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European Union: Data Retention Directive not Justifiable

The Centre for Law and Democracy is today releasing an Analysis of the European Union's 2006 Data Retention Directive, assessing it from the perspective of the right to freedom of expression. The Directive has attracted a lot of criticism, mostly on the basis that it fails to respect privacy. CLD's Analysis highlights the ways the Directive exerts a chilling effect on freedom of expression, and its failure to pass muster as a restriction on free speech.

"The Data Retention Directive is a crude instrument which requires the preservation of vast quantities of information relating to communications between law-abiding citizens," said CLD Executive Director, Toby Mendel. *"Given the serious implications of these sorts of measures for freedom of expression, a more nuanced and targeted approach is required."*

International law prohibits not only measures which directly limit freedom of expression but also those which do so indirectly. Retention of traffic and location data – even without the content of communications, which is not permitted under the Directive – allows a detailed digital picture of an individual's life to be generated, especially if this data is merged with other data files, which can easily be done. The blanket retention of this data creates an atmosphere in which everyone feels they are being monitored for possible criminal activity, exerting a serious chilling effect on freedom of communication.

CLD's primary recommendation is that the Data Retention Directive be scrapped entirely and replaced with a far more carefully designed and targeted regime. If the system is retained, a number of safeguards against abuse should be put in place, including:

- Limitations on both the scope of activity which would trigger access to retained data (i.e. serious crimes) and the scope of actors who can access the data (i.e. law enforcement officials).
- Requiring service providers to adopt strong data security measures and to notify oversight bodies whenever there is a data security breach.
- Shorter maximum data retention periods and flexibility for States to determine minimum data retention periods.

CLD urges the European Union to replace the Directive with a regime that creates an appropriate balance between law enforcement needs and freedom of expression.

The Analysis is available at:

<http://www.law-democracy.org/live/european-union-data-retention-directive-not-justifiable/>

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