

Under Austrian Law, § 76a Code of Criminal Procedure, providers of communication services are obliged to provide subscriber data upon request of the police responsible for criminal investigations, public prosecutor's offices or the competent courts. The request has to be related to investigations that are based on a concrete suspicion of an offence. Subscriber data under § 93 (3) item 3 Telecommunications Act means all personal data required for the establishment, processing, modification or termination of the legal relations between the user and the provider or for the production and publication of subscriber directories, including name, academic degree, address, subscriber number and other contact information for the message, information about manner and content of the contractual relationship and credit-worthiness.

Further, providers of communication services are obliged to provide the following data of the owner of technical equipment upon request of the public prosecutor's office (§ 76a (2) Code of Criminal Procedure):

1. the name, address and terminal identification of a subscriber, who was assigned a public IP-address on a definite date, unless it would determine a large number of people;
2. the terminal identification, that is assigned by using e-mail-services;
3. the name and address of a subscriber who was assigned an e-mail-address on a definite date;
4. the e-mail-address and the public IP-address of the sender of an e-mail.

Correspondingly, the duty of communication providers to provide the relevant data is also stipulated in § 90 (7) Telecommunications Act: At the written request of the competent courts, public prosecutor's offices or the police responsible for criminal investigations (§ 76a (1) Code of Criminal Procedure), providers of communications services are obliged to provide those authorities with information on subscriber data (§ 92 (3) item . 3) on subscribers for the investigation and prosecution of actual suspicions of a criminal offence. [...] In urgent cases, such requests may be conveyed orally on a preliminary basis.

Definitions and requirements for obtaining information about the data of a message transmission and the surveillance of messages are regulated in §§ 134 and 135 Code of Criminal Procedure.

According to § 138 (2) Code of Criminal Procedure, providers (§ 92 (3) item 1 Telecommunications Act: operator of public communications services) and other providers of services (§ 13, § 16 and § 18 (2) E-Commerce Act, Federal Law Gazette I No. 152/2001) are obliged to provide information about data of a message transmission and to cooperate in the surveillance of messages (§ 135 (2) and (3) Code of Criminal Procedure).

Excerpt of the Austrian Code of Criminal Procedure for obtaining data of a message transmission and the surveillance of messages:

#### Definitions

§ 134. For the purposes of the present law, the following terms shall mean:

[...]

2. "information about the data of a message transmission" is information that is provided about communication data (§ 92 (3) item 4 of the Telecommunications Act), access data (§ 92 (3) item 4a of the Telecommunications Act) and position data (§ 92 (3) item 6 of the Telecommunications Act) of a telecommunications service, or a service of the information society (§ 1 (1) item 2 of the Notification Act),

3. "surveillance of messages" is the determination of the contents of messages (§ 92 (3) item 7 of the Telecommunications Act), which are exchanged or forwarded via a communications network (§ 3 item 11 of the Telecommunications Act), or a service of the information society (§ 1 (1) item 2 of the Notification Act),

[...]

## Confiscation of Letters, Information about Data of a Message Transmission, as well as Surveillance of Messages

§ 135.

[...]

(2) Information about the data of a message transmission shall be admissible

1. if and as long as it is urgently suspected that one of the persons concerned by the information has kidnapped or otherwise seized another person, and that the information about data is restricted to such a message of which it has to be assumed that it was communicated, received or sent by the accused at the time when the person was deprived of his/her liberty,
2. if it is to be expected that this can promote the clearing up of a punishable act, committed with intent, which carries a prison term of more than six months, and if the owner of the technical equipment, which was or will be the source or the target of a message transmission, expressly agrees to it, or
3. if it is to be expected that this can promote the clearing up of a punishable act, committed with intent, which carries a prison term of more than one year, and if it is to be assumed, on account of certain facts, that data concerning the accused can thus be obtained.

(3) The surveillance of messages shall be admissible

1. in the cases of paragraph (2) item 1,
2. in the cases of paragraph (2) item 2, whenever the owner of the technical equipment, which was or will be the source or target of the message transmission agrees to the surveillance,
3. if this appears to be required to clear up a punishable act, committed with intent, that carries a prison term of more than one year, or if the clearing up or prevention of a punishable act, committed or planned within the framework of a criminal or terrorist association or a criminal organisation (§ 278 to § 278b of the Criminal Law Code) would otherwise be essentially impeded, and
  - a. the owner of the technical equipment, which was or will be the source or target of messages is urgently suspected of a punishable act, committed with intent, that carries a prison term of more than one year, or of a punishable act pursuant to § 278 to § 278b of the Criminal Law Code, or
  - b. it is to be expected, on account of certain facts, that a person urgently suspected of the offence (letter a) will use the technical equipment or will establish contact with it;
4. if it is to be expected, on account of certain facts, that the whereabouts of a fugitive or absent accused may be determined, who is urgently suspected of a punishable act, committed with intent, that carries a prison term of more than one year.