WORKING DOCUMENT

From: Europol
To: DAPIX (Friends of the Presidency - Data Retention)
Subject: Outcome of the 1st Data Retention Matrix Workshop

Delegations will find in the Annex a power point presentation from EUROPOL comprising the Outcome of the 1st Data Retention Matrix Workshop held on 20 March 2018.
Outcome
1st Data Retention Matrix Workshop
20th March 2018

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Data Protection Function

18 April 2018
Brussels
Quick introduction

Annulment of the Data Retention Directive (DRD) following Digital Rights Ireland and Tele2

‘NO indiscriminate retention’ -> 1. Restricted data retention
  2. Targeted data access

Data Retention Workshop: Europol + Bulgarian Presidency, 20th March 2018

Why a success? - Why a challenge?

MS early feedback

The way forward
Interference Levels

Level 1: Initial Retention
- Meta Data
- Data stored by Providers
- Retention

Level 2: Storage, Access and Use
- Access
- Law Enforcement
  - fighting
  - Serious Crime/Terrorism

“wide-ranging, particular serious interference”
Clearly non-compliant with Charter

Level 1: general retention

- all traffic and location data
- all subscribers and users
- all means of communication

Level 2

Data stored by Providers

Meta Data

Retention

Law Enforcement fighting

Serious Crime/Terrorism
Clearly compliant with Charter – but not fit for LE reality

Level 1: targeted retention

Level 2

Meta Data

Targeted retention and subsequent use
• impossible, potential relevance cannot be foreseen in advance

Law Enforcement

Serious Crime/Terrorism
Level 1:
• Not only targeted data retention, but also restricted data retention is compliant with the Charter according to Digital Rights and Tele2.

Level 2:
• Access to metadata must be targeted according to Digital Rights and Tele2.
Compliant with Charter – and fit for LE reality!

Level 1: restricted retention

Level 2: targeted access

Meta Data

Data retention

Data potentially relevant

• based on evidence and
• prior judicial review and
• safeguards against misuse and ...

Law Enforcement fighting

Serious Crime/Terrorism
Role of Europol vs. role of MS

Europol is encouraged to facilitate preparatory works for the related data matrix in close cooperation with experts from the Member States with a view to further examination in DAPIX –FoP

JHA Council 7 December 2017
Sources for creation of matrix so far

- Electronic Evidence Guide
  (Data Protection and Cybercrime Division of Council of Europe);

- ETSI Standards
  (Handover requirements and a handover specification for retained data);

- Feedback from EC3 and EU IRU.
Data Retention Workshop - introduction to the participants

Start from broadest possible technical standards allowing for complete visibility of which data is technically being retained.

Match the operational business needs against such most comprehensive technical standards of retained data.

**Better visibility** on fact that LE is, indeed, **not** advocating the general or indiscriminate retention of any available information but is making best effort to draw the link to what is strictly necessary in order to prevent and combat serious crime and terrorism.

Focus should be on what would **NOT** be absolutely essential for the fights against serious crime and terrorism.

Any item which can reasonably be excluded from the list of data categories that are **absolutely necessary** will be crucial in the difficult discussions to come.
Data Retention Workshop – Why a challenge?

- Technical + legislative = how?

- The Matrix needs to be highly **flexible** (but solid) and to adapt to changing conditions in **technology**

- How to address OTT providers questions? ->

- To broaden or to reduce the data categories?
## Preparatory work for the Data Retention Matrix: types of data records held by providers which are strictly necessary or unnecessary for criminal investigation purposes.

