ADDENDUM to DRAFT MINUTES\(^1\)

Subject: 2709th meeting of the Council of the European Union (JUSTICE and HOME AFFAIRS), held in Brussels on 21 February 2006

\(^1\) The information from the minutes which is contained in this document is not confidential and may therefore be released to the public.
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"A" ITEM

Item 10. Regulation of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders code) ................................................................. 3

"B" ITEM

"A" Items (list: 6390/06 PTS A 6)

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


The Council approved the amendments contained in the European Parliament's opinion and adopted the proposed act as amended. The Hungarian delegation voted against and the Slovenian delegation abstained. (Legal basis: Article 62(1) and (2)(a) of the Treaty establishing the European Community).

1. Statement by the Republic of Slovenia

"The Republic of Slovenia reaffirms its willingness to comprehensively implement the Community Code on the rules governing the movement of persons across borders; however, through this statement, Slovenia wishes to draw attention to the possible consequences of rigorous application of Article 7 of the Code.

As one of the most frequently used entry points to the territory of the European Union, Slovenia is aware of its responsibility to perform border checks in the interests of all the Member States. Furthermore, it wishes to stress that rigorous application of border checks to all third country nationals on the scale provided for in Article 7 of the Regulation will most probably cause severe disruptions in international road traffic at border crossings. That being so, Slovenia cannot take sole responsibility for possible delays at the border."
"B" items (Agenda: 6388/06 OJ/CONS 7 JAI 58)


PE-CONS 3677/05 COPEN 200 TELECOM 151 CODEC 1206 OC 981
+ COR 1 (en) + COR 2 (it) + COR 3 (da) + COR 4 (et) + COR 5 (es)
+ COR 6 (hu) + COR 7 (mt) + COR 8 (sl) + COR 9 (pt) + COR 10 (cs)
+ COR 11 (da)
+ REV 3 (sv) + REV 5 (fi) + REV 6 (lv) + REV 7 (lt)
+ REV 8 (nl) + REV 9 (pl) + REV 9 COR 1 (pl) + REV 10 (de)
+ REV 11 (el)

The Council approved the amendments contained in the European Parliament's opinion and adopted the proposed act as amended. The Irish and Slovak delegations voted against. (Legal basis: Article 95 of the Treaty establishing the European Community).

2. Joint statement by the Council and the Commission in relation to Article 12 (Evaluation) of the draft Directive

"The Commission will invite Member States and the European Parliament, the European Data Protection Supervisor and representatives from the electronic communications industry to regular review meetings to exchange information about technological developments, costs and effectiveness of application of the Directive. The first meeting will take place before the end of 2006.

During this process, Member States will be invited to inform partners of their experiences in implementing the Directive and share best practices. On the basis of the outcome of such meetings, the Commission will consider presenting any necessary proposals, including with regard to any difficulties which may have emerged for Member States in relation to the technical and practical implementation of the Directive, in particular its application to Internet e-mail and Internet telephony data."

3. Declaration by the Council concerning Article 1

"In defining "serious crime" in national law Member States shall have due regard to the crimes listed in Article 2(2) of the Framework Decision on the European Arrest Warrant (2002/584/JHA) and crime involving telecommunication."
4. **Statement by the Commission**

"The Commission recognises that retention of data may generate significant additional costs for electronic communication providers, and that reimbursement by Member States of demonstrated additional costs incurred by undertakings for the sole purpose of complying with requirements imposed by national measures implementing this Directive for the purposes as set out in the Directive may be necessary. In assessing the compatibility of such aids with the Treaty, the Commission will, inter alia, take due account of such necessity and of the benefits in terms of public security impact on society in general of the data retention obligations flowing from the Directive."

5. **Statement by the Commission concerning Article 15(1) of Directive 2002/58/EC**

"The Commission recalls that the fundamental principles of necessity and proportionality govern the application of Article 15(1) of Directive 2002/58/EC and Article 11 of this Directive."

6. **Statement by the Republic of Poland concerning the withdrawal of the parliamentary scrutiny reservation**

"Poland withdraws its reservation and supports the adoption of the Directive as a valuable instrument in combating crime. In lodging its reservation, Poland did not intend to block the adoption of this document. The reservation was the result of discussions conducted within the Polish parliament aimed at extending the period of retention of data beyond the limits laid down in Article 7 of the Directive. At the same time, the Polish delegation trusts that Article 12 of the Directive will be interpreted in such a way as to allow national solutions implementing the Directive to be tailored to the special nature of the fight against organised crime and to the internal requirements of the criminal policies of each Member State in this area."

