



**COUNCIL OF
THE EUROPEAN UNION**



Data retention

**2683rd Justice and Home Affairs Council session
Luxembourg, 12 October 2005**

The Council held an exchange of views on the basis of a paper from the Presidency.

A large number of delegations could accept the elements set out below as the basis for further work, subject to maintaining the derogation in Article 15(1) of the 2002 Telecommunications Directive and clarifying its future scope.

In the next stage, the Framework Decision will remain on the table, as an option favoured by a number of delegations. However, a majority of delegations were also open to the idea of adopting a Directive.

There was wide agreement that any measure must reflect the elements referred to below, notably in respect of the provisions on retention periods, scope and costs.

The Council agreed that work should be taken forward urgently. It instructed Coreper to finalise agreement on all outstanding issues as soon as possible and agreed that informal contacts with the European Parliament should continue in order to maximise common ground between the Council and the EP on issues of substance, while respecting the Council's position as set out above. The Council agreed to revert to this issue at its next meeting with a view to a final decision before the end of the year.

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Elements set out as the basis for further work

Scope – inclusion of data on fixed network and mobile telephony; Internet access and Internet communication services (telephony and email); and unsuccessful call attempts, with an extended implementation period of an additional two years for Internet data and data on unsuccessful call attempts.

Retention periods – approximation based on a minimum level of 6 months for Internet and 12 months for telephony, with a maximum level of 2 years retention, recalling the possibility for Member States who already have national legislation going beyond that period to retain such legislation by virtue of Article 95 TEC.

Costs – discretion for Member States to decide at a national level whether to reimburse industry for the additional costs associated with the retention of data for law enforcement purposes, achieved by having no provision at all on costs in the instrument.

Review clause / comitology – use of a fixed technical list of the data to be retained with the inclusion of a review clause (rather than a comitology arrangement) to consider practical experience in the effectiveness of the Directive 5 years after its implementation and to ensure that it remains in line with developments in telecommunications technology.

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It should be noted that a proposal on data retention was made in April 2004 by France, Ireland, Sweden and the UK, on the basis of Articles 31 and 34 of the Treaty of the European Union, under the so-called "Third Pillar". For its adoption, such a proposal needs unanimity at the Council. But the Commission has considered that the categories of data to be retained and the period for retaining such data fall within EC competence ("First Pillar") and should be adopted by the Council in co-decision with the European Parliament, on the basis of a Commission proposal for a Directive. On 21 September 2005 the Commission adopted such a proposal for a Directive on retention of communication data.

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