preserve the privacy of the user, Member States must encourage the development of telecommunications service options such as alternative payment facilities which allow anonymous or strictly private access to publicly available telecommunications services, for example calling cards and facilities for payment by credit card; whereas, alternatively, Member States may, for the same purpose, require the deletion of a certain number of digits from the called numbers mentioned in itemized bills;

(19) Whereas it is necessary, as regards calling line identification, to protect the right of the calling party to withhold the presentation of the identification of the line from which the call is being made and the right of the called party to reject calls from unidentified lines; whereas it is justified to override the elimination of calling line identification presentation in specific cases; whereas certain subscribers, in particular helplines and similar organizations, have an interest in guaranteeing the anonymity of their callers; whereas it is necessary, as regards connected line identification, to protect the right and the legitimate interest of the called party to withhold the presentation of the identification of the line to which the calling party is actually connected, in particular in the case of forwarded calls; whereas the providers of publicly available telecommunications services must inform their subscribers of the existence of calling and connected line identification in the network and of all services which are offered on the basis of calling and connected line identification and about the privacy options which are available; whereas this will allow the subscribers to make an informed choice about the privacy facilities they may want to use; whereas the privacy options which are offered on a per-line basis do not necessarily have to be available as an automatic network service but may be obtainable through a simple request to the provider of the publicly available telecommunications service;

(20) Whereas safeguards must be provided for subscribers against the nuisance which may be caused by automatic call forwarding by others; whereas, in such cases, it must be possible for subscribers to stop the forwarded calls being passed on to their terminals by simple request to the provider of the publicly available telecommunications service;

(21) Whereas directories are widely distributed and publicly available; whereas the right to privacy of natural persons and the legitimate interest of legal persons require that subscribers are able to determine the extent to which their personal data are published in a directory; whereas Member States may limit this possibility to subscribers who are natural persons;

(22) Whereas safeguards must be provided for subscribers against intrusion into their privacy by means of unsolicited calls and telefaxes; whereas Member States may limit such safeguards to subscribers who are natural persons;

(23) Whereas it is necessary to ensure that the introduction of technical features of telecommunications equipment for data protection purposes is harmonised in order to be compatible with the implementation of the internal market;

(24) Whereas in particular, similarly to what is provided for by Article 13 of Directive 95/46/EC, Member States can restrict the scope of subscribers' obligations and rights in certain circumstances, for example by ensuring that the provider of a publicly available telecommunications service may override the elimination of the presentation of calling line identification in conformity with national legislation for the purpose of prevention or detection of criminal offences or State security;

(25) Whereas where the rights of the users and subscribers are not respected, national legislation must provide for judicial remedy; whereas sanctions must be imposed on any person, whether governed by private or public law, who fails to comply with the national measures taken under this Directive;

(26) Whereas it is useful in the field of application of this Directive to draw on the experience of the Working Party on the protection of individuals with regard to the processing of personal data composed of representatives of the supervisory authorities of the Member States, set up by Article 29 of Directive 95/46/EC;

(27) Whereas, given the technological developments and the attendant evolution of the services on offer, it will be necessary technically to specify the categories of data listed in the Annex to this Directive for the application of Article 6 of this Directive with the assistance of the Committee composed of representatives of the Member States set up in Article 31 of Directive 95/46/EC in order to ensure a coherent application of the requirements set out in this Directive regardless of changes in technology; whereas this procedure applies solely to specifications necessary to adapt

the Annex to new technological developments, taking into consideration changes in market and consumer demand; whereas the Commission must duly inform the European Parliament of its intention to apply this procedure and whereas, otherwise, the procedure laid down in Article 100a of the Treaty shall apply;

(28) Whereas, to facilitate compliance with the provisions of this Directive, certain specific arrangements are needed for processing of data already under way on the date that national implementing legislation pursuant to this Directive enters into force,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Object and scope

1. This Directive provides for the harmonisation of the provisions of the Member States required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy, with respect to the processing of personal data in the telecommunications sector and to ensure the free movement of such data and of telecommunications equipment and services in the Community.

2. The provisions of this Directive particularise and complement Directive 95/46/EC for the purposes mentioned in paragraph 1. Moreover, they provide for protection of legitimate interests of subscribers who are legal persons.

3. This Directive shall not apply to the activities which fall outside the scope of Community law, such as those provided for by Titles V and VI of the Treaty on European Union, and in any case to activities concerning public security, defence, State security (including the economic well-being of the State when the activities relate to State security matters) and the activities of the State in areas of criminal law.

Article 2

Definitions

In addition to the definitions given in Directive 95/46/EC, for the purposes of this Directive:

(a) 'subscriber' shall mean any natural or legal person who or which is party to a contract with the provider of publicly available telecommunications services for the supply of such services;

(b) 'user' shall mean any natural person using a publicly available telecommunications service, for private or business purposes, without necessarily having subscribed to this service;

(c) 'public telecommunications network' shall mean transmission systems and, where applicable, switching equipment and other resources which permit the conveyance of signals between defined termination points by wire, by radio, by optical or by other electromagnetic means, which are used, in whole or in part, for the provision of publicly available telecommunications services;

(d) 'telecommunications service' shall mean services whose provision consists wholly or partly in the transmission and routing of signals on telecommunications networks, with the exception of radio- and television broadcasting.

Article 3

Services concerned

1. This Directive shall apply to the processing of personal data in connection with the provison of publicly available telecommunications services in public telecommunications networks in the Community, in particular via the Integrated Services Digital Network (ISDN) and public digital mobile networks.

2. Articles 8, 9 and 10 shall apply to subscriber lines connected to digital exchanges and, where technically possible and if it does not require a disproportionate economic effort, to subscriber lines connected to analogue exchanges.

3. Cases where it would be technically impossible or require a disproportionate investment to fulfil the requirements of Articles 8, 9 and 10 shall be notified to the Commission by the Member States.

Article 4

Security

1. The provider of a publicly available telecommunications service must take appropriate technical and organisational measures to safeguard security of its services, if necessary in conjunction with the provider of the public telecommunications network with respect to network security. Having regard to the state of the art and the cost of their implementation, these measures shall ensure a level of security appropriate to the risk presented.

2. In case of a particular risk of a breach of the security of the network, the provider of a publicly available telecommunications service must inform the subscribers concerning such risk and any possible remedies, including the costs involved.