

His Excellency Tony Blair
Presidency of the Council of the European Union
Rue de la Loi 175 B-1048 Brussels - Belgium

Her Excellency Viviane Reding
European Commission
Commissioner for Information Society and Media
Rue de la Loi 200 B-1049 Brussels - Belgium

His Excellency Franco Frattini
European Commission
Vice President and Commissioner for Justice, Freedom and Security
Rue de la Loi 200 B-1049 Brussels - Belgium

cc: Members of the LIBE and Industry committees of the European Parliament

Brussels, 12 July 2005

Your excellencies,

On behalf of European Digital Rights and Privacy International we would like to express our sadness and anger at the terrorist attacks in London on 7 July. We understand the difficulty of ensuring the daily safety of all citizens and residents while at the same time guaranteeing all other human rights, including their right to a private life. We also understand and support the continuing effort required to prevent such attacks. However, in view of the plan of the UK's Presidency of the Council of the European Union to respond to the attacks with an urgency procedure in the JHA Council to adopt quickly a draft framework decision that allows for total communications surveillance, we respectfully call for restraint.

We consider the attacks on London an attack on the human rights that have been so carefully crafted and guaranteed in the United Nations Declaration on Human Rights, in the European Convention on Human Rights and in the EU Charter of fundamental rights. Human rights law matters most when governments and societies face times of crisis. The worst possible response would be to jeopardise those carefully wrought rights by a panic-inspired response.

We consider the draft framework decision on ubiquitous data retention a serious violation of the right to a private life and a serious endangerment to freedom of speech. In our opinion, there must remain an unbridgeable gap between the investigation and prosecution of criminals and the mass surveillance of all citizens and residents. This gap forms the core of our democratic values. No one is to be held guilty until proven so. We are deeply concerned that a mass surveillance response to terror would result in a resounding success for the perpetrators of these attacks: a fundamental undermining of our most cherished values.

On the basis of press interviews with the UK Home Secretary conducted after the London attacks, and from the latest version of the draft framework decision, drafted by the upcoming UK Presidency of the Council on 29 June, we feel the Presidency might be set on adopting the measure on data retention entirely within the third pillar, without any further democratic consultation with the European Commission and the European Parliament. Given that the UK Presidency has already signaled that data retention will be an important priority and in view of its efforts to establish a formal decision in the JHA Council of 12 October 2005, we can only conclude the decision

has evolved a life of its own, without any convincing proof of the usefulness and benefits, without any analysis on the costs incurred by the industry and its inevitable translation into costs for consumers, without any serious analysis of the effectiveness, and last but not least, without the legitimacy of a full democratic debate in the European Parliament.

We recall the report from EP rapporteur Alexander Alvaro that disapproved of any such measure and we would respectfully remind you that this report was collectively adopted in the European Parliament on 7 June 2005. We also recall the opinions of the European Commission, of the JURI commission of the EP as adopted by LIBE and finally, of the legal service of the JHA Council, all confirming the complete lack of a legal basis in the third pillar.

Therefore we urge you to reconsider this approach. If a proposed measure such as data retention meets such systematic and overwhelming resistance from politicians from all countries and all parties, from all parts of industry and from all civil rights defenders, it must require rigorous and persuasive arguments to form the foundation of a truly democratic debate. Passing such a measure without any of these arguments, outside of the regular democratic institutions and under emotional pressure, can only produce strong distrust in the democratic process, thus eroding the very foundations of our society.

We are proud to live in a free and open society. If anything can unite and preserve us in times of crisis it is our respect for human rights. We hope you will reconsider your strategy and instead engage in a genuine and meaningful public debate with the European Commission and the European Parliament on effective, proportionate and necessary measures.

Yours sincerely,

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And the members of European Digital Rights, in alphabetical order:

Association Electronique Libre (AEL) - Belgium
Bits of Freedom - Netherlands
Campaign for Digital Rights (CDR) - United Kingdom
Chaos Computer Club (CCC e.V.) - Germany
CPSR-ES - Spain
Digital Rights - Denmark
Electronic Frontier Finland (EFFI) - Finland
Förderverein Informationstechnik und Gesellschaft (FITUG e.V.) - Germany
Forum InformatikerInnen für Frieden und gesellschaftliche Verantwortung (FIfF e.V.) - Germany
Foundation for Information Policy Research (FIPR) - United Kingdom
GreenNet - United Kingdom
Internet Society Bulgaria
Imaginons un Réseau Internet Solidaire (IRIS) - France
Netzwerk Neue Medien (NNM e.V.) - Germany
quintessenz - Austria
Swiss Internet User Group (SIUG) - Switzerland
VIBE!AT - Austria