

2011/2089	Autre infraction présumée	ROUMANIE	Service responsable : HOME/A/03
Services associés : SJUR/X/00; SGEN/X/00			
Non-transposition of the data retention DIRECTIVE 2006/24/EC			
Bases juridiques : Directive:32006L0024			
Stade : Non-communication		Financement communautaire : N	
Procédures en relation : dossier père -> ; dossiers fils ->			

**Fait Incriminé :**  
 Infringement case 2011/2089 - concerning failure by Romania to communicate measures in compliance with obligation of Article 15 (1) 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.

<b>Mise en demeure 258 (ex226) :</b>	<b>Mise en demeure 260 (ex228) :</b>
Décision :	Décision :
Envoi :	Envoi :
Réponse :	Réponse :
<b>Mise en demeure complémentaire 258 (ex226) :</b>	<b>Mise en demeure complémentaire 260 (ex228) :</b>
Décision :	Décision :
Envoi :	Envoi :
Réponse :	Réponse :
<b>Avis motivé 258 (ex226) :</b>	<b>Avis motivé ex228 :</b>
Décision :	Décision :
Envoi :	Envoi :
Réponse :	Réponse :
<b>Avis motivé complémentaire 258 (ex226) :</b>	<b>Saisine 260 (ex228) :</b>
Décision :	Décision :
Envoi :	Dépot décision :
Réponse :	Ref. Aff. :
	D. Arrêt :
<b>Saisine 258 (ex226) :</b>	
Décision :	
Dépot décision :	
Ref. Aff. :	
D. Arrêt :	
<b>Origine CDO :</b>	<b>Correspondance avec l'état membre (2 dern. évén.):</b>
24/05/2011.MAIL DG HOME	

**Historique des décisions (6 dernières décisions) :**

Etat du dossier au 31/05/2011	Jr.Rs.:	Eq.Jr.:	Resp. Int.: CNH	Resp. Ext.:
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**I. FACTS**  
 The deadline for transposition of the Data Retention Directive (2006/24/EC) was 15 September 2007. On 25 November 2008, RO informed COM (internal ref SG/CdC(2008)A/8868 of 26112008 - SG-R-2) that measures transposing the Directive, Law No 298/2008, had been published in the Official Gazette of Romania No 780 of 21 November 2008. On 23 November 2009, the Constitutional Court declared Law No 298/2008 to be unconstitutional in its entirety and annulled it.

**II. CORRESPONDENCE WITH THE MEMBER STATE**  
 On 30 March 2010, in response to COM's letter of 19 January 2010, RO wrote to COM explaining the legal effects of Decision No 1258 of 8 October 2009 of the Romanian Constitutional Court which annulled the provisions of Law 298/2008 as unconstitutional. In that letter, RO stated that it had set up a national, inter-institutional working party to draw up new transposing measures which would comply with the Court's decision. On 27 October 2010, COM invited RO officials to meet officials from DG Home Affairs to discuss the status and timescales of preparations of the new legislation. On 10 January 2011 RO replied accepting the meeting, which subsequently took place on 21 January. During the meeting, RO authorities undertook to send draft law to the Commission. Over four months later, however, no further notification has been forthcoming from Romania.

**III. CONCLUSION AND PROPOSAL**  
 Since the judgment of their Constitutional Court in November 2009, RO 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 RO Article 258 letter of formal notice.

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:

- 1) Romania had notified the national transposition measures, which subsequently have been annulled by the Romanian Constitutional Court.
- 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.
- 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.

<b>Etat des consultations :</b>							<b>Prop. du service responsable :</b>	25/05/2011.Mise en demeure 258(ex226):
	MD258(ex226)	MDC258(ex226)	AM258(ex226)	AMC258(ex226)	MD260(