

Jurius

## Telephone Subscriber's Data Permitted in Other State

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ECJ – A telephone subscriber's consent to the publication of his data also covers its use in another Member State. The highly harmonised regulatory framework makes it possible to ensure throughout the EU the same respect for requirements relating to the protection of subscribers' personal data. (Judgement C-536/15)

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[Rz 1] The Belgian company European Directory Assistance (EDA) offers directory enquiry services and directories accessible from Belgian territory. It requested the undertakings which assign telephone numbers to subscribers in the Netherlands (namely, Tele2, Ziggo and Vodafone Libertel) to make available to it data relating to their subscribers, relying in that regard on an obligation provided for under Dutch law, which is itself a transposition of the Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (OJ 2002 L 108, p. 51), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 (OJ 2009 L 337, p. 11). Since those undertakings considered that they were not required to provide the data in question to an undertaking established in another Member State, they refused to provide the data requested.

[Rz 2] The College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands), which is ruling on the dispute, referred some questions to the Court of Justice for a preliminary ruling. In addition to the question whether an undertaking is required to make data relating to its subscribers available to a provider of directory enquiry services and directories established in another Member State, that court wishes to know, if that is so, whether it is necessary to leave the subscribers with the choice whether or not to give their consent depending on the country in which the undertaking requesting that data provides its services. In that regard, the Dutch court asks how to balance respect for the principle of non-discrimination and privacy.

[Rz 3] In its judgment, the Court declares, in answer to the first question, that the Universal Service Directive covers also all requests made by an undertaking established in a Member State other than that in which the undertakings which assign telephone numbers to subscribers are established.

[Rz 4] It is apparent from the wording itself of the relevant Article 25(2) of the directive that it covers all reasonable requests to make available data for the purposes of the provision of publicly available directory enquiry services and directories. Moreover, that provision requires that that information be made available in a non-discriminatory manner.

[Rz 5] That article therefore makes no distinction according to whether the request is made by an undertaking established in the same Member State as that in which the undertaking to which the request is addressed is established, or in another Member State. That lack of distinction is compatible with the objective pursued by the directive, which seeks, in particular, to ensure the availability, throughout the EU, of good quality publicly available services through effective competition and choice.

[Rz 6] Moreover, the refusal to make data relating to subscribers available to persons requesting that information on the sole ground that they are established in another Member State is incompatible with the principle of non-discrimination.

[Rz 7] As regards the question whether it is necessary to leave the subscribers with the choice whether or not to give their consent depending on the country in which the undertaking requesting that data provides its services, the Court refers to its previous case-law (Case: C-543/09 Deutsche Telekom ). Where a subscriber has been informed by the undertaking which assigned him a telephone number of the possibility that his personal data may be passed to a third-party undertaking, with a view to being published in a public directory, and he has consented to that publication, renewed consent is not needed from the subscriber at issue for the passing of the sa-

me data to another undertaking, if it is guaranteed that the data in question will not be used for purposes other than those for which the data were collected with a view to their first publication.

[Rz 8] In those circumstances, the passing of the same data to another undertaking intending to publish a public directory without renewed consent having been obtained from that subscriber is not capable of substantively impairing the right to protection of personal data, as recognised by the Charter of Fundamental Rights of the European Union.

[Rz 9] Moreover, the Court notes that, regardless of where they are established in the EU, undertakings which provide publicly available telephone directory enquiry services and directories operate within a highly harmonised regulatory framework making it possible to ensure throughout the EU the same respect for requirements relating to the protection of subscribers' personal data.

[Rz 10] Consequently, it is not necessary for the undertaking assigning telephone numbers to its subscribers to differentiate in the request for consent addressed to the subscriber according to the Member State to which the data concerning him could be sent.

Judgement of the ECJ C-536/15 of 15 March 2017 in case Tele2 (Netherlands) BV, Ziggo BV and Vodafone Libertel BV vs. Autoriteit Consument en Markt (ACM)

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