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From:	General Secretariat of the Council
To:	DAPIX (Friends of the Presidency - Data Retention)
Subject:	Data Retention - State of play in the Member States

Delegations will find in the Annex an updated table outlining the status of legislation on data retention and relevant court cases in the MSs, as noted to date. Delegations are invited to communicate any further changes to the General Secretariat of the Council (milena.petkova@consilium.europa.eu).

Data Retention

State of play in the Member States

Member State	DR legislation in force	Status of the legislation	Relevant Court cases
Austria	No	A legislative proposal is under preparation.	Most parts of the Austrian law on data retention were declared invalid by the Constitutional Court on 27 June 2014 following the Ireland Digital Rights judgement of 8 March 2014.
Belgium	Yes	• Law of 29 May 2016 on the collection and retention of data in the telecommunications sector (<i>Loi relative à la collecte et à la conservation des données dans le secteur des communications électroniques</i>) The Law entered into force on 28 July 2016. • Code of criminal procedure (<i>Code d'instruction criminelle</i>): articles 46bis, 88bis, 464/13 and 464/25 • Law of 30 November 1998 on the intelligence and security services (<i>Loi organique des services de renseignement et de sécurité</i>): articles 13, 18 §3, 18 §8, 18/3 §2 and 18/8 • Law of 13 June 2005 on electronic communications (<i>Loi relative aux communications électroniques</i>): articles 126 and following, as well as 145	• The previous Law on data retention has been annulled by the Belgian Constitutional Court on 30 July 2013 following the Ireland Digital Rights judgement of 8 March • Following the decision of the European Court of Justice in the case Tele2, four claims for annulment of the new Belgian legislation have been introduced before the Constitutional Court. A decision is expected in 2018.
Bulgaria	Yes	• Electronic Communications Act Prom. SG 41 of 22 May 2007, last amended and	The previous Bulgarian data retention law was declared incompatible with the

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		supplemented by SG 103 of 27 December 2016 • Criminal Procedure Code Prom. SG 83 of 18 October 2005, last amended and supplemented by SG. 13 of 7 February 2017	national constitution by the constitutional Court on 12 March 2015.
Croatia	Yes	• Electronic Communications Act. • Criminal Procedure Act • Regulation on the obligations in the field of national security of the Republic of Croatia for legal and natural persons in telecommunications	
Cyprus	Yes	• Law on the Retention of Telecommunications Data with a View to Investigating Serious Crimes (183(i)/2008) as amended by Law 99(i)/2008	
Czech Republic	Yes	• Electronic Communications Act • Code of Criminal Procedure, Section 88a	
Denmark	Yes	• Administration of Justice Act, Act no 1255 of 16 November 2015, Chapter 71 • Executive Order No. 988 of 28 September 2006 on the retention and storage of traffic data by providers of electronic communications networks and electronic communications services, amended by Executive Order no. 660 of 19 June 2014 (following the 2014 Digital Rights Ireland judgment) • Guidelines for the Executive Order on the retention and storage of traffic data by providers of electronic communications	

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		networks and electronic communications services	
Estonia	Yes	• Electronic Communications Act based on Directive 2006/24/EC concerning data retention obligation and retention criteria by telecommunication service providers • Several other national legal acts set the access criteria, prior authorization and other criteria for access. For example, access and use of retained telecom data is regulated in the Criminal Procedure Code. For misdemeanors procedure, it's the Code of Misdemeanor Procedure etc. Access to the retained data is allowed in different procedures and slightly different rules and criteria apply.	
Finland	Yes	• Information Society Code 917/2014, sections 157- 159 and 322 • The Act refers to the Police Act, the Border Guard Act (578/2005), the Act on the Processing of Personal Data by Border Guards (579/2005), the Customs Act (1466/1994) and the Coercive measures Act (806/2001)	
France	Yes	• Post and Electronic Communications Law, in particular Article L34-1 (<i>Code des postes et des communications électroniques, notamment l'article L34-1</i>). • <i>Loi n 215-912 du 24 juillet 2015 relative au renseignement</i> • <i>Code de procédure pénale, articles 60-1, 77-11, 99-3, 706-95-4 et 706-95-5</i>	

