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NOTE

From: Presidency
To: Delegations

Subject: Ad-hoc Working Party on Data Retention
- Establishment and adoption of its Terms of Reference

1. Following a reorganisation of the Council working structures the DAPIX Working Party and the FOP DAPIX (Data Retention) ceased to exist. The two main streams of that group were superseded by the Working Party on Data Protection and the newly created Working Party on JHA information exchange¹, leaving the data retention issues without a forum for discussion.
2. Given this fact as well as the need to continue the work in the Council on data retention which is not finalised yet, the Presidency considers necessary to establish a dedicated to data retention working structure in the form of an Ad-Hoc Working Party on Data Retention.
3. For that purpose draft Terms of Reference have been prepared and set in the Annex to this note.

¹ 14854/19.

4. Delegations are invited to provide their comments on the text by 2 October cob to the following email addresses: jai.criminal.justice@consilium.europa.eu, becker-mo@bmjv.bund.de, and pol-ju-5-eu@brue.auswaertiges-amt.de
 5. The updated text will be discussed in a JHA Counsellors meeting for which delegations will be informed in due time.
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Terms of Reference of the ad-hoc Working Party on Data Retention

1. An ad-hoc Working Party on Data Retention (hereinafter "the ad-hoc WPDR") is hereby set up for the initial period of three years. This mandate is subject to review upon its expiration and can be renewed or extended according to the needs and the objectives to be attained in the area of data retention.
2. The ad-hoc WPDR will cover the data retention issues in the Council, ensuring their consistency. It can be involved in both non-legislative, including the preparation of Council conclusions, recommendations to provide leadership or other strategic documents where needed and legislative activities, including the negotiations of any upcoming legislative proposals on data retention.
3. The ad-hoc WPDR will provide a platform bringing together the Member States' experts dealing with data retention matter, taking into account its complexity and the relevant provisions of European and national law including fundamental rights, namely privacy, the principle of proportionality, data protection, and following the objectives to harmonise the obligations of providers to retain certain data and to ensure that those data are available for the purpose of investigation, detection and prosecution of serious crime.
4. Member States will allow sufficient flexibility and fair involvement of the relevant competent national authorities according to the needed expertise and to the national distribution of competences and mechanisms for coordination.
5. The ad-hoc WPDR will work under the guidance of COREPER and Council. As appropriate, it will bring issues to their attention or report to them on the outcomes of the relevant discussions in order to define or steer the overall JHA data retention policy of the EU and its priorities.

6. The activities of the ad-hoc WPDR will be without prejudice to the work carried out in other [sectorial] Working Parties, which shall remain responsible for the specific legislative and non-legislative files.
7. The objectives of the ad-hoc WPDR will be related more specifically to the following:
 - assist in setting the EU priorities and strategic objectives as part of a comprehensive data retention policy framework by providing a cross-cutting working platform supporting a coherent approach on these issues and thus avoiding fragmented policy developments and decision/law-making;
 - accompany the decision-making process in the data retention domain, where there is an evident need to guarantee the application of coherent policy approach while ensuring full compliance of the discussed solutions with the relevant case-law and fundamental rights;
 - examine and follow up on the Commission study on data retention as tasked by the Council as well as further decisions of the ECJ on national rules on data retention and any potential future legislative proposal on Data Retention; and
 - identify and further exploit synergies, including with any other relevant entities or stakeholders.
8. The ad-hoc WPDR will be chaired by the rotating Presidency of the Council. It will meet according to the need in order to take stock of the state of play in the field, to identify the key challenges and priorities as well as to discuss respective solutions and ways to achieve them.
9. These terms of reference may be subject to review, if deemed necessary.

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...	Ad-Hoc Working Party on Data Retention	New structure replacing the FOP Dapix (Data Retention) which has ceased to exist.

² Based on doc 10308/19: list of Council preparatory bodies.