

Answers to the European Commission's questionnaire on data retention (English summary)



Summary of recommendations

1. **The European Commission should propose to repeal Directive 2006/24/EC on retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks (Data Retention Directive).**
2. In the event that the Data Retention Directive 2006/24/EC is not repealed, it should be amended in order to allow Member States to decide whether or not to require the retention of communications data (i.e. **introduce an opt-out right**).
3. In the event that Data Retention Directive 2006/24/EC is not repealed, the language of the legislation should be amended to ensure that **non-commercial providers** are excluded from data retention obligations.
4. In the event that Data Retention Directive 2006/24/EC is not repealed, it should be amended to ensure that all providers covered by the legislation have a right to **full reimbursement of all related investment and operational costs**.
5. In the event that Data Retention Directive 2006/24/EC is not repealed, both it and Directive 95/46/EC should be amended to ensure the **security of the collected data** and a better enforcement of data security measures. In concrete terms, stored data should be encrypted and stored on systems that are separate from providers' other services. Furthermore, they should only be communicated in an encrypted form. A class action right for citizens and for data protection organisations should be introduced. Businesses should be able to sue competitors for data protection breaches. Manufacturers should be responsible when unsafe technology leads to data protection breaches. The entity processing the data, regardless of fault, should be responsible for data protection breaches, and a fixed minimum compensation payment should be established. It should be prohibited to disadvantage consumers who choose to exercise their data protection rights. A foundation which researches and evaluates data processing practices should be established.
6. In the event that Data Retention Directive 2006/24/EC is not repealed, the Directive should ban member states from requiring other types of providers to retain data, and from requiring **additional types of data** to be stored.
7. In the event that Data Retention Directive 2006/24/EC is not repealed, it should be amended so that **location data of mobile devices** (such as mobile phones) as well as data relating to Internet users is not stored.

8. The European Commission **should not support any proposals aimed at easier identification** of telecommunications users. The European Commission should instead facilitate and encourage the cross-border supply of anonymity services.
9. The European Commission should not propose harmonised methods of **storage and transfer** of communications data.
10. The European Commission should not propose that providers store communications records in a **central database**.
11. In the event that Data Retention Directive 2006/24/EC is not repealed, Articles 10 and 14 of the Directive should be amended in order to provide for an authoritative, **independent analysis of the effectiveness and efficiency of data retention**, measured in relation to the investigation of and protection from offences as well as in relation to a cost-benefit analysis of other approaches. Independently of this, the Commission should take the initiative to undertake such research. When reviewing the responses of Member States and preparing the evaluation report, the Commission should indicate that a full assessment of the effectiveness and efficiency of the measure has not yet taken place for the reasons set out above.
12. The European Commission should use the means at its disposal to bring about improvements to the Cybercrime Convention of the Council of Europe. In addition, the Commission should ensure fundamental rights guarantees in future agreements on **export of data to third countries** (such as the SWIFT agreement, PNR data and the High Level Contact Group on data protection and data sharing).

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Arbeitskreis Vorratsdatenspeicherung (German Working Group on Data Retention)

The Arbeitskreis Vorratsdatenspeicherung (AK Vorrat) is a Germany-wide organisation which campaigns against extensive surveillance in general and the blanket logging of telecommunications and other behavioural data in particular.

Homepage und contact details: <http://www.vorratsdatenspeicherung.de>