

2011/2091	Autre infraction présumée	ALLEMAGNE	Service responsable : HOME/A/03	Etat du dossier au 31/05/2011	Jr.Rs.:	Eq-Jr.:	Resp. Int.: CNH	Resp. Ext.:
Services associés : SGEN/X/00; SJUR/X/00				I. FACTS				
Non-transposition of the data retention DIRECTIVE 2006/24/EC				The deadline for transposition of the Data Retention Directive (2006/24/EC) was 15 September 2007. Because Germany had not communicated any national transposing measures to the Commission by the said deadline, the Commission on 27 November 2007 sent DE a letter of formal notice (reference SG(2007) D207204). On 18 January 2008, DE replied notifying the COM of Telecommunications Surveillance Law of 31 December 2007 (SG(2008) A/00731), which it declared to be the complete transposition of the Directive. On 2 March 2010, the German Constitutional Court in its judgment (ref. 1 BvR 256/08, 1 BvR 263/08, 1 BvR 586/08) annulled the Telecommunications Surveillance Law in its entirety.				
Bases juridiques : Directive:32006L0024				II. CORRESPONDENCE WITH THE MEMBER STATE				
Stade : Non-communication				On 16 June 2010, the Commission sent a letter to Germany through EU Pilot (file number 1174/10/JLSE) requesting clarifications with regard to the transposition of the Directive.				
Procédures en relation : dossier père -> ; dossiers fils ->				On 23 June 2010, Germany confirmed that its Constitutional Court had declared the national law transposing the Directive to be unconstitutional in its entirety and that it had included very detailed requirements in its judgment of what such a law should include.				
Fait Incriminé :				On 27 October 2010, COM invited DE officials to meet officials from DG Home Affairs to discuss the status and timescales of preparations of the new legislation.				
Infringement case 2011/2091 - concerning failure by Germany to communicate measures in compliance with obligation of Article 15 of Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks.				The meeting took place on 21 January. During the meeting, the German delegation undertook to keep the Commission informed about developments. Over four months later, however, no further notifications have been forthcoming from Germany.				
Mise en demeure 258 (ex226) :				III. CONCLUSION AND PROPOSAL				
Decision :				Since the judgment of their Constitutional Court in March 2010, DE has not indicated to COM how and when it proposes to produce new legislation to transpose the Data Retention Directive. It is therefore proposed to issue to DE Article 258 letter of formal notice.				
Envoi :				In its Communication on Implementation of Article 260(3) TFEU (OJ C 12, 15.01.2011, p.1), COM in exercising its discretionary power considers that the Article 260(3) instrument should be used as a matter of principle in all cases of failure to fulfil an obligation, which concern the transposition of directives adopted under a legislative procedure. COM nevertheless recognised that there might be special cases in which it would not deem it appropriate to seek penalties under Article 260(3). In the present case, COM considers that it is appropriate to depart from these general criteria and not to use the Article 260(3) instrument due to several reasons linked to the specificity of the present case:				
Réponse :				1) Germany had notified the national transposition measures, which subsequently have been annulled by the German Constitutional Court.				
Mise en demeure complémentaire 258 (ex226) :				2) It is not certain that the Court of Justice will follow the interpretation by the Commission of the application of Article 260(3) in an exceptional situation of annulment a posteriori of the transposition measures.				
Decision :				3) The transposition of the Data Retention Directive is particularly complex due to the fact that the general obligation to retain data requires adoption of national measures whose implementation may raise sensitive questions linked to fundamental rights, in particular the right to data protection.				
Envoi :								
Réponse :								
Avis motivé 258 (ex226) :								
Decision :								
Envoi :								
Réponse :								
Avis motivé complémentaire 258 (ex226) :								
Decision :								
Envoi :								
Réponse :								
Saisine 258 (ex226) :								
Decision :								
Dépot décision :								
Ref.Aff. :								
D.Arrêt :								
Origine CDO :				Correspondance avec l'état membre (2 dern. évén.):				
16/06/2010:				09/11/2010:EM - Envoi lettre:SG-EUPILOT-DOC-2010-5661				
				03/11/2010:EM - Envoi lettre:SG-EUPILOT-DOC-2010-554				
Historique des décisions (6 dernières décisions) :								

Etat des consultations :							Prop. du service responsable :	25/05/2011:Mise en demeure 258(ex226)::
	MD258(ex226)	MDC258(ex226)	AM258(ex226)	AMC258(ex226)	MD260(ex228)	MDC260(ex228)	Prop. des chefs de cabinet :	10/06/2011:Mise en demeure 258(ex226)::
DG -> SJ							Prop. décision de la Commission :	
SJ -> DG							Position du service juridique :	31/05/2011:Accord SJ:sur Mise en demeure 258:Ares(2011)504421
DG -> SG								

