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INFORMATION NOTE

from : the Legal Service

to : the Committee of Permanent Representatives (Part Two)

Subject : **Case before the Court of Justice of the European Union C-293/12**

Validity of Directive 2006/24/EC of the European Parliament and of the Council of 15 March 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

- Referral to the Court of Justice for a preliminary ruling from the High Court of Ireland

1. The Registrar of the Court of Justice of the European Union notified the General Secretariat of the Council on 10 July 2012 that the High Court of Ireland requested the Court of Justice to give a preliminary ruling on the validity of Directive 2006/24/EC of the European Parliament and of the Council of 15 March 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.
2. The reference to the Court of Justice is made in the course of proceedings between Digital Rights Ireland Limited (the plaintiff), the Minister for Communications, Marine and Natural Resources, the Minister for Justice, Equality and Law Reform, the Commissioner for the Garda Síochána, Ireland and the Attorney General (the defendants) and the Human Rights Commission (the notice party).

3. The following questions are referred to the Court of Justice:

"(1) Is the restriction on the rights of the Plaintiff in respect of its use of mobile telephony arising from the requirements of Articles 3, 4, and 6 of Directive 2006/24/EC incompatible with Article 5.4 TEU in that it is disproportionate and unnecessary or inappropriate to achieve the legitimate aims of:

*(a) Ensuring that certain data are available for the purposes of investigation, detection and prosecution of serious crime?
and/or*

(b) Ensuring the proper functioning of the internal market of the European Union?

(2) Specifically,

(i) Is Directive 2006/24/EC compatible with the right of citizens to move and reside freely within the territory of Member States laid down in Article 21 TFEU?

(ii) Is Directive 2006/24/EC compatible with the right to privacy laid down in Article 7 of the Charter and Article 8 ECHR?

(iii) Is Directive 2006/24/EC compatible with the right to the protection of personal data laid down in Article 8 of the Charter?

(iv) Is Directive 2006/24/EC compatible with the right to freedom of expression laid down in Article 11 of the Charter and Article 10 ECHR?

(v) Is Directive 2006/24/EC compatible with the right to Good Administration laid down in Article 41 of the Charter?

(3) To what extent do the Treaties - and specifically the principle of loyal cooperation laid down in Article 4.3 of the Treaty on European Union - require a national court to inquire into, and assess, the compatibility of the national implementing measures for Directive 2006/24/EC with the protections afforded by the Charter of Fundamental Rights, including Article 7 thereof (as informed by Article 8 of the ECHR)?"

4. The Council is, according to Article 23 of the Statute of the Court of Justice of the European Union, entitled to submit observations within two months of receipt of the notification, in a case governed by Article 267 of the Treaty on the Functioning of the European Union if the act, the validity of which is in dispute, originates from the Council.

 5. The validity of Directive 2006/24/EC of the European Parliament and of the Council of 15 March 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, being in dispute, the Council should make use of this right. In line with practice, the Agents of the Council will restrict their observations to the defence of the validity of the act and will not intervene on its interpretation.

 6. The Director-General of the Legal Service of the Council has appointed Mr Jorge MONTEIRO and Ms Inese ŠULCE, legal advisors in the said service, as the Council's agents in this case.
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