

ISOC European Regional Bureau Newsletter

5 - 11 April 2014

<http://www.Internetsociety.org/what-we-do/where-we-work/europe>

Data protection

EU: Court ruling annuls the EU Data Retention Directive

- In its **ruling** from 8 April, the **Court of Justice of the European Union declared the EU Data Retention Directive invalid**, as the **law interferes seriously with the fundamental rights to respect of private life and to the protection of personal data**. The interference was judged as not being limited to what is strictly necessary.
- The objective of the Directive was to harmonise Member States' provisions on data retained by the providers of publicly available electronic communications services or networks for the purpose of prevention, investigation and prosecution of criminal offences. **Providers were required to store traffic and location data, as well as data necessary to identify the user.**
- The Court observed that the retained data makes it possible to know the identity of the person, to identify the time of communication, as well as its place, and to know the frequency of the communications, thus providing details on **private lives of the persons whose data is retained**. According to the Court, the requirement of retention of those data seriously interferes with the fundamental respect for private life and personal data protection.
- The Court stated that the retention of data satisfies an objective of general interest, but the Court is of the opinion that the **EU exceeded the limits of proportionality by adopting this Directive**. The wide-ranging nature of the Directive is not limited to what is strictly necessary, as the Directive covers all traffic data without any differentiation, limitation or exception.
- Furthermore, the **Directive fails to lay down objective criteria** ensuring that only competent authorities have access to the data, thus preventing the risk of abuse. With regards to the **data retention period**, the Court stated that there is no objective criterion to ensure that the retention is limited to what is strictly necessary.
- Lastly, the Court underlined that the Directive does not require for the retained data to be stored in the EU.
- The ruling of the Court means that **in legal terms the Directive is null and void**, therefore there is no EU legislation on data retention. But, national laws remain in place. It was **reported** that national courts may face legal challenges against their own laws as citizens could claim breaches of privacy.
- The **Commission will take several months to assess the impact of the judgment**. It would be for the next college of Commissioners, due to take office in November, to take a decision whether to present a new legislative proposal.

EU: No progress in EU Member States talks on the proposed Data Protection Regulation

- Despite the original announcement that the **Greek Presidency of the EU** aims to steer the European governments to agree on a position on the proposed Data Protection Regulation by June, **Greek official Lilian Mitrou** told the Annual Conference on Data Protection in the EU that EU states are now seeking to strike a **common position on certain parts only** of the proposed Regulation.

- Referring to the discussions on the so-called **one-stop shop principle**, Mitrou stated that there is a lack of political will. The aim for the Presidency is to **avoid revisiting aspects of the proposal already agreed on**.
- Speaking at the same event, **Jacob Kohnstamm, the head of the Dutch Data Protection Authority**, called on the **EU governments to speed up their negotiations** and open talks with the Parliament and the Commission.
- **Paul Nemitz, Director at DG Justice Fundamental Rights and Citizenship** stated that European privacy **watchdogs should become active law enforcers**, rather than producers of position papers.

EU: Termination of mandate of the Hungarian Data Protection Supervisor violates EU law

- In its **ruling** from 8 April, the Court of Justice of the European Union declared that by terminating the mandate of the **Data Protection Supervisor, Hungary violated the EU Data Protection Directive**. The Directive provides for the Member States to appoint one or more authorities to supervise the application of that Directive. Member States are required to ensure that the role of data protection supervisors is carried out in **full independence**. The early termination of the mandate was considered by the Court as an infringement to the supervisor's independence.
- The mandate of the Hungarian data protection commissioner Jori was terminated on 1 January 2012, as the country's parliament decided to reform the data protection system and to establish a national authority, replacing the supervisor.

Net neutrality

EU: The UK and Germany propose a scaled-back alternative to the proposed Connected Continent

- The **UK and Germany** are said to have prepared a **watered-down version of the proposed Connected Continent** package that recently gained backing from the European Parliament. As the negotiations are now to continue on the EU Member States level, the final text of the Regulation might be very different from the Parliament's version. The future of the text will test the Parliament's willingness to compromise, internal sources reported.
- Following the Parliament's adoption of the draft text, the European Commission has called on the Member States' representatives to come to an agreement on a **compromise text ahead of a meeting of Telecom ministers that is scheduled for November**.
- The text drafted by the UK and Germany is said to offer an alternative between the conservatism of the EU Member States and the far-reaching position of the Parliament, as it reportedly focuses on areas that can be agreed on quickly.
- With regards to **net neutrality**, the Anglo-German **proposal suggest less stringent rules**, as the Parliament's position is considered as being too prescriptive, thus potentially hindering innovation and development.
- The **management of wireless spectrum** is one of the controversial points of the proposal as spectrum allocation is considered as a valuable source of income for the Member States. The UK and Germany are wary of the proposed alignments of frequencies allocations and merely suggest improving the current mechanisms.

