

Note for the file

on the Proposal on the retention of data (report of Mr Alvaro) Summary of expected positions, situation on 8/11/2005

| <i>Subject</i> | <i>COM proposal</i> | <i>Likely LIBE position based on amendments received</i> | <i>Likely Council position</i> |
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| <i>Scope</i> | Traffic data on fixed and mobile telephony, internet access, e-mail and IP telephony – location data and unsuccessful calls included | Traffic data on fixed and mobile telephony – no location and related data , no data on unsuccessful calls, (no data on internet usage) respect private life/protection of personal data in access/use of data/records of traffic data | Traffic data on fixed and mobile telephony, internet access, e-mail and IP telephony – location data and unsuccessful calls likely to be included, maybe with an additional implementation period |
| <i>Purpose of retention</i> | prevention, detection, investigation and prosecution of serious crime, such as terrorism and organised crime | detection, investigation, and prosecution of specified forms of (serious) criminal offences. To define this, some AMs propose a list of crimes partly or wholly based on the list of the European Arrest Warrant (FD 2002/584/JHA) | detection, investigation, and prosecution of crime |
| <i>Purpose of access</i> | Access for the same purposes as above | Access for the same purposes as above | Access for specified, explicit and legitimate purposes, to be defined under national law |
| <i>Authorities to have access</i> | Competent authorities determined by MS | Access by judicial authorities and other authorities responsible for detection, investigation and prosecution of serious criminal offences. – possibly subject to judicial authorisation – no transmission to third countries/one AM proposes access to National Board of police in each Member State/one AM excludes secret services | Competent authorities determined by MS |
| <i>Access</i> | not included | Several AMs propose to introduce a provision on access to the data <ul style="list-style-type: none"> - for specific purposes/case by case - necessary/proportionate - erase data when no longer necessary - providers prohibited to use data - register - confidentiality/integrity of data shall be ensured - One Am data can be transmitted to third countries/third parties under | See Article 6 FD |

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| | | special circumstances - data cannot be transmitted to third countries (3 AMs) | |
| <i>Retention periods</i> | 12 months telephony, 6 months internet | 3 -6 months (possibly 12) - One AM advocates a retention period of one year for all data. - One AM keeps the retention periods of one year and six months, but stresses that these are maximums - One AM advocates a retention period reduced from one year to six months for all data (but MS may choose to retain data for longer) - One AM advocates a retention period reduced from one year to six months for all data (but MS may decide to extend or reduce this period) They must inform the Commission of this, and review the situation every two years) - Three AMs advocate a retention period reduced to three months for all data (with one stressing that this should be a harmonised period) - One AM advocates a flexible retention period from six months to a maximum of two years. | 12-24 months (possibly 6-24 months) + safeguard clause |
| <i>Costs</i> | Reimbursement of demonstrated additional costs as a consequence of the Directive | Full reimbursement of all costs for telecom industry (4 ams) - one AM deletes the article pertaining to the reimbursement of additional costs. - one AM includes costs for ensuring data protection. - One AM includes costs on investment and operational costs (including cost of providing the authorities with the data) - One AM proposes a uniform fee system. | No reimbursement – Commission declaration on compatibility with State aid rules |
| <i>Flexibility under Article 15 (1) of Directive 2002 (58)</i> | Flexibility of data retention for other purposes – but harmonised dataset for combating serious crime | All flexibility removed from Article 15 (1) – no more possibility of data retention for national or public security/Reference to art. 5 of Dir. 2002/58 is removed (3 AMs) | Complete flexibility – additional datasets may be retained, and for additional purposes in 15 (1) |
| <i>Data protection provisions</i> | Not necessary – covered by existing Directives (95/46 and 2002/58) | Additional provisions proposed in line with existing Directives | See Article 5 FD |

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| <i>Penal sanctions</i> | Not included, covered by FD on attacks against information systems and data protection Directives | Effective, proportionate and dissuasive penalties for infringements of the national provisions adopted to implement Directive. | Unlikely to be included |
| <i>Comitology procedure to update list of data</i> | Included | Not included | Not included |
| <i>Review clause</i> | three years | review 2 years and sunset clause after five years - 3 AMs propose that Commission informs EP of statistics. - 2 AMs propose to include the number of times the data was not transferred without undue delay or the data requested was not available. - 1 AM states that ENISA may provide help to MS in collecting statistics. | five years |
| <i>Data to be retained (Annex)</i> | | All AMs place Annex into the main text - Four AMs add to the title of Art. 4 "types" of data - One AM states that is only for data that is "processed and logged" - One AM does not include internet data because it is too expensive and its use has not been proven - Two AMs exclude content data. - One AM states that there must be guarantees to ensure that there is an effective distinction between content and traffic data. Two AMs remove the serial number of mobile phones since these numbers are not unique and can be manipulated. At least 3 AMs remove "location data" from data required. One AM leaves it open to Member States to require unsuccessful call attempts to be recorded if they so wish. | |