

31 -10- 2011

Ares save 1153205

Dear Mr Krisch,

Thank you for your letter of 26 September 2011 in which you inform me about the views of a number of civil society groups on the revision of the EU legal framework for data retention.

We are grateful for your input into the review of the EU's approach to data retention. As you know, this is a sensitive area arousing strong and highly divergent views among stakeholders. The Commission intends to listen carefully to all views, including those of civil society groups, and to weigh up the various impacts of what is proposed.

I am pleased that you share the Commission's view of the importance of the impact assessment process, and in particular the fundamental rights 'checklist' to which our evaluation report referred. The main conclusion of the report was that, on the basis of the evidence available, data retention is a valuable tool for criminal justice systems and for law enforcement in the EU. It also identified for the need for improvement in a number of areas. In particular, the EU data retention legislation should be more precise so that it is clear to the citizen what data is to be retained and accessed and for what specific purposes. Retention periods should be reduced to the minimum necessary and as far as possible standardised across the EU. Operators should be reimbursed in a consistent way for their actual costs – not only is this, in our view fair, it would also help ensure that data are requested only where really needed. Data protection standards for handover and use of the data must be as high as possible and more transparent – the EU should be able to rely on regular reports from Member States on what data has been retained, why and how it has been used, what the outcome of using the data was, and whether alternatives for using that data were considered and, if so, which alternatives.

The impact assessment which is being prepared will address all aspects of data retention including those mentioned above, and those raised in your letter. We will also consider alternative measures, including the feasibility and desirability of an EU approach to data preservation in view of its potential impact on security, fundamental rights and the internal market.

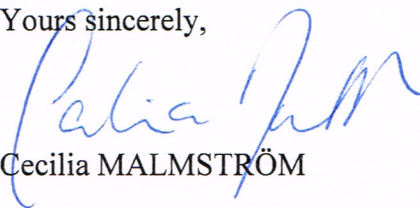
We recognise that you, along with data protection authorities and, to some extent, industry stakeholders are very dissatisfied with the current framework. We are however also aware that the directive is valued by almost every Member State and that they do not accept that there is any need to change it, and we would expect them to oppose any attempt by the EU to regulate access and use of these data.

We of course agree with you that data retention impinges on the right to privacy, which is why we continue to press all involved in the storage and use of telecommunications data, whether service providers or law enforcement, to provide credible quantitative and qualitative evidence of the value to criminal investigation and prosecution of data which is stored as a result of the retention obligation.

Equally, if I may refer to your mentions of data losses, mistakes and effect on consumer communications behaviour, we would be very interested to receive any tangible evidence you and colleagues may have of how the Data Retention Directive has in practice, directly or indirectly, affected citizens' ability to exercise their fundamental rights. This evidence will inform the analysis and conclusions of the impact assessment.

As we seek to find a solution which is right for the EU as a whole your ongoing contribution to this important debate is greatly appreciated.

Yours sincerely,



Cecilia MALMSTRÖM

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