ARTICLE 29 DATA PROTECTION WORKING PARTY

14/EN
WP 220

Statement on the ruling of the Court of Justice of the European Union (CJEU) which invalidates the Data Retention Directive

Adopted on 1 August 2014

The European data protection authorities assembled in the Article 29 Working Party (WP29) welcome the ruling of the Court of Justice of the European Union (CJEU) which invalidates the Data Retention Directive[1]. They now urge the EU Member States and competent EU institutions to draw the consequences from the ruling which sets a new standard for national data retention legislations.

The judgment of 8 April 2014 takes up several of the concerns raised from the outset by the WP29[2] and data protection authorities. The Court found that the Directive:

- entails a wide-ranging and particularly serious **interference with the fundamental rights** to privacy and to the protection of personal data;
- fails to sufficiently circumscribe such interference to ensure that it is **limited to what is strictly necessary** for the purpose of fighting 'serious crime', thereby leaving it too open for Member States to decide on the scope of data retention and;
- fails to define the **guarantees** surrounding data retention, i.e. objective criteria to determine the retention periods, appropriate technical and organisational security measures and conditions for the access and use of the data by competent national authorities.

The invalidation of the Directive is also motivated by the fact that it does not require that the data be retained **within the EU**, and that consequently it does not fully ensure the control of compliance with the requirements of protection and security by an independent authority on the basis of EU law, which is explicitly required by the Charter and is "an essential component of the protection of individuals with regards to the processing of personal data".

As such, the national measures based on the invalidated Directive are not directly affected by the ruling. Yet, the WP29 urges Member States as well as the competent European institutions to evaluate its consequences on national data retention laws and practices in the EU. Indeed, national legislations have to comply with Article 15(1) of the ePrivacy Directive[3] – which lays down rules for retaining electronic communications data. Such legislation clearly falls within the scope of Union law and shall thus be in compliance with the Charter of Fundamental Rights and general principles of Union law as interpreted by the CJEU.

In particular, national data retention laws and practices should ensure that there is **no bulk retention of all kinds of data** and that, instead, data are subject to appropriate differentiation, limitation or exception. Also, access and use by national competent

[1] Directive 2006/24/EC.

[2] See namely the Working Party's Opinions 5/2002 and 4/2005 and Report 01/2010.

[3] Article 15(1) of the Directive 2002/58/EC provides that national legislation for the retention of electronic communication data must constitute a necessary, appropriate and proportionate measure within a democratic society to safeguard national security, defence, public security, and the prevention, investigation, detection and prosecution of criminal offences or of unauthorized use of the electronic communication system, and that it shall also be in compliance with the Charter of Fundamental Rights and general principles of Union law.

authorities should be limited to what is **strictly necessary** in terms of categories of data and persons concerned, and subject to **substantive and procedural conditions**. Moreover, national laws should provide for **effective protection** against the risk of unlawful access and any other abuse, including the requirement that the storage of the data is subject to the control of an independent authority ensuring compliance with EU data protection law.

The WP29 also calls on the European Commission to provide without further delay clear guidance on the consequences of the Court's judgment, both at European and at Member State level. The WP29 offers its expertise to those conducting the assessment of national legislations and requests to be duly consulted should a new instrument be envisaged at the European level on these matters.