Re. Questionnaire
with a view to take stock of the operation of the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC

REPLIES FROM IRELAND

NOTE: The replies are those to the questions set out in the version of the questionnaire of 30 September 2009.

1. QUESTIONS TO MEMBER STATES

1.A Qualitative and quantitative aspects of the application of Directive 2006/24/EC

1.A.1 Law Enforcement Issues

1.A.1.a Directive 2006/24/EC is in the process of being transposed into Irish law. A Bill to this effect is currently before the Irish Parliament. Accordingly, no statistical data on the application of the Directive is available.

1.A.1.b See response to 1.A.1.a above.

1.A.1.c See response to 1.A.1.a above.

1.A.1.d See response to 1.A.1.a above.

1.A.1.e Type of Crimes

1.A.1.e.1 The retention of communications data is governed at present by Part 7 of the Criminal Justice (Terrorist Offences) Act 2005. Section 63 provides that the Garda Commissioner (i.e. the head of the national police force) may request a service provider to retain certain data for a period of 3 years for the purpose of the prevention, detection, investigation or prosecution of crime and the safeguarding of the security of the State. The types of crime which this covers is not further defined so it includes a broad range of crimes.

Under the Bill which will transpose Directive 2006/24/EC they types of crimes for which data must be retained will be 'serious offences' which are defined as offences punishable by imprisonment for a term of 5 years or
more. In addition, certain offences which are punishable by imprisonment of less that 5 years are also included. these are specifically set out in a schedule to the Bill. they are:

An offence under sections 11 and 12 of the Criminal Assets Bureau Act 1996 (re. identification or obstruction of officers of the Criminal Assets Bureau);
An offence under section 6 of the Criminal Evidence Act 1992 (re. making a false statement in a certificate of evidence);
An offence under section 12 of the Non-fatal Offences against the Person Act 1997 (poisoning);
An offence under section 1 of the Prevention of Corruption Acts 1889 to 1995;
An offence under section 5 of the Protection for Persons Reporting Child Abuse Act 1998.

1.A.1.e.2 This information is not available.

1.A.1.e.3 The retention of communications data is governed at present by Part 7 of the Criminal Justice (Terrorist Offences) Act 2005. This Act related to the retention of data only for the purpose of the prevention, detection, investigation or prosecution of crime.

The Bill to transpose Directive 2006/24/EC will also apply to the retention of data only for the purpose of the prevention of serious offences, the safeguarding of the security of the State and the saving of human life.

1.A.1.e.4 Assessment of the data to be retained

1.A.1.e.5 Directive 2006/24/EC is in the process of being transposed into Irish law. A Bill to this effect is currently before the Irish Parliament. The data to be retained under the Bill are the same as those set out in the Directive.

The retention of communications data is governed at present by Part 7 of the Criminal Justice (Terrorist Offences) Act 2005. This Act does not include data which is not also included in Directive 2006/24/EC.

1.A.1.e.6 See response to 1.A.1.e.5 above.

It is considered that the data to be retained under Article 5 of Directive 21006/24/EC is relevant to law enforcement and will be adequate for this purpose when it has been transposed.

1.A.1.f Details of the requests that are issued

1.A.1.f.1 Directive 2006/24/EC is in the process of being transposed into Irish law. A Bill to this effect is currently before the Irish Parliament. Accordingly, no information of they type requested is available. Furthermore, the
information sought in this question is outside the scope of Directive 2006/24/EC.

1.A.1.f.2 See response to 1.A.1.f.1 above.

1.A.1.g Directive 2006/24/EC is in the process of being transposed into Irish law. A Bill to this effect is currently before the Irish Parliament. Accordingly, no information of the kind sought is available.

1.A.1.h See response to 1.A.1.g above.

The retention of communications data is governed at present by Part 7 of the Criminal Justice (Terrorist Offences) Act 2005. No time frame is set out in the Act.

1.A.1.h.1 See response to 1.A.1.h above.

1.A.1.h.2 See response to 1.A.1.h above.

1.A.1.h.3 See response to 1.A.1.h above.

1.A.1.i Reimbursement of costs

1.A.1.i.1 Directive 2006/24/EC is in the process of being transposed into Irish law. A Bill to this effect is currently before the Irish Parliament.

The retention of communications data is governed at present by Part 7 of the Criminal Justice (Terrorist Offences) Act 2005. No provision is made in the Act for the reimbursement of costs for capital or operational expenditure incurred by service providers.

1.A.1.i.2 See response to 1.A.1.i.1 above.

1.A.1.j Effectiveness - What is the success rate of the use of retained data

1.A.1.j.1 Directive 2006/24/EC is in the process of being transposed into Irish law. A Bill to this effect is currently before the Irish Parliament. Therefore it is not possible to answer this question.

The retention of communications data is governed at present by Part 7 of the Criminal Justice (Terrorist Offences) Act 2005. The information sought in this question is not available.

Furthermore, the information is outside the scope of Directive 2006/24/EC.

