

European Commission
Secretary-General
B-1049 Brussels
BELGIUM

June 25, 2018

SUBJECT: APPLICATION OF THE TELE2 SVERIGE/WATSON JURISPRUDENCE THROUGHOUT EUROPE

Dear Sir or Madam,

We are organisations that, in different ways, defend digital rights.

We are **NGOs and litigation groups** upholding the rights to privacy, data protection and freedom of expression through advocacy, workshops and other educational activities.

We are **community networks**, organisations that operate on local communication infrastructures managed as commons good, for the people and by the people.

We are **academics**, analysing and teaching law in compliance with democratic values and the hierarchy of norms without which there is no rule of law.

We are **activists**, voicing a common concern for the preservation of rights and freedoms, including privacy and personal data protection.

On several occasions in the past, we have already pointed out existing hurdles in our legal framework for the protection of our rights to privacy and data protection.¹

Together, we would like to address to the European Commission our concerns about the respect for CJEU case law on data retention by various Member States.

Directive 2006/24, which required the collection and retention of personal data significantly infringed privacy and data protection of people. Although it expressly excluded the content of telephonic or electronic communications and the communicated informations from its scope, it obliged Member States to ensure the conservation of personally identifiable data and allowed investigatory authorities to trace back a person's communication patterns and online activities.

Four years ago, the CJEU judged that Directive 2006/24/EC was invalid (CJEU April, 8th 2014, Digital Rights Ireland) and, more than a year ago, the Court reiterated the same points, clearly and without ambiguity, in a preliminary ruling requested by courts in Sweden and in the United Kingdom (CJEU, December 21st 2016, Tele2 Sverige/Watson).

¹[Open letter to European Commissioner for Home Affairs Cecilia Malmström](#)
[Global civil society groups call for suspension of the EU-US Privacy Shield](#)
[Open letter to EU policy makers on community networks](#)

In this judgement, the Court stated that:

"Such legislation does not require there to be any relationship between the data which must be retained and a threat to public security. In particular, it is not restricted to retention in relation to (i) data pertaining to a particular time period and/or geographical area and/or a group of persons likely to be involved, in one way or another, in a serious crime, or (ii) persons who could, for other reasons, contribute, through their data being retained, to fighting crime (...). National legislation such as that at issue in the main proceedings therefore exceeds the limits of what is strictly necessary and cannot be considered to be justified, within a democratic society."

European law prevails over national laws. Therefore, the Court's aforementioned judgements must apply to all similar legislations across the European Union. Yet, we have found that at least **17 EU Member States**² still implement national measures mandating general and non-targeted bulk data retention, thus directly infringing the CJEU's interpretation of data retention law and interfering indiscriminately in each individual's rights to the respect for private and family life, the protection of personal data, and freedom of expression. These countries are: Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, France, Germany, Hungary, Ireland, Italy, Luxembourg, Poland, Portugal, Slovenia, Spain, Sweden, and the United Kingdom. On the issue of data retention, these countries' legal framework do not comply with the case law of the Court of Justice.

Today, 62 organisations, community networks and academics, in 19 member States share the concern expressed in this letter.

At the same time and as a consequence, in 11 Member States – Belgium, Czech Republic, France, Germany, Ireland, Italy, Poland, Portugal, Spain, Sweden and United Kingdom – we are filing complaints to the European Commission, to demand action, and to stand for the protection of fundamental rights enshrined in Articles 7, 8 and 11 of the Charter of Fundamental Rights of the European Union, as interpreted by the Grand Chamber of the European Court of Justice.

We call for the application of sanctions for non-compliant Member States by referring to the Court of Justice, which should logically strike down all current data retention national frameworks.

Thank you in advance for acting and upholding the rights of EU citizens and residents.

Sincerely,

²A Concerning State of Play for the Right to Privacy in Europe National Data Retention Laws since the CJEU's Tele-2/Watson Judgment

Signatories :

Les Exégètes Amateurs
La Quadrature du Net
netCommons
Privacy International
Pangea.org
Renewable Freedom Foundation
Aktion Freiheit statt Angst e.V.
Open Technologies Alliance - GFOSS
Digitalcourage e.V.
BlueLink.net
Frënn vun der Ënn
Asociatia pentru Tehnologie si Internet
Freifunk.net
Arbeitskreis Vorratsdatenspeicherung (Working Group on Data Retention)
Datenschutzraum e.V.
Franciliens.net
Aquilenet
ILOTH
FAlmaison
NetHood.org
Tetaneutral
Digital Rights Ireland
Xnet
Hermes Center for Transparency and Digital Human Rights
epicenter.works – for digital rights
Bits of Freedom
Associação D3 - Defesa dos Direitos Digitais
Rézine
NURPA (Net Users' Rights Protection Association)
Access Now
Iuridicum Remedium
Panoptykon
DFRI - Föreningen för digitala fri- och rättigheter
Commons Network
Digitale Gesellschaft
Otvorena mreža
MeshPoint
Statewatch
Coalizione Italiana per le Libertà e i Diritti civili (CILD)
igwan.net
Network Bogotá
WirelessPT.net
Chaos Computer Club Lëtzebuerg
Initiative für Netzfreiheit
FDN
SCANI
Illyse
FFDN
Neutrinet
Open Rights Group
ALDIL
Liberty
APS Progetto Wireco Ciminna
Internet Society France
Touraine Data Network
Article 19
Mycelium
EDRi
IT-Political Association of Denmark
Sarantaporo.gr
Association for Progressive Communications (APC)
Electronic Frontier Norway (EFN)



// datenschutzraum



digitalcourage

{ { Franciliens.net } }

Fournisseur Associatif d'Internet



PRIVACY INTERNATIONAL

Digital Rights Ireland



Network Bogotá



LIBERTY
PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

