

**3rd International Conference
on Public Policy (ICPP3)
June 28-30, 2017 – Singapore**

Panel: Policy Process Theories

Session: Policy-Making in the Context of Contested Paradigms

**One Step forward, two Steps back?
Digital Transformation as a Contested Policy Paradigm**

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For a decade, internet activists in Germany have pushed hard for internet policy as a new policy paradigm that covers not only technical aspects but the transformative and disruptive power of the internet on all parts of society. Recently, the Bundestag established a novel standing committee of Internet policy and digital society issues, the Digital Agenda Committee (DAC), which ostensibly indicated that the new and contested paradigm of internet policy had gained an important and permanent spot on the political agenda. However, the introduction of the DAC got mixed reviews. While some scholars interpret the DAC as an important novel actor of internet policy within parliament, journalists, Internet bloggers, and Social Media activists are disappointed by its limited responsibilities. They lament that most politicians have not grasped the new paradigm and its implications.

Much can be learned by studying how new issues contest established policy paradigms in parliaments since these are prominent venues for policy making. In our paper we ask whether the DAC matters for parliamentary decision-making processes on Internet policy legislation in Germany and how. Is the Digital Agenda Committee a venue for the new paradigm of internet policy? Does its creation help parliamentarians to promote this new policy paradigm? We use legislation on data retention as a most likely case for the formation of an internet policy paradigm. In a before-and-after case study, we use discourse network analysis to study the effects of committee jurisdictional changes, related discourses and framing processes, the formation of issue coalitions (within and beyond committees) as well as strategies of individual members of parliament. By understanding how the respective policy paradigm has been contested we contribute to the more general question whether it got shifted in the direction of a comprehensive internet policy paradigm.

Keywords: Internet Policy, data retention

Introduction

In late 2011 and early 2012, internet activists declared the “birth of internet policy²” in Germany (Spielkamp/Wragge 2012). They took a number of events as indications that the transformative power of the internet on all parts of society had gained an important and permanent spot on the political agenda in its own right: for instance the electoral success of the Pirate Party at the state level in Berlin, massive mobilization against the *Anti-Counterfeiting Trade Agreement* (ACTA), the negative verdict of the Federal Constitutional Court regarding the data retention act, and a commission of inquiry (a so-called Enquete Commission) on the subject of *Internet and Digital Society* of the German Parliament. This Enquete Commission recommended to create a permanent committee in parliament on internet policy and digital society in its final report (Bundestag 2013, 41). After the general election in 2013, the German Bundestag indeed established a new permanent committee in February 2014, the Digital Agenda Committee (DAC).

On the one hand, it seems that the time of internet policy in parliament had come—to paraphrase Kingdon (2003)—and is there to stay. The DAC is a remarkable institutional change because it was the first of its kind in the European Union and increased the number of permanent committees in the German Bundestag from 22 up to 23. On the other hand, the DAC does not have the competence to become a responsible committee in the legislative process but functions only as an advisory committee. In addition, the window of

² The German term is: *Netzpolitik*

major attention for internet policy seems to have closed rather quickly as seen for example by the rather limited reactions to the disclosures of global surveillance systems by Edward Snowden in 2013. Overall, it remains an open question if internet policy has really found a permanent place on the parliamentary agenda and thereby in German policymaking yet.

In this paper we focus on the German Bundestag as one important location of the emerging internet policy in Germany. We argue that the introduction of the DAC, i. e. institutional change, is only one dimension to grasp the state of the evolution of internet policy in parliament. Since there is no established theory of how a new policy paradigm emerges and gets successfully established, we first discuss insights from a general information-processing perspective and propose that either the DAC could be a venue for the internet policy paradigm or the respective change in the policy image or changes in existing policy paradigms indicate that a new internet policy paradigm got established. We also assume that this is not easily achieved because an emerging policy has to overcome a certain amount of friction in a political system. This friction is *inter alia* created by institutional factors which are system-specific and cognitive frictions concerning discourses and paradigms. As a consequence, we have to combine an institutional and a discourse analysis. In this section we also briefly discuss whether there already is a internet policy paradigm. Second follows a short history of data retention politics in Germany to introduce our case. Third we proceed with the empirical analysis that consists of three steps: institutional analysis, discourse network analysis, and an interaction analysis of strategic choices. At the time of writing, the analysis is mostly descriptive.

1 Theoretical perspective: Information-processing, venues, and policy images

How does a new policy paradigm like internet policy get a permanent hold in parliament? We use a general information-processing perspective to theoretically grasp the intrusion of new issues and policy paradigms (see Jones/Baumgartner 2005; 2012; Baumgartner/Jones 2009). Internet activists argue that the transformative power of the internet is a new phenomenon that has to get recognized by political decision-makers and especially parliamentarians. Hence, they implicitly share a problem-solving perspective on parliaments (c.f. Adler/Wilkerson 2012). The German Parliament as a transformative legislature (c.f. Steffani 1979; Schüttemeyer 1998) can be seen as a problem-solving organization that has to process information in order to produce laws as policy solutions. Yet a multitude of different issues and social conditions demand the attention of individual members of parliament and parliament as an organization. An important boundary of rational problem-solving is the limited attention of individuals and organizations (Jones/Baumgartner 2005). Neither individuals nor organizations can attend to everything at the same time but have to prioritize problems.

One organizational solution to process the information of a large number of fairly different and complex problems in parliaments is the committee system. It enables parliament in a division of labor to process information on many different issues in parallel. As a consequence of this, members of parliament either seek assignment to specific committees because of their policy-orientation and the respective expertise they already have or—if they

get an assignment because of other reasons—gain expertise through committee work. In any case, committees are venues where experts for specific issues—out of parliament and government or from interest groups in hearings—meet and discuss policy solutions. A specific committee system should increase the problem-solving capacity of parliament.

Committee jurisdictions are not cut into stone. They can change when perceptions of policy problems change. Moreover, new issues that arise on the parliamentary agenda have to be integrated into the existing system of committees and subcommittees. This can result in the jurisdictional expansion or contraction of existing committees or—less often because an institutional change implies high transaction costs—the creation of new committees. The recommendation of the Enquete Commission “Internet and Digital Society” (Bundestag 2013, 41) followed this line of reasoning. If parliament wants to meet the challenge of the complex and novel policy questions regarding the internet, i.e. if it shows itself capable of social learning (Hall 1993), it has to increase its problem-solving capacity with a respective permanent committee.

The context of bounded and not comprehensive rationality for problem-solving is especially fundamental on the individual level, i.e. in the cognitive dimension. As one consequence, the construction of a policy image³ is an important part of information processing (c.f. Baumgartner/Jones 2009, 25–30). Only if a social condition can be seen as something that government can and should change, it constitutes a public policy problem and gets attention. A policy image guides that attention. It combines empirical information—e. g. what kind of information is (or is not) relevant, how is that information to be interpreted, what policy instruments are appropriate, what policy outcomes are to be expected—and evaluative information—e. g. what is (or is not) acceptable in regard to what values.⁴ Although experts in a policy network often disagree about policy solutions they tend to share a policy image the longer they interact.

