



EUROPEAN COMMISSION
Cabinet of Commissioner Cecilia Malmström

Head of Cabinet
Maria Åsenius

Brussels, 20 AVR. 2011
Ares (2011)

Your Excellency,

I should be grateful if you would ensure delivery of the attached letter from Commissioner Cecilia Malmström to Minister Rein LANG and Minister Marko POMERANTS.

Yours faithfully,



Maria Åsenius

His Excellency Mr. Raul MÄLK
Permanent Representative of Estonia
Rue Guimard 11/13
1040 Bruxelles

By e-mail: kristo.pollu@mfa.ee

Brussels, 20 AVR. 2011
ARES (2011)

Your Excellency,

The Commission adopted this week its report on the evaluation of the Data Retention Directive (Directive 2006/24/EC).

I wish to thank you for your contribution over the last two years. I am especially grateful to those Member States who supplied statistics in line with Article 10 of the Directive and who responded to the letter of 27 July 2011 from the Director-General for Home Affairs requesting further evidence.

Our main findings are the following.

- Data retention is a valuable instrument to maintain security in the EU. Police and judiciary in most Member States have reported to the Commission that retained data plays a central role in the fight against serious crime. These data provide valuable leads and evidence which have resulted in convictions for criminal offences and in acquittals of innocent suspects in relation to crimes which, without data retention, might never have been solved.
- Most Member States have transposed the Directive in line with its provisions. Twenty-five Member States transposed initially, but legislation in three Member States has been annulled by national courts.
- Although the Directive sought to harmonise certain aspects of data retention in the EU, considerable variations remain in terms of the definition of the purpose of data retention, retention periods, procedures and conditions for access to retained data, reimbursement of costs for operators, and also in terms of how often Member States request access to the data in practice and what types of data is mostly used.
- The Directive has affected telecommunications and network service providers, especially smaller ones, who reported high costs associated with storing and giving access to the data. There is however no evidence of a significant impact on consumer prices.
- New technologies and trends in criminal behaviour, such as the use of pre-paid SIM cards, do not at this stage seem to call for changes to the Directive.

H.E. Mr Rein LANG
Minister of Justice
Estonia

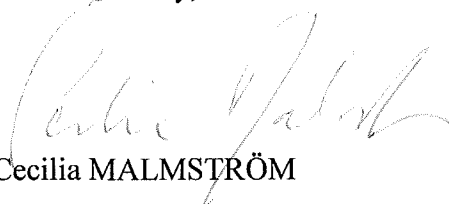
- Data retention has an impact on the fundamental rights to privacy and to protection of personal data. The Directive has been criticised, notably for providing insufficient safeguards on how the data is stored, accessed and used, i.e. that it leaves too many issues to national law to regulate. The report recognises that, as a result of this lack of detail in the Directive, the legislation in three Member States was annulled by national courts, and that a question as to the legality of the Directive is expected to be referred by the courts of one Member State (Ireland) to the European Court of Justice.
- Drawing on the experience since the adoption of the Directive in 2006, there is a need to improve the EU data retention framework to bring greater clarity on the scope, purpose and duration of retention, the procedures for access and use of retained data, data security, and reimbursement of the costs borne by telecommunication service providers.

I am therefore committed to revising the Directive to respond to the concerns raised by telecommunication service providers, data protection authorities, and other stakeholders keeping in mind the value which data retention brings to criminal justice systems and the work of law enforcement.

In the coming weeks the Commission will host a number of workshops with different stakeholders to consider options for revising the Directive. We will invite Member States officials to attend a dedicated workshop on 30 June to discuss the impact for criminal justice and the work of law enforcement of these different options.

Given that data protection authorities and advocacy groups in certain Member States have raised questions about the necessity of data retention, and hence its compatibility with the Charter of Fundamental Rights, I count on the continued input of your services, backed up by reliable qualitative and quantitative evidence, to fully assess the importance of telecommunications data for security in the EU.

Yours sincerely,



Cecilia MALMSTRÖM

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H.E. Mr. Marko POMERANTS
Minister of Interior
Estonia

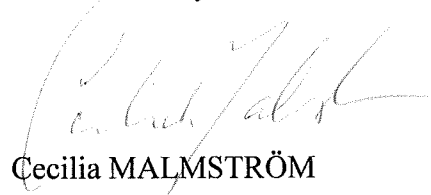
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Cecilia MALMSTRÖM