



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 25 June 2004

10841/04

**COPEN 79
TELECOM 126**

OUTCOME OF PROCEEDINGS

of : Working Party on cooperation in criminal matters

dated : 4 June 2004

No. prev. doc. : 8958/04 CRIMORG 36 TELECOM 82

Subject : Draft Framework Decision on the retention of data processed and stored in connection with the provision of publicly available electronic communications services or data on public communications networks for the purpose of prevention, investigation, detection and prosecution of crime and criminal offences including terrorism

France, Ireland, Sweden and the United Kingdom transmitted on 28 April 2004 the proposal in 8958/04 CRIMORG 36 TELECOM 82 for a Framework Decision on the retention of data processed and stored in connection with the provision of publicly available electronic communications services or data on public communications networks for the purpose of prevention, investigation, detection and prosecution of crime and criminal offences including terrorism. An explanatory note on the proposal from the four Member States will follow.

The Working Party on cooperation in criminal matters had at its meeting on 4 June 2004 a first exchange of views on the proposal.

The proposal is closely linked to the Declaration on combating terrorism adopted by the European Council on 25 March 2004, in which the Council was instructed to examine measures for establishing rules on the retention of communications traffic data by service providers with a view to adoption by June 2005.¹ The conclusions of the Council of 20 September 2001 and of 19 December 2002 should also be kept in mind. The proposal should also be seen in relation to Directive 2002/58/EC of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)², including in particular Article 15 thereof.

Without prejudice to general scrutiny reservations, general linguistic scrutiny reservations (the proposal was not available in all official languages) and general parliamentary scrutiny reservations by some delegations, the proposal was received with positive first reactions by several delegations. However, many delegations underlined that they could not express any definitive position at this stage as internal consultations in their countries on the proposal had not been finalised. A number of concerns were raised by different delegations, including:

- The exact scope and aim of the instrument and the exact kind of data covered needed to be examined/clarified.
- Information on legislation and practice of Member States in the field of retention of traffic data would be useful.
- The instrument would need to be in line with already adopted EU provisions and other international provisions. In that context, any duplication of existing law should be avoided.
- The 1950 European Convention on human rights, and jurisprudence in relation to that Convention, should be kept in mind.
- Article 6 TEU as well as the principle of proportionality should be kept in mind.
- Telecommunications experts should be involved in negotiations. Advice should be sought from industry as appropriate.

¹ 7906/04 JAI 100 ECOFIN 107 TRANS 145 RELEX 123 ECO 73 PESC 208 COTER 20 COSDP 142.

² OJ L 201, 31.7.2002, page 37.

- The draft Framework Decision also concerned prevention, which went further than mutual assistance in criminal matters. The parts of the text on prevention needed clarification.
- The minimum period for retention of traffic data needed further examination, and was too long in the view of some delegations.

The Commission recalled that it had organised a meeting on data retention on 14 June 2004 in Brussels (Forum for the prevention of organised crime - ad hoc meeting on data retention).

It was recalled that 14107/02 CRIMORG 100 TELECOM 42 contained the answers from the 15 old Member States to the questionnaire in 11490/1/02 REV 1 CRIMORG 67 TELECOM 4 on traffic data retention. For the purpose of further proceedings concerning the proposed Framework Decision, the Presidency would - in collaboration with the incoming Netherlands Presidency, the Commission and the General Secretariat - take steps to get updated information on traffic data from the 15 old Member States and to get information on the same subject from the 10 new Member States.¹

The incoming Netherlands Presidency informed the Working Party that the next meeting of the Working Party on traffic data retention would take place on 27 and 28 September 2004.

¹ A questionnaire has been sent out in 10767/04 COPEN 77 TELECOM 125.