

Annex: Summary of the positions of the 3 institutions

	COM proposal	LIBE Committee position	Council position
Scope	telephony, internet access, e-mail and telephony location data (implicitly) unsuccessful calls.	telephony, internet access and telephony location data <i>only at start 'opt-in' on unsuccessful calls</i>	telephony, internet access, e-mail and telephony location data <i>only at start unsuccessful calls only where stored or logged, no unconnected calls</i>
Data retained	Generated or processed	Generated and processed	Generated or processed
Retention periods	12 months telephony, 6 months internet	6-12 months	6-24 months + possibility for extension of the maximum period if the Member State [MS] is facing particular circumstances (Article X)
Purpose of retention	<i>prevention</i> , detection, investigation and prosecution of serious crime, such as terrorism and organised crime	detection, investigation, and prosecution of serious crime (as defined in Article 2(2) of European Arrest Warrant [EAW])	detection, investigation, and prosecution of <i>serious crime, as defined by national law</i> + declaration in Annex III whereby MS " shall have due regard to Article 2(2) of EAW and crime involving telecommunication "
Purpose of access	Data provided to competent national authorities, in specific cases and in accordance with national legislation for the same purposes as above	Data provided to competent national authorities, <i>following the approval of the judicial authorities</i> , in specific cases and <i>in accordance with the provisions of the Directive and within in the provisions of the national judicial system</i> for the same purposes as above	Data provided to competent national authorities, in specific cases and in accordance with national legislation
Authorities to have access	Competent authorities determined by MS	<i>Authorities defined as: judicial and national authorities responsible for detection, investigation and prosecution of serious crime</i>	Competent authorities determined by MS
Access	No detailed rules	<i>Detailed article providing for rules on access, including transmission of data to third countries</i>	in line with ECHR rules of necessity and proportionality
Unsuccessful calls	Obligation that providers retain data	An opt-in where MS can choose to oblige telecoms to store the data	Only the data that providers already retain i.e. where it is 'stored and logged'.

Costs	Reimbursement of demonstrated additional costs as a consequence of the Directive	Reimbursement of all demonstrated additional <i>investment and operating costs including additional costs of data protection and costs for making the retained data available to law enforcement</i>	No provision - reimbursement to be left to Member States (& Commission declaration on compatibility with State aid rules)
Flexibility under Article 15 (1) of Directive 2002 (58)	Flexibility of data retention for other purposes – no flexibility outside the directive for the purposes in the directive	Flexibility only for other purposes	Complete flexibility – right to retain types of data falling outside scope of the directive and for purposes not covered by the directive, e.g. unsuccessful call attempts, judicial purposes (recital 12bis). And future measures clause as in new Article X
Data protection provisions	Not necessary – covered by existing Directives (95/46 and 2002/58)	Additional provisions proposed in line with existing Directives	Minimum standards as per existing Directives (95/46 and 2002/58)
Deletion of Data		- deletion of the data, which have not been accessed nor preserved, at the end of the retention period - <i>automatic deletion of the data which have been accessed or preserved once the investigation is completed</i>	deletion of data at the end of the retention period except those data which have been accessed and preserved, no rule for the deletion of which have been accessed and preserved data
Penal sanctions	Not included, covered by FD on attacks against information systems and data protection Directives	Effective, proportionate and dissuasive sanctions (including criminal <i>and</i> administrative sanctions) for infringements of the national provisions adopted to implement Directive.	Effective, proportionate and dissuasive sanctions (administrative or criminal)
Statistics	Statistics provided on a yearly bases to include: - cases where data provided - age of data provided - cases where data unavailable	As COM proposal but also: - <i>statistics to be drawn up by law enforcement authorities</i> - <i>cases where data did not lead to successful conclusion of investigation</i> - <i>cases where data security was breached</i> -	Can accept COM proposal
Review clause	After 3 years COM submits to EP and Council an evaluation of the application of the Directive and of the impact on telecoms operators and consumers (using statistics)	After 2 years COM submits to EP and Council an evaluation of the necessity and effectiveness of the Directive and of the impact on fundamental rights and the telecoms operators and consumers (using statistics)	Can accept Commission proposal and agree to set up a 'review group' to meet and exchange information on technological developments, costs and effectiveness of the application of the Directive

<p>List of data to be retained (Annex) through comitology procedure</p>	<p>Annex to be reviewed through comitology</p>	<p>List moved to body of text and <i>deletion of comitology</i></p> <p>List re-ordered and following <u>data types excluded</u>:</p> <ul style="list-style-type: none"> - <i>end location data</i> - <i>maps of geographical location of cells (due to misunderstanding)</i> - <i>destination of internet communications</i> - <i>MAC address</i> - <i>An opt-in on unsuccessful calls</i> 	<p>List moved to body of text and <i>deletion of comitology</i></p> <p>Can accept most of EP position but also the following <u>additional data types included</u>:</p> <ul style="list-style-type: none"> - <i>e-mail and Internet telephony (as category)</i> - <i>Internet service used</i> - <i>phone numbers in cases of call forwarding or call transfer</i> - <i>removing the word 'Connection Label', using only User ID</i> - <i>destination of internet communications</i> - <i>maps of geographical location of cells (due to misunderstanding)</i>
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