



Europe

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## Data retention: Impact on Economic Operators

The five major Trade Associations in Europe (CableEurope, GSMA Europe, EuroISPA, ECTA and ETNO) are members of the Data Retention Experts Group of the European Commission. In the context of the Experts Group, as **major industry stakeholders** in the provision of electronic communication services to EU citizens, we wish to bring to your attention a high level summary of our main concerns regarding the implementation of the Data Retention Directive.

The following points were already raised by industry during the adoption process of the Directive and they have proven to be real shortcomings of the Directive at the time of its implementation in the Member States. As we are preparing the evaluation process of the Data Retention Directive (further to Art. 14 of the Directive), it is essential that we learn from the current ‘side effects’, and that enduring issues of concern for the industry are addressed. The industry wants to remind everyone that while there is a strong commitment from our side in the fight against terrorism, the DRD requirements should be consistent with other EU priorities such as the economic recovery, the promotion of investments, the achievement of the EU single market and the consolidation of EU business competitiveness worldwide.

### Lack of Harmonisation

The Data Retention Directive provides broad room for manoeuvre in terms of data to be retained, periods of retention, cost compensation schemes. Consequently, the Directive fails its objective of harmonisation. A system of data retention would be much more effective if operators were obliged to retain the same data in the same format and the same rules were applied for access and handover of that data to LEAs in all Member States.

This lack of harmonisation consequently has an impact on competition at the European level and, therefore, on the completion of the Internal Market.

Therefore, industry recognises the key role of the Experts Group in giving guidance on the implementation of the Directive. The Experts Group or Platform will aid Member States’ LEAs, National Data Protection Agencies and European industry in establishing a coherent approach for implementation particularly with respect to more innovative services.

### Economic Impact

The Data Retention Directive has a significant impact on industry and affects European competitiveness. The e-communications service providers are facing substantial capital and operational costs (for smaller service providers, these costs can be regarded as enormous). The cost reimbursement of service providers therefore remains imperative.

The e-communication service providers are facing enormous costs due to necessary upgrades in their network systems, investments in data storage, technology, as well as investments in IT systems for the translation and processing of massive amounts of data into useful retrievable information for Law Enforcement purposes. Furthermore, operational costs are increased by dedicated staff. Often the most qualified engineers, who are being asked to deal with the requests for information from LEAs or to give evidence in Court, are the most expensive and demanded resources.

Cost compensation of Operators will indirectly ensure a better degree of accountability for data retention investments. Cost reimbursement is therefore not only crucial from an industry perspective, but also from a public policy perspective; it would provide a safeguard to keep traffic data retention as an effective instrument and implementation limited. Otherwise, if LEAs are not requested to compensate costs incurred by operators in the process of retaining data, the instrument to steer towards improving effectiveness and providing usefulness will be lacking, there will be no incentive to limit requests to truly essential cases; to formulate accurate requests; or to exempt certain operators from data retention obligations in cases where their inclusion would be clearly disproportionate.

### **Lack of standardised product solutions**

As a result of failing harmonization, standardization is not occurring. For pan-European operators, the lack of harmonization between Member States often involves proprietary tailor-made solutions per Member State. The lack of possibility for standardization impacts product costs as different vendors do not offer interoperable solutions.

The increasing scale and scope of data retention requirements triggers the need for an increased effort towards standardisation of product features and interfaces. Together with adequately harmonised obligations this will reduce overall implementation and operational costs.

### **Effectiveness**

With regard to the effectiveness of the Data Retention Directive, no adequate cost-benefit appraisal has been undertaken to ensure the proportionality of the measures.

Practice has shown that queries are mostly related to voice telephony data as opposed to Internet data. Therefore, with a view to evaluating the Directive in 2010 and for the sake of efficiency and effectiveness, the focus should be on the harmonized retention of telephony data and not on Internet data.

*The contributors to this joint statement are:*



**ECTA** (European Competitive Telecommunications Association - [www.ectaportal.com](http://www.ectaportal.com)) is the pan-European pro-competitive trade association for European Telecoms companies and represents over 150 communications companies.

For further details, please contact Delphine Bernet-Travert  
- [dbernet@ectaportal.com](mailto:dbernet@ectaportal.com)



**ETNO** (the European Telecommunications Network Operators' Association - [www.etno.be](http://www.etno.be)) is the voice of the European telecommunications network operators with over a decade of experience in shaping EU telecoms policy. The association represents 43 companies located in 36 European countries. They account for an aggregate annual turnover of more than 270 billion € and employ over one million people across Europe.

For further details, please contact Gert Wabeke or the ETNO Office  
- e-mail: [gert.wabeke@kpn.com](mailto:gert.wabeke@kpn.com)  
- [etno@etno.be](mailto:etno@etno.be)



**EuroISPA** is the world's largest association of Internet Service Providers (ISPs), representing the interests of over 1700 ISPs across Europe. With a Secretariat in Brussels, EuroISPA is a major voice of the Internet industry on information society subjects such as cybercrime, data protection, e-commerce regulation, EU telecommunications law and safe use of the Internet. Further information about the organisation (including its composition, aims and position papers) are available from its website: <http://www.euroispa.org>.

For further details, please contact Malcolm Hutty or the secretariat  
- Malcolm Hutty: e-mail: [malcolm@linx.net](mailto:malcolm@linx.net)  
- Secretariat: [secretariat@euroispa.org](mailto:secretariat@euroispa.org), Tel: +32 2 503 22 65



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The **GSMA** in Europe ([www.gsmeurope.org](http://www.gsmeurope.org)) represents 171 mobile operators in 51 countries/areas in Europe and counts around 600 million subscribers. Globally, the GSM Association represents over 700 mobile operators in over 200 countries and counts around 3.8 billion subscribers. In addition, more than 200 manufacturers and suppliers support the Association's initiatives as key partners

For further details, please contact [hakan.hjelmestam@teliasonera.com](mailto:hakan.hjelmestam@teliasonera.com)



CableEurope is the European trade association of cable operators and their national associations active in Europe. The main goal of the Association is to foster co-operation between cable operators and to promote and represent their interests at European and international level. CableEurope members have between them more than 55 million subscribers.

For further details, please contact Simon Kang  
- e-mail: [skang@upcbroadband.com](mailto:skang@upcbroadband.com)