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NOTE

From:	Presidency
To:	Delegations
Subject:	High-Level Group on access to data for effective law enforcement: state of play and envisaged next steps

State of play

The High-Level Group on access to data for effective law enforcement ('the HLG') was established by a Commission decision on 6 June 2023. It is composed of experts nominated by the Member States, representatives of relevant EU bodies and agencies, and the EU Counter-Terrorism Coordinator. The group has been co-chaired by the Commission and the rotating presidencies of the Council.

At its fourth meeting, held in May 2024, the HLG endorsed a set of recommendations to support a comprehensive EU approach to ensure access to data for effective law enforcement.

On 29 May 2024, the Standing Committee on Operational Cooperation on Internal Security (COSI) discussed the recommendations formulated by the HLG, expressed support for the HLG process and welcomed the work done by the experts.

At the JHA Council meeting on 13 June 2024, home affairs ministers held an exchange of views on the HLG recommendations, broadly welcomed the work done by the HLG experts and highlighted the need to proceed swiftly with the work on access to data for effective law enforcement. They confirmed the priorities identified by COSI, namely:

1. a harmonised EU legal framework for data retention,
2. the establishment of rules on access to data pertaining to interpersonal electronic communication, and
3. legally and technically sound solutions to access encrypted electronic communication, in individual cases and subject to a judicial order, for the purpose of preventing, investigating and prosecuting serious and organised crime as well as terrorism.

Furthermore, ministers advocated strengthening the EU's role in the standardisation of protocols and technologies, and taking a coordinated approach on the certification of digital forensics tools and procedures. Finally, they insisted on the need to develop a roadmap for the implementation of the recommendations, with a clear timeline, an assessment of the feasibility, and adequate financial resources.

COSI was deemed the appropriate body to monitor the implementation of the recommendations, supported by the Coordinating Committee in the area of police and judicial cooperation in criminal matters (CATS) where appropriate. Ministers for justice were informed of the HLG recommendations on 14 June 2024.

Next steps

The Hungarian Presidency and the Commission, with the continuous support of the previous presidencies (Sweden, Spain, Belgium), are committed to facilitating the preparation of a concluding report by the HLG. Throughout the process, HLG experts have been consulted by the Commission, including in writing, to get a clearer picture of how to operationalise the recommendations. The concluding report will explore in more depth the rationale behind the recommendations and reflect the experts' suggestions for possible ways forward. In line with the structure of the working groups established in the context of the HLG, the report will delve into the issues and possible solutions related to digital forensics, data retention and lawful interception. It will do so through the lens of legal, capacity-building and cooperation dimensions.

The HLG concluding report is expected to be presented at the COSI meeting on 27 November 2024, following the final HLG plenary meeting scheduled to take place on 15 November 2024.

Based on the concluding report and taking into account the priority setting by the Council, the new Commission, once in office, will be in a position to consider the request by the Council to prepare a roadmap for the implementation of the recommendations.

In parallel, the Presidency is exploring possibilities to launch some actions without delay, making the best use of existing operational structures such as the EU Innovation Hub for Internal Security and the EU agencies, in accordance with their respective mandates. An exchange of views on the implementation of recommendations made by the HLG in relation to encryption was held at the COSI Support Group meeting on 9 September 2024, based on the first report on encryption prepared by the Innovation Hub.

Conclusion

The Presidency invites delegations to take note of the state of play and the envisaged next steps for the work of the HLG.