When political actors want to promote a new issue they often try to change an existing policy image. In fact, different policy images often compete with each other and political actors constantly try to manipulate policy images in favor of their interests—although often without success. Some issues of internet policy like data protection or intellectual property rights have already existed for decades and a number of existing policy subsystems have already processed respective information under different policy images or paradigms. Hence, established policy paradigms have to be successfully contested and the notion of the internet as an all disruptive and transformative power has to be established as a new paradigm.

Finally, policy images (cognitive dimension) are related with the question which institutional location, i. e. which venue (organizational dimension), gets the authority to discuss and decide certain issues. Hence, the assignment to committees in parliament is not only a question of expertise as discussed above. It matters if an issue is understood e. g. as a

⁴ The concept of a policy image in Punctuated Equilibrium Theory corresponds very closely to the concept of a policy paradigm following Peter Hall (1993).

civil rights or an economic issue and gets assigned to different respective committees because different groups of experts respond more to some policy images than to others. Policy images and venues interact.

Following this theoretical perspective our analysis proceeds in three steps. First, an institutional analysis of the committee structure in parliament shows if internet policy has found a venue with the creation of the DAC. Second, a discourse network analysis is used to figure out if the policy image or paradigm of data retention policy has shifted over time in the direction of internet policy. Third, we analyze how parliamentarians which want to promote internet policy as a new paradigm strategically act to overcome cognitive, organizational, and institutional friction in doing so.

A new internet policy paradigm?

The declaration of the “birth of internet policy in Germany” as quoted in the introduction is correct insofar as the term internet policy gained rapid prominence in German media. Nevertheless—or in part reason for its discursive success, it remains rather unclear what exactly constitutes internet policy. From a policy analysis perspective, it denotes regulatory issues—technical and content—regarding the internet. Yet, internet activists argue that the internet and digital technologies are not “just new technologies” but lead to as great a transformation of all parts of society as the industrial revolution or the invention of letterpress printing did (Bundestag 2013, 41). They deny that internet issues are primarily technical, security, or economic problems, and that established regulatory instruments regarding, for example, telecommunications, media, or intellectual property rights work for the internet because the very nature of the internet and digital technologies is different. Calling into question old way of thinking, they attach to the term internet policy all characteristics of a policy paradigm (see Hall 1993, 279).

Yet, this is where agreement ends because there is no consistent positive formulation of an internet policy paradigm in Germany. This is prominently apparent from the final report of the Enquete Commission on *Internet and Digital Society*. It does not report final results (Bundestag 2013, 4), i.e. a shared understanding of the problems, appropriate instruments, and goals. Instead it points to the detailed reports of its twelve working groups, reports just on issue (electronic participation) with two “dissenting opinions”, and presents reflections of the members of the committee on their work.

Overall, a unique internet policy paradigm is still in the making. This poses a dependent variable problem for the discourse dimension of our analysis since it can not generally be deduced what an internet policy argument or frame would look like as distinguished for example from an “old“ data protection argument. We account for this problem in our research design. We proceed mostly inductively, and look for differences in the discourses over time in a carefully selected case, i.e. data retention. Internet activists regard the issue of data retention as very important because “old” politicians that have not grasped the internet policy paradigm yet do not understand the implications of data retention (see for example Beckedahl/Lüke 2012, 35f.). Hence, data retention is a crucial (most likely) case, i.e. an

issue which internet activists and politicians should try to discursively intrude and where they should therefore contest established policy images and paradigms.⁵

2 Short history of data retention conflict

Data Retention⁶ is a legally complex, emotionally charged, and also lengthy topic which goes far back to the 1990s. In Germany it was discussed in 1996 for the first time when telecommunication law was liberalized in the policy context of data protection. This took place in the analogue century of stationary and place-bound-communication. At that time the issue of data retention was an implicit element of the political discourse which became explicit with the draft bill in 1999 when the (opposition) christian-democratic party failed to lower existing standards in the request of traffic data.

Soon after, the digital transformation—the Internet, the 24/7-application of smartphones, Internet-enabled devices, and the web 2.0—has become part of our everyday lives. Previously inaccessible and by that time *big* data can be collected and stored digitally. On the one hand this can be considered as a fascinating new possibility for anything and everything. On the other hand big data enables internet provider and commercial companies to draw individual motion profiles of each and every customer—without their consent or even knowledge of it. In light of the disruptive tension, it is evident why data retention entered the political agenda time and again. As we will show in the following sections it was from the very beginning on a crucial and contested policy issue among politicians, Internet experts, and not least the affected citizens.

When the US 9/11-terrorism act happened in 2001—followed by terrorism acts in Madrid 2004 and in London 2005—the policy image of internal security shifted towards a strong focus on combating terrorism. Data retention was one of the concise answers. The raising world wide awareness of new threats for the national and internal security increased the number of new national standards to fight terrorism domestically. To harmonize the very different national data retention approaches among the member states of the European Union, an EU data retention directive (No. 2006/24/EG) had been adopted in 2006⁷. 17 articles of the directive described precisely the categories and types of data to store, and also the data access and the duration of storage (a minimum of six up to a maximum of 24 month of storage, c.f. Article 6). At the end, it remained on the national scope of action to interpret the EU directive and bring up national law consistent with the directive's provisions.

⁵ See also below for further information (e.g. control case) on the discourse network analysis of our paper.

⁶ Data Retention is defined as the obligation to store telecommunication and Internet data by certain service providers to retain personal and traffic data arising from telecommunication and Internet use and make these data available for security services when necessary.

⁷ A chronology of events can be found in a timeline table in the Appendix of the paper. It also serves as data and fact basis for this chapter.

Germany dealt with the EU data retention directive in the Bundestag and adopted the first data retention act in 2007 (c.f. details Szuba 2011). The first data retention act encompassed a number of changes and reforms of telecommunication law (orig.: *Telekommunikationsgesetz, TKG*), namely the introduction of preventive data retention over a period of six months. Moreover it effected some changes of the criminal trial law especially regarding the right for telecommunication observation, the enquiry of traffic data, and also the confiscation of electronic storage media. Lastly, procedural rules regulating undercover investigations had been harmonized by the revision of compulsory notifications.

The day before the act should have been taken into force (on the 1st of January 2008), a group of 34,000 citizens filed a collective constitutional complaint at the German Federal Constitutional Court (orig.: *Bundesverfassungsgericht, BVerfG*). Coordinated by the interest group actor *Data Retention* (orig.: *Arbeitskreis Vorratsdatenspeicherung*) the initiative aimed to prevent data retention in Germany. After judicial scrutiny, the German Federal Constitutional Court declared the data retention act as being incompatible with German constitutional law (Article 10 I GG: right of mail protection and telecommunication secrecy) with the consequence, that the act was repealed in 2010.

