

## **Draft “Agreed Summary” - for use in report to EURIM Council and Members**

The following points emerged in the course of the discussions with DTI officials during the workshop on the Draft Regulations on the Lawful Business Practice Regarding the Interception of Communications on 7th September.

1. The Telecoms Data Protection Directive has been overtaken by changes in technology not envisaged when it was drafted and there have been major changes in staff both in Commission and the UK since the Directive it was agreed and also since the consultations on the TDPD last year. This, plus a number of other problems led to the short consultation period. DTI is committed to a 12 week period (as per the new Cabinet Office Guidelines) in future.
2. The intention is that where corporate guidelines exist for use of their systems and communications facilities by staff, no change in current procedures and practices will be required. The purpose of the regulations is to cover situations where these do not exist. Nonetheless, all corporations will need to review their procedures to ensure their activities are authorised and that will take time.
3. Issues arise in a businesses’ relations with the external world but the expectation is that it will be possible to handle these with simple statements saying that communications are monitored.
4. It is believed that the handling of stored data fits within Data Protection provisions. There is, however, a need for clarification that store and forward uses (including caching) are not regarded as interception. The issue is to see that what is currently done is not constrained and not to impede future technology developments.
5. There is a need for much clarity and precision on a number of definitions; in terms both of what is meant and what they cover. Queries were raised with regard to “authorised” (where UK Courts use a more precise definition that what was believed to be intended), “interception”, “communications data” and various aspects of the wording in RIP Act.
6. There is a need for guidance for small firms on the implications of these regulations for them. It was suggested that the Small Firms service be responsible for this.
7. Issues of penalties and enforcement were raised but not discussed in detail.
8. There is a risk that unless rules are clear and simple, firms in doubt will merely move the point of interception outside the UK and the EU. Some corporate activities are already located in London to enable procedures that cannot be based in some other European countries because of their domestic legislation. These would be among the first to move.
9. Issues of explicit or implied consent were raised. Contracts of employment or with contractors can be used to obtain consent. The means of informing third parties of corporate policies regarding recording calls for business purposes needed to be

addressed. If simple wording in contracts or advertisements or on websites is sufficient then the cost to business is greatly reduced.

10. Internally, organisations will need to be precise in their guidance to management, their communications to staff and in their internal policies in respect of situations where they inform and situations where they need to seek consent. This applies equally to communications within the company from employee to employee and outside the company between employee and third party. The DTI undertook to clarify these issues in the response to consultation.
11. DTI's summary of the consultation exercise would examine the status of the interception of communications data. The future Communications Data Protection Directive was likely to cover it and therefore there was a need for early inputs to the consultation process on these issues.
12. The need for the short deadline for consultation and implementation was explained. The timetable is realistic only if the regulations and accompanying statements are such that industry does not have to make major changes or produce its own sector guidelines. It was suggested that if an employee or third party raised a complaint in the period before guidelines were available it would only be a civil action and they would have to show loss as a consequence.
13. There will be a need at some stage for a comparison of how the UK and other Member States are implementing the TDPD provisions.
14. EURIM and DTI agreed to look at the timetables for consultation on a number of forthcoming European directives with a view to working together to promote more timely and representative inputs from those likely to be affected .