**Data retention after Tele2 judgement: the good, the bad and the ugly**

**Marko Jurić**

Following its annulment of Data Retention Directive in April 2014 (Digital Rights Ireland case), CJEU made a step further in December 2016, when it delivered a new landmark decision - C‑203/15 and C‑698/15 (Tele 2 / Watson case). In essence, it was declared that national data retention statutes fall within the scope of EU law, and that they can be considered compatible with fundamental rights and freedoms only if several conditions and safeguards are implemented. The Court therefore concluded that the purpose of data retention must be limited to fighting serious crime, that access to the data must be subject to prior review by a court or other independent authority, that subjects of data retention must be informed as soon as possible about the application of this measure, and also that retained data must be stored within the EU. All of these safeguards contribute significantly to the protection of fundamental rights and should be welcomed. On the other hand, the Court also ruled, applying the strict necessity test, that general and indiscriminate retention of several categories of communication traffic data cannot be justified. In this context, it was implied that so called "targeted" retention of traffic data might pass this test, provided that it is limited by, for example, geographical criteria.

The author will argue that general data retention scheme is extremely important tool for both intelligence / security and crime investigation purposes. So-called "targeted" retention, on the other hand, is not suitable alternative to general data retention system. "Targeted" retention of data of some groups of people might lead to discriminatory results. Moreover, targeted retention fails to provide adequate framework for situations where access to victim's data are needed. Finally, "targeted" retention adds little to the already existing measure of "data preservation", which can be implemented on the basis of CoE's Cybercrime Convention. Since targeted retention is not suitable measure to achieve aims pursued by law enforcement authorities, author will argue that the Court should have ruled that general and indiscriminate data retention systems do satisfy the necessity test. If this was the case, better solution would be to require implementation of conditions and safeguards to access to data phase.