In 2014, before the Coalition of CDU/CSU and FDP had brought up a new data retention bill in Germany, the European Court of Justice considered the EU directive 2006/24/EG. The question whether the directive was conform with the *Charter of Fundamental EU Rights* and *the treaty of European Union* was answered negatively with regard to personal data and privacy rights. Accordingly, the EU data retention directive was repealed.

The decision of the European Court of Justice in 2014 could have been the end of the data retention story in the European Union. Lastly, after repealing the EU directive the obligation to incorporate EU community law was no longer maintained. Furthermore, in Germany as in other EU-countries, the amount of public protest against the data retention act was remarkable. The political process was accompanied by some harsh criticism that state intervention could be too far reaching and unacceptable because it leads to an Orwellian state.

Notwithstanding these concerns the Grand Coalition proposed another draft bill in 2015 after devoting a great deal of time to discussing different scenarios (e.g. the quick freeze solution) and to attracting a majority for the second data retention act. Whilst CDU/CSU officials pushed the revision of law, SPD members were disunited over the issue. After the terrorism attacks in January 2015 in Paris (Charlie Hebdo) the discussion more and more accelerated. It finally culminated in an agreement between the German federal chancellor Angela Merkel (CDU), the vice-chancellor Sigmar Gabriel (SPD), and the Minister of internal affairs Thomas de Maizière (CDU) to adopt a second data retention act. Due to an inner party conflict of the Social democrats, 200 party delegates came together on a party convention to take a decision. With a small majority of 60 percent behind him, the federal minister of justice, Heiko Maas (SPD), who himself was long enough not in favor of a second bill, drafted the new data retention bill in coordination with the Minister of internal affairs, Thomas de Maizière (CDU) (c.f. Gathmann 2015; Munziger/Das Gupta 2015). After

the repealing court decision in 2010 the proponents of the 2015 data retention act tried their best to design it to conform with constitutional law.

In October 2015 the German Bundestag adopted the second data retention act which encompassed a number of changes: The duration for data storage was curtailed down to four weeks for location data and to ten weeks for telecommunication- (number, time, duration of talks) and Internet data (IP addresses, Internet connection). In the new bill clear rules on who is allowed to use the data for certain cases (and only by official authorization) and also clear definitions for a number of exceptions were stated.

Interest groups again pushed hard against the law. And also Green party members—which had been a data retention opponents since the very first time—announced in parliament to litigate against the act.

3 Empirical analysis

3.1 Method and Data

The analysis proceeds in three steps. First, from an institutionalist perspective we trace the purpose of the DAC to prove whether Internet policy has found a venue in parliament. Since it was adopted in the 18th session of parliament for the first time, we examine its structure and competency by reviewing the rules of procedure. To draw a comprehensive picture, we include scholarly results and also media reports to the qualitative secondary analysis.

Second, a discourse network analysis is used to figure out whether the policy image or paradigm of data retention policy has shifted over time in the direction of internet policy. “Since the *argumentative turn* in policy analysis, scholars have increasingly focused on discourse as an explanatory factor for the analysis of policy processes” (Muller 2015). On the other hand over the past two decades there is a boom in the scholarly use of network approaches and network analysis in political science to point out the impact of political actors’ interactions on policy results (Lang/Leifeld 2008: 223). Hence, the integration of content analysis and social network analysis to a discourse network analysis seems promising. It allows not only to draw comprehensive pictures of complex political phenomena, but also to overcome the lack of objectified and standardized measuring in qualitative methods.

Third, we analyze how parliamentarians act to overcome cognitive, organizational, and institutional friction to promote internet policy strategically as a new paradigm. The behavioral analysis therefore concentrates on (individual) voting results, time-statement-relations, and inside-outside-mobilization. Data comes from parliamentary official protocols, printed matters, and dossiers of the 16th and 18th legislative sessions. Moreover, we conducted in-depth interviews with members of the DAC in 2016⁸. In order to both elicit the parliamentarians’ own attitudes and strategies of their membership in the DAC (e.g. general interest in digital topics, see oneself as an Internet expert, want to promote an Internet

⁸ We talked with five members of the DAC from different political parties. Due to the agreement to assure personal rights, all quotations are anonymized.

policy paradigm, etc.) we employed both, a template of questionnaire and a number of open questions. At the end, we compare the results with the observable reality of MPs' activities.

The three steps of our analysis take up all relevant aspects of the political sphere: polity (institutional dimension, illustrated here: venue), policy (discursive dimension, illustrated here: policy image), and politics (behavioral dimension, illustrated here: inside-outside-mobilization).

3.2 Analysis and findings

POLITY–Institutional change: Promises and pitfalls of the digital agenda committee

Due to digitalization, society has changed a great deal. In February 2014 the Bundestag adopted a new standing committee to oversee the federal government's Digital Agenda: The Digital Agenda Committee (DAC, orig.: Ausschuss Digitale Agenda). It was the first of its kind in the European Union. Up to that time in the Bundestag, there was a sub-committee *New Media* under the responsibility of the standing committee *Culture and Media* (orig.: Kultur und Medien) concerned with issues of digitalization. The creation of the standing committee comes as a result of the Enquete commission *Internet and digital Society* (orig.: Internet und digitale Gesellschaft). At the end of its term in 2013 the commission issued a recommendation on the establishment of a standing committee to bring some digital expertise inside parliament.

The DAC started its business with 16 ordinary and 16 deputy members. The main objective was to observe, accompany and supervise the Government's Digital Agenda. Although committee members could also take up issues on their own authority, they still lack to be responsible in law-making. This restriction can be explained by the fact that the DAC does not mirror any governmental department (in contrast to all other committees). Hence, without the existence of a ministry for digital affairs, the DAC in parliament can only function as an advisory committee to other committees (c.f. Bundestag 2016a).

Apart from the remarkable restrictions in law-making, members of the DAC can invite oral governmental reports on all issues of the Digital Agenda and build up networks with interest group actors outside parliament or even parliamentarians of other nations (c.f. Bundestag 2016e). In their first year committee members also figured out innovative ways to better connect with citizens outside parliament (e.g. they tested an online participation tool to invite registered citizens to take part in the committee business⁹, c.f. Bundestag 2016b).

However, the balance after one year in office was negative. Media reports and Internet blogger lambasted the DAC for a wide gulf between ambition and reality when taking into account activities and results. Authors counted how often and for what purposes the DAC met during the year. Disappointed about the result of 28 sessions, they also highlighted the very few number of six public hearings. Instead of making the committee business

⁹ The documentation of the pilot project goes back to mid of 2015 and can be found on the webpage of the German Bundestag.

more transparent for public, they argued, committee members preferred to sit behind closed doors (c.f. Voß 2015; Schnoor 2015).