Cloud computing

EU: Cloud-computing regulation would be premature

- The European **Commission has no immediate plans to propose legislation on cloud computing** as a way to support the market uptake of the technology, confirmed **Ken Ducatel at DG Connect's** Software unit at the recent Annual European Cloud Computing Conference.

- The **Commission favours self-regulatory initiatives** that software makers would promote themselves, and is ready to support the private sector's efforts.

Copyright infringement

EU/Netherlands: EU court ruling maintains integrity of online copyright protection

- The **Court of Justice of the European Union (CJEU)** ruled on 10 April that **national law may not take account of illegal downloading in calculating appropriate fees to set copyright levies**.
- The case *ACI Adam* was referred by the Supreme Court of the Netherlands regarding a fee paid by importers and manufacturers of CDs, who disputed the inclusion of an estimated sum for downloads from illegal sources in the private copyright levy system.
- According to the CJEU, 'if Member States were free to adopt legislation permitting, inter alia, reproductions for private use to be made from an unlawful source, the result of that would clearly be detrimental to the proper functioning of the internal market. Similarly, the objective of proper support for the dissemination of culture may not be achieved by sacrificing strict protection of copyright or by tolerating illegal forms of distribution of counterfeited or pirated works.'
- In response, a spokesman for the Dutch Ministry of Security and Justice told a Dutch newspaper that **"as from today, illegal downloading is forbidden"**.
- However, the same press article quotes an ICT lawyer, saying that Brein, the umbrella organisation which represents copyright holders in the Netherlands, is unlikely to pursue individuals who illegally download, but rather to go after the platforms that illegally host content.

Comment: The ruling illustrates that the CJEU will not allow Member State to reinterpret EU copyright law to get round the problem of illegal downloading.

Cloud computing/Data protection

EU: Microsoft's cloud system approved by EU regulator

- Privacy changes to **Microsoft's online enterprise cloud storage** system won the **approval of the EU data protection authorities** for meeting the EU standards. Other major cloud service providers are expected to follow suit as they might be under **growing pressure to make similar commitments as protection of digitally stored data has become a priority in Europe**.

Internet governance

EU: Support for multistakeholder model of Internet governance

- In her answer to **MEP Laurence J.A.J. Stassen's** (Non-attached, the Netherlands) questions on the future model of **Internet governance**, **Commissioner Kroes** underlined that the global nature of the Internet needs to be taken into account in its governance model.
- The Commissioner recalled a number of actions the Commission promoted to support a multistakeholder model of Internet governance, those include: promotion of **Internet governance principles** consistent with fundamental rights; strengthening of the **Internet Governance Forum**; and promotion of **globalisation of ICANN and IANA**.
- A similar position was expressed by the **Council's Working Party on Telecommunications** which has published the so-called Lines with regards to positions that will be expressed by the EU Member States and the Commission at the upcoming **Global Multistakeholder Meetings on the Future of Internet Governance** that will take place in Sao Palo, Brazil on 23-24 April. The Lines underlined that in order to preserve the Internet as a single, open, secure and un-fragmented network, a coherent set of principles should be established with all stakeholders. The sustainability of the multistakeholder model of Internet

governance should be ensured by **making processes and institutions more inclusive, transparent and accountable.**

Launch of Geneva Internet Platform

- On 8 April, Swiss authorities and the DiploFoundation launched the **Geneva Internet Platform** (GIP) with the aim of engaging digital actors, fostering Internet governance and monitoring digital policies. The initiative intends to affirm Geneva as the global centre for Internet governance.

Cybersecurity

Germany: Mass email password theft

- On 7 April, BSI, **Germany's Federal Office for Information Security** announced that major email providers in Germany had begun letting their users know if they had been hit by the **latest mass-theft of email account information**. BSI confirmed that the theft concerns at least 3 million German accounts.
- The last mass theft that dates back to January resulted in a repeated crash of the government's Internet safety site.