

LTT POUR RV DE MIDI	Date: 13/04/2011	Author: HOME-A3
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1. SUBJECT

Data Retention Directive: state of play with Germany.

2. LTT

- The implementation deadline was 15 September 2007 (except for internet related data which was 15 March 2009). Germany transposed the Directive in 2008, but its legislation was annulled by its constitutional court in March 2010.
- The Commission regrets Germany's ongoing delay in transposing and intends to continue to enforce the Data Retention Directive where necessary by means of infringement procedures
- Unless Germany notifies the Commission of a proposal to transpose the Directive as soon as possible, the Commission will be obliged to commence infringement proceedings against it on the basis of non-compliance under Article 258 of the Treaty on the Functioning of the European Union.

3. BACKGROUND

DRD : Implementation status

There are currently five countries that have not transposed the Data Retention Directive:

- **Austria** and **Sweden** have yet to adopt any transposing legislation;
- In **Romania**, **Germany** and more recently the **Czech Republic**, national laws transposing the Directive were declared unconstitutional by their respective Constitutional Courts. The three countries are currently considering how to re-transpose legislation.

In March 2010 the German Constitutional Court annulled the law that transposed the Data Retention Directive. The court did not address the Directive itself. It held that under the German Constitution, retained data should only be requested where there was already a suspicion of a serious criminal offence or evidence of a danger to security. It acknowledged that data retention for strictly limited uses along with sufficiently high security of data would not necessarily violate the German Basic Law. It held that a retention period of six months was at the upper limit of what could be considered proportionate and that data retrieval should be prohibited for certain privileged communications (i.e. those connected with emotional or social need) which rely on confidentiality.

None of the conclusions of the judgment preclude full transposition of the Directive in way that complies with German Basic Law.

In January the German Minister of Justice published proposals for introducing a form of data preservation known as quick freeze plus.

In the Commission's view, this would not be sufficient to transpose the Directive.

On 21 Jan 2011 DG HOME met with German authorities to discuss the situation. The Commission has yet to receive details of the substance or timing of a legislative proposal for transposing the Directive.