From the institutionalist perspective the establishment of the DAC can be interpreted as a visible sign to indicate that Internet policy has arrived in parliament. The establishment of the DAC is not only a remarkable institutional change that as such invites interpretation. Moreover and in light of our theoretical perspective, the issue of data retention in parliament is a crucial, i. e. a most likely case for the potential evolution of a internet policy network in two respects. First, we focus on parliament as one “knot” of such a policy subsystem because parliaments are more accessible to new issues than the executive branch of government. Members of parliament listen to their constituents and the general public and consistently try to find issues they can promote. Change in the committee structure is less costly and hence more likely than in the ministerial bureaucracy (c. f. Baumgartner/Jones 2009, 193). The DAC proves this point and its purpose is in fact said to permanently establish the issue of internet policy and digital society in parliament (c.f. Bundestag 2014). Although the DAC is not a responsible committee, we expect that digital experts will nevertheless try to make it a venue for internet policy in parliament in some way. Second, we share the general expectation, i.a. expressed in a press release of the Federal government (Bundesregierung 2014), that data retention is a highly relevant issue for internet activists. Therefore, we expect that digital experts in parliament will try to influence the policy image of data retention as well as to access the data retention policy network in parliament.

POLICY–Data retention discourse networks 2001, 2007, and 2015

Method

There are a couple of established methods for analyzing discourses like Critical discourse analysis or Frame mapping. Yet, these methods mainly focus on content of discourses but neglect actors and how these are related to contents.¹⁰ Since we are interested not only in potential changes in policy images but also in who attempts to produce those, a method is needed that allows to analyze relations between contents and actors in discourses. The software tool Discursive Network Analyzer¹¹ makes it possible to combine category-based content analysis and social network analysis and computes different kinds of networks. We use affiliation networks in which the positive or negative relation of individual or collective actors to concepts are represented.¹²

¹⁰ For a discussion of content-oriented approaches, their advantages and limitations see Leifeld (2016, 37–51).

¹¹ See <https://github.com/leifeld/dna> and Leifeld (2016, 291–321).

¹² See Leifeld (2016, 62–64) on how affiliation networks are computed.

Data

The data set of the discourse network analysis consists of the protocols of the plenary sessions of all three readings of three bills.¹³ These are the two data retention bills (of 2007 and of 2015) passed into law by Grand Coalitions of CDU/CSU and SPD. In addition, we include a bill in the data set introduced by the christian-democrats (CDU/CSU) in 2001. It included provisions for preventive retention of telecommunications data. We selected that bill because, at one the hand and in retrospect, it belongs to the history of the data retention debate (see Gausling 2010, 47). On the other hand, there had been no community of internet activists and a respective discourse in Germany or even the Bundestag¹⁴ yet. Hence, we assume that these debates are free of arguments that are specific for this community. In that sense, this bill functions as a control case.

The protocols were split up by speaker (producing 60 documents), read, and manually encoded. We arrived at our codes by inductive content analysis and used the following process to ensure intercoder reliability. During first readings of the protocols we independently created lists of general claims that cover arguments made for and against the bills and data retention respectively. The lists were compared, merged and reduced to a final list of 30 general claims that were then grouped by policy domains (legal, security, and internet, see appendix). Finally, notes were added to create our codebook. The protocols were then encoded by two coders independently. Coding results were compared, discussed, and—if necessary—harmonized.

Whenever an actor made a statement covered by our codes, this was coded as a claim, adding information about the actor, the organization (see appendix), the date, and whether she or he agreed to the claim¹⁵. This way we encoded 393 statements of 38 individual actors and seven organizations respectively. In addition, we created notes with information about the context of the debates for further interpretation of the discourse networks.

Descriptive Analysis

Figure 1 shows the number of general claims and the sum of references to these claims for each of the three debates.

¹³ See appendix. Further documents—protocols of public hearings, protocols of committee meetings, transcription of interviews—are to be included in the analysis in the future but could not be covered for this paper at the time of writing.

¹⁴ See also the assessment in retrospect of internet activist that there were almost none internet policy competent parliamentarian around that time, Beckedahl/Lücke (2012, 36).

¹⁵ All claims were phrased from the direction of the bills, i.e. in agreement with data retention to make the binary variable agreement/disagreement unambiguous.

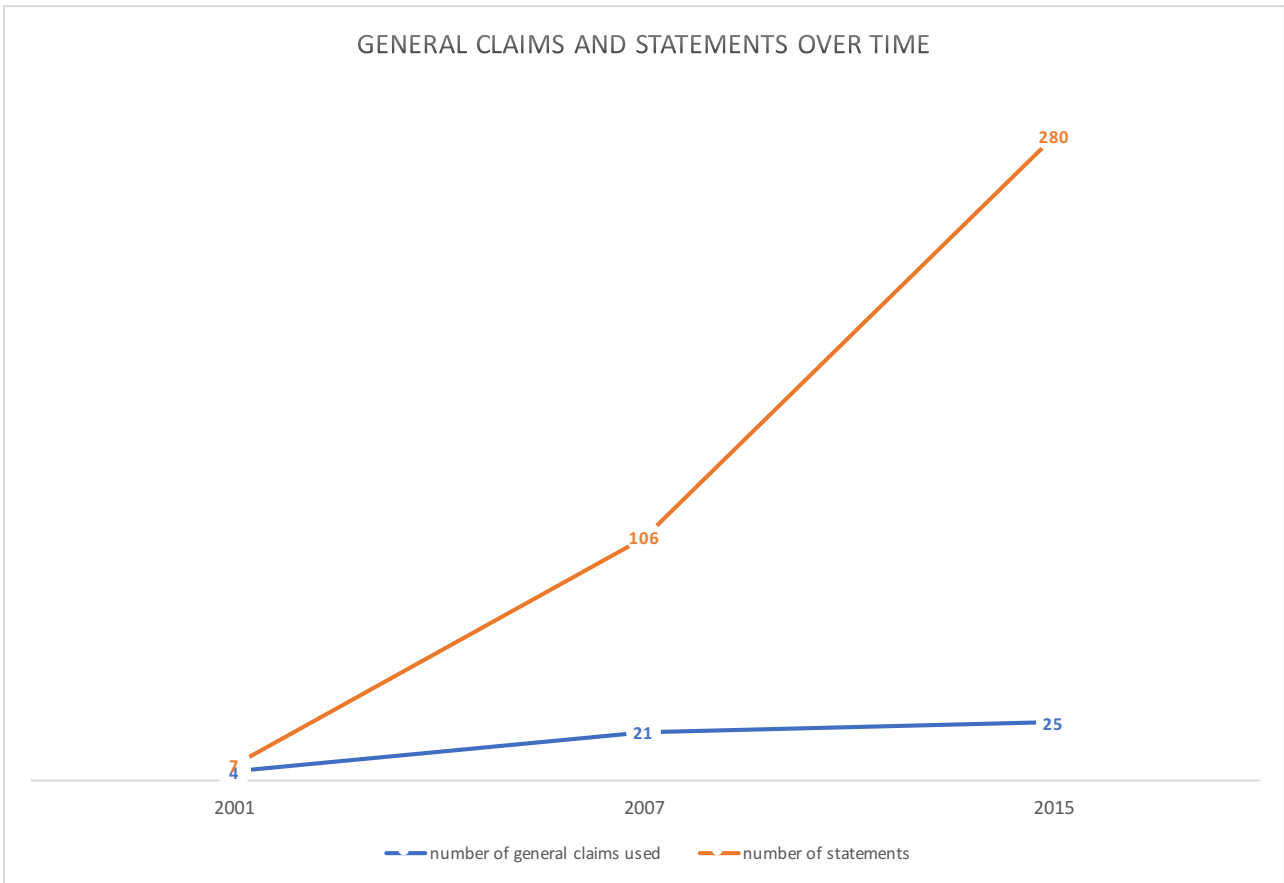


Figure 1: Number of general claims used and number of statements in 2001, 2007, 2015

