



Opinion of the Advocate General at the Court Maciej Szpunar in Case C-661/24 | Académie Fiscale and Others

Press release No 117/26

Luxembourg, 3 September 2026

Retention of electronic communications data: Advocate General Szpunar clarifies the criteria for assessing the compatibility of national legislation with EU law

In 2022, Belgium adopted new legislation relating to the collection and retention of identification data and metadata in the electronic communications sector. ¹ That legislation is intended, *inter alia*, to regulate the retention of certain traffic and location data by providers of electronic communications services in order to combat fraud, malicious use of the network and breaches of network security.

Directive 2002/58 ² on privacy and electronic communications establishes a strict framework governing the retention of those data. It aims to reconcile the objectives of general interest pursued by the Member States with respect for fundamental rights, in particular the right to respect for privacy and the protection of personal data guaranteed by the Charter of Fundamental Rights of the European Union.

The Belgian Constitutional Court, before which five actions have been brought, has referred questions to the Court of Justice concerning the compatibility of certain provisions of the 2022 legislation with EU law.

In his Opinion, **Advocate General Maciej Szpunar proposes that the Court should find that EU law precludes several of the rules contained in the Belgian legislation at issue.**

He recalls, first of all, that the national measures requiring the retention of traffic and location data constitute an interference with the fundamental rights to respect for privacy and the protection of personal data. Such interference is permissible only if provided for by law, is strictly necessary and complies with the principle of proportionality. He also states that the assessment of the compatibility of a national regime for the retention of data depends on the seriousness of the interference which it entails and the importance of the objective pursued.

He nevertheless observes that the Court's recent case-law, ³ in the context of criminal offences committed exclusively online, makes it possible to take greater account of the technical arrangements for the retention of data when assessing the seriousness of the interference with fundamental rights. In his view, that case-law could be extended to all regimes for the retention of traffic and location data. Thus, national legislation could provide, subject to certain strict conditions, for the general and indiscriminate retention of traffic and location data for the purposes referred to in Directive 2002/58. Such data would have to be retained in accordance with technical arrangements ensuring a genuinely watertight separation of the different categories of data and preventing their combined use throughout the entire retention period, thereby ensuring that precise conclusions on users' private lives could not be drawn. Moreover, such retention would have to be limited to what is strictly necessary.

Applying that analysis to the Belgian legislation, the Advocate General notes that that legislation authorises the retention of a very broad set of traffic and location data without imposing technical arrangements which ensure a genuine separation of the different categories of data. He considers that the resulting interference goes beyond what is necessary to attain the objectives pursued.

He further observes that several essential elements of the retention regime are left to the discretion of providers of electronic communications services. In certain circumstances, those providers may determine which data they consider it necessary to retain and extend the retention period. He therefore considers that that legislation lacks clarity and precision and does not provide the sufficient safeguards required by EU law. It therefore fails to comply with the principle of proportionality.

Lastly, the Advocate General recalls that only the Court may, in exceptional cases, limit the temporal effects of its interpretation of EU law. He concludes that a national court may not maintain on a temporary basis the effects of national provisions that are incompatible with EU law.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice of the European Union about the interpretation of EU law or the validity of an EU act.

The General Court has jurisdiction to deal with requests for a preliminary ruling coming exclusively within the following areas (1) the common system of value added tax (VAT), (2) excise duties, (3) the Customs Code, (4) the tariff classification of goods under the Combined Nomenclature, (5) compensation and assistance to passengers in the event of denied boarding or delay or cancellation of transport services, or (6) the system for greenhouse gas emission allowance trading. The Court of Justice has jurisdiction to deal with all other requests for a preliminary ruling.

Neither the Court of Justice nor the General Court decides the national dispute itself. It is for the national court or tribunal to resolve the case in accordance with the ruling by the Court of Justice or by the General Court, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice. The presentation of the facts and the legal context refers to the relevant period and is based on the case file.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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¹ That law replaces the loi du 29 mai 2016 relative à la collecte et à la conservation des données dans le secteur des communications électroniques (Law of 29 May 2016 on the collection and retention of data in the electronic communications sector), several provisions of which have been annulled by the Belgian Constitutional Court in the light of the case-law of the Court of Justice, in particular its judgment of 6 October 2020, Joined Cases *La Quadrature du Net and Others*, [C-511/18](#), [C-512/18](#) and [C-520/18](#) (see also [Press Release No 123/20](#)).

² [Directive 2002/58/EC](#) of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications).

³ In particular the judgment of 30 April 2024, *La Quadrature du Net II and Others (Personal data and action to combat counterfeiting)*, [C-470/21](#) (see also [Press Release No 75/24](#)).