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Judgment of the Court of Justice in Case C-301/06

Ireland v. Parliament and Council

THE DATA RETENTION DIRECTIVE IS FOUNDED ON AN APPROPRIATE LEGAL BASIS

The directive was correctly adopted on the basis of the EC Treaty as it relates predominantly to the functioning of the internal market

In April 2004, France, Ireland, Sweden and the United Kingdom submitted to the Council a proposal for a framework decision based on the articles of the EU Treaty relating to police and judicial cooperation in criminal matters. The subject of that proposal was the retention of data processed and stored in connection with the provision of publicly available electronic communications services or data in public communication networks for the purposes of the prevention, investigation, detection and prosecution of criminal offences, including terrorism.

The Commission stated that it favoured the EC Treaty as the legal basis for part of that proposal. More specifically, it took the view that Article 95 EC, which permits the adoption of measures which have as their object the establishment and functioning of the internal market, was the appropriate legal basis for the obligations imposed on operators to retain data for a certain period. The Commission also found that those measures would affect two existing directives¹ and that Article 47 of the EU Treaty does not allow an instrument based on that Treaty to affect the *acquis communautaire*.

On a proposal from the Commission, the Council opted for the adoption of a directive based on the EC Treaty. On 21 February 2006, the data retention directive² was adopted by the Council by qualified majority. Ireland and Slovakia voted against the adoption of that directive.

Subsequently, Ireland, supported by Slovakia, asked the Court of Justice to annul the directive on the ground that it had not been adopted on an appropriate legal basis. Ireland takes the view that the directive cannot be based on Article 95 EC since its ‘centre of gravity’ does not concern the functioning of the internal market but rather the investigation, detection and prosecution of

¹ Directive 95/46/EC on data protection and Directive 2002/58/EC on the protection of privacy in the electronic communications sector.

² Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks (OJ 2006 L 105, p. 54).

crime, and that measures of this kind ought therefore to have been adopted on the basis of the articles of the EU Treaty relating to police and judicial cooperation in criminal matters.

The Court notes at the outset that the action brought by Ireland relates solely to the choice of legal basis and not to any possible infringement by the directive of fundamental rights resulting from interference with the exercise of the right to privacy.

The Court finds that the directive was adopted on an appropriate legal basis

The Court observes that, prior to adoption of the directive, several Member States had introduced measures designed to impose obligations on service providers in regard to data retention and that those measures differed substantially, particularly in respect of the nature of the data retained and the respective retention periods. Those obligations have significant economic implications for service providers in so far as they may involve substantial investment and operating costs. Furthermore, it was entirely foreseeable that Member States which did not yet have such rules would introduce rules in that area which were likely to accentuate even further the differences between the various existing national measures. Thus, it was apparent that these differences would have a direct impact on the functioning of the internal market and that it was foreseeable that that impact would become more serious with the passage of time. Such a situation justified the Community legislature in pursuing the objective of safeguarding the proper functioning of the internal market through the adoption of harmonised rules.

The Court also notes that the data retention directive amended the provisions of the directive on the protection of privacy in the electronic communications sector, which is itself based on Article 95 EC. In those circumstances, in so far as it amends an existing directive which is part of the *acquis communautaire*, the directive could not be based on a provision of the EU Treaty without infringing Article 47 EU.

Finally, the Court finds that the provisions of the directive are essentially limited to the activities of service providers and do not govern access to data or the use thereof by the police or judicial authorities of the Member States. The measures provided for by the directive do not, in themselves, involve intervention by the police or law-enforcement authorities of the Member States. Those issues, which fall in principle within the domain covered by police and judicial cooperation in criminal matters, have been excluded from the provisions of the directive. The Court therefore concludes that the directive relates predominately to the functioning of the internal market.

Accordingly, **it was necessary to adopt the directive on the basis of Article 95 EC.**

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Languages available: CS, DE, EN, ES, EL, FR, HU, IT, NL, PT, RO, SK

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-301/06>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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