### Categories of Data Services and Sources

<table>
<thead>
<tr>
<th>Category</th>
<th>Pages</th>
<th>ETSI Standards B.2 Telephony fields</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Telephony services</td>
<td>p.3-12</td>
<td>ETSI B.2.2.0 - Table B.1</td>
<td>p.57</td>
</tr>
<tr>
<td>1.1. Telephony Subscriber</td>
<td>p.3</td>
<td>ETSI B.2.2.4.1 - Table B.2</td>
<td>p.58</td>
</tr>
<tr>
<td>1.2. Subscribed Telephony Services</td>
<td>p.3</td>
<td>ETSI B.2.2.3.1 - Table B.3</td>
<td>p.59</td>
</tr>
<tr>
<td>1.3. Telephony Service Usage</td>
<td>p.4</td>
<td>ETSI B.2.4.1 - Table B.5</td>
<td>p.60</td>
</tr>
<tr>
<td>1.3.1. Telephony Service Usage</td>
<td>p.5</td>
<td>ETSI B.2.4.2 - Table B.6; B.2.4.3 - Table B.7</td>
<td>p.60-61</td>
</tr>
<tr>
<td>1.3.2. Party Information + Sms/Mms Information</td>
<td>p.6</td>
<td>ETSI B.2.5.1 - Table B.9</td>
<td>p.61</td>
</tr>
<tr>
<td>1.4.1. Telephony Device</td>
<td>p.8</td>
<td>ETSI B.2.6.1 - Table B.10</td>
<td>p.62</td>
</tr>
<tr>
<td>1.5.1. Telephony Network Element</td>
<td>p.9</td>
<td>ETSI B.2.6.2.1 - Table B.11</td>
<td>p.63</td>
</tr>
<tr>
<td>1.5.2. Location parameters</td>
<td>p.9</td>
<td>ETSI B.2.6.2.2 - Table B.12; B.2.6.3.1 - Table B.13</td>
<td>p.63-64</td>
</tr>
<tr>
<td>1.5.3. GSM and UMTS Location parameters</td>
<td>p.11</td>
<td>ETSI B.2.6.2.4 - Table B.14</td>
<td>p.64</td>
</tr>
<tr>
<td>1.5.4. Extended location parameters</td>
<td>p.11</td>
<td>ETSI B.2.6.3.1 - Table B.15</td>
<td>p.64</td>
</tr>
<tr>
<td>1.5.5. Transmitter Details parameters</td>
<td>p.11</td>
<td>ETSI B.2.6.3.1 - Table B.15</td>
<td>p.64</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Category</th>
<th>Pages</th>
<th>ETSI Standards C.2 Message services</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. Asynchronous message services</td>
<td>p.12-15</td>
<td>ETSI C.2.2.0 - Table C.1</td>
<td>p.81</td>
</tr>
<tr>
<td>2.1.1. Msg Subscriber</td>
<td>p.12</td>
<td>ETSI C.2.2.2 - Table C.2</td>
<td>p.81</td>
</tr>
<tr>
<td>2.1.2. Msg Store</td>
<td>p.12</td>
<td>ETSI C.2.3.1 - Table C.3</td>
<td>p.82</td>
</tr>
<tr>
<td>2.2.1. Msg Transmission</td>
<td>p.13</td>
<td>ETSI C.2.3.2 - Table C.4</td>
<td>p.82</td>
</tr>
<tr>
<td>2.2.2. Msg Store Operation</td>
<td>p.14</td>
<td>ETSI C.2.4.0 - Table C.5; ETSI C.2.4.1 - Table C.6</td>
<td>p.83</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Category</th>
<th>Pages</th>
<th>ETSI Standards D.2 Multimedia fields</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Synchronous multi-media services</td>
<td>p.15-22</td>
<td>ETSI D.2.2.0 - Table D.1</td>
<td>p.88</td>
</tr>
<tr>
<td>3.3. Multimedia Service Registration Info</td>
<td>p.15</td>
<td>ETSI D.2.2.5 - Table D.2</td>
<td>p.89</td>
</tr>
<tr>
<td>3.3.1. Multimedia Service Registration Info</td>
<td>p.15</td>
<td>ETSI D.2.3.1 - Table D.3; D.2.3.2 - Table D.3A; D.2.3.3 - Table D.4</td>
<td>p.90-91</td>
</tr>
<tr>
<td>3.3.2. Party Information</td>
<td>p.21</td>
<td>ETSI D.2.4.1 - Table D.5</td>
<td>p.91-92</td>
</tr>
<tr>
<td>3.3.3. IMS Information</td>
<td>p.22</td>
<td>ETSI D.2.4.2 - Table D.6</td>
<td>p.92</td>
</tr>
<tr>
<td>3.3.4. Media Components</td>
<td>p.22</td>
<td>ETSI D.2.4.3 - Table D.7</td>
<td>p.93</td>
</tr>
<tr>
<td>3.3.4. Media Components</td>
<td>p.22</td>
<td>ETSI D.2.4.4 - Table D.8</td>
<td>p.93</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Category</th>
<th>Pages</th>
<th>ETSI Standards E.2 Network access</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. Network access</td>
<td>p.23-31</td>
<td>E.2.2 - Table E.1</td>
<td>p.101</td>
</tr>
</tbody>
</table>

**Note:**

- ETSI Standards V1.20.1 (2017-11)
- Council of Europe (COE) 'Electronic Evidence Guide'
1st feedback! -> Draft Matrix=good start

- Tour de table -> data retention periods

- How to address the **proportionality** core issue?
  
  **Belgium** proposed to:
  
  1. Focus on service providers which do not store content
  2. Raising awareness at political level

- Link between **data retention** and **humanitarian** purposes (Art. 10 Directive (EU) 2016/680)

- Input from France, Belgium and Latvia: **online platforms** at national level facilitating requests to service providers

- Un-tick also what is technically unfeasible
Matrix itself cannot not be legislated!

Law enforcement is making any possible effort in order to get the balance right!
Potential for failure? – Think positive!

Outcome may depend on crime area – consolidated matrix printed on transparent sheets may provide 'different shades of grey or black'. If even based on very granular data standards no categories can reasonably be excluded:

Certainly not the result we were hoping for - however, still important. It shows that law enforcement is at least making tangible effort to live up to the proportionality principle. It may mean that this principle can in reality only be implemented at 'interference level' 2, i.e. 'targeted data access'.

Bound to fail? To the contrary: Nothing to lose - we can only win!
The way forward

Next Workshop: 14 May 2018
What do we expect?

1. Consolidated Data Matrix with MS contributions

2. Deepen the debate on Data Retention at EU level:
   - Commission e-evidence proposal
     -> Commission Production Order
   - European Investigation Order (EIO)