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NOTE

From: Presidency
To: Permanent Representatives Committee/Council
Subject: Access to data for effective law enforcement / “going dark”
– State of play

At the informal meeting of justice and home affairs ministers on 26 January 2023, ministers discussed the challenges faced by judicial and law enforcement authorities to access relevant data to fight crime in the digital age under the agenda point “going dark”. Ministers gave broad support to the Presidency’s proposal to establish a new forum gathering all relevant actors to work on the issue of law enforcement access to data, jointly and comprehensively. Ministers tasked the Standing Committee on Operational Cooperation on Internal Security (COSI) to take the matter forward.

On 22 February 2023, COSI held a first discussion on the Presidency’s proposal to establish a High-Level Expert Group on access to data for effective law enforcement (HLEG). The HLEG was proposed to be co-chaired by the Presidency and the Commission, and to be comprised of a plenary and dedicated working groups. The proposal received broad support in COSI, and delegations expressed that encryption and data retention were the most pressing challenges to be addressed.

Considering the feedback from COSI, a draft scoping paper was presented at the informal COSI meeting on 30 March 2023. Following endorsement of the scoping paper for the High-Level Expert Group on access to data for effective law enforcement¹ by COSI, a formal process was launched in the Commission to prepare a decision on the creation of the HLEG, based on the scoping paper. Following a presentation of the state of play at the COSI meeting on 16 May 2023, the Presidency invited delegations to nominate their representatives for the group.

The objectives of the HLEG will be to establish a collaborative and inclusive platform to overcome silos and work towards commonly accepted solutions. It should formulate a strategic forward-looking vision and propose recommendations for the further development of Union policies and legislation to enhance and improve access to data for effective law enforcement. It should contribute to integrating a law enforcement perspective, including privacy and data protection requirements, in all relevant EU policies and actions. The group is expected to present its final recommendations to COSI by mid-2024.

The Presidency, together with the Commission, has initiated the preparations for a first meeting of the group, scheduled to be held on 19 June 2023 in the Council premises. At this first meeting, the HLEG should decide on its rules of procedure, the concrete challenges to address and the tasks and expected outcomes of the respective working groups.

COSI, CATS and other relevant working formats of the Council should be regularly informed about the group's activities.

¹ 8281/23