

Law no. 298/2008 on the retention of data generated or processed in connection with the provisions of publicly available electronic communications services or of public communications networks and for the amendment of Law no. 506/2004 on the processing of personal data and the protection of private life within the electronic communication sector

CHAPTER I: General provisions

Article 1

(1)The present law establishes the obligations of the providers of electronic communications network and services with respect to the retention of certain data which are generated or processed by them, in order to ensure that the data are available to the competent authorities for the purpose of the investigation, detection and prosecution of serious crime.

(2)The present law shall apply to traffic and location data on both legal entities and natural persons and to the related data necessary to identify the subscriber or registered user.

(3)The present law shall not apply to the content of electronic communications, including information consulted using an electronic communications network.

(4)The application of the provisions of the present law shall be done with the observance of the provisions of Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data, modified and amended, and of Law no. 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector, modified and amended.

Article 2

(1)Within the meaning of the present law, the following terms and expressions have the following definitions:

a)providers of electronic communications network and services – the person which provides, for commercial purpose, services and/or electronic communication networks to the end users or other providers of electronic communications network and services, in order to sustain their traffic;

b)data - traffic data and location data and the related data necessary to identify the subscriber or user;

c)user – any legal entity or natural person using a publicly available electronic communications service, for private or business purpose, without necessarily having subscribed to that service;

d)subscriber – any legal entity or natural person which signed a contract with a provider of publicly available electronic communications network and services;

e)telephone service - calls (including voice, voicemail and conference and data calls), supplementary services (including call forwarding and call transfer) and messaging and multi-media services (including short message services, enhanced media services and multi-media services);

f) serious crime – crime which is part of the ones enumerated at article 2 paragraph b) of Law no. 39/2003 concerning the prevention and suppression of organised crime, committed or not by an organised group, provided by chapter IV of Law no. 535/2004 concerning the prevention and suppression of terrorism and also among crimes against the state security provided by title I of the special part of Law no. 15/1968 – Criminal Code of Romania, republished, modified and amended;

g) user ID – a unique identifier allocated to persons when they subscribe to or register with an Internet access service or Internet communications service;

h) cell ID – the identity of the cell from which a mobile telephony call originated or in which it terminated;

i) unsuccessful call attempt – a communication where a telephone call has been successfully connected but not answered or there has been a network management intervention

j) unconnected call – a communication where a telephone call has not been technically finalised, meaning there was no connection between the calling person and the called person.

(2) Within the provisions of the law, the definitions provided by Article 3 of Law no. 677/2001, modified and amended, and the ones provided by Article 2 of Law no. 506/2004, modified and amended, are applicable.

CHAPTER II: Data retention

Art. 3

(1) The providers of publicly available electronic communications services and of publicly communications networks have the obligations to ensure, on their expense, the creation and the administration of a database, in order to retain the following categories of data, to the extent in which the data are generated or processed by them:

a) data necessary to trace and to identify the source of a communication;

b) data necessary to identify the destination of a communication;

c) data necessary to identify the date, time and duration of a communication;

d) data necessary to identify the type of communication;

e) data necessary to identify users' communication equipment or what purports to be their equipment;

f) data necessary to identify the location of mobile communication equipment.

(2) The retention period is of six months from the date of communication.

(3) The expenses related to the creation and administration of the database are fiscally deductible.

Article 4

The data necessary to trace and to identify the source of a communication contain:

a) concerning fixed network telephony and mobile telephony: the calling telephone number and also the name and address of the subscriber or registered user

b) concerning Internet access, Internet e-mail and Internet telephony: the user ID(s) allocated; the user ID and telephone number allocated to any communication entering the public telephone network; the name and address of the subscriber or registered user to whom an Internet Protocol (IP) address, user ID or telephone number was allocated at the time of the communication.

Article 5

The data necessary to identify the destination of a communication contain:

a) concerning fixed network telephony and mobile telephony: the number(s) dialled (the telephone number(s) called), and, in cases involving supplementary services such as call forwarding or call transfer, the number or numbers to which the call is routed; the name(s) and address(es) of the subscriber(s) or registered user(s);

b)concerning Internet e-mail and Internet telephony: the user ID or telephone number of the intended recipient(s) of an Internet telephony call; the name(s) and address(es) of the subscriber(s) or registered user(s) and user ID of the intended recipient of the communication.

Article 6

The data necessary to identify the date, time and duration of a communication contain:

a)concerning fixed network telephony and mobile telephony, the date and time of the start and end of the communication;

b)concerning Internet access, Internet e-mail and Internet telephony: the date and time of the log-in and log-off of the Internet access service, together with the IP address, whether dynamic or static, allocated by the Internet access service provider to a communication, and the user ID of the subscriber or registered user; the date and time of the log-in and log-off of the Internet e-mail service or Internet telephony service.

Article 7

The data necessary to identify the type of communication contain:

a)concerning fixed network telephony and mobile telephony: the telephone service used;

b)concerning Internet e-mail and Internet telephony: the Internet service used.