7. **Declaration by the Netherlands pursuant to Article 15(3)**

"Regarding the Directive of the European Parliament and of the Council on the retention of data processed in connection with the provision of publicly available electronic communications services and amending Directive 2002/58/EC, the Netherlands will be making use of the option of postponing application of the Directive to the retention of communications data relating to Internet access, Internet telephony and Internet e-mail, for a period not exceeding 18 months following the date of entry into force of the Directive."
8. Declaration by Austria pursuant to Article 15(3)

"Austria declares that it will be postponing application of this Directive to the retention of communications data relating to Internet access, Internet telephony and Internet e-mail for a period of 18 months following the date specified in Article 15(1)."

9. Declaration by Estonia to the Commission and the Council

"In accordance with Article 15(3) of the Directive of the European Parliament and of the Council on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, Estonia hereby states its intention to make use of use that paragraph and to postpone application of the Directive to retention of communications data relating to internet access, internet telephony and internet e-mail until 36 months after the date of adoption of the Directive."

10. Declaration by the United Kingdom

"The United Kingdom declares in accordance with Article 15(3) of the Directive on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC that it will postpone application of that Directive to the retention of communications data relating to Internet Access, Internet telephony and Internet e-mail."

11. Declaration by the Republic of Cyprus pursuant to Article 15(3)

"The Republic of Cyprus declares that it is postponing application of this Directive in respect of the retention of communications data relating to Internet access, Internet telephony and Internet e-mail until the date fixed in Article 15(3)."

12. Declaration by the Hellenic Republic

"Greece declares that, pursuant to Article 15(3), it will postpone application of this Directive in respect of the retention of communications data relating to Internet access, Internet telephony and Internet e-mail until 18 months after expiry of the period provided for in Article 15(1)."
13. Declaration by the Grand Duchy of Luxembourg

"Pursuant to Article 15(3) of the Directive of the European Parliament and of the Council on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, the Government of the Grand Duchy of Luxembourg declares that it intends to make use of Article 15(3) of the Directive in order to have the option of postponing application of the Directive to the retention of communications data relating to Internet access, Internet telephony and Internet e-mail."

14. Declaration by Slovenia

"Slovenia is joining the group of Member States which have made a declaration under Article 15(3) of the "Directive of the European Parliament and the Council on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks", for the 18 months postponement of the application of the Directive to the retention of communication data relating to Internet, Internet telephony and Internet e-mail."

15. Declaration by Sweden pursuant to Article 15(3)

"Pursuant to Article 15(3), Sweden wishes to have the option of postponing application of this Directive to the retention of communications data relating to Internet access, Internet telephony and Internet e-mail."

16. Declaration by the Republic of Lithuania pursuant to Article 15(3)

"Pursuant to Article 15(3) of the draft Directive of the European Parliament and of the Council on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or public communications networks and amending Directive 2002/58/EC (hereafter the "Directive"), the Republic of Lithuania declares that once the Directive has been adopted it will postpone the application thereof to the retention of communications data relating to Internet Access, Internet telephony and Internet e-mail for the period provided for in Article 15(3)."
17. **Declaration by the Republic of Latvia**

"Latvia states in accordance with Article 15(3) of Directive 2006/.../EC of... February 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC that it is postponing application of the Directive to the retention of communications data relating to Internet access, Internet telephony and Internet e-mail until … 2009*."

* 36 months after the date of adoption of this Directive.

18. **Declaration by the Czech Republic on Article 15**

"Pursuant to Article 15(3), the Czech Republic hereby declares that it is postponing application of this Directive to the retention of communications data relating to Internet access, Internet telephony and Internet e-mail until 36 months after the date of adoption thereof."

19. **Declaration by Belgium**

"Belgium declares that, taking up the option available under Article 15(3), it will postpone application of this Directive, for a period of 36 months after its adoption, to the retention of communications data relating to Internet Access, Internet telephony and Internet e-mail."

20. **Declaration by the Republic of Poland**

"Poland hereby declares that it intends to make use of the option provided for under Article 15(3) of the Directive of the European Parliament and of the Council on the retention of data processed in connection with the provision of publicly available electronic communications services and amending Directive 2002/58/EC and postpone application of the Directive to the retention of communications data relating to Internet access, Internet telephony and Internet e-mail for a period of 18 months following the date specified in Article 15(1)."
21. Statement by Finland

"Finland declares in accordance with Article 15(3) of the Directive on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC that it will postpone application of that Directive to the retention of communications data relating to Internet access, Internet telephony and Internet e-mail."

22. Declaration by Germany pursuant to Article 15(3)

"Germany reserves the right to postpone application of this Directive to the retention of communications data relating to Internet access, Internet telephony and Internet e-mail for a period of 18 months following the date specified in the first sentence of Article 15(1)."