

EU REVISES TELECOMS DRAFT DIRECTIVE TO IMPACT ALL USERS WITH NEW CONTROLS

The EU Commission has responded to criticisms of the original 1990 version of the telecommunications privacy (ISDN) Draft Directive by publishing a revised text on June 13th this year. We cover this first EU sectoral data protection initiative with a brief report from Marie Georges, the Commission's Expert from DG XV, on the motives behind and the content of main changes to the ISDN Directive. This report is followed by a roadmap to the most important provisions which will affect all telecommunications service providers and should benefit all telecommunications users.

The ISDN Draft Directive "concerning the protection of personal data and privacy in the context of digital communication networks, in particular the Integrated Services Digital Network (ISDN) and digital mobile networks," was originally proposed in the same package of privacy related proposals as the general Data Protection Directive in 1990 (PL&B August 1990 p. 11). It has been a target of major criticisms, including those on the basis of the subsidiarity principle.

Reactions to the first draft

The original Commission's proposal for the ISDN Directive was received with a large number of representations and criticisms. Discussions were held mainly with Member States, but also with the representatives of the telecommunications industry and telemarketing professionals.

However, those Member States which support the Directive believe that there is a need for more precise harmonisation in this sector, since behind the legal text there are technical decisions which have to be made in order to make equipment in line with the legal framework. In addition to these Member States, there was some pressure from certain parts of industry to finalise the work on the

ISDN Directive. The industry was impatient to see the outcome of the Commission's proposal in order to adapt its products to the new legal requirements.

Subsidiarity test

The ISDN Directive was included in the so-called second list decided upon by the Heads of Government at the December 1992 Edinburgh summit. The second list consisted of those directives which have to be revised under the subsidiarity principle. Thus, in its attempt to revise the Directive on the basis of the subsidiarity principle, the Commission had to consider two points.

1. Is protection needed specifically for the telecommunications sector?
2. Up to which point should there be harmonisation?

Taking into account these two criteria, the Commission deleted a certain number of provisions of the ISDN draft directive which had been proposed in the first version. These are mainly provisions regarding:

- general legitimate purposes
- the requirement about periods of data retention
- the right of access.

More general provisions of the Data Protection Directive would apply in any case and ensure that the objectives of the deleted articles in the ISDN Directive are fulfilled.

More changes

The revised version of the ISDN Directive incorporates some of the amendments made by the European Parliament:

- the scope of the Directive has been widened to include private enterprises which offer certain kinds of services,
- the provision on public directories has been added to ensure uniform rules throughout the Community. There is international access to directories, especially electronic directories, within the Community and constant transfers of data from those

directories and it is necessary that the directories are regulated in the same way.

The Commission retained provisions on specific issues, such as those dealing with:

- billing data, for example, itemised billing
- calling line identification
- call forwarding
- surveillance of communication
- unsolicited calls.

The Commission's approach was, where possible, to provide only for common objectives and to leave the technical means of achieving these objectives to the Member States. This was specially the case in the area of unsolicited calls and itemised billing. Thus, the objective is specified but the technical solutions are left to the Member States.

Regarding the issue of unsolicited calls, there is a new provision on automatic call devices for transmitting pre-recorded messages. This came up in discussion on the Distance Selling Directive last year and it became necessary to have common provisions on this issue.

Calling line identification

Concerning calling line identification (CLI), the Commission decided on a per-call blocking function or a per-line blocking function. The choice is left to the subscriber. In any case, both options should be given free of charge.

The same applies in relation to third-country calls. Thus, it will be possible to block transmission of the caller's identification when a call originating in the Community goes to a third country.

Also, it will be possible to obtain elimination of the identification of all incoming

calls, irrespective of whether they originate within or outside the Community.

The Commission is looking for a broad international system, since these services have to be the same everywhere. There is a need for an international system which would work not only within the Community but also on a wider level.

It seems that the Commission's position on CLI is in line with decisions already taken in Canada and most likely to be taken in Australia. In the USA, some states already have the same provision and some work has been done at the federal level to extend it to inter-state calls. The USA position for international calls is still not clear. In any case, it is important that all the countries work together on the issue of calling line identification for convenience of the customers.

This report, written by PL&B consultant, Bojana Bellamy, is based on a presentation given by Marie Georges, Expert, D.G. 15, European Commission at the *Privacy Laws & Business 7th Annual Conference*, Cambridge in July 1994.

**The ISDN Draft Directive's text is published by the Commission of the European Communities as COM (94) 128 final-COD 288 Brussels 13.06.1994
Catalogue number: CB-CO94-138-EN-C
ISBN 92-77-67540-3, ISSN 0254-1475 and available from the Office for Official Publications of the European Communities, L-2985, Luxembourg. The document is also available in other EU official languages.**