

Council: The Way Forward in Data Retention

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News

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The Council remains committed to establishing a European regime on the retention of electronic communication data for the purpose of fighting crime. Following the conclusions on data retention drawn under the Austrian Council Presidency in December 2018 (see *eucrim* 4/2018, p. 201), the [JHA Council again adopted conclusions](#) in the matter at the end of the Romanian Council Presidency at its meeting on 6 June 2019.

The ministers restressed that “data retention constitutes an essential tool for law enforcement, judicial and other competent authorities to effectively investigate serious crime, [...] including terrorism or cyber crime.”

The ministers also acknowledged, however, that it is difficult to cut the Gordian knot, i.e. to bring up legislation that is in line with the EU’s Charter on Fundamental Rights as interpreted by the European Court of Justice in the cases *Digital Rights Ireland* and *Tele 2 Sverige*. Despite further pending references for preliminary rulings against data retention rules (see *eucrim* 1/2019, p. 26), the Council feels that the legal possibility for data retention schemes at the EU and national levels should be maintained.

The Commission is invited to support the DAPIX-Friends of Presidency Working Party by gathering relevant information in the Member States and by means of targeted consultations of stakeholders. In particular, the Commission has been requested to get a comprehensive study off the ground to explore possible solutions for retaining data. The study may also serve as a basis for a future new legislative initiative on an EU data retention scheme. The conclusions stressed that the study must take into account the following issues:

- The evolving case-law of the Court of Justice and of national courts relevant for data retention;
- The outcomes of the common reflection process in the Council;
- Concepts of general, targeted and restricted data retention (first level of interference) and the concept of targeted access to retained data (second level of interference);
- Exploration of the extent to which the cumulative effect of strong safeguards and possible limitations at both interference levels could assist in mitigating the overall impact of retaining those data to protect the fundamental rights of the Charter, while ensuring the effectiveness of the investigations.

The Commission is further invited to report on the state of play of its work by the end of 2019.

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