

Data retention directive: Meeting with CZ Ministry of Industry and Trade, Prague 15 June 2011

Electronic Communications Department
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DG Home Affairs

1. The meeting was set up at COM's initiative to discuss a) how CZ intended to respond to the decision of their constitutional court judgment annulling their measures transposing the Data Retention Directive (DRD) and b) CZ views on possible recast of the DRD

Transposition

2. JN said that the following week he expected the senior official in the ministry to write to DG explaining procedures and next steps for responding to the 22 March constitutional court judgment annulling the CZ transposing measures. JN said that the problem with both CZ and DRD was that the laws were rushed; in CZ there had been insufficient background - they relied too much on the DE transposing law. They disagreed with certain premises in the judgment - e.g. there were in fact data security measures in the now annulled telecommunications act.
3. CZ had set up a working group consisting of officials from ministries of interior, justice, industry and trade to prepare a new draft law. They were meeting with members of parliament who brought the case before the constitutional court. There would be a public consultation in the summer in which would explain the importance of data retention for solving problems such as car theft, gang crime, and locating missing children. They expected a proposal to be laid before parliament in autumn. Ministry of the Interior was in the lead, Ministry of Industry was responsible for implementation. This was not controversial in CZ as in DE - 'one day's headlines and then forgotten'.
4. On purpose limitation, CZ will narrow the old provision so that it applies only to specific crimes and those listed in international treaties, plus those carrying 3 years prison otherwise, no major changes were envisaged.

Review of the directive

5. CZ considered DRD a very valuable tool and wanted to support it - polite but general resistance to any significant changes.
6. On *purpose limitation*, JN was sceptical about whether it would be possible to have a single definition of serious crime. Data retention should cover also what CZ defined as civil offences and all crimes connected with the network e.g. email or telephone threats.
7. Reluctant to broaden scope as it would be costly for MS to pay for the data. Market of telecommunications companies is smaller than for information society services. There would be a huge cost for compensating this. On the other hand new mobile networks (not GSM) should be covered with different procedures.
8. *Statistics* created a burden for MS; it was better to hold a meeting and collect best practices on implementation. Under the old CZ law, the obligation for stats was operators; it's a 'huge problem' to get them from police or courts.

9. On *rentetion* period, 6 months is preferable; 1 year would be difficult to justify.
10. On *who should be able to access*, there be no strict rules. Whoever needs it in accordance with their roles should be allowed to do so.
11. On *cost recovery* – costs should be reimbursed by state bodies because it makes it easier to regulate, to get a better service from operators, and to protect against excessive use. CZ law includes a specific decree which covers investment and per-request cost which were agreed with the operators. – asked them to support the COM. This will remain in the new law (although Ministry of Interior have not been in favour).

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