As can be seen, there is very little activity (just seven references to four claims) in 2001. There are two major reasons for that. The draft bill was introduced by CDU/CSU being in opposition at that time. Draft bills by opposition parties usually get discussed together with draft bills by the majority parties which results in a focus of the debate on the latter ones. This was especially true in that case, when the draft bill was discussed together with the first Sicherheitspaket (“security package”), i.e. the German version of the US patriot act, the then red-green government introduced after 9/11. In 2007, we already see the usage of over five times the number of claims with over one hundred references. This does not really come as a surprise since the first data retention act was highly politicized. The number of general claims used increases slightly in 2015 with a remarkable increase in references.

Figure 2 to 4 show affiliation networks of the plenary debates of the bills of 2001, 2007, and 2015 respectively. Circled nodes represent collective actors (parties party-affiliated parts of the government) and squared nodes represent general claims in the debate. The size of the nodes represent degrees of relationships. Collective actors that relate to more claims are represented by bigger nodes. Claims to which more actors refer to are represented by bigger nodes. Green links between actors and claims mean that actors agree with the claim, red links that they disagree. Numbers at links are the sum of references (i.e. link weights) to the claim where positive numbers mean agreement and negative

number disagreement. For example, -3 means that an collective actor disagreed three times with a claim.¹⁶ The length of the links and the rest of the layout are optimized for readability and include no further information about the network.

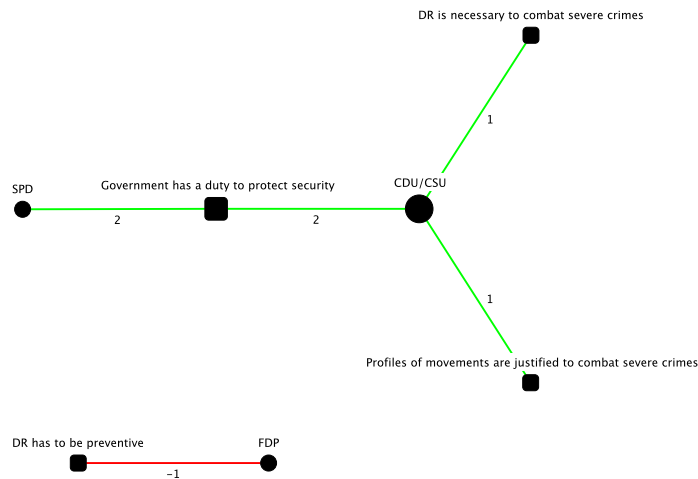


Figure 2: Discourse network: Draft bill CDU/CSU 2001

Since the draft bill of 2001 is our control case, we would not expect to find (m)any specific internet policy claims. Indeed, only security claims are used (although one could argue that the claim regarding profiles of movement is an internet policy claim).

¹⁶ Since numbers are sums of statements by individual actors belonging to a collective actor that could either mean that one individual actor disagreed three times, one individual actor disagreed two times and another one one time, or three individual actors disagreed one time each.

