

Data retention: Commission refers Sweden back to Court for failing to transpose EU legislation

Despite a first ruling by the European Court of Justice in early 2010, Sweden has not transposed the Data Retention Directive into national law. The directive makes it mandatory for telephone companies and Internet service providers to store telecommunications traffic and location data for law enforcement purposes. Three years and a half after the deadline for all Member States to transpose, Sweden's failure to do so is likely to have a negative effect on the internal market for electronic communications and on the ability of police and justice authorities to detect, investigate and prosecute serious crime. The Commission therefore referred Sweden to the European Court of Justice for a second time, requesting it to impose financial penalties.

The European Court of Justice will determine the level of sanctions which can take the form of a penalty and/or a lump sum. The lump sum penalises the continuation of the infringement between the first judgement (under Article 258 TFEU) on non-compliance and the second judgement (under Article 260 TFEU). The penalty payment is calculated in principle by day of delay after the delivery of the second judgement. The Commission proposes the Court to impose on Sweden a daily penalty payment of €40.947 for each day after the second Court ruling until the infringement ends and to impose a lump sum €9.597 per day for the period between the 2010 Court judgment and the second Court ruling.

On 4 February 2010, the European Court of Justice condemned Sweden for failing to fulfil its obligations to implement the Data Retention Directive in its national law (Case C-185/09). Following this ruling and in the absence of a precise timetable for adoption of the legislation, the Commission decided to send a letter of formal notice to Sweden on 28 June 2010. The Commission asked for details of the measures which Sweden intended to take to ensure compliance with the Court's judgement.

Sweden informed the Commission in writing on 21 January 2011 that it had submitted draft legislation transposing the Data Retention Directive to its Parliament on 8 December 2010, and that it aimed for the legislation to be adopted by mid-March 2011. Regrettably, on 16 March 2011 the Swedish Parliament decided to defer the vote on the proposed legislation for a further 12 months.

Background

The Data Retention Directive (2006/24/EC) was adopted in 2006 and should have been transposed into national law by 15 September 2007, with the option of postponing the retention of communications data relating to Internet access, Internet telephoning and Internet e-mail until 15 March 2009.

Data retention refers to the storage of traffic and location data resulting from electronic communications (not data on the content of the communications). Under the Directive, traffic and location data retained by Internet service providers and phone companies will be made available only to national law enforcement authorities in specific cases and in accordance with national law.

For more information

[MEMO/11/220](#)

Homepage of Cecilia Malmström, Commissioner for Home Affairs

http://ec.europa.eu/commission_2010-2014/malmstrom/welcome/default_en.htm

Homepage DG Home Affairs:

http://ec.europa.eu/dgs/home-affairs/index_en.htm