



Legal Service

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8 April 2014

INFORMATION NOTE

JUDGMENT

of 8 April 2014 in the joined preliminary ruling Cases

C-293/12, *Digital Rights Ireland*
referred to the Court by the High Court of Ireland

and C-594/12, *Seitlinger*
referred to the Court by the Austrian Constitutional Court
(*Verfassungsgerichtshof*)

Subject: Retention of data

Compatibility of Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 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 (the “Data Retention Directive”)¹ in particular with Article 7 and 8 of the Charter of Fundamental Rights of the European Union

Languages: English and German

Operative part: The Court of Justice (Grand Chamber) hereby rules:

“Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 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 is invalid”.

¹ OJ L 105, 13.04.2006, p. 54.

Observations:

1. By this judgment, the Grand Chamber of the Court of Justice declares the Data Retention Directive to be invalid. This declaration of invalidity concerns the Directive in its entirety. Given that the Court has not limited the temporal effect of its judgment, the declaration of invalidity takes effect *ex tunc*, that is to say from the date on which the Directive entered into force.
2. The main objective of the Data Retention Directive is to harmonise Member States' provisions concerning the retention of certain data which are generated or processed by providers of publicly available electronic communications services or of public communications networks. It seeks to ensure that the data are available for the purpose of the prevention, investigation, detection and prosecution of serious crime, such as, in particular, organised crime and terrorism. Thus, the Directive provides that the providers must retain traffic and location data as well as related data necessary to identify the subscriber or user. By contrast, it does not permit the retention of the content of the communication.
3. The High Court (Ireland) and the *Verfassungsgerichtshof* (Constitutional Court, Austria) asked the Court of Justice to examine the validity of the Directive, in particular in the light of the fundamental rights of respect for private life and of the protection of personal data, which are enshrined in Articles 7 and 8 of the Charter of Fundamental Rights.
4. In the national proceedings, the High Court must resolve a dispute between the Irish company Digital Rights Ireland and the Irish authorities regarding the legality of national measures concerning the retention of data relating to electronic communications. The *Verfassungsgerichtshof* has before it several constitutional actions brought by the *Kärntner Landesregierung* (Government of the Province of Carinthia) and by Mr Seitlinger, and more than 11 000 other applicants.
5. In its judgment, the Court observes that the data to be retained under the Directive may provide very precise information on the private lives of persons, such as the habits of everyday life, permanent or temporary places of residence, daily or other movements, activities carried out, social relationships and the social environments. According to the Court, the Directive therefore interferes in a particularly serious manner with the fundamental rights of respect for private life and of the protection of personal data. The fact that data are retained and subsequently used without the persons concerned being informed is likely to generate a feeling that their private lives are the subject of constant surveillance (paragraph 37).
6. For the reasons set out below, the Court holds that such an interference of the Directive with the fundamental rights at issue is not justified.
7. The Court acknowledges that the retention of data required by the Directive for the purpose of their possible transmission to the competent national authorities genuinely satisfies an objective of general interest, namely the fight against serious crime and, ultimately, public security. Furthermore, the Court states that the retention of data is not such as to adversely affect the essence of the fundamental rights of respect for private life and of the protection of personal data. The Directive does not permit the acquisition of knowledge of the content of the electronic communications as such and provides that service or network providers must respect certain principles of data protection and data security (paragraphs 39 to 44).

8. However, the Court holds that the Directive exceeds the limits imposed by the principle of proportionality. In that context, the Court observes that, in view of the important role played by the protection of personal data in the light of the fundamental right of respect for private life and the extent and seriousness of the interference with that right caused by the Directive, the EU legislature's discretion is reduced, with the result that review of that discretion should be strict (paragraph 48).
9. Although the retention of data required by the Directive may be considered to be appropriate for attaining the objective pursued by it, the wide-ranging and particularly serious interference of the Directive with the fundamental rights at issue is not sufficiently circumscribed to ensure that that interference is actually limited to what is strictly necessary (paragraph 64).
10. This concerns firstly the fact that the Directive covers, in a generalised manner, all individuals, all means of electronic communication and all traffic data without any differentiation, limitation or exception being made in the light of the objective of fighting against serious crime. Secondly, the Directive does not lay down any objective criterion or any substantive and procedural conditions under which the competent national authorities may have access to the data and subsequently use them. Thirdly, the Directive imposes a period for the retention of data between a minimum of six months and a maximum of 24 months, without making any distinction between the categories of data or providing objective criteria on the basis of which the period must be determined. Moreover, the Court also finds that the Directive does not provide for sufficient safeguards to ensure effective protection of the data against the risk of abuse and against any unlawful access. Finally, the Court states that the Directive does not require that the data be retained within the EU. Thereby, the Court considers that the Directive does not fully ensure the control of compliance with the requirements of protection and security by an independent authority, as is, however, explicitly required by the Charter.

(signed)

Antonio CAIOLA
Head of Unit

(signed)

Ulrich RÖSSLEIN

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