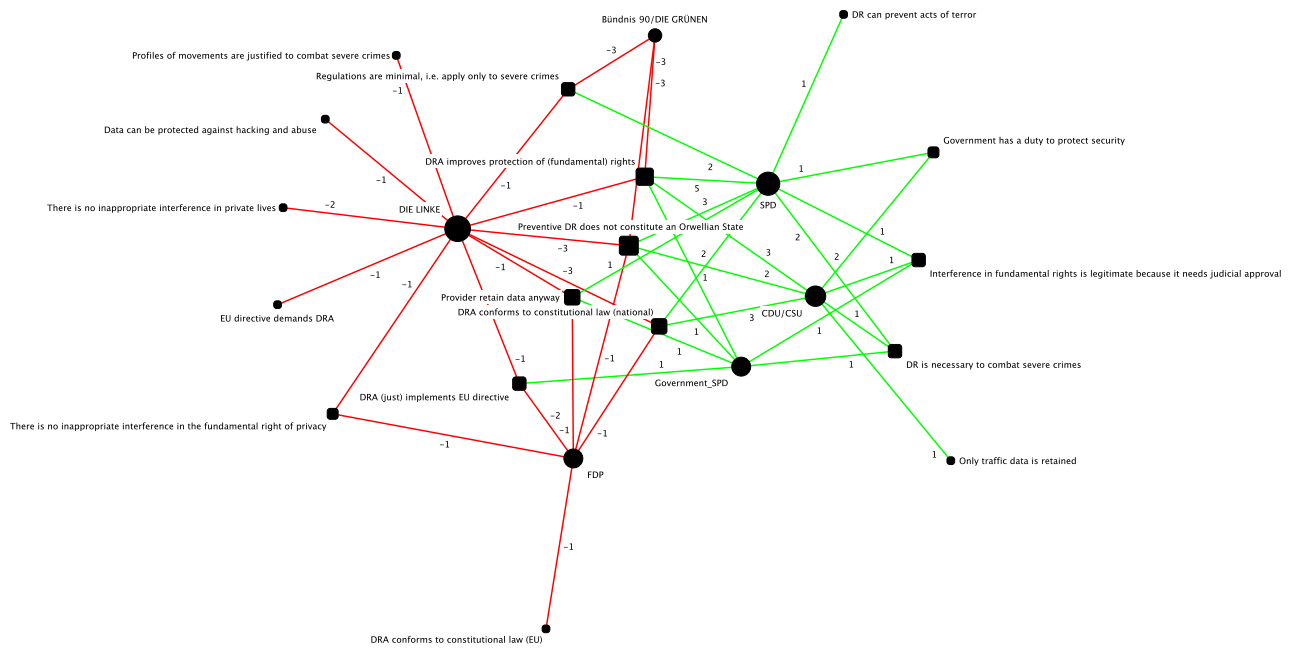


Figure 3: Discourse network: Data Retention Act 2007

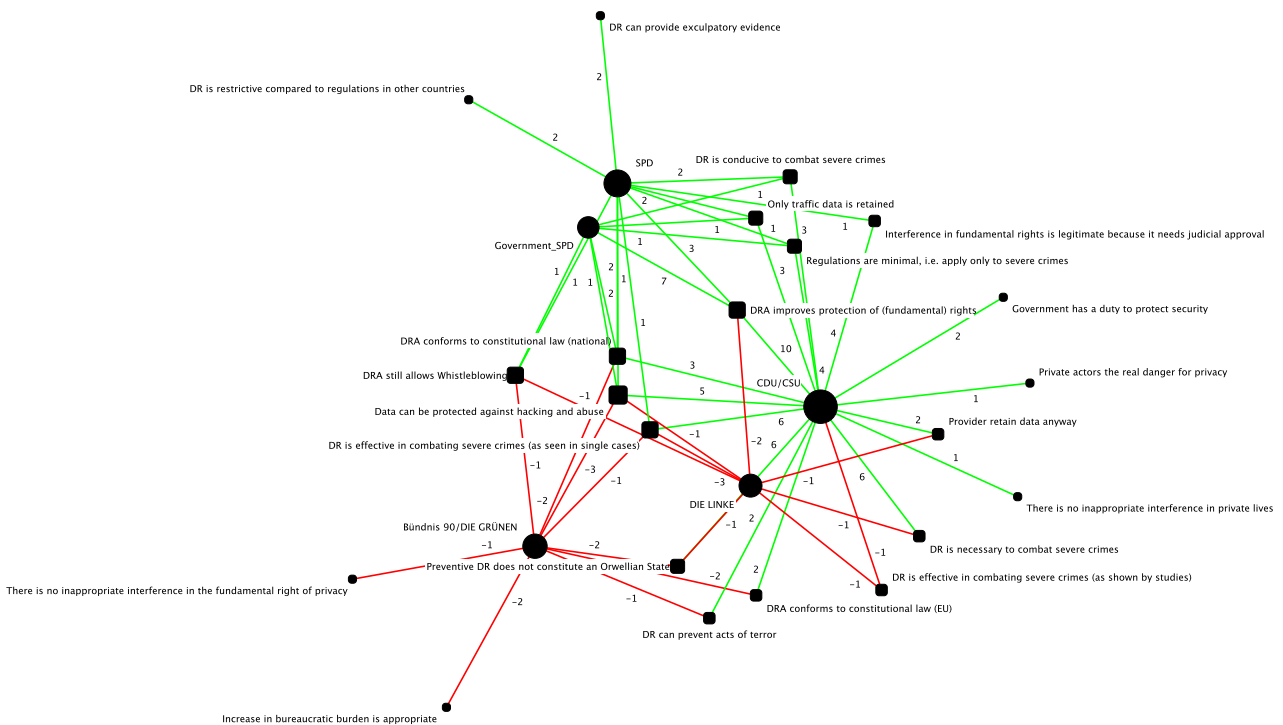


Figure 4: Data Retention Act 2015

Preliminary interpretation will follow in the presentation

POLITICS–Voting behavior and inside-outside-mobilization

Table 1 summarizes most relevant facts of data retention law making. Since the 2001 draft bill was not adopted, we concentrate only on successfully adopted data retention acts. With regard to the governing parties (Grand coalition), the initiator of the bills (ministry of justice), and the responsible committee in parliament (committee of legal affairs) we detect a number of commonalities in 2007 and 2015. What is different is that the draft bill 2007 referred to the EU data retention directive whereas in 2015 it was no longer required to adopt data retention law. Further, we can see for the second draft bill the digital agenda committee, which did not exist before, to give its expertise and opinion. Further, as we can see from voting results, the number of dissidents shows a remarkable increase. All of the 43 dissidents in 2015 were members of the social-democratic party. What does this portend?

Table 1: Synopsis of data retention law making in 2007 and 2015

Issue	Data Retention Act 1	Data Retention Act 2
Legislative period	16th, 2005-2009	18th, 2013-2017
Governing parties/majority in parliament	Grand Coalition: CDU/CSU and SPD	Grand Coalition: CDU/CSU and SPD
Bill with reference to...	EU directive 2006/24/EG	none
Initiative of law	<ul style="list-style-type: none"> – initiative presented by the ministry of justice – submitted to parliament by government 	<ul style="list-style-type: none"> – two initiatives equally worded, presented by the ministry of justice – submitted to parliament by parliamentary factions of CDU/CSU and SPD – submitted to parliament by government (later rejected by parliament)
Bundesrat's approval required by initiative?	no	no
Instructed committees	legal, internal affairs, food & agriculture & consumer protection, culture & media economy & technology, finance (subsequently) (1+5)	legal & consumer protection, internal affairs, finance, economy & energy, transport & digital infrastructure, human rights & humanity, European affairs, Digital Agenda (1+7)
Committee responsible	committee of legal affairs	committee of legal affairs and consumer protection
Changes of bill by committee?	yes	yes
Form and content of changes by committee	<ul style="list-style-type: none"> – Legal prohibition of data confiscation for people in sensitive positions, – procedural rules of telecommunication observation, secret online searches and searches in storage media without official permission 	<ul style="list-style-type: none"> – Evaluation and reporting after 36 months in particular on the impact of criminal prosecution, additional costs, and compliance of data protection rules
Date of final vote (by name)	09.11.2007	16.10.2015
Voting result (y/n/abst.)	366:156:2 (from total votes cast: 524, missing: 89)	404:148:7 (from total votes cast: 559, missing: 71)
Number of dissidents	opposition parties (all) 11 MPs from the Grand Coalition	opposition parties (all) 43 MPs from the Grand Coalition

Issue	Data Retention Act 1	Data Retention Act 2
Grand Coalition's dissidents by party (abst.)	CDU/CSU: 4 (0), SPD: 7 (2)	CDU/CSU: 0 (0), SPD: 43 (7)
MPs missing the vote (from Grand Coalition)	CDU/CSU: 30, SPD: 37	CDU/CSU: 35, SPD: 14

Source: Compiled by authors based on Bundestag 2016c and Bundestag 2016d.

We talked to DAC members to find out about their idea of data retention and Internet policy more generally. The results can help to explain the number of dissidents on the data retention draft 2015. DAC members from the SPD were commonly against data retention. However, they did not want to jeopardize the procedure. What they did instead was to arrange representation in the DAC on the voting day. Committee members generally describe themselves as digital experts in parliament (c.f. Interview ###). Surprisingly, related to content almost all of them seem to interact more with outside Internet experts than with colleagues from their own factions. —> Shared policy image not inside, but outside parliament?

4 Conclusion

To learn whether Internet policy has become a comprehensive policy paradigm in the Bundestag, legislation on data retention was analyzed as a most likely case for a formation of it. In a before-and-after case study, we used discourse network analysis to study the effects of committee jurisdictional changes, related discourses and framing processes, the formation of issue coalitions (within and beyond committees) as well as strategies of individual members of parliament.

