Questionnaire for the Evaluation of Directive 2006/24EC

3 Questions Addressed to National Supervisory Authorities and the European Data Protection Supervisor (EDPS)

Qualitative Answers

3.A Assessment of the application of Directive 2006/24/EC, taking into account further developments in electronic communications technology and the statistics provided pursuant to Article 10. Please provide information on the distribution of competences of supervisory authorities according to Directives 98/46/EC, 2002/58/EC and 2006/24/EC

3.A.1 Do authorities have investigative powers vis-à-vis providers? Which cases of complaints, if any, have led to supervisory or investigative activities? Please provide for an overview of these activities and outcome of proceedings.

Do authorities have investigative powers vis-à-vis providers?

The Data Protection Act (DPA), (which transposes Directive 95/46/EC) Chapter 440 of the Laws of Malta, when enlisting the functions of the Data Protection Commissioner, in article 40(b) describes one of his functions as:

‘either of his own motion or at the request of a data subject verify whether the processing is carried out in accordance with the provisions of this Act or regulations made thereunder’.

This article endows the Data Protection Commissioner with all the necessary means to perform his duties, including powers of investigation among others both in cases of complaints from individuals or of his own initiative.

In addition to the above article 41(1) and (5) provides that, on request

(1) ‘The Commissioner shall be entitled to obtain …

(a) access to the personal data that is processed, and;
(b) information about and documentation of the processing of personal data and documentation of the processing of personal data and security of such processing …

(5) In the exercise of his functions under this article the Commissioner shall have the same powers to enter and search any premises as are vested in the executive police by any law …’

1 The definition of Data Protection Commissioner in the DPA includes ‘… any officer or employee of the Commissioner…’
Which cases of complaints, if any, have led to supervisory or investigative activities? Please provide for an overview of these activities and outcome of proceedings.

To date no cases of complaints *vis-à-vis* providers have led to supervisory or investigative activities.

3.A.2 Do authorities have investigative powers *vis-à-vis* public authorities? Which cases of complaints, if any, that have led to supervisory or investigative activities? Please provide for an overview of these activities and outcome of proceedings.

Do authorities have investigative powers *vis-à-vis* public authorities?

Vide reply to question 3.A.1.

Which cases of complaints, if any, have led to supervisory or investigative activities? Please provide for an overview of these activities and outcome of proceedings.

To date no cases of complaints *vis-à-vis* public authorities have led to supervisory or investigative activities.

3.A.6 Please provide details about case law (jurisprudence), if any, with regard to the implementation or use of the Data Retention Directive or concerning the use of retained data within criminal investigations?

To date no such details are available.
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3 Questions Addressed to National Supervisory Authorities and the European Data Protection Supervisor (EDPS)

Quantitative Answers

3.A.3 Do authorities have the power to audit the compliance of providers and have there been any audits? If so, please provide details about such audits and the outcome of proceedings.

Vide reply to 3.A.1. In this regard, the Office of the Data Protection Commissioner has the power to audit whether providers are complying with their data protection obligations in Directive 2006/24/EC, as transposed into our legislation by means of Legal Notice (LN) 198 of 2008 to the DPA entitled ‘Processing of Personal Data (Electronic Communications Sector) (Amendment) Regulations, 2008 and LN 199 of 2008 to the Electronic Communications (Regulation) Act, Chapter 399 of the Laws of Malta, entitled ‘Electronic Communications (Personal Data and Protection of Privacy) (Amendment) Regulations, 2008.

Given the fact that the Directive was transposed into our legislation just over a year ago and also that prior to the transposition this Office had regular, intensive meetings with all stakeholders, including all the telecom and internet service providers, in order to make sure that everything was in place from a data protection perspective for them to be in a position to see to the obligations brought about by the Directive and at the same time make sure that such processing does not lead to a violation of the privacy of the data subjects involved, to date, no such audits have taken place.

3.A.4 Which problems have supervisory authorities identified with the practical implementation of the Directive?

No such problems were identified.

3.A.5 What experience do authorities have with the supervision of data that service providers have stored centrally, i.e. either within their jurisdiction or beyond? If so, please provide details about the challenges met in that context, also with regard to data stored outside of the EU/EEA. Please specify in particular the data protection issues that have been addressed in that context and the approach that has been followed to settle the contentious issues.

To date no data protection issues have been addressed in the mentioned context.

3.B Evaluation of the effectiveness of existing (non-) legislative measures or technical solutions to ensure traceability of users of communication services, in particular mobile phones lines, opened with prepaid SIM cards. Please provide details of the observations made by the data protection authorities with regard to practical needs and privacy.
issues surrounding measures intended to increase the traceability of users, if any, in particular of mobile pre-paid SIM cards, in particular from the point of view of ensuring the appropriate balance between the respect of privacy of users and security interests. In case any procedure has been brought against such means or measures deployed in your country, please provide details about this procedure.

Maltese legislation does not require the registration of pre-paid SIM cards users. In view of this the Data Retention Directive as transposed into our legislation does not apply to non-registered users of prepaid SIM cards.