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NOTE

From: Presidency
To: Permanent Representatives Committee/Council
Subject: Common reflection process on data retention
= Progress report

1. As confirmed by CATS on 8 March 2017, the Presidency has convened the Working Party on Information Exchange and Data Protection (DAPIX) in a Friends of the Presidency formation to facilitate a common reflection process at EU level on data retention in light of the recent judgments of the Court of Justice of the European Union (CJEU)¹.
2. The objective of the group is to pull various working strands and expertise together to allow for a comprehensive overview on retention of communication data from a multidisciplinary perspective. Three meetings of the working party took place thus far - on 10 April, 15 May and 29 May 2017. They allowed for dedicated discussions on the specific requirements of the CJEU judgments and served as a forum for exchanging national experiences.

¹ Judgement of the Court of Justice of the EU (Grand Chamber) "*Digital Rights Ireland and Seitlinger and others*" of 8 April 2014 in joined Cases C-293/12 and C-594/12 and Judgement of the Court of Justice of the EU (Grand Chamber) "*Tele 2 and Watson*" of 21 December 2016 in joined Cases C-203/15 and C-698/15.

3. With a view to structuring the work of the group, delegations identified specific issues to be discussed in order to gradually build a comprehensive overview of the challenges and possible solutions for data retention schemes². In this respect, the Presidency invited a first exchange of views on the following two sets of issues: (a) the requirements of the CJEU regarding the concept of targeted data retention for the purposes of prevention and prosecution of crime and (b) the access criteria for competent authorities as defined by the Court. Discussions took place on the basis of a number of detailed questions regarding those two main sets of issues. Work on that basis will continue.
4. The practical needs of competent authorities to access data for the purposes of effective prevention and prosecution of crime were also extensively discussed, including in light of national experiences and the operational practice of Europol. In this context, a common understanding appears to be emerging that basic subscriber information, e.g. IP address attributed to an user would not fall within the scope of the Tele 2 Judgment.
5. Furthermore, the Presidency invited delegations to provide examples of cases where the retention of the electronic data proved indispensable for the prevention and prosecution of crime. A number of Member States and Europol contributed to this compilation or are preparing their contributions. The compilation constitutes important reference material demonstrating the operational significance of data retention for the purposes of preventing and fighting crime and ensuring public security.
6. The group is also following closely the status of Member States' national legislation on data retention and any relevant court cases within this context. The document outlining the current state of play will be regularly updated.

² doc. 7597/17

7. The common reflection process on data retention will continue with a view to examining further the implications of the judgements. In the context of examining the availability of electronic communications data retained by service providers, the group will also follow the work on the draft e-Privacy Regulation which is under way in the Council preparatory bodies³.

Ministers are invited to take note of the progress report and exchange views on the current state of play.



³ Proposal for a Regulation of the European Parliament and of the Council concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications), doc. 5358/17