



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 5 April 2005 (08.04)
(OR. fr)**

**6725/05
ADD 1**

**PV/CONS 10
JAI 66**

ADDENDUM to DRAFT MINUTES¹

Subject: **2642nd meeting of the Council of the European Union (**JUSTICE AND HOME AFFAIRS**), held in Brussels on 24 February 2005**

¹ The information from the Council minutes which is set out in this addendum is not confidential and may therefore be released to the public.

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Agenda items released to the public concerning the final adoption of Council acts

"A" items: (list: 6588/05 PTS A 7)

When finally adopting the "A" items relating to legislative acts, the Council agreed to enter the following in these minutes:

Item 2. Council Framework Decision on attacks against information systems

15010/04 DROIPEN 64 TELECOM 170

- + COR 1 (de)
- + REV 1 (cs)

The Council adopted the above framework Decision. (Legal basis: Articles 29, 30(1)(a), 31(1)(e) and 34(2)(b) of the Treaty on European Union).

1. Statement by the Commission

"The Commission regrets that Article 6(2) of the Framework Decision does not provide for a minimum level of penalty for the illegal access offence as defined in Article 2."

Item 3. Council Framework Decision on confiscation of crime-related proceeds, instrumentalities and property

14648/04 DROIPEN 63

- + COR 1 (cs)
- + COR 2
- + COR 3 (da)
- + REV 1 (sl)
- + REV 2 (pl)

The Council adopted the above framework Decision. (Legal basis: Articles 29, 31(1)(c) and 34(2)(b) of the Treaty on European Union).

Item 4. Council Framework Decision on the application of the principle of mutualrecognition to financial penalties

6838/04 COPEN 24

- + COR 1 (de)
- + COR 2 (sv)
- + COR 3 (de)
- + COR 4 (sv)
- + REV 1 (pl)

The Council adopted the above framework Decision. (Legal basis: Articles 31(a) and 34(2)(b) of the Treaty on European Union).

2. Statement by the Commission

"The Commission holds that compensation orders such as mentioned in Article 1(b)(ii) are covered by Council Regulation (EC) No 44/2001 on jurisdiction and enforcement of judgements in civil and commercial matters and are therefore not to be considered financial penalties according to Article 1(b) of this Framework Decision."

3. Statement by the Council

"The Council takes note that Germany intends to submit an initiative for a further Framework Decision containing measures on cooperation between Member States in proceedings for road traffic offences, following corresponding provisions in the draft agreement of the Council on cooperation between the Member States of the European Union in proceedings for road traffic offences and the enforcement of financial penalties in respect hereof. The Council will examine the proposal with a view to the early adoption of such measures."

4. Statement by the Council

"The Council takes note that the agreement on Articles 5, 7(2)(g) and 20(3) is without prejudice to:

- the positions of the Member States in respect of solutions to be found regarding future instruments on mutual recognition in criminal matters, and
- the interpretation of existing instruments on mutual recognition in criminal matters."

5. Statement by Germany on the reference to conduct which infringes road traffic regulations in Article 5(1)

"Only infringements of traffic rules and of rules for the protection of traffic installations shall be regarded as infringements, and not general criminal offences or infringements of general regulatory provisions. Hence, only those provisions whose protective purpose concerns the safety of road traffic or the maintenance of traffic installations shall be understood to be provisions regulating road traffic."

6. Statement by Austria

"Austria declares that it will recognise and execute decisions on offences under the last indent of Article 5(1) without verification of double criminality as provided for in Article 5(3) only if the issuing State has indicated in the Certificate the details of the offence, the relevant legal rules and the precise provision of the instrument, adopted on the basis of the TEC or the TEU, which constitutes the legal basis for the decision."

7. Statement by the Commission

"The Commission emphasises that Article 6 of the Treaty on the European Union requires the respect of fundamental rights arising from the constitutional traditions common to Member States. To the extent that Recital 6 refers to constitutional principles which are not common to Member States, it should be construed so as only to allow a Member State to apply those of its constitutional principles which are not common to its own procedures."

8. Statement by Portugal

"Portugal declares that it intends to make use of the possibility provided for in Article 20(2)(b) with regard to recognition of decisions concerning legal persons, limiting such recognition to cases in which the obligation to provide for the criminal liability of legal persons is laid down in a European Union instrument."

9. Statement by Austria

"The Republic of Austria declares pursuant to Article 20(2)(b) of the Framework Decision that it is limiting its application, with regard to legal persons, for a period of 5 years from the date of entry into force to decisions related to conduct for which a European instrument provides for the application of the principle of liability of legal persons."

10. Statement by Ireland and Sweden

"Ireland and Sweden consider that Recital 6 (and similar recitals in other Framework Decisions of the EU dealing with mutual recognition of decisions in criminal matters) should be construed as not preventing a Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media, even though they may not be common to all Member States, when providing for the execution of a decision of relevant authorities of other Member States. In the opinion of Ireland and Sweden, any interpretation of Recital 6 which would restrict its applicability to a Member State's own procedures would not only make the provision redundant but would contradict its very terms."

Item 9. Council Decision concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism

10667/04 SIRIS 74 SCHENGEN 5 COMIX 415

- + COR 1 (sv)
- + REV 1 (hu)

The Council adopted the above Decision. (Legal basis: Articles 30(1)(a) and (b), 31(a) and (b) and 34(2)(c) of the Treaty on European Union).

11. Statement by the German delegation

"Germany would point out that national members of Eurojust and their assistants, when carrying out their work for Eurojust, are not subject to national law but only to the Eurojust Decision. The technical arrangements for access to the SIS by national members of Eurojust must therefore be determined by the Council. Germany proposes that a technical access model be developed that is similar to that chosen for the partial participation of the United Kingdom and Ireland in the SIS."

12. Statement by the German delegation

"Germany would point out that the different wordings used in Article 101a(1) and 101b(1), under which only Europol is to have the right to search SIS data "directly", do not necessarily mean that no provision may be made for direct access by Eurojust (for the national members of Eurojust and their assistants)."

13. Statement by the German delegation

"Germany welcomes the agreement that has been reached on the SIS initiative put forward by Spain. Germany would continue to argue that the authorities that issue residence permits for aliens need access to data on aliens in accordance with Article 95 of the Schengen Convention. It is also essential for Eurojust to have access to data in accordance with Article 100 of the Schengen Convention. Germany assumes that a start will be made without delay on examining the question of extending Eurojust's access to further categories of data, as already proposed at the Council meeting on 19 December 2002, taking account of the requirements set out in the letter from the Eurojust College. Germany also assumes that the Member States will soon reach consensus on these issues in the context of further discussions on the development of the SIS, and suggests that a specific brief should be given to the relevant working party."
