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Commentary on Directive 2002/58/EC, article 7

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Published in:
Concise European IT law

Publication date:
2010

Document Version
Publisher's PDF, also known as Version of record

[Link to publication](#)

Citation for published version (HARVARD):

Poullet, Y 2010, Commentary on Directive 2002/58/EC, article 7. in *Concise European IT law*. Kluwer Law international, Alphen aan den Rijn , pp. 206-207.

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the framework of a processing agreement for the provision of value added services is not excluded. For instance, an internet service provider could subcontract a value added service consisting in an assistance to navigate on internet to a processor and, in this framework, could transfer the internet addresses requested by its subscriber. In such a case, the service provider is also required to inform the users and subscribers about the forwarding of their data before they give their consent where such consent is required (i.e., in case of provision of value added services).

7. Communication of traffic data to competent bodies (para. 6). According to para. 6, para. 1, 2, 3 and 5 apply without prejudice to the possibility for competent bodies to be informed of traffic data in conformity with applicable legislation with a view to settling disputes, in particular interconnection or billing disputes. This paragraph introduces an additional purpose, the settlement of disputes, of processing allowing the service provider to disclose traffic data to competent bodies and the competent bodies to process traffic data where such processing is in conformity with the applicable legislation. The consequences of the use of the terms 'without prejudice' are not very clear: would this paragraph allow the storage of data longer as permitted under paragraphs 1, 2, 3 and 5 in view of a possible communication to a competent body?

[Itemised billing]

Article 7

(1) **Subscribers shall have the right to receive non-itemised bills.**

(2) **Member States shall apply national provisions in order to reconcile the rights of subscribers receiving itemised bills with the right to privacy of calling users and called subscribers, for example by ensuring that sufficient alternative privacy enhancing methods of communications or payments are available to such users and subscribers.**

General. Art. 7(1) gives the subscriber the right to obtain itemised bills for all services covered by the Directive and not only for voice telephony services as it was the case with the Old Directive or the Universal Service Directive (Booklet 1-4). The significance of this provision is unclear as it might mean that the offer of an itemised billing is only optional and submitted to the condition of the subscriber's request. Art. 7(2) encourages the Member States to take national measures in order to 'reconcile the rights of subscribers receiving itemised bills with the right to privacy of calling users and called subscribers'. *Consumers' v Privacy concerns – Possible solutions.* On that point precisely, consumer protection interests might diverge substantially from privacy concerns. The problem is delicate insofar the subscriber might be different from the user, for example, within a family or a company. In that context the itemised bill might be a way to have a look at the activities

of an employee or a spouse or child. To solve this delicate problem, recital 33 does suggest certain methods like the use of optional services and payment mechanisms (e.g. prepaid calling cards to be inserted in the terminal equipment) which will permit use of the terminal equipment anonymously and without traces in the bill. Furthermore, at the request of the Working Party, the same recital makes reference to the French solution enacted by Decree No. 2002-36 of 8 January 2002 which requires voice telephony service providers to offer a service option whereby the last four digits of the called numbers do not appear on the bill.

[Presentation and restriction of the calling and connected line identification]

Article 8

(1) **Where presentation of calling line identification is offered, the service provider must offer the calling user the possibility, using a simple means and free of charge, of preventing the presentation of the calling line identification on a per-call basis. The calling subscriber must have this possibility on a per-line basis.**

(2) **Where presentation of calling line identification is offered, the service provider must offer the called subscriber the possibility, using a simple means and free of charge for reasonable use of this function, of preventing the presentation of the calling line identification of incoming calls.**

(3) **Where presentation of calling line identification is offered and where the calling line identification is presented prior to the call being established, the service provider must offer the called subscriber the possibility, using a simple means, of rejecting incoming calls where the presentation of the calling line identification has been prevented by the calling user or subscriber.**

(4) **Where presentation of connected line identification is offered, the service provider must offer the called subscriber the possibility, using a simple means and free of charge, of preventing the presentation of the connected line identification of the calling user.**

(5) **Paragraph 1 shall also apply with regard to calls to third countries originating in the Community. Paragraphs 2, 3 and 4 shall also apply to incoming calls originating in third countries.**

(6) **Member States shall ensure that where presentation of calling and/or connected line identification is offered, the providers of publicly available electronic communications services inform the public thereof and of the possibilities set out in Paragraphs 1, 2, 3 and 4.**

1. General. This article regulates in detail the conditions under which information about the participants in a telephone conversation may be disclosed