



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL JUSTICE FREEDOM AND SECURITY

The Director-General

Brussels,  
JLS/F3/JVcn D(2010)3986

Your Excellency,

On its Judgment of 2 March 2010 (ref. 1 BvR 256/08, 1 BvR 263/08, 1 BvR 586/08), the German Constitutional Court has held that the national law transposing 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<sup>1</sup>, is incompatible with the constitutional right of the privacy of telecommunications.

I would be obliged to receive information about the impact of this judgment on the application of the Directive in Germany.

With regard to the Judgement of the Constitutional Court itself, I would appreciate if you could provide me with information about the effect of the judgement, not only with regard the retention of traffic and location data, but also concerning subscriber data and IP-addresses.

In its ruling, the Court has stated that Section 113 of the Telecommunications Act lacks the controls necessary to ensure the data is secure and properly utilized, and that the national law should include appropriate standards regarding data security, data use, transparency and legal protection.

I would be grateful if you could clarify the process and timing for the adoption of such national legislation that not only meets the conditions stipulated by the Constitutional Court, but also the requirements of the Data Retention Directive itself.

In view of what precedes, I would be grateful to receive your comments within two months after reception of this letter as well as a copy of relevant legal texts and/or transitory measures that you may consider taking in reaction to the abovementioned judgment.

Yours faithfully,

Jonathan Faull

**His Excellency Mr Edmund Duckwitz**  
**Permanent Representative of Germany to the European Union**  
**Rue Jacques de Lalaing 8-14**  
**B-1040 Bruxelles**

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<sup>1</sup> OJ L 105/54 of 13 04 2006