Preliminary interpretation of our descriptive analysis will be shared in the presentation

Bibliography

- Adler, E. Scott/Wilkerson, John D. (2012): Congress and the Politics of Problem Solving, Cambridge, MA: Cambridge University Press.
- Baumgartner, Frank R./Jones, Bryan D. (2009): Agendas and instability in American politics, Chicago: University of Chicago Press.
- Beckedahl, Markus/Lüke, Falk (2012): Die digitale Gesellschaft. Netzpolitik, Bürgerrechte und die Machtfrage, München: Deutscher Taschenbuch Verlag.
- Bug, Mathias (2016): Terrorismusbekämpfung als Waffe gegen Alltagskriminalität – Argumentation und Wirklichkeit der Vorratsdatenspeicherung in Deutschland., in: Zeitschrift für Parlamentsfragen, Heft 3/2016, 670–692.
- Bukow, Sebastian (2011): Vorratsdatenspeicherung in Deutschland. Symbol des sicherheitspolitischen Wandels und des zivilgesellschaftlichen Protests? in: Bug, Mathias/Münch, Ursula/Schmid, Viola (Hg.): Innere Sicherheit – auf Vorrat gespeichert? Tagungsband 2. SIRA Conference Series. Heft 1, November 2011, 22–55.
- Bundesregierung (2014): Bundestag setzt Internet-Ausschuss ein, press release, February 14, Online: <https://www.bundesregierung.de/Content/DE/Artikel/2014/02/2014-02-14-bt-ausschuss-digitale-agenda.html> (last retrieved: 02.03.2016)
- Bundestag (2013): Schlussbericht der Enquete-Kommission „Internet und digitale Gesellschaft“, BT Drucksache 17/12550.
- Bundestag (2014): Antrag der Fraktionen CDU/CSU, SPD, DIE LINKE. und BÜNDNIS 90/DIE GRÜNEN. Einsetzung eines Ausschusses Digitale Agenda, BT Drucksache 18/482.
- Bundestag (2016a): Webpage of the German Bundestag. Online: www.bundestag.de (last retrieved: 20.01.2016).
- Bundestag (2016b): Webpage of the German Bundestag. Online: <https://www.bundestag.de/ada/beteiligung/forumdisplay.php?f=2> (last retrieved: 20.01.2016).
- Bundestag (2016c): Synopsis of the Gesetz zur Neuregelung der Telekommunikationsüberwachung und anderer verdeckter Ermittlungsmaßnahmen sowie zur Umsetzung der Richtlinie 2006/24/EG. Online: http://dipbt.bundestag.de/dip21.web/searchProcedures/advanced_search_list.do (last retrieved: 07.03.2016).
- Bundestag (2016d): Synopsis of the Gesetz zur Einführung einer Speicherpflicht und einer Höchstspeicherfrist für Verkehrsdaten. Online: http://dipbt.bundestag.de/dip21.web/searchProcedures/advanced_search_list.do?sellid=67296&method=select&offset=0&anzahl=100&sort=3&direction=desc (last retrieved: 07.03.2016).
- Bundestag (2016e): Webpage of the German Bundestag. Online: <http://www.bundestag.de/ada> (last retrieved: 02.03.2016).
- Gathmann, Florian (2015): Vorratsdatenspeicherung: Maas rettet Gabriel. Online: <http://www.spiegel.de/politik/deutschland/spd-und-vorratsdatenspeicherung-maas-rettet-gabriel-a-1039895.html> (last retrieved: 01.03.2016).
- Gausling, Tina (2010): Verdachtsunabhängige Speicherung von Verkehrsdaten auf Vorrat. Zur Umsetzung der Richtlinie 2006/24/EG durch die §§ 113a, 113b TKG, München: Beck.

- Hall, Peter (1993): Policy Paradigms, Social Learning, and the State: The Case of Economic Policymaking in Britain, *Comparative Politics*, Vol. 25, Nr. 3, 275–296.
- Hornung, Gerrit (2012): Datenschutz – nur solange der Vorrat reicht? Die Speicherung von Telekommunikationsverkehrsdaten als Problem der Abwägungskompetenz im Mehrebenensystem, in: *PVS, Sonderheft 46/2012*, 377–407.
- Howlett, Michael/Ramesh, M./Perl, Anthony (2009): *Studying public policy. Policy cycles & policy subsystems*, 3rd edition, Don Mills, Ontario: Oxford University Press.
- Ismayr, Wolfgang (2013): *Der Deutsche Bundestag*. bpb: Bundeszentrale für politische Bildung.
- Jones, Bryan D./Baumgartner, Frank R. (2005): *The politics of attention. How government prioritizes problems*, Chicago: University of Chicago Press.
- (2012): From There to Here: Punctuated Equilibrium to the General Punctuation Thesis to a Theory of Government Information Processing, in: *The Policy Studies Journal*, 40, Nr. 1, 1–19.
- Kingdon, John W. (2003): *Agendas, alternatives, and public policies*, 2nd edition, New York: Longman.
- Lang, Achim/Leifeld, Philip (2008): Die Netzwerkanalyse in der Policyforschung. Eine theoretische und methodische Bestandsaufnahme. In: Frank Janning and Katrin Toens (editors): *Die Zukunft der Policy-Forschung. Theorien, Methoden, Anwendungen*. Berlin: Springer VS, 223-241.
- Leifeld, Philip (2016): *Policy debates as dynamic networks. German pension politics and privatization discourse*, Frankfurt; New York: Campus
- Muller, Allan (2015). Using Discourse Network Analysis to Measure Discourse Coalitions: Towards a Formal Analysis of Political Discourse. *World Political Science*, 11(2), 377-404.
- Munziger, Paul/Das Gupta, Oliver (2015): Private Daten werden wieder gespeichert. Online: <http://www.sueddeutsche.de/politik/grosse-koalition-maas-und-de-maizire-einigen-sich-auf-vorratsdatenspeicherung-1.2435935> (last retrieved: 01.03.2016).
- Scheffel, Folke (2016): *Netzpolitik als Policy Subsystem? Internetregulierung in Deutschland 2005-2011*. Baden-Baden: Nomos.
- Schnoor, Mike (2015): Erstes Zeugnis für die Digitale Agenda: Setzen, Sechs! Ungenügend! #BTADA. Online: <http://digibuzz.de/erstes-zeugnis-fuer-die-digitale-agenda-setzen-sechs-ungenuegend-btada/> (last retrieved: 29.02.2016).
- Schüttemeyer, Suzanne S. (1998): *Fraktionen im Deutschen Bundestag 1949–1997 – Empirische Befunde und theoretische Folgerungen*. Opladen: Westdeutscher Verlag.
- Schwanholz, Julia (2016): Der deutsche Bundestag als Akteur in der Netzpolitik. In: Busch, Andreas; Breindl, Yana; Jakobi, Tobias (ed.): *Netzpolitik. Ein einführender Überblick*. Wiesbaden: Springer. (i.E.).
- Spielkamp, Matthias/Wragge, Alexander (2012): *ACTA – der Big Bang der Netzpolitik*, edited by Wikimedia Deutschland and iRights.info, Berlin. Online: <http://goo.gl/6IPgI9> (last retrieved: 07.06.2012).
- Steffani, Winfried (1979): *Parlamentarische und Präsidentschaftliche Demokratie. Strukturelle Aspekte Westlicher Demokratien*. Opladen: Westdeutscher Verlag.

