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Ämne: Comment on SOU 2017:75 (Data retention)

To whomever it concerns.

To establish context, this is the conclusion from EUCJ regarding data retention (ECLI:EU:C:2016:970):

Paragraph 112:

"Having regard to all of the foregoing, the answer to the first question referred in Case C-203/15 is that Article 15(1) of Directive 2002/58, read in the light of Articles 7, 8 and 11 and Article 52(1) of the Charter, must be interpreted as precluding national legislation which, for the purpose of fighting crime, provides for the general and indiscriminate retention of all traffic and location data of all subscribers and registered users relating to all means of electronic communication."

The Following are quotes from the commission's report (SOU 2017:75) and my comments:

Page 41, para 1:

"Traffic data will still be retained; but the obligation to retain will be limited to data on who contacted whom"

"Location data at the beginning and end of a call will still be retained".

There is nothing that shows retention being targeted at a specific group or place. The proposed limitation is not a limitation that limits which users' traffic data is being retained. Instead, it will apply to all subscribers. In para 109 the court states:

"That legislation must, in particular, indicate in what circumstances and under which conditions a data retention measure may, as a preventive measure, be adopted, thereby ensuring that such a measure is limited to what is strictly necessary"

Having a "preventive measure" apply at all times to all users is not limited to what is strictly necessary. It is therefore illegal.

Page 41, para 2:

"For Internet access, the Commission proposes that the retention obligation should include data that make it possible to identify the subscriber or registered user"

As this retains data on everybody using an internet service provider, it indiscriminately retains data on people who will never be suspected of a crime. It is therefore illegal.

"However, the Commission suggests that there should no longer be any obligation to retain connection capacity data."

As this information is by most objective standards totally useless compared to traffic/location data, the commission can actually make this concession without conceding anything as this data is relevant to the provider for billing purposes, and on page 43, para 4, the commission expands the scope of

access to be able get to such data, thereby effectively retaining it while not specifically retaining it. Convenient and dishonest.

Page 43, para 2:

"The Commission therefore proposes that prosecutors shall be appointed as an independent administrative body to decide on such access".

A prosecutor will be able to request data on cases he is currently working on, making independence impossible. The suggestion does therefore not meet the court's requirements.

Page 43, para 4:

"Law enforcement agencies' access to data on electronic communications should continue to include not only the data retained under data retention rules, but also information stored for the operators own purposes, such as information needed for billing."

A logic that suggests expansion when the highest court requires reduction cannot possibly even qualify for the dumpster.

Because the proposals do not limit data retention to subscribers/users who are suspected of a serious crime, it is not limited to what is strictly necessary and will therefore continue to be illegal.

Thank you,

Anonymous