

Combating crime: prevention of crime, criminal offences and terrorism, retention of data processed on public communications networks. Framework Decision. Initiative France, Ireland, Sweden and United Kingdom

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The Council examined the scope of the draft Framework Decision on data retention. To recall, the proposal implies in principle that providers of publicly available electronic communications services or networks must retain specified data enabling the source, routing, destination, time, date and duration of communications and the location of the telecommunications devices used to be established. In its original form, the proposal seems to be limited to data already processed and stored for billing, commercial and other legitimate purposes.

However, this approach would imply that the possibilities for access to data for law enforcement purposes depend on the technical and commercial setup of each individual service provider. Some service providers apply systems, such as flat-rate systems, which imply that relevant data, processed for the purpose of providing the telecommunication concerned, are erased immediately after the communication has been terminated.

The Council therefore instructed its preparatory bodies to examine another approach entailing an obligation for service providers to retain relevant data defined in a common list in the instrument, provided that the data are processed/generated by the service provider in the process of supplying the telecommunications service concerned. Particular consideration should be given to the proportionality of the measure in relation to costs, privacy (data protection) and efficiency.

This approach may lead to a higher degree of certainty for the retention of the data concerned, and is less sensitive to the commercial behaviour of the service provider and technical developments. The service provider would be under an obligation to retain the data concerned to the extent that the data are processed /generated by the service provider, even if the data have no interest for the service provider. The level of harmonisation of Member States' legislation would be relatively high. Judicial authorities and law enforcement authorities have during the last years increasingly expressed concerns regarding the use of technical innovations, brought about by the continuous development of electronic telecommunications services, for the purpose of committing crimes, and the difficulties which this may cause regarding detection of and investigation into crimes. These concerns relate not only to communications by fixed phones, mobile phones, short message services (SMS), electronic media services (EMS) and multi media services (MMS). Increasingly, they also relate to Internet Protocols including email, voice over the Internet, worldwide web, file transfer protocols, network transfer protocols, voice over broadband, etc.