



10 November 2016

To: Mr Patrick Penninckx

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Mr Nils Muižnieks  
Mr Alexander Seger  
Ms Sophie Kwasny  
Mr Alexandru Frunza

Dear Mr Penninckx,

European Digital Rights, an observer member of the CDMSI, welcomes the opportunity to comment on the final report of the T-CY Cloud Evidence Group.

You will find attached a summary of the issues at stake, in the context of the T-CY report, prepared by Professor Douwe Korff. We urge the Council of Europe and Member States to take these comments fully into account.

We are particularly concerned about:

- the lack of safeguards of the proposed measures, stemming partly from flaws in the Cybercrime Convention, with regard to non-CoE countries, non-Convention 108 countries and free accession to that instrument;
- the repetition of the unexplained premise that MLATs cannot be reformed, which is used as a very thin justification for the far-reaching measures being proposed;
- the lack of solutions with regard to national measures by law enforcement authorities to circumvent the Cybercrime Convention and other parallel frameworks that can lead to human rights violations and fragmented rules and implementation;
- the lack of precision with regard to the precise scope of the term "subscriber data", which is open to broad interpretation, in a text that is supposed to provide a "common understanding" of the term;
- the rule of law implications, as explained by the report, of the "voluntary" arrangements under which US companies share - or not - data with law enforcement authorities.

Step one of this process should consist of a meaningful, comprehensive attempt to address the problems with MLATs as efficiently as possible. It is, after all, a full ten years after we were told that the illegal EU data retention directive was ostensibly needed due to MLAT inefficiency – a decade during which no meaningful efforts were made to fix the underlying problem.

We look forward to cooperating with the Council of Europe on this issue in the future.

Yours sincerely,

Joe McNamee  
Executive Director  
European Digital Rights (EDRi)