

PRESS RELEASE

CCBE Issues Recommendations Following the Annulment of the Data Retention Directive

24/09/2014

The recommendations¹ to lawmakers and member bars aim at a better protection of lawyer-client communications and citizens' data covered by professional secrecy when new legislation is introduced following the annulment.

In April of this year, the Court of Justice of the EU (CJUE) issued a severe and unprecedented judgement (Joined Cases C-293/12 and C-594/12), invalidating in its entirety the 2006 Data Retention Directive².

The CCBE supports the conclusions of the CJUE, especially regarding the infringement of the principle of professional secrecy that may follow as a result of the implementation of the directive.³ The CCBE therefore calls upon its member bars and law societies to take appropriate action to ensure that national laws comply with the proportionality concern raised by the Court.

Furthermore, based on the conclusions of the *CCBE Comparative Study on Governmental Surveillance of Lawyers' Data in the Cloud*⁴, the CCBE invites the European Commission to ensure that national regulatory regimes for the interception of communications should guarantee the inviolability of data and other evidence falling under the principle of professional secrecy.

There should be a harmonised, minimum level of protection for professional secrecy, regardless of the data being traffic data, other metadata or content data, and irrespective of which governmental body requires access to such given data, and whether the purpose is for national security or preventing crime.

The minimum level of protection of communications containing professional secrecy should be the same in the electronic world as it is in the paper world, where often

stronger guarantees are in place. This minimum level of protection must ensure in every EU Member State a more explicit and consistent protection of professional secrecy of communications between lawyer and client, with prior judicial authorisation for access to data and clear requirements on the purpose and duration of the data retention.

In view of its resolution of 12 March 2014 on the 'US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens'⁵, the CCBE also invites the European Parliament to undertake urgent action to establish 'A European Digital Habeas Corpus - protecting fundamental rights in a digital age' including the protection of lawyer-client confidentiality as stipulated in Action 6 of the resolution.

Note to editors

The Data Retention Directive, promoted by Member States in reaction to terrorist attacks in the United States, Spain and the United Kingdom, entered into force on 3 May 2006. Under the implementation measures, Internet service providers were required to hold records of users' activity for up to two years, and provide access to the police and security services. At the time, the CCBE expressed its opposition to the Directive, due to the transfer of private data covered by professional secrecy to governments without prior judicial authorisation.

About the CCBE

The CCBE represents the bars and law societies of 32 member countries and 13 further associate and observer countries, and through them more than 1 million European lawyers.

Founded in 1960, the CCBE is recognised as the voice of the European legal profession by the EU institutions, and acts as the liaison between the EU and Europe's national bars and law societies. The CCBE has regular institutional contacts with those European Commission officials, and members and staff of the European Parliament, who deal with issues affecting the legal profession. The CCBE is an international non-profit-making association incorporated in Belgium.

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¹ http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_12092014_CCBE_Rec1_1410520338.pdf

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:105:0054:0063:EN:PDF>

³ See paragraph 58 of the judgement.

⁴ http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_04042014_Comparat1_1400656620.pdf

⁵ <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2014-0230>