



# Home Office

## HOME SECRETARY

2 Marsham Street, London SW1P 4DF  
[www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

Jean Marie CAVADA MEP  
Chairman, LIBE Committee  
European Parliament

17 October, 2005.

Dear Jean-Marie,

I thought it would be helpful, following my appearance at the LIBE Committee meeting on 13 October to set out, for the benefit in particular of MEPs who were not able to be present, how the Presidency sees the work on data retention progressing over the coming weeks.

As I said to the Committee, I remain personally committed to reaching agreement on a First Pillar instrument if it can be done by the end of the year. I attach great importance to the Council, the Commission and the European Parliament working together to that end. I also made clear that I see the process as one of genuine consultation and negotiation between the institutions.

However, as I made clear, as President of the JHA Council, I must reflect the views of the Council as a whole. For that reason, I set out for the Committee in some detail the outcome of the Council discussions, notably the Council's view, recorded in its conclusions, that, "the Framework Decision will remain on the table, as an option favoured by a large number of delegations. However, a majority of delegations were also open to a Directive". I made clear, too, that the Council had also agreed that the Presidency should continue contacts with the EP, "in order to maximise common ground between the Council and the EP on issues of substance, while respecting the Council's position". The Council Conclusions on this issue are attached.

The Council discussions themselves made clear that Member States continue to have very different views about the desirability of the First Pillar route. Nonetheless, the Council was able to come to a view about the main elements of

substance that might form the basis for agreement within the Council itself. These covered:

1. Scope of the Directive<sup>1</sup> - inclusion of data on fixed network and mobile telephony; Internet access and Internet communication services (telephony and email); and unsuccessful call attempts, with an extended implementation period of an additional 2 years for Internet data and data on unsuccessful call attempts.
2. Retention periods - approximation based on a minimum level of 6 months for Internet and 12 months for telephony, with a maximum level of 2 years retention, recalling the possibility for Member States who already have national legislation going beyond that period to retain such legislation by virtue of Article 95 TEC.
3. Costs - discretion for Member States to decide at a national level whether to reimburse industry for the additional costs associated with the retention of data for law enforcement purposes, achieved by having no provision at all on costs in the instrument

It is my intention now to work extremely closely with the EP in order to maximise the common ground between the Council and the Parliament and to identify whether there is sufficient common ground between all three institutions to reach agreement by the end of this year. To that end, the views of the Parliament on the specific content of the proposal formally adopted by the Commission on 21 September will be vital and I would urge all Members to play as full and constructive a part as possible in that debate. The Presidency looks forward to hearing the Parliament's specific suggestions shortly. I believe, as I said to the Committee, that the Council, the Commission and the EP have a unique opportunity to develop a mature relationship on JHA matters and to show that we are serious about working together to make a difference to the daily lives of our citizens.

I would also like to take this opportunity to set out briefly the other important areas of discussion at the JHA Council in Luxembourg:

- There was overwhelming support for a simple, uniform procedure for the production and examination of evidence in the European Order for Payment.
- We agreed in principle to take forward work on developing Regional Protection programmes to better protect refugees near their region or origin.
- The Council agreed to work with Europol to moving to an organised crime threat assessment for 2006. Council Conclusions were agreed on this.
- We also made progress on the principles that should apply both to issuing and the execution of European Evidence Warrant.

---

<sup>1</sup> This would be without prejudice to finalising the list of technical descriptions of the types of data falling within these general definitions

- We are nearing conclusion of negotiations on an extradition agreement with Norway and Iceland.
- We made progress in moving towards agreement on the draft Framework Decision on information exchange between law enforcement authorities, which we would hope to finalise in December.



**CHARLES CLARKE**

## **DATA RETENTION CONCLUSIONS**

The Council held an exchange of views on the basis of a paper from the Presidency.

A large number of delegations could accept the elements set out in the Annex to the Presidency note as the basis for further work, subject to maintaining the derogation in Article 15(1) of the 2002 Telecomms Directive and clarifying its future scope.

In the next stage, the Framework Decision will remain on the table, as an option favoured by a large number of delegations. However, a majority of delegations were also open to a Directive.

There was wide agreement that any measure must reflect the elements referred to above, notably in respect of the provisions on retention periods, scope and costs.

The Council agreed that work should be taken forward urgently. It instructed Coreper to finalise agreement on all outstanding issues as soon as possible and agreed that informal contacts with the EP should continue in order to maximise common ground between the Council and the EP on issues of substance, while respecting the Council's position as set out above. The Council agreed to revert to this issue at its next meeting with a view to a final decision before the end of the year.