

Opening Statement

Communications [Retention of Data] Amendment Bill 2022

Introductions

Good morning members of the Committee. I will shortly provide an overview of An Garda Síochána's position on the **Communications (Retention of Data) (Amendment) Bill 2022**, which is focused on addressing the immediate impact of recent judgements from the Court of Justice of the European Union (CJEU) including the Graham Dwyer case.

As you are aware, in the Graham Dwyer case the Court of Justice of the European Union (CJEU) ruled that EU law prohibited the general and indiscriminate retention of electronic and location data and found that in Ireland's case, section 6(1)(a) of the **Communications (Retention of Data) Act 2011 was inconsistent with EU law.**

Members of the Committee, An Garda Síochána welcomes the **Communications (Retention of Data) (Amendment) Bill 2022.**

With regard to this Bill, we welcome the provision contained in same to seek and retain electronic traffic and location data in order to mitigate against risks posed to our National Security.

An Garda Síochána also welcomes the provisions in the Bill to allow for the lawful access to subscriber data and information on Internet Protocol (IP) addresses which will be invaluable in sensitive criminal investigations.

AGS similarly acknowledges the provision in the Bill to access location information in high risk missing person's cases to allow us to meet our **Article 2** obligations to preserve life.

AGS welcomes the fact that judicial authorisations will be required to preserve and access data and this in turn will provide reassurance to the public of the independence of the process, bolstering the protections to the right to privacy and the right to protection of personal data.

Unfortunately, from the perspective of investigating serious crime, significant difficulties are foreseen, we are however cognisant that the Bill has to conform to the jurisprudence of the CJEU. Going forward the issue of targeted retention is a challenge for all countries in the EU and not just Ireland and it is

acknowledged that the current Bill will be followed by additional legislation, intended to address other outstanding issues.

As you will probably aware, a significant feature of criminal investigations is the use of electronic traffic and location data to provide investigative opportunities to gather evidence. In that regard, there is also a positive obligation on foot of rulings by the Superior Courts in Ireland, which mandates AGS to seek out and preserve all evidence, which tends to show the guilt or innocence of a person suspected of involvement in a crime.

Under the scheme of the Bill, whilst AGS will be able to utilise Preservation and Production Orders to secure evidence, this process will be forward-looking and not retrospective. This will cause significant difficulties in criminal investigations, which usually commence post incident. However, this restriction does not arise in relation to matters relating to National Security matters.

Where the Bill will be of most benefit is where AGS is aware in advance of the communications methods being utilised by for example an Organised Crime Group, but unfortunately this is rarely the case. In the norm, many of our criminal investigations look back into the past and utilise post incident analysis. This will no longer be possible and this will be a significant challenge for criminal investigations.

AGS would urge wider consultation with Communication Service Providers during the transition phase and post the enactment of the Bill to examine the availability of data during this phase.

If any member of the Committee have any questions both my colleague and I are keen to assist.

Thank You.