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**COMMISSION DECISION**

**of 18.4.2013**

**on setting up an experts group on best practice in the implementation of electronic communications data retention for the investigation, detection and prosecution of serious crime ('the data retention experts group')**

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### **on setting up an experts group on best practice in the implementation of electronic communications data retention for the investigation, detection and prosecution of serious crime ('the data retention experts group')**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2006/24/EC of the European Parliament and the Council 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 ("the Data Retention Directive")<sup>1</sup>, and in particular Recital 14 thereof,

Whereas:

- (1) Directive 2006/24/EC of the European Parliament and the Council of 15 March 2006<sup>2</sup> ("the Data Retention Directive") aims to harmonise Member States' provisions concerning the obligations of providers of publicly available electronic communications services or of public communications networks with respect to the retention of certain data which are generated or processed by them in order to ensure that such data are available for the purpose of the investigation, detection and prosecution of serious crime.
- (2) The preamble (recital 14) to the Data Retention Directive notes that technologies relating to electronic communications are changing rapidly and that legitimate requirements of competent authorities may evolve, and that in order to obtain advice and to encourage the sharing of best practice in these matters, the Commission intended to establish a group composed of Member States' law enforcement authorities, associations of the electronic communications industry, representatives of the European Parliament and data protection authorities including the European Data Protection Supervisor.
- (3) Accordingly, and to assist in the evaluation of the Data Retention Directive in accordance with the Joint Statement of the Council and the Commission of 10<sup>th</sup> February 2006, the Commission, in Decision 2008/324/EC of 25 March 2008 setting up the 'Platform on Electronic Data Retention for the Investigation, Detection and Prosecution of Serious Crime', set up a group of experts in the field of data retention, drawn from the stakeholders referred to in Recital 14 of the Data Retention Directive. That Decision applied until 31 December 2012 and a new experts group is now needed.
- (4) This evaluation report adopted on 11th April 2011,<sup>3</sup> taking due note of the position papers adopted by the group, concluded that the EU should support and regulate data retention as a necessary measure for security, and that, as transposition of the Data

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<sup>1</sup> OJ L 105/54 13.4.2006

<sup>2</sup> OJ L 105/54 13.4.2006

<sup>3</sup> COM(2011) 225 final

Retention Directive had been uneven, the Directive should be reviewed and improved in certain respects. In order to ensure that the Commission continues to be able to call upon the expertise of specialists in an advisory body on matters concerning the retention of data and related technological developments and the evolving requirements of competent authorities, it is necessary to set up a new group of experts in this field, and to define its tasks and its structure in accordance with the horizontal rules on expert groups.<sup>4</sup>

- (5) The new experts group should help develop and disseminate guidance on best practice in the area of data retention at an operational level and to review the effectiveness of that guidance.
- (6) The composition of the new experts group should, taking into account Recital 14 of the Data Retention Directive, be strengthened and focused on the quality of expertise which in the Commission's view is valuable in assisting in the effective and efficient implementation of the Directive. Given the growing importance of retained telecommunications in cross-border investigations of serious crime, the Commission intends to appoint a representative of the European Police Office (Europol) as a member of the group.
- (7) Rules on disclosure of information by members of the group should be laid down.
- (8) Personal data should be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>5</sup>.
- (9) It is appropriate to fix a five-year period for the application of this decision. The Commission will in due course consider the advisability of an extension.
- (10) The Annex to this Decision contains the Call for Applications for Selection of Experts.

HAS ADOPTED THIS DECISION:

*Article 1*  
***Subject matter***

The experts group on best practice in the implementation of electronic communications data retention for the investigation, detection and prosecution of serious crime (hereinafter referred to as 'the experts group', is hereby established.

*Article 2*  
***Tasks***

The group's tasks shall be:

- (a) to exchange information about changes in technologies relating to the provision of publicly available electronic communications (services and networks) and in the legitimate requirements of competent authorities of Member States which are

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<sup>4</sup> Framework for Commission expert groups: Horizontal rules and public register, Brussels, 10.11.2010, C(2010) 7649 final; Commission Staff Working Document accompanying the Framework for Commission Expert Groups: Horizontal Rules and Public Register, Brussels, 10.11.2010 SEC(2010) 1360.

<sup>5</sup> OJ L8, 12.1.2001, p.1.

relevant to the application of the Data Retention Directive and to help ensure that the Directive continues to fulfil its intended aims;

- (b) to identify and to define difficulties which have emerged at national and cross-border level in relation to the technical and practical implementation of the Data Retention Directive, in particular from the perspective of competent authorities and the electronic communications industry;
- (c) to identify best practice in matters relating to data retention and, if requested by the Commission, to devise and to disseminate guidance on best practice and to review the effectiveness of that guidance.

### *Article 3* **Consultation**

The Commission may consult the group on any matter relating to the electronic retention of data relevant to the investigation, detection and prosecution of serious crime. Any member of the group may advise the Commission that it is desirable to consult the group on a specific question.

