



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 25 June 2004

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**COPEN 77
TELECOM 125**

NOTE

from : Presidency

to : Working Party on cooperation in criminal matters

No. prev. doc. : 8958/04 CRIMORG 36 TELECOM 82
10841/04 COPEN 79 TELECOM 126

Subject : Questionnaire on traffic data retention

On 4 June 2004, the Working Party on cooperation in criminal matters had a first exchange of views on the draft Framework Decision on the retention of data processed and stored in connection with the provision of publicly available electronic communications services or data on public communications networks for the purpose of prevention, investigation, detection and prosecution of crime and criminal offences including terrorism.¹

¹ See the proposal in 8958/04 CRIMORG 36 TELECOM 82 and the outcome of proceedings in 10841/04 COPEN 79 TELECOM 126.

It was at that meeting recalled that 14107/02 CRIMORG 100 TELECOM 42 contained the answers from the 15 old Member States to the questionnaire in 11490/1/02 REV 1 CRIMORG 67 TELECOM 4 on traffic data retention. For the purpose of further proceedings concerning the proposed Framework Decision, the Presidency would - in collaboration with the incoming Netherlands Presidency, the Commission and the General Secretariat - take steps to get updated information on traffic data from the 15 old Member States and to get information on the same subject from the 10 new Member States.

The Commission recalled at the meeting that it had organised a meeting on data retention on 14 June 2004 in Brussels (Forum for the prevention of organised crime - ad hoc meeting on data retention).

The Presidency has in collaboration with the incoming Netherlands Presidency, the Commission and the General Secretariat established the attached revised questionnaire in the light of the preliminary discussions in the Working Party and the discussions at the ad hoc meeting on data retention on 14 June 2004.

Member States are invited to reply to the questionnaire by 29 July 2004, if possible in a language that is easily understood by the incoming Presidency.

The answers should be sent, preferably by e-mail, to:

Mr. Bent Mejborn

DG H

General Secretariat of the Council of the European Union

e-mail: bent.mejborn@consilium.eu.int

Questionnaire on traffic data retention

Question 1

Does your country, at present, have legislation concerning the retention of traffic data for law enforcement purposes and other purposes:

- a) regarding telephone communication (fix and mobile phones)?
 - b) regarding Internet communication (including e-mail) ?
- If yes, please indicate the relevant provisions and their content. Please indicate whether your legislation covers traffic data in relation to subscribers in respect of both natural and legal persons. If you are considering to amend your legislation, please inform on that.
- If no, are you considering legislation concerning traffic data retention?

Question 2

Please specify the types of traffic data currently retained in your country and indicate the period for which they are retained for law enforcement and other purposes:

- a) regarding telephone communication (fix and mobile phones)
- b) regarding Internet communication (including e-mail).

Does the traffic data retained cover only data stored by providers under Article 6 of Directive 2002/58/EC (e.g. for the purposes of billing or marketing electronic communications services/provision of value added services) or does it also cover other traffic data (e.g. data where the subscriber pays a “flat rate”)?

Question 3

Have your law enforcement agencies specified the types of data they need in their investigations and the periods for which they need the data? Have you conducted any research into the demands of law enforcement agencies and/or the data currently being retained by communication providers? If yes, is this research public, and is the result thereof available to the public?

Question 4

Please indicate, if possible, types of offences (committed in a certain way) where the use of retained traffic data has proven to be of substantial importance for the investigation as well as the types of traffic data used (e.g. the use of data revealing to which Internet sites a suspect has had access in cases of child pornography committed via the Internet or the use of information on location of mobile phones to investigate into various serious crimes).

Question 5

What is the present procedure for a law enforcement authority to obtain traffic data from a service provider?

Question 6

Have you received any reports from your law enforcement authorities that indicate difficulties in their work due to the non-existence of appropriate legal instruments concerning traffic data retention (e.g. information on mobile telephone communication, including location information, was deleted before the need to use the data was apparent)?

Question 7

In case your country has legislation providing for the retention of traffic data for law enforcement purposes, does your country reimburse the providers for the costs caused by the retention? Or is there in your country a system of reimbursing the providers for specific queries? Please indicate, if possible, the amount of costs and reimbursement per year and specify, if possible, the areas where they occur (e.g. retention of Internet traffic data, retention of phone traffic data).

Question 8

Does the authorities in your country deliver "formats", software or retention capacity of any kind to telecommunications providers or others in order to facilitate the compliance with obligations to retain data?

Question 9

Please give here any other information you deem to be useful.
