European Judicial Cybercrime Network declaration in support of new European legislation on access to data for criminal investigations

The **European Judicial Cybercrime Network (EJCN),** a network of practitioners specialised in cybercrime, digital evidence and technology with an impact in criminal investigations, wishes to call attention to the need for a European comprehensive framework aimed at modernising retention and access to digital evidence for the purposes of criminal investigations.

We wish to highlight that the effectiveness of criminal investigations requiring digital evidence would be greatly improved with the creation of a legal framework, which could adequately balance the right to privacy of individual users and victims, in particular the rights of the most vulnerable, such as victims of child sexual abuse.

The challenge of digital evidence

As judicial authorities specialised in cybercrime, we have observed that digital evidence is increasingly important for modern criminal investigations. To maintain public safety and ensure justice for victims, judicial and law enforcement authorities often require access to data, either stored or in transit. However, we also believe that such access must be balanced with individuals' fundamental right to privacy, as established in the jurisprudence of the Court of Justice of the European Union (CJEU).

The need for future-proof harmonisation

During the 16th plenary of the EJCN held on 3 and 4 June 2024, we concluded that the current absence of harmonised data retention legislation across the EU and the challenges in implementing CJEU requirements on data retention have negatively affected the essential gathering or validity of digital evidence, along with international cooperation in cybercrime cases.

We have also concluded that a minimum-level legal regime, creating harmonised EU rules on data retention and access, would be a very relevant tool in reducing legal uncertainty and improving the efficiency of criminal investigations.

From our discussions, we understand that this new legal framework on data retention should be technologically neutral and cover all data handlers, including over-the-top providers and other services generating and storing data for the benefit of their users. In our perspective, the issue of data access also needs to be considered, and intelligible data should be provided in accordance with the best technological solutions; this would guarantee users' privacy in addition to timely and effective remediation for victims of crimes.

Ensuring fundamental rights protection and accountability

We firmly believe that data protection and privacy rules should be taken into account, including the principles of necessity, proportionality and legality under judicial supervision. However, rules on accountability and enforceability for service providers would also be an essential element, including administrative or other sanctions to ensure appropriate compliance.

As practitioners working on cybercrime and digital evidence, we believe that the creation of new EU legislation on data retention and access would be very beneficial in ensuring that judicial and law enforcement authorities have the tools and capabilities they need to protect public safety and uphold justice for victims, while respecting fundamental rights.

In this role and by using the expertise present in the EJCN, we conclude that establishing a clear, consistent, technologically neutral and rights-respecting framework for data retention and access would be of great benefit to the efficiency of criminal investigations and the protection of EU citizens, namely against cybercrime, organised crime, terrorism and child sexual abuse.

Therefore, we can suggest to European policymakers to continue to develop their best efforts on this topic and to consider the creation of this legal framework, addressing the challenges on data retention and access in a manner that upholds fundamental rights and the rule of law.

More information on the EJCN: **https://www.eurojust.europa.eu/judicial-cooperation/practitioner-networks/european-judicial-cybercrime-network**