### *Article 4* **Membership – Appointment**

1. The experts group shall be composed of a maximum of 20 members with a balance of expertise in the areas of:
  - (a) law enforcement;
  - (b) electronic communications industry;
  - (c) data protection and privacy.
2. Up to eighteen experts shall be appointed in their personal capacity, or to represent a common interest shared by stakeholders, or to represent a trade association of the electronic communications industry (up to five experts) or to represent Member States' authorities at national, regional or local level, in particular law enforcement authorities (up to seven experts) and data protection authorities (up to four experts).
3. The group shall also include:
  - (a) one representative of the European Data Protection Supervisor;
  - (b) one representative of the European Police Office .
4. Individuals appointed in a personal capacity as well as individuals representing a common interest and organisations (as defined in Rule 8(3) of the horizontal rules on experts groups) referred to in paragraph 2 shall be appointed by the Director General of DG Home Affairs from specialists and relevant stakeholders with competence in the areas referred to in Article 2 who have responded to a call for applications. National authorities referred to in paragraph 2, the European Data Protection Supervisor and the European Police Office each appoint a representative.
5. Members of the experts group are appointed for three years. They shall remain appointed until they are replaced or their term of appointment ends. Their appointment may be renewed for a further three years.
6. Provision may be made for the same number of alternates as members to be appointed. Alternates shall be appointed in accordance with the same conditions as

members; alternates automatically replace any members who are absent or indisposed. If both a member and his/her alternate are absent or indisposed, that member may, with the agreement of the Chair of the group, nominate an expert to represent them at meetings.

7. Members of the experts group appointed in a personal capacity who are no longer capable of contributing effectively to the experts group's deliberations, who resign or who do not comply with the conditions set out in Article 339 of the Treaty may be replaced for the remainder of their term of office.
8. Members of the experts group appointed in a personal capacity shall act independently and in the public interest.
9. The names of members shall be published in the Register of Commission expert group and other similar entities ('the Register').
10. Personal data shall be collected, processed and published in accordance with Regulation (EC) No 45/2001.

#### *Article 5* **Operation**

1. The experts group shall be chaired by a representative of the Commission.
2. In agreement with the Commission services, the group may set up sub-groups to examine specific questions on the basis of terms of reference defined by the group. Such sub-groups shall be disbanded as soon as their mandate is fulfilled.
3. The Commission's representative may invite experts from outside the experts group with specific competence in a subject on the agenda to participate in the work of the experts group or sub-group on an ad hoc basis. In addition, the Commission's representative may give observer status to individuals, to organisations (as defined in Rule 8(3) of the horizontal rules on experts groups), and to candidate countries.
4. Members of the group and their representatives, as well as invited experts and observers, shall comply with the obligations of professional secrecy laid down by the Treaties and their implementing rules, as well as with the Commission's rules on security regarding the protection of EU classified information, laid down in the Annex to Commission Decision 2001/844/EC, ECSC, Euratom<sup>6</sup>. Should they fail to respect these obligations, the Commission may take all appropriate measures.
5. The meetings of the group and sub-groups shall be held on Commission premises. The Commission shall provide secretarial services. Other Commission officials with an interest in the proceedings may attend meetings of the group and its sub-groups.
6. The group may adopt rules of procedure on the basis of the standard rules of procedure adopted by the Commission.
7. All relevant documents (such as agendas, minutes and participants' submissions) will be made available, either in the Register itself or via a link from the Register to a dedicated website where information on the experts group can be found. Exceptions to systematic publication may apply where disclosure of a document would

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<sup>6</sup> Commission Decision of 29 November 2001, amending its internal Rules of Procedure (OJ L 317, 3.12.2001, p.1).

undermine the protection of a public or private interest as defined in Article 4 of Regulation (EC) 1049/2001<sup>7</sup>.

*Article 6*  
***Meeting expenses***

1. Participants in the group shall not be remunerated for the services they render.
2. Travel and subsistence expenses incurred by participants in the activities of the group shall be reimbursed by the Commission in accordance with the provisions in force within the Commission.
3. Those expenses shall be reimbursed within the limits of the available appropriations allocated under the annual procedure for the allocation of resources.

*Article 7*  
***Applicability***

The decision shall apply until five years after its adoption.

*For the Commission*  
*Cecilia Malmström*  
*Member of the Commission*

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<sup>7</sup>

These exceptions are intended to protect public security, military affairs, international relations, financial, monetary or economic policy, privacy and integrity of the individual, commercial interests, court proceedings and legal advice, inspections, investigations or audits and the institution's decision making process.

## **ANNEX: Call for applications for the selection of experts for the Data Retention Experts Group**

By Decision of ... [...] <sup>8</sup> ('the Decision'), the Commission has set up an experts group on best practice in the implementation of electronic communications data retention for the investigation, detection and prosecution of serious crime ('the experts group').

