



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 1 December 2005

**15101/05
ADD 1**

LIMITE

**COPEN 191
TELECOM 141**

ADDENDUM TO NOTE

from : Presidency

to : COREPER/JHA Council

No. prev. doc. : 14935/05 COPEN 187 TELECOM 139

No. Cion prop. : 12671/05 COPEN 150 TELECOM 96 CODEC 803

Subject : Data retention

**List of outstanding reservations on the text of the draft Directive on data retention
as proposed by the Presidency and as set out in doc. 15101/05 COPEN 191 TELECOM 141 +
COR 1.**

I. GENERAL RESERVATIONS

General reservations linked to the legal basis of the instrument by IE/SI/SK/MT/LT.

General reservation on the text by COM; the College will need to decide on a revision of the current COM position which is reflected in the COM proposal for the Directive.

General scrutiny reservation on the whole text by IT.

General Parliamentary scrutiny reservation by DE/UK.

II. TITLE / RECITALS

Title SE proposes to add "generated or" processed... in the title of the draft Directive.

(11) Proposal by SE to add "generated or" processed...

(12bis) Reservation by PT/COM.

New Recital proposed by FIN and modified by SE:

Reservation by IT.

Scrutiny reservations by several delegations (inter alia FR/BE/DK/SK/COM).

(15bis), (16ter), (17bis): Scrutiny reservation by FR.

(A) Reservation by SE; SE thinks that (A) should be replaced by the Finnish proposal for a recital, as modified by SE.

(20) Reservation by COM.

DE wants a recital according to which Member States have the possibility to reimburse service providers; DE thinks that the COM declaration is not sufficiently to ensure that.

III. OPERATIVE TEXT

Article 1(1)Reservations by GR/PT on deletion of "serious" criminal offences.

Reservation by IT on the deletion of "prevention".

Reservation by COM.

Reservation by FI (FI wants to replace "generated OR processed" by "generated AND processed") in case their proposal for a recital (as amended by SE) is not taken on board.

Article 2(2) point (e) Reservation by DE on "or in which it terminated"; DE thinks this wording should be deleted in accordance with the deletion of location data at the end of a communication.

point (f) Reservation on DE on "unsuccessful call attempt"; DE can accept point f) only on condition that the obligation to delete data on unsuccessful call attempts is deleted from Article 3(2).

Scrutiny reservation by DK.

Article 3(1) Reservation by FI (FI wants to replace "generated OR processed" by "generated AND processed") in case their proposal for a recital (as amended by SE) is not taken on board.

Article 3(2) Reservations by CZ/EE/DE/LV/AT/NL/DE on the inclusion of data on unsuccessful call attempts.

Article 4(1) Reservation by HU on the inclusion of the list of data in the body of the text; HU wants the list of data to be annexed to the Directive.

Reservation by FI (on data relating to Internet access, Internet telephony and Internet e-mail) in case their proposal for a recital (as amended by SE) is not taken on board.

Reservation by DE on paragraph 1(b)(3)(a) and (b) in relation to "intended" recipient(s); DE thinks that the reference to "intended" should be deleted since it covers unsuccessful call attempts.

Reservation by DE on paragraph 1(e)(2)(b) and (d) in relation to "IMSI"; DE thinks that these data should be deleted.

Reservation by NL on paragraph 1(e)(2)(f); NL wants to delete point (f) on activation of pre-paid cards.

Reservation by SE on the deletion of point (e)(3)(c) in paragraph 1 relating to "MAC address".

Reservation by IT/SE/HU on paragraph 1(f) relating to the deletion of location data at the end of the communication.

SE wants to introduce the following new point (c)(2)(c) in paragraph 1: "The date and time of the start and end of the communication."

Article 4(2) Reservation by SE; SE thinks the new paragraph 2 duplicates Article 1(2) second sentence.

- Article 5 Reservation by HU on the deletion of the Article.
- Article 6 Reservation by HU on the deletion of the Article.
- Article 7 Reservations by GR (maximum retention period should be 1 year instead of 2 years), by IE/IT (maximum retention period of 2 years is too low - IE proposes a maximum retention period of 3 years), by SI/LU (minimum retention period of 6 months is too low - SI proposes a minimum retention period of 1 year).
Reservation by COM.
Reservation by HU; HU wants to copy Article 4 of the draft FD. HU has indicated that it is willing to revise its position should it not be supported by any other delegation.
Reservation by FI in case their proposal for a recital (as amended by SE) is not taken on board.
- Article 7bis Scrutiny reservation by FR/HU.
- Article 8bis Scrutiny reservation by FR.
- Article 9 Reservation by FR/DK/DE. DE wants to limit the obligation to provide statistics to the period before the review (Article 12) is undertaken.
Scrutiny reservation by EE;
EE/SE want to include in the first indent a reference to "the number of" cases in which information has been provided.... .
- Article 10 Reservations by GR/PT (costs should be regulated at EU level to avoid distortions of competition) and by CZ (draft Directive should contain a provision on sharing of costs).
Reservation by COM on the deletion of Article 10.
- Article 11 Reservation by COM.

Article X Reservation by COM.
Scrutiny reservations by SK/FR.

Article 11bis Scrutiny reservation by FR/HU.

Article 13 Reservation by NL/SE who think that the implementation period should be 24 months instead of 18 months.
Reservation by FI in case their proposal for a recital (as amended by SE) is not taken on board.
Reservation by COM on the deletion of the reference to the correlation table.

Proposed declaration to be made by COM:

Reservation by COM; COM would be willing to make a declaration, the current drafting, however, is not supported. The declaration as such will be subject to final authorisation and appreciation of the full "package" by the College.