Article 8

The data necessary to identify users' communication equipment or what purports to be their equipment contain:

a)concerning fixed network telephony, the calling and called telephone numbers;

b)concerning mobile telephony: the calling and called telephone numbers; the International Mobile Subscriber Identity (IMSI) of the calling party; the International Mobile Equipment Identity (IMEI) of the calling party; the IMSI of the called party; the IMEI of the called party; in the case of pre-paid anonymous services, the date and time of the initial activation of the service and the location label (Cell ID) from which the service was activated;

c)concerning Internet access, Internet e-mail and Internet telephony: the calling telephone number for dial-up access; the digital subscriber line (DSL) or other end point of the originator of the communication.

Article 9

The data necessary to identify the location of mobile communication equipment contain:

a)the location label (Cell ID) at the start of the communication;

b)data identifying the geographic location of cells by reference to their location labels (Cell ID) during the period for which communications data are retained.

Article 10

(1)The providers of publicly available electronic communications services and of publicly communications networks, set up within Romanian jurisdiction, have the obligation to retain the data concerning an unsuccessful call attempt only where these data are generated or processed and store, as regards telephony data, or logged, as regards Internet data, within the activities of services providing.

(2) The providers do not have the obligation to retain the data provided by Article 3 paragraph (1) as regards the unconnected calls.

Article 11

(1)For the application of the provisions of present law, the interception and the retention of the communication's content or of the information consulted during the usage of an electronic communication network is forbidden.

(2) The providers of publicly available electronic communications services and of publicly communications networks have the obligation to retain only those data enumerated by Article 3 paragraph (1), which are accessible only when carrying out their activities, according to the law.

(3) At the end of the retention period, all the data stored according to the present law, except for those provided to the competent authorities, according to the law, and stored by them, shall be, irreversibly, destroyed through automatic procedures.

Article 12

The activity of data retention is carried out by observing the following principles:

a) the retained data shall be of the same quality and subject to the same security and protection as those data on the network;

b) the data shall be subject to appropriate technical and organisational measures to protect the data against accidental or unlawful destruction, accidental loss or alteration, or unauthorised or unlawful storage, processing, access or disclosure;

c) the data shall be subject to appropriate technical and organisational measures to ensure that they can be accessed by specially authorised personnel only.

Article 13

(1) In case the data provided by Articles 4-7 can be retained by more providers of electronic communications network and services, the data retention activity is carried out only by one of the providers.

(2) The retention activity of data provided by Articles 4-7 may be carried out by a third party, for a provider of electronic communications network and services, where technically possible and following a contractual agreement and is carried out according to the provisions of Articles 19 and 20 of Law no. 677/2001, modified and amended, and of Law no. 506/2004, modified and amended.

(3) The obligation to retain the data provided by Articles 4-7 is applicable to the providers of electronic communications network and services which assign numbers, concerning fixed and mobile telephony, IP addresses, in case of data services.

Article 14

(1) The Ministry of Interior and Administrative Reform, the Public Ministry, the Romanian Intelligence Service and the Foreign Intelligence Service, hereinafter competent authorities, have the obligation to collect and to communicate, each semester, to the Ministry of Communications and Information Technology the following statistical data, in the view of prosecution and control of the provisions application:

a) the number of cases in which the information were provided to the competent authorities, according to the provisions of present law;

b) the period of time between the date when the data were retained and the date when the competent authority has solicited the communication of data;

c) the number of cases in which the requests for data could not be carried out.

(2) The terms until the statistical data should be communicated are established by methodological norms for the application of the law.

(3) The Ministry of Communications and Information Technology centralizes the statistical data received from the competent authorities and submits, annually, to the European Commission, the statistics elaborated based on those data. The statistics shall not contain personal data.

CHAPTER III: The procedure for requesting the data retained

Article 15

The providers of publicly available electronic communications services and of publicly communications networks have the obligation, at the request of competent authorities, based on the authorization issued according to the provisions of Article

16, to communicate as soon as possible the data stored according to this law, except the cases of force majeure.

Article 16

(1) The request of transmitting the data retained according to the present law is accomplished only after the criminal prosecution has begun, with a motivated authorization of the court president which has the competence to judge the case in first instance or from the court corresponding by degree, in the territorial jurisdiction that covers the premises of the parquet where the prosecutor carries out or supervises the criminal prosecution or of the judge assigned by the latter, at the prosecutor's request who carries out or supervises the criminal prosecution, according to the law, if there are serious data or signs concerning the preparation or committing a serious crime.

(2) In emergency cases, when the delay from obtaining the authorization provided by paragraph (1) would bring serious prejudices to the criminal prosecution activities or to the accomplishment of the obligations assumed by Romania through juridical documents for international cooperation or as an European Union Member State, the prosecutor, who carries out or supervises the criminal prosecution or who has that competence, may authorize, by a motivated ordinance, the request of communicating the retained data, according to the present law. According to paragraph (1), within 48 hours from issuing the authorization, the prosecutor presents to the competent court of law the reasons for issuing the authorization. Within at least 48 hours, the court of law takes the decision concerning the legality and the solidity of the ordinance by which the data transmission request was authorized.

