

Data Protection Ireland

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Headlines

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CJEU gives landmark data retention ruling in Irish murder case

In an anticipated ruling, the Court of Justice of the EU has determined that Ireland's Communications (Retention of Data) Act 2011 breaches EU law.

The outcome is the product of a referral made by the Irish Supreme Court on the admissibility of evidence in a murder case.

The key evidence in the case included traffic and location data relating to telephone calls from convicted murderer, Graham Dwyer's, mobile phone that was argued successfully by the prosecution to place him at the scene of the murder.

Mr Dwyer had challenged the admissibility of the evidence in his conviction.

Prior to considering the case, the CJEU had already ruled in 2014 that Directive 2006/24/EC (the Data Retention Directive) was invalid, a deciding factor being that it disproportionately interfered with the rights recognised by Articles 7 and 8 of the Charter of Fundamental Rights of the European Union, which deal with the right to respect for a person's private and family life, home and communications.

The CJEU said previously that there could not be a general and indiscriminate

retention of mobile phone metadata.

Ireland had raised arguments for an exception to this previously stated position, at least in relation to serious crime. However, giving judgment in Mr Dwyer's case, the CJEU stated that 'serious crime' could not be treated in the same way as a threat to national security. Agreeing with the earlier Opinion of the Advocate General in November 2021, it made the overall finding that Ireland's legislation on data retention isn't compatible with EU law.

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New Privacy Shield closer to being a reality

The European Data Protection Board ('EDPB') has welcomed the recent announcement of a political agreement in principle between the European Commission and the US on transatlantic data transfers, indicating that it sees US authorities' commitment to implement measures to protect EU individuals' privacy and personal data as a "positive first step in the

right direction".

The EDPB highlighted that the joint announcement does not yet constitute a legal framework that can be relied on to legitimise transfers between the EU and the US. For the time being, organisations must continue taking the necessary measures to comply with the transfer requirements of the GDPR and

the *Schrems II* (C-311/18) judgment.

Once available, the EDPB will examine the Commission's draft adequacy decision for the US in light of EU law, Court of Justice of the EU case law and its prior recommendations on the topic. In particular, the EDPB will verify how US

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