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

Delegations will find in the Annex a table outlining the status of legislation in the MSs, as noted to date. Delegations are invited to verify this information and to inform the Presidency on any changes or corrections, as well as on relevant court cases that could be noted in this context. Delegations are invited to send their comments to the General Secretariat of the Council (milena.petkova@consilium.europa.eu) by 18 May 2017, cob.

Data Retention

State of play in the Member States

Member State	DR legislation in force	Status of the legislation	Relevant Court cases
Austria	No	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. A legislative proposal is under preparation.	
Belgium	Yes	• Law 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. • <i>Code d'instruction criminelle, articles 46bis et 88 bis</i> • <i>Loi du 30 novembre 1998 sur les services de renseignement de de sécurité, articles 13, 18 para 3 et 18, para 8</i> • <i>Loi du 13 juin 2005 relative aux communications électroniques, articles 126 suivants et 145</i>	
Bulgaria	Yes	• Electronic Communications Act Prom. SG 41 of 22 May 2007, last amended and supplemented by SG 103 of 27 December 2016 • Criminal Procedure Code Prom. SG 83 of 18 October 2005, last amended and	The previous Bulgarian data retention law was declared incompatible with the national constitution by the constitutional Court on 12 March 2015.

Member State	DR legislation in force	Status of the legislation	Relevant Court cases
		supplemented by SG. 13 of 7 February 2017	
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 networks and electronic communications services	
Estonia	Yes	• Electronic Communications Act, based on Directive 2006/24/EC	

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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 706-95-4 et 706-95-5</i> • <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 (<i>Gesetz für Einführung einer Speicherpflicht und einer Höchstspeicherfrist für Verkehrsdaten</i>) The law entered into force on 18 December 2015, but the storage obligation becomes effective on 1 July 2017.	

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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 • 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	
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 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)	
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	

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		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 het aanbieden van openbare telecommunicatiediensten en openbare telecommunicatienetwerken</i>)	
Poland	Yes	Telecommunications law (Dz. U. z 2016 r. poz. 1489)	
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.

Member State	DR legislation in force	Status of the legislation	Relevant Court cases
		• 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	
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.	
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 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</i>	

Member State	DR legislation in force	Status of the legislation	Relevant Court cases
		<i>de brottsbekämpande myndigheternas underrättelseverksamhet</i> • Code of Judicial Procedure (<i>Rättegångsbalken</i>)	
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.	