(3) The authorization of requesting the retained data should contain:

- a)** the name of the court/parquet;
- b)** date, hour and place of issuing;
- c)** name and surname of the judge/prosecutor;
- d)** the availability period of the authorization;
- e)** name and social headquarter of the legal entity which has to provide the data retained;
- f)** indicating the person who makes the object of the verification of retained data or indicating the identification code of the subscriber or of the unregistered user for the Internet services or of the phone number of the subscriber or of the unregistered user for the fixed or mobile telephony services;
- g)** the concrete ground for issuing the authorization for the request of retained data;
- h)** the period of time for which the retained data are to be provided;
- i)** the signature of the judge/prosecutor.

(4) The lack of any of the mentions provided by paragraph (3) is sanctioned with the absolute nullity of the authorization.

(5) The availability period of the authorization cannot surpass 15 days.

(6) The retained data not related to the fact that constitutes the research object are archived at the parquet's premises, in special places, in sealed envelope, by ensuring the confidentiality and can be communicated to the judge or, by request, to the group invested with finalising the cause. At the final solution of the cause, the data shall be deleted or, by case, destroyed by the prosecutor, by signing a minute.

(7) If the solution of not prosecuting was issued, the retained data are archived at the parquet's premises, in special places, in sealed envelope, by ensuring the confidentiality and are kept until the prescription term of the criminal responsibility for the action which constituted the cause is due, and when they are destroyed, a minute is signed.

(8) If the court declared a conviction, acquittal or cessation decision for the criminal process, which is definitive, the retained data are archived in the same time with the

dossier at the court's premises, in special places, in sealed envelope, by ensuring the confidentiality.

CHAPTER IV: The supervisory authority

Article 17

The competent authority to monitor the application of the provisions of the present law is the National Supervisory Authority for the Processing of Personal Data, hereinafter N.S.A.P.D.P.

CHAPTER V: The regime of the sanctions

Article 18

(1)Constitute contraventions the following acts:

- a)the non accomplishment of the obligation provided by Article 3 paragraph (2);
- b)the non accomplishment of the obligation provided by Article 11 paragraph (2) and (3);
- c)the non accomplishment of the obligation provided by Article 12.

(2)The contraventions provided by paragraph (1) are sanctions, by derogation from the provisions of Government Ordinance no. 2/2001 on the legal framework of minor offences, approved with modifications and amendments by Law no. 180/2002, modified and amended, with a fine from 2.500 lei up to 500.000 lei.

(3)The establishment of the contraventions provided by paragraph (1) and the application of the sanctions is performed by the control personnel of N.S.A.P.D.P., empowered for this activities, according to the provisions of Article 35 of Law no. 677/2001, modified and amended.

Article 19

(1)Any intentional access or transfer of data stored according to the present law, without an authorization, constitutes an infringement and is punished with imprisonment from one year to five years.

(2)The intentional obstruction of communicating the retained data to the competent authorities, as a consequence of applying the present law constitutes an infringement and is punished with imprisonment from 6 months to one year.

(3)The attempt to the infringement provided by paragraph (1) is punished.

CHAPTER VI: Final provisions

Article 20

For the purpose of preventing and counteracting the threats toward the national security, the state bodies with attributions in this domain may have access, in the conditions established by normative acts which regulate the activity of national security, to the data retained by the providers of publicly available electronic communications services and of publicly communications networks.

Article 21

On the date of entering into force, Law no. 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector, published in the Official Journal of Romania, Part I, no. 1.101 of 25th of November 2004, amended, is modified and amended as following:

1.Article 5, paragraphs (1) and (6) are modified and shall have the following content:

"Article 5

(1) Traffic data relating to subscribers and users, processed and stored by the provider of a public electronic communications network or by the provider of a publicly available electronic communications service, must be erased or made anonymous when they are no longer needed for the purpose of the transmission of a communication without prejudice to paragraphs (2), (3), (5) and (5¹).

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(6) Paragraphs (1) to (3) and (5) shall apply without prejudice to the possibility for competent bodies to have access to traffic data in conformity with applicable legislation."

2. Article 8, after paragraph (4) a new paragraph is introduced, paragraph (5) with the following content:

"(5) The provisions of the present Article shall apply without prejudice to the possibility for the competent authorities to have access to the data retained by the providers of a public electronic communications network or by the provider of a publicly available electronic communications service, according to the law."

Article 22

Within 30 days from entering into force, the Ministry of Communications and Information Technology shall elaborate the methodological norms for the application of the law and will submit them for approval to the Government.

Article 23

(1) The present law enters into force from 60 days from its publishing in the Official Journal of Romania, Part I.

(2) The provisions referring to the retention of traffic and location data relating to the Internet access, Internet e-mail and Internet telephony will be applicable starting with 15th of March 2009.

The present law is transposing the provisions of Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, published in the Official Journal of the European Union (OJEU) no. L105 of 13th of April 2006.

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This law was adopted by the Romanian Parliament, with the observance of the provisions of Article 75 and 76 paragraph (1) of the Romanian Constitution, republished.

Published in the Official Journal no. 780 of 21st of November 2008.