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		• <i>Loi n 2016-731 du 3 juin 2016 renforçant la lutte contre le crime organisé, le terrorisme et leur financement</i> • <i>Loi n 2004-575 du 21 juin 2004 pour la confiance dans l'économie numérique (LCEN) et son décret d'application n 2011-2019 du 25 février 2011 relatif à la conservation et à la communication des données</i>	
Germany	Yes	• Law on the introduction of an obligation to store and a maximum period to retain traffic data (Gesetz für Einführung einer Speicherpflicht und einer Höchstspeicherfrist für Verkehrsdaten) • The law entered into force on 18 December 2015. The storage obligation became effective on 1 July 2017.	<u>Constitutional Court</u> The current legislation is being challenged before the German Constitutional Court (several constitutional complaints). Requests for interim decisions in relation to these complaints have been denied in July 2016 and in April 2017, respectively. <u>Administrative Courts</u> A complaint brought forward by an Internet Access Provider – directed against the obligation to store internet traffic data only – is pending at the Administrative Court Cologne. After the corresponding request for interim relief has been denied in February 2017, the Higher Administrative Court for North Rhine-Westphalia granted the appeal against that decision and ruled that the provider is not obliged to store data until the main proceedings are concluded. It based its decision on the notion that in light of the Tele2 judgment the German legislation on data retention would clearly be incompatible with EU law.

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			The court acknowledged that the current storage obligation is more restrictive in comparison to the previous system. It concluded, however, that these restrictions do not warrant a different assessment than that provided by the Tele2 judgment regarding the SE and GB legislation. Following the decision of the Higher Administrative Court, the Federal Network Agency announced that it will abstain from enforcement measures regarding the storage obligations and that it won't impose fines for non-compliance with the storage obligations until main proceedings are concluded. Another complaint and corresponding request for interim relief filed by another Internet Access Provider (Telekom Deutschland GmbH) is still pending at the Higher Administrative Court for North Rhine-Westphalia. The Administrative Court Cologne had dismissed the corresponding request for interim relief on the grounds that there was no legitimate interest in legal action after the announcement of the Federal Net Agency.
Greece	Yes	Act 3917/2011 (implementing Directive 2006/24)	
Hungary	Yes	2003 Electronic Communications Act - Act XIX on Criminal Procedure of 1998 - Police Act XXXIV of 1995	

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		• National Tax and Customs Office Act CXXII of 2010 • National Security Service Act CXXV of 1995 • Government decree 180/2004 (V.26) on electronic communications networks and bodies and agencies authorised to conduct covert investigations on cooperation between organisations • Under the coordination of Ministry of Interior an expert group on data retention has been established at a national level in the beginning of May 2017 in cooperation with the ministries, organisations and authorities concerned. The main task of the group is to analyse and assess the impacts of the Tele2 judgement on the existing Hungarian legislation and based on the practical experiences to draft possible solutions regarding the way forward with amending current legislation. The current legislation, in relation with the Tele2 judgement, has not been modified until this time.	
Ireland	Yes	• Communications (Retention of Data) Act 2011	
Italy	Yes	• Legislative Decree n. 109/2008 • Legislative Decree n. 7 of 18 February 2015 (confirmed by law n. 43 of April 17, 2015)	
Latvia	Yes	• Electronic Communications Act (Article 71) • Criminal Procedure Act (Article 192) • Cabinet Regulation No 820 of 2007	
Lithuania	Yes	• Electronic Communications Law No IX-2134 of	

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		15 April 2004 (Articles 65, 66, 67 and 77) • Code of criminal Procedure (Article 154) • Law on Criminal Intelligence No XI-2234 of 2 October 2012 (Article 6) • Law of the Republic of Lithuania on Cyber Security No XII-1428 of 11 December 2014 should also be pointed out (Articles 12-16)	
Luxembourg	Yes	• Loi modifiée du 30 mai 2005, relative aux dispositions spécifiques de protection de la personne à l'égard du traitement des données à caractère personnel dans le secteur des communications électroniques et portant modification des articles 88-2 et 88-4 du Code d'instruction criminelle	
Malta	Yes	• Subsidiary Legislation 440.01 Processing of Personal Data (Electronic Communications Sector) Regulations of 15 July 2003 (last amended by Legal Notice 429 of 2013)	
Netherlands	No	• The Data Retention Act of 1 September 2009 is no longer applicable following a ruling of the the Hague Civil Court of 15 March 2015 • Proposal of 13 September 2016 amending the Telecommunications Act and the Criminal Procedures Act in view of the retention of data processed in the context of providing public telecommunication services and public telecommunication networks (<i>Voorstel van wet van 13 september 2016 tot Wijziging van de Telecommunicatiewet en het Wetboek van Strafvordering in verband met de bewaring van gegevens die zijn verwerkt in verband met</i>	

