Dear Commissioner,

The EFJ raised your attention to the impact of the data retention directive on journalists’ protection of sources and press freedom in an earlier meeting with you and members of your Cabinet in September 2010. The EFJ delegation asked you to consider inserting an additional clause to the Directive which could provide legal protection for journalists over their duties to protect their sources during the review of the Directive. With regard to the evaluation report which is in consultation at the moment, we would like you to consider the following points by the EFJ:

1. The European Federation of Journalists believes that the EU Directive 2006/24/EC of the European Parliament and the Council of Ministers of 15 March 2006 “on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC” should be withdrawn, since it jeopardises press freedom in Europe. We are very concerned that the basic principle of journalism- to protect journalists’ sources- is violated by inquiries of the criminal investigations. This is against the Council of Europe’s Recommendation No. R (2000)7 of the Committee of Ministers to Member States on the right of journalists not to disclose their sources of information, which all EU Member States have signed. It also is against the spirit of the resolution on “developments in anti-terrorism legislation in Council of Europe member states and their impact on freedom of expression and information”¹. The legitimate

¹ 1st Council of Europe Conference of Ministers responsible for Media and New communication Services, 28-29 may 2006, Reykjavik, Iceland
objectives of criminal prosecution can be met by other means, such as via a so-called quick freeze procedure, which is being done or will be done in some Member States. Instead, the data retention directive massively violates protected areas of traffic data and thus protected civil rights and liberties, which are covered by the Charter of Fundamental Rights of the European Union.

2. The European Federation of Journalists (EFJ) notes that the European Commission intends to stick to data retention with regard to systematic retaining of communication and location data. The EFJ disapproves this, and agrees with, among others, the European Data Protection Supervisor Mr. Peter Hustinx, who brought up this position unambiguously in the EC hearing on 3 December 2010.

3. The European Federation of Journalists (EFJ) proposes the following amendments, in case the Directive will not be withdrawn but revised:

“(22a) In particular the directive guarantees the right and the freedom to receive and circulate information and ideas without state intervention and independently of frontiers, as it is recognised in the Article 11 of the Charter of Fundamental Rights. This includes foremost the protection of sources.”

Further, the European Federation of Journalists (EFJ) proposes for such case to include as Article 8a* the following rule:

Article 8a

(1) Member States shall ensure that Article 1 and 7 will not apply to persons, who have the right to protect their sources in line with national legislation and the Council of Europe standards and its case law, and in particular those who have contributed or directly contribute to the gathering, editing, production or distribution of information to the public via any means of media”.

(2) An investigation measure directed at a person who has the right to refuse to testify shall be inadmissible if it is expected to produce information in respect of which such person would have the right to refuse to testify. Any information which is obtained nonetheless may not be used. Any recording of such information is to be deleted without delay. The fact that the information was obtained and deleted shall be documented.

*The consecutive numbering of amendments and articles is based on the directive in force and has to be adjusted in case of change of the counting.
Yours Sincerely,

Arne König,
EFJ President

Renate SCHROEDER
EFJ Co-Director

cc.
Christian d’Cunha, European Commission
Soren Schonberg, European Commission
EC Media Task-Force