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Answer given by Ms Johansson
on behalf of the European Commission
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Encryption is essential to the digital world, to secure digital systems and transactions. It is an important tool for the protection of cybersecurity and fundamental rights, including freedom of expression, privacy and data protection. It is an important tool to safeguard international data transfers. Both the European Electronic Communications Code¹ and the General Data Protection Regulation² mention encryption explicitly as an appropriate security and data protection measure.

At the same time, it can also be used by criminals to hide their actions from law enforcement and the judiciary. This makes the work of law enforcement and the judiciary more challenging, as they seek to obtain lawful access to evidence.

Article 15(1) of Directive 2002/58 enables the Member States to introduce exceptions to the confidentiality of electronic communications, where such a restriction constitutes a necessary, appropriate and proportionate measure within a democratic society to safeguard national security, defence and public security, and the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communication system.

A substantial part of investigations against all forms of crime and terrorism involve encrypted information. As mentioned in the Counter-Terrorism Agenda for the EU³, the Commission will work with Member States to identify possible legal, operational, and technical solutions for lawful access and promote an approach, which both maintains the effectiveness of encryption in protecting privacy and security of communications, while providing an effective response to crime and terrorism.

The Commission supports structured dialogues with Member States and key stakeholders, including on personal data protection, on this issue. Any solution identified should not weaken or directly or indirectly ban encryption.

Access to encrypted data should be targeted and not lead to general surveillance.

¹ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast).

² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

³ COM(2020) 795 of 9 December 2020