

---

## **CCBE POSITION ON THE LEGAL FRAMEWORK FOR THE FUNDAMENTAL RIGHT TO PROTECTION OF PERSONAL DATA**

---

Identification number in the register of interest representatives: 4760969620-65

---

## CCBE Position on the Legal Framework for the Fundamental Right to Protection of Personal Data

---

The Council of Bars and Law Societies of Europe (CCBE) represents around 1 million European lawyers through its member bars and law societies from 31 full member countries, and 11 further associate and observer member countries. The CCBE responds regularly on behalf of its members on policy issues which affect European citizens and lawyers. In this submission, the CCBE responds to the request of the European Commission to obtain views on the new challenges for personal data protection in order to maintain an effective and comprehensive legal framework to protect individual personal data within the EU.

The legal profession supports and profoundly respects the fundamental right to protection of personal data, including the right of respect of privacy and that of confidentiality of communications. The CCBE is aware of its own responsibility in this area and has published recommendations to its membership regarding best practice in data protection when making use of the internet and e-communication (please see the guidelines at [http://www.ccbe.org/fileadmin/user\\_upload/NTCdocument/EN\\_CCBE\\_Guidance\\_ele1\\_1231836053.pdf](http://www.ccbe.org/fileadmin/user_upload/NTCdocument/EN_CCBE_Guidance_ele1_1231836053.pdf)).

The CCBE is deeply worried about legal initiatives that would challenge the fundamental right of personal data protection. More specifically, we are worried by the growing number of initiatives taken at the European level which, under cover of the fight against terrorism, are serious infringements of fundamental freedoms and rights.

We have already expressed our opposition to the Council framework decision on the retention of traffic data and localisation of data. This framework decision challenges the right of the respect of privacy and that of confidentiality of communications. By providing access to information such as name, date, place, frequency, and duration of a communication, whatever its format, this draft infringes the confidentiality of the lawyer-client relationship and in general professional secrecy, as well as the exercise of the right of the defence.

The two particular concerns of the CCBE have been: (1) that professional secrecy is not guaranteed when governments have eventual access to the retained data; and (2) that prior judicial authorisation is not required before governments have access to the data.

In support of the CCBE's stance on professional secrecy, the European Parliament passed a legislative resolution at the same time as it passed the data retention directive. The relevant part of this resolution of 14 December 2005 (P6\_TA (2005)0512, A6-0365/2005) stressed the need to safeguard professional secrecy: The European Parliament (...) 4. *Considers that the Member States have the right to apply their national constitutional principles and considers especially that professional secrecy will also be respected in the application of the present directive*

The European Court of Justice also expressly mentioned in its decision in the AM&S case (case C-155/79): *“that confidentiality serves the requirements, the importance of which is recognized in all of the member states, that any person must be able, without constraint, to consult a lawyer whose profession entails the giving of independent legal advice to all those in need of it”*. It added that *“the principle of the protection against disclosure afforded to written communications between lawyer and client is based principally on a recognition of the very nature of the legal profession, inasmuch as it contributes towards the maintenance of the rule of law and that the rights of the defence must be respected”*. The duty of the lawyer to respect “strict professional secrecy” was asserted again by the Court in the Wouters case (Case C-309/99) as being a generally recognised principle in all Member States and an *“essential rule to ensure the proper practice of the legal profession”* that bars try to keep to.

With regard to new technologies, the CCBE welcomes the initiative taken by the Member States and the European Commission towards the establishment of the “e-Justice” project. However, while efficiency of justice is of utmost importance, human rights should always go hand-in-hand with each new development towards more efficiency. Therefore, the CCBE has some concerns regarding, for instance, the interlinking of criminal data bases through the e-Justice portal. With regard to data protection issues, the CCBE raises the following questions about this particular interlinking proposal:

- who would have access to the database?;
- what purpose can the information be used for?;
- the accuracy, access, use and understanding of the information stored must be clarified. How can any errors or misunderstandings be rectified, and how can one appeal against misinformation on the criminal record database?
- there is an issue as to delay in putting information onto the database, and also the removal of information which has been successfully appealed.

The CCBE therefore urges the European institutions once again to take into account the following guidelines when shaping Europe's legal framework on the fundamental right to protection of personal data:

1. to ensure that lawyers' professional secrecy is guaranteed in the context of data protection when retained traffic and communication data are accessed by governments and other competent authorities;
2. to ensure that access to retained data is granted under the legislation only with prior judicial authorisation;
3. to ensure that once the government or law enforcement authority has accessed the data, it should only be used and stored for as long as this is necessary for the purpose for which the data was originally supplied as protected under Article 6 of the Directive 95/46/EC and Article 6 Para 1 of the Directive 2002/58/EC;
4. to ensure that a high level of protection measures safeguarding the principle of respect for privacy and confidentiality of communications, as protected under Articles 7 and 8 of the Charter of Fundamental Rights of the European Union and Article 8 of the European Convention of Human Rights, are inserted into the legislation.

Finally, the CCBE would like to express its willingness to provide further input and expertise to future consultations or proposals from the European Commission in this field.