### Tasks of the experts group

The tasks of the experts group are:

- (a) to exchange information about changes in technologies relating to the provision of publicly available electronic communications (services and networks) and in the legitimate requirements of competent authorities of Member States which are relevant to the application of Directive 2006/24/EC ('the Data Retention Directive') and to help ensure that the Directive continues to fulfil its intended aims;
- (b) to identify and define difficulties which have emerged at national and cross-border level in relation to the technical and practical implementation of the Data Retention Directive, in particular from the perspective of competent authorities and the electronic communications industry;
- (c) to identify best practice in matters relating to data retention and, if requested by the Commission, to devise and to disseminate guidance on best practice and to review the effectiveness of that guidance.

### Members of the experts group

In accordance with Article 4 of the Decision, the group shall consist of 20 experts. The purpose of this call is not to select experts from the European Data Protection Supervisor, Europol or Member States' national authorities. (The Decision provides that one expert shall be a representative of the European Data Protection Supervisor, and one expert shall be a representative of the European Police Office (Europol). In addition, Member States' law enforcement authorities at national, regional or local level may each appoint a representative (up to seven experts) and data protection authorities may each a representative (up to four experts)).

The remaining experts shall be appointed in a personal capacity or to represent a common interest shared by stakeholders, or to represent a trade association of the electronic communications industry (up to five experts). The Commission is calling for applications with a view to selecting these remaining members of the experts group.

### Criteria for selection of members

The Commission will take the following criteria into account when assessing applications:

- proven competence and experience, including at European and/or international level, in the areas of law enforcement and/or the electronic communications industry and/or data protection;
- a genuine commitment to efficient and effective implementation of the Data Retention Directive;

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<sup>8</sup> [...]

- the need to strike a balance within the experts group in terms of representativeness of applicants, gender and geographical origin<sup>9</sup>;
- members of the experts group must be nationals of a Member State of the European Union or, if appropriate, of an acceding country or a European Economic Area country.

#### How to apply

Applications must be signed and sent by [...]. The date of sending will be established as follows:

- where applications are sent by email to the following address: [home-data-retention@ec.europa.eu](mailto:home-data-retention@ec.europa.eu) with the subject '**Applications for the Data Retention Expert Group**', the date of the email will be considered the date of sending;
- where applications are sent by post to the following address: European Commission, Directorate-General Home Affairs [...], the postmark date will be considered the date of sending;
- where applications are hand-delivered to the following address: European Commission, [...], the date on the receipt given upon delivery will be considered the date of sending.

Each application must clearly indicate whether the application concerns an individual in a personal capacity, an individual representing a common interest shared by stakeholders or an individual representing a trade association of the electronic communications industry.

Each application must be completed in one of the official languages of the European Union. However, applications in English or French would facilitate the evaluation procedure. All applicants must submit curriculum vitae (CV) indicating their educational background, professional experience and language knowledge (maximum two pages) in support of their application. If the application is in a language other than English or French, it would be desirable to include a summary of the CV in English or French.

The following information should also be included:

- the organisation, company or authority for which the applicant is currently working and the length of time he/she has worked there;
- other organisations, companies or authorities, for which he/she has worked in the past;
- his/her specific competences in the relevant area(s);
- the specific projects and or tasks he/she has been involved in the relevant areas;
- any work that he/she has published that concern the application of Data Retention Directive;
- any experience he/she has acquired at EU and/or international level;
- the major professional challenges which the applicant envisages for the near future;
- if required, the name of an alternate who, in accordance with Article 4(6) of the Decision, may automatically replace the relevant member if he/she is absent or indisposed.
- if the application concerns an individual in a personal capacity, any interests that he/she has which may prejudice his or her independence.

Applications from organisations or associations should also include information on:

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<sup>9</sup> Commission Decision 2000/407/EC of 19 June 2000 relating to gender balance within the committees and expert groups established by it (OJ L 154 of 27.6.2000, p. 34).

- the relevance of data retention to their organisation; and
- the mission and mandate of the organisation.

#### Terms of appointment

The Commission shall select members of the group for a three-year term, which may be renewed.

All members appointed in a personal capacity shall give the Commission their opinions free from outside influence, and shall commit to act in the public interest.

All members shall respect the conditions of confidentiality as set out in Article 5 of the Decision.

Travel and subsistence expenses incurred by participants in the activities of the group shall be reimbursed by the Commission in accordance with the provisions in force in the Commission within the limits of the available budgetary appropriations. Members will receive no remuneration for their duties.

The list of members of the group of experts shall be published in the Register of Commission Expert Groups (<http://ec.europa.eu/transparency/regexpert/>).

Personal data will be collected, processed and published in accordance with the provisions of Regulation (EC) No 45/2001.

#### Further information

For any further information please email [home-data-retention@ec.europa.eu](mailto:home-data-retention@ec.europa.eu) or telephone +32 (0) 2 296 20 33.

Information on the results of the call for applications will be published on the website of the DG Home Affairs ([http://ec.europa.eu/dgs/home-affairs/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/index_en.htm)) [and, if appropriate, in the *Official Journal of the European Union*].