

From: [REDACTED]
To: [REDACTED]
Sent at: 04/10/18 11:29:31
Subject: Data retention requirement: RE:
Final_Draft_Forma_l_comments_Terrorist_Content_Online

a possible wording: considered the potential impact on the persons concerned, the EDPS calls for additional elements to justify the necessity and the proportionality of the requirement for HSPs laid down under Article 7 of the Proposal to preserve and store content and related data for the purpose of (identifying false positives and) to allow criminal investigations (data retention for the purpose of criminal law enforcement, providing the means to also establish profiles of the individuals concerned ("specific users", see at p. 107 of the Impact Assessment) possible quote of Tele2).

From: [REDACTED]
Sent: 04 October 2018 09:43
To: BUCHTA Anna <anna.buchta@edps.europa.eu>: [REDACTED]
Subject: RE: Final_Draft_Forma_l_comments_Terrorist_Content_Online

On the repository:

concerns on the necessity and proportionality of the 'repository' of content and related data established under Article 7 of the Proposal. The Impact Assessment does not seem to provide a sound justification, nor sufficient supporting elements.

Pursuant to recital 31 of the Proposal, the HSPs have the obligation to inform the competent law enforcement authorities of the existence of any evidence of terrorist offences that they become aware of. Hence, on the one hand, the added value of the repository for the countering of terrorist offences is unclear or however lessened by the obligation to inform law enforcement authorities. On the other hand, the Impact Assessment acknowledges the risks posed by the preservation of content and related data^[1] (content and data not limited to the aforesaid terrorist evidence) for the 'double purpose' of allowing a check on removed content to identify 'false positives' but also for the purpose of criminal investigation^[2].

Hence, the introduction of the obligation to preserve content and "related data" for the purpose of criminal law investigation on terrorism offences is most probably disproportionate having regard to the risks posed to fundamental rights and freedoms. The EDPS therefore recommends duly reconsidering the necessity and proportionality of this far reaching measure. On the basis of such re assessment, it may be considered more appropriate to restrict the purpose and use of the repository to the function of allowing checks on false positives only, thus abandoning the current 'dual purpose regime'.

+ the repository comes dangerously close to the processing of data under Article 10 GDPR, requiring strict control of a competent official authority.

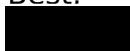
From: [REDACTED]
Sent: 03 October 2018 18:11
To: BUCHTA Anna <anna.buchta@edps.europa.eu>
Cc: [REDACTED]
Subject: Final_Draft_Forma_l_comments_Terrorist_Content_Online

Dear Anna,

Please find attached a first draft on the Proposal regarding Terrorist Content Online. Since the Proposal is not big and is also (rather) well drafted, an Opinion would be quite brief, so I was not sure whether we want to go there. If you consider that we should go for an Opinion, the necessary changes can be done fast.

<https://saas.fabasoft.com/edps/mx/COO.6515.100.2.339223>

Best.



[1] See at page 105-106 of the Impact Assessment: “the requirement under option 3 for HSP to preserve content removed through proactive measures would have an impact on the right to data protection and privacy, as it is likely that preservation of the aforesaid content will also involve retention of the data related to the content provider (and possibly other third parties).”

[2] The Impact Assessment specifies the double function of this repository, namely “as a safeguard in cases of erroneous removal and to facilitate criminal investigations”, at page 7; and “to ensure the existence of evidence for any potential criminal investigations”, at page 29.

Recital 20 of the Proposal refers to the obligation to preserve content “for investigative and prosecutorial purposes”; “the required preservation of data is limited to data that is likely to have a link with terrorist offences”.