

# **Esin DigiDiary**

## **Monthly Tech Litigation Digest: CJEU Evaluates Traffic and Location Data Retention**

The Court of Justice of the European Union (CJEU) evaluated the use of traffic and location data as evidence in criminal proceedings with its decision No. C-140-20 dated 5 April 2022 ("**Decision**"). The Decision is available [here](#).

### **Background**

At a murder trial, a first instance court in Ireland sentenced the defendant, G.D., to life imprisonment. The defendant appealed the decision of the first instance court on the grounds that the court unlawfully used traffic and location data in the judgement. In their appeal, the defendant argued that the Irish Act allowing the retention of traffic and location data interferes with their rights according to EU law. As the High Court ruled in favor of the defendant, Ireland referred the case to the Supreme Court of Ireland. Subsequently, the Supreme Court of Ireland asked the CJEU to review their questions regarding the retention and use of traffic and location data.

### **What does the Decision cover?**

The CJEU referred to its case law and stated that EU law precludes national legislation allowing the general and indiscriminate retention of traffic and location data. The CJEU underlined that the retention of traffic and location data may interfere with the fundamental rights of the individuals. However, the CJEU also underlined that the public authorities have positive obligations to protect those fundamental rights.

Therefore, the CJEU concluded that there must be a balance between the rights and interests and evaluated the conditions and cases for processing the traffic and location data to combat serious crimes and prevent serious threats to public security as follows:

- i. *Targeted and limited retention of traffic and location data:* The CJEU evaluated that the public authorities can adopt measures targeting a certain geographical area or a certain individual. These measures can be directed towards strategically important places such as airports or places with a higher crime rate or high number of visitors. Through targeted retention to combat serious crime, the public authorities can process information on the presence and activity of individuals in that specific geographical area, yet subject to a limited time. The CJEU evaluated that objective evidence indicating the connection of a targeted person with a serious crime or a risk to public security must exist to target the traffic and location data of individuals. The CJEU considers individuals that were previously identified as threats to public or national security as sufficient evidence to target these individuals.

ii. *General and indiscriminate retention of IP addresses and data relating to civil identity of users:* The CJEU concluded that EU law does not preclude the national legislation to stipulate the control and registration of the identity of an individual purchasing a product under the electronic communications legislation. As for the retention of IP addresses, the CJEU held that the general retention of IP addresses constitutes an interference to the fundamental rights of individuals, including their right to freedom of expression. However, the CJEU also pointed out that retaining IP addresses might be necessary to investigate several crimes, especially the ones that are committed online, such as child pornography. Therefore, the CJEU concluded that the retention of IP addresses is possible but subject to conditions.

iii. *Expedited retention of traffic and location data held by service providers:* The CJEU further pointed out that the public authorities can order the expedited retention of traffic and location data with the initiation of an investigation regarding a serious crime or a serious threat to public security. This measure can involve the expedited retention of the data of suspects as well as the individuals related to the crime, for instance an individual who the victim contacted beforehand.

The CJEU refers the evaluation of the use of traffic and location data of the defendant as evidence to the national court in Ireland, subject to the principles above.

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