- Szuba, Dorothee (2011): Vorratsdatenspeicherung. Der europäische und deutsche Gesetzgeber im Spannungsfeld zwischen Sicherheit und Freiheit. Baden-Baden: Nomos.
- Voß, Jan (2015): Ein Jahr BTADA: Der Bundestagsausschuss Digitale Agenda in Zahlen. Online: <http://politik-digital.de/news/ein-jahr-btada-der-bundestagsausschuss-digitale-agenda-in-zahlen-144667/> (last retrieved: 29.02.2016).

Appendix

A. Codebook

Overview of the data set

BT PIPr 14/192 First reading

BT PIPr 14/227 Second and third reading

BT PIPr 16/109 First reading Data Retention Act of 2007

BT PIPr 16/124 Second and third reading Data Retention Act of 2007

BT PIPr 18/110 First reading Data Retention Act of 2015

BT PIPr 18/131 Second and third reading Data Retention Act of 2015

List of codes

Statements

– Legal claims

There is no inappropriate interference in private lives

There is no inappropriate interference in the fundamental right of privacy

Interference in fundamental rights is legitimate because it needs judicial approval

Preventive DR¹⁷ does not constitute an Orwellian State

DR has to be preventive

Private actors are the real danger for privacy

DR conforms to constitutional law (national)

DR conforms to constitutional law (EU)

DRA improves protection of (fundamental) rights

EU directive demands DRA

DRA (just) implements EU directive

DR is restrictive compared to regulations in other countries

DRA still allows Whistleblowing

– Security claims

DR is necessary to combat severe crimes

DR is conducive to combat severe crimes

DR is effective in combating severe crimes (as seen in countries with DR)

DR is effective in combating severe crimes (as seen in single cases)

DR is effective in combating severe crimes (as shown by studies)

Profiles of movements are justified to combat severe crimes

Profiles of behavior are justified to combat severe crimes

Profiles of personal character are justified to combat severe crimes

DR can provide exculpatory evidence

DR can prevent acts of terror

Regulations are minimal, i.e. apply only to severe crimes

Government has a duty to protect security

– Internet policy claims

¹⁷ DR=data retention

Amount of stored data can still be processed
 Data can be protected against hacking and abuse
 Provider retain data anyway
 Only traffic data is retained

– Residual category

Increase in bureaucratic burden is appropriate

Organization

CDU/CSU
 SPD
 BÜNDNIS 90/DIE GRÜNEN
 FDP
 Die LINKE
 Government CDU/CSU
 Government SPD

B. Comprehensive data retention timeline

Date	Event	Level of decision making
2002		
12.07	Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)	national & EU
2004		
28.04	A number of national governments (France, Ireland, Sweden, UK) submit the proposal of a framework decision to the council of ministers.	national & EU
2005		
17.02	The members of the German Bundestag declare themselves against any kind of data retention and ask the German government to also be against data retention law on the EU-level.	national
08.09	EU 25 ministers of Justice and Home Affairs decided to adopt a Framework Decision on data retention which would oblige telecommunications operators to record telephone and internet communications.	EU
21.09	The EU-Commission and the Council of the European Union propose a directive for data retention.	EU
2006		
15.03	The European Parliament votes for the EU directive on data retention (2006/24/EG).	EU

Date	Event	Level of decision making
13.04 .	The EU directive on data retention is released to the public.	EU
03.05 .	The EU directive on data retention takes effect.	EU
01.06 .	Ireland and Slovakia bring the EU directive on data retention before the European Court of Justice (ECJ).	national & EU
26.10 .	The German Federal Constitutional Court prohibits the retention of T-Online customers' connection data.	national
2007		
27.06 .	Draft bill of the Federal Government: Act Reforming Telecommunications Surveillance and Other Covert Investigative Measures and Transposing Directive 2006/24/EC (BT-Drs. 16/5846).	national
15.09 .	The deadline of the EU directive on data retention for Telecommunication expires (c.f. (2006/24/EG, Art.15 Section 1).	EU
21.09 .	The permanent committee of justice (of the German Bundestag) holds a public hearing on data retention.	national
09.11 .	The German Bundestag votes for the reform of the telecommunication data retention, namely the data retention act.	national
30.11 .	The Bundesrat votes for the data retention act.	national
26.12 .	The data retention act will be signed with strong reservations by the German Federal President Horst Köhler.	national
31.12 .	A collective constitutional complaint will be filed with the German Federal Constitutional Court in Karlsruhe against the data retention act.	national
2008		
01.01 .	The data retention act is promulgated in Germany.	national
11.03 .	Temporary injunction in the matter of "data retention" of the Federal Constitutional Court.	national
01.07 .	The ECJ deliberates the directive on data retention.	EU
03.09 .	The German government presents first results on the usage of Telecommunication data retention.	national
28.10 .	The Federal Constitutional Court grants in part an application for the issuing of an extended temporary injunction with regard to the provisions on the retention of telecommunications traffic data.	national
2009		
15.03 .	The deadline of the EU directive on data retention ends up for Internet access, Internet phone connections and Emails.	EU & national
2010		

Date	Event	Level of decision making
02.03 .	The German Federal Constitutional Court declares the data retention act from 2007 as being unconstitutional.	national
2011		
18.04 .	The EU commission publishes a report on the EU directive 2006/24/EG	EU
14.09 .	An electronic petition submitted to the German Bundestag reaches the quorum of 50.000 signatures to force a public hearing with the petitioner in the committee.	national
27.10 .	The EU commission asks Germany formally to transpose the EU directive 2006/24/EG into national law.	EU & national
2012		
15.10	The petition committee holds a public session on the topic of data retention.	national
2014		
12.01 .	The minister of internal affairs Thomas de Maizière (CDU) and the minister of justice Heiko Maas (SPD) agree on waiting for the decision of the European Court of Justice before proposing a new data retention bill.	national
08.04 .	The ECJ declares the EU directive 2006/24/EG as being repugnant with European Common Law.	EU
2015		
18.03 .	The German Bundestag holds a question time on data retention.	national
20.05 .	The political faction Die Linke states a motion against data retention.	national
09.06 .	The governmental factions CDU/CSU and SPD propose a new data retention bill.	national
17.06 .	The German government proposes a new data retention bill (with the same wording)	national
18.06 .	First reading in the German Bundestag.	national
21.09 .	Public audition in the committee of legal affairs and consumer protection.	national
16.10 .	Second and third reading in the German Bundestag and final vote for the data retention act.	national

Source: Compiled by authors based on official documents.