1.A.1.j.2 See response to 1.A.1.j.1 above.
1.A.1.j.3 See response to 1.A.1.j.1 above.

1.A.2 National and transnational requests and answers

The information sought under this heading is considered to be outside the scope of Directive 2006/24/EC.

1.A.2.a.3 Directive 2006/24/EC is in the process of being transposed into Irish law. A Bill to this effect is currently before the Irish Parliament. Therefore there is no information available to answer this question.

Assistance to foreign police or judicial authorities, including in relation to the provision of retained communications data, is provided in accordance with legislation governing mutual legal assistance - Criminal Justice (mutual Assistance) Act 2008.

In the most recent period for which information is available (2009 to end November) the number of foreign mutual legal assistance requests received by the Central Authority for Mutual Assistance seeking access to retained communications data was 20.

Information in relation to outgoing transnational requests is not available as the Central Authority for Mutual Assistance does not keep records of the type of assistance being sought by the relevant requesting Irish authorities.

1.A.2.a.4 As Directive 2006/24/EC has not yet been transposed there are no comparative figures available at this stage,

1.A.2.b.1 This information is not available.

1.A.2.b.2 This information is not available. Factors affecting the time to respond to a request for information include that the request is in compliance with the Criminal Justice (mutual Assistance) Act 2008, the age of the information being sought, the number of service providers to be contacted, the purpose for which the information is sought, securing a court date to have the information taken as evidence, whether the decision to provide the information is challenged by the person in respect of whom it is sought.

1.A.2.b.3 Insofar as the requesting authority can help in reducing the time taken to respond to a request, full and proper compliance with Criminal Justice (mutual Assistance) Act 2008 will assist in speedily processing requests.

1.A.2.c A decision on issuing an outgoing mutual legal assistance request must be made by a judicial authority, such as the independent Director of Public Prosecutions.
1.A.2.d All outgoing mutual legal assistance requests are issued through the Central Authority for Mutual Assistance.

All incoming mutual legal assistance requests must be sent to the Central Authority for Mutual Assistance.

1.A.2.e Costs

1.A.2.e.1 No provision is made in the Criminal Justice (Mutual Assistance) Act 2008 for the reimbursement of costs to service providers.

1.A.2.f Language

1.A.2.f.1 Mutual Legal Assistance requests must be received in either Irish or English.

1.A.2.f.2 Where outgoing requests are required to be in a language other than English, official translations are provided, usually by privately contracted translation agencies.

1.A.2.g Data Security

1.A.2.g.1 There are strong data protection provisions in Irish law to protect individuals against unlawful processing or disclosure of personal data. The Data Protection Acts 1988 and 2003 (the latter implementing the EU Data protection Directive 95/46/EC) reinforce the fundamental right to privacy of the individual. Data controllers and data processors must comply with the principles of data protection set out in the legislation. The legislation established an independent Data Protection Commissioner and individuals whose rights are infringed can make a complaint to the Commissioner who will investigate whether there has been a breach of the Act and order that data be corrected or deleted.

1.A.3 Telecommunications Authorities

1.A.3.a Allocation of tasks.

1.A.3.a.1 to 1.A.3.a.7 Directive 2006/24/EC is in the process of being transposed into Irish law. A Bill to this effect is currently before the Irish Parliament. Therefore there is no information available to answer this question.

The information sought is considered to be outside the scope of Directive 2006/24/EC.
1.B Evaluation of the effectiveness of existing (non-) legislative measures or technical solutions to ensure traceability of users of communications services, in particular mobile phone lines, opened with prepaid SIM cards (cf Council conclusions)

1.B.1 Law enforcement issues

The information sought in this section is considered to be outside the scope of Directive 2006/24/EC.

1.B.1.a The issue of the problems encountered by law enforcement by the use of pre-paid SIM cards has existed for some time. Any measure to compel the registration of pre-paid SIM cards or mobile phones must be one which is efficient, cost effective and demonstrably workable. Nevertheless, the question of what measures can be taken to identify the users of pre-paid SIM cards is being considered.

1.B.1.b See response to 1.B.1.a above.

1.B.1.c Efficiency

1.B.1.c.1 Directive 2006/24/EC is in the process of being transposed into Irish law. A Bill to this effect is currently before the Irish Parliament. Therefore there is no information available to answer this question.

1.B.1.c.2 See response to 1.B.1.c.1 above.

1.B.1.c.3 See response to 1.B.1.c.1 above.

1.B.1.c.4 See response to 1.B.1.c.1 above.

1.B.1.d See response to 1.B.1.a above.

1.B.1.e This is an operational matter for An Garda Síochána (national police force).

1.B.2 Telecommunications authorities

1.B.2.a See response to 1.B.1.a above.

1.B.2.b See response to 1.A.3.a.1 to 1.A.3.a.7 above.

1.B.2.b.1 See response to 1.A.3.a.1 to 1.A.3.a.7 above.

1.B.2.b.2 See response to 1.B.1 above.