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		<i>het aanbieden van openbare telecommunicatiediensten en openbare telecommunicatienetwerken)</i>	
Poland	Yes	• Telecommunications law of 16 July 2004 (Section VIII – Obligations as regards defence, national security, internal security and public order) (Articles 180a-180e) • Regulation of the Minister of Infrastructure of 28 December 2009 with regard to the detailed list of data, the categories of the providers of publicly available telecommunications services or public networks that are obliged to retain and store the data • Law of 15 January 2016 amending the Law on the Police and other certain Laws • Law of 16 November 2016 on the National Revenue Administration • Code of Criminal Procedure (Articles 218, 218a, 218b) • Regulation of the Minister of Justice of 28 April 2004 on the means of technical preparation of information systems and networks for the collection of lists of phone calls and other communications and the means of securing IT data	Judgement of the Constitutional Tribunal of 30 July 2014 (K 23/11) on catalogue of data on the individual, collected via electronic means in the course of operational surveillance; data destruction requirements.
Portugal	Yes	• Law No 32/2008 of 17 July transposing Directive 2006/24/EC	
Romania	Yes	• Law No 235/2015, amending Law No 506/2004, introducing rules regarding access of competent national authorities to retained data (notably Articles 5 and 121)	The previous Romanian data retention law was declared unconstitutional by the Constitutional Court on 8 July 2014.

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		Law No 75/2016, amending Law No 235/2015 and Government Emergency Order No 82/2014 (amending and supplementing Law No 135/2010 on the Code of Criminal Procedure (notably Articles 138 and 152).	
Slovakia	Yes	Act no. 351/2011 of 14 September 2014 on Electronic Communications	Ruling of the Constitutional Court of the Slovak Republic of 29 April 2015 No. PL ÚS 10/2014-78 (On 29 April 2015, The Grand Chamber of the Constitutional Court (PL. ÚS 10/2014) proclaimed provisions Article 58(5) to (7) and § 63(6) of the Act on Electronic Communications (Act No. 351/2011 Coll.), which until now required mobile network providers to track the communication of their users, as well as provisions of Article 116 of the Criminal Code (Act No. 301/2005 Coll.) and § 76(3) of the Police Force Act (Act No. 171/1993 Coll.), which allowed access to this data, to be in contradiction to the constitutionally guaranteed rights of citizens to privacy and personal data.
Slovenia	No	The Slovenian Constitutional Court annulled Chapter 13 on data retention of the Electronic Communications Act on 3 July 2014. No proposal has been made by the government to replace this law.	The Slovenian Constitutional Court annulled Chapter 13 on data retention of the Electronic Communications Act on 3 July 2014.
Spain	Yes	Law 25/2007 of 18 October on the retention of data concerning electronic communications and public communication networks, last amended on 10 May 2014 (<i>Ley 25/2007, de 18</i>	

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		<i>de octubre, de conservación de datos relativos a las comunicaciones electrónicas y a las redes públicas de comunicaciones, consolidado de 10 de mayo de 2014).</i>	
Sweden	Yes	• Law (2003:389) on electronic communications (<i>Lagen (2003:389) om elektronisk kommunikation</i>) • Regulation (2003:396) on electronic communications (<i>Förordningen (2003:396) om elektronisk kommunikation</i>) • Law (2012:278) on gathering of data relating to electronic communications as part of intelligence gathering by law enforcement authorities (<i>Lagen (2012:278) om inhämtning av uppgifter om elektronisk kommunikation i de brottsbekämpande myndigheternas underrättelseverksamhet</i>) • Code of Judicial Procedure (<i>Rättegångsbalken</i>) • Public Inquiry has been commissioned by the Government on 16 February 2017 to provide proposals in order to make Swedish law compatible with the Tele2-judgment. Proposals will be presented on 9 October 2017.	
United Kingdom	Yes	• Investigatory Powers Act 2016, notably Part 3 on the authorisations for obtaining communications data and Part 4 on the retention of communications data.	Judicial Review of the Data Retention and Investigatory Powers Act 2014 Court of Appeal hearing scheduled for 7 June 2017. Additional challenge to the Investigatory Powers Act 2016 pending.