



EUROPEAN DATA PROTECTION SUPERVISOR

The EU's independent data
protection authority

The EDPB/EDPS Joint Opinion 4/2022 2022 on the Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse

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Outline

- Relevant CJEU case law
- Are detection orders targeted?
- Different types of dection orders
- The role of the EU Centre
- Focus on communication providers (where we have more case law at EU level and probably more severe interference)

Relevant CJEU case law



Relevant CJEU case law

- case law on data retention: Tele2 Sverige and Watson and Others (C-203/15 and C-698/15, EU:C:2016:970), of 6 October 2020, La Quadrature du Net and Others (C-511/18, C-512/18 and C-520/18, EU:C:2020:791), and of 5 April 2022, Commissioner of An Garda Síochána and Others (C-140/20, EU:C:2022:258), Spacenet and Deutsche Telekom (C-793/19 and C-794/19) of 20 September 2022.
- no general and indiscriminate retention of traffic and location data to combat serious crime
- EDPS Opinion 7/2020 on the Proposal for temporary derogations from Directive 2002/58/EC for the purpose of combatting child sexual abuse online: general and indiscriminate scanning of all text-based communications not proportionate

Are detection orders
targeted?



,Targeted Retention' in the jurisprudence of the CJEU

The national legislator could 'provide, for the purposes of safeguarding national security, combating serious crime and preventing serious threats to public security, for the **targeted retention** of traffic and location data which is limited, **on the basis of objective and non-discriminatory factors**, according to

- the **categories of persons concerned** or
- using a **geographical criterion**,

for a period that is limited in time to what is strictly necessary, but which may be extended.

(Spacenet and Telekom Deutschland, para. 75)



Are detection orders targeted?

No limitation in the sense of the jurisprudence of the Court:

- no clear regulation with preconditions and legal consequences, and
- the Proposal would ultimately leave the decision to the judge.
- the Proposal does not effectively guard against generalised and indiscriminate monitoring by multiple providers for extend periods of time.

The decisions to seek and issue detection orders do not depend on the bearers of the fundamental right to privacy of communication and data protection, but on the behaviour of the provider

Types of detection orders



Types of detection orders: known CSAM, unknown CSAM, and grooming detection

Risk of general and indiscriminate monitoring exists for all three types of detection orders.

In addition, some types additionally stand out due to high error rates, especially false positives rates, according to the Impact Assessment:

- known CSAM: 0,000000002% (1 in 50 billion)
- unknown CSAM: 0,1% false positives with 80% of total CSAM in the data set
- grooming: 88% accuracy, 12% false positives
- no information on audio communications

The role of the EU Centre



The role of the EU Centre

- can help to sort out the false positives
- limited technical and organisational separation from Europol
- criteria and safeguards conditioning Europol's access and subsequent use of data obtained from the EU Centre's information systems are not specified

Transmission of personal data from the EU Centre to Europol should only take place on a case-by-case basis, following a duly assessed request, via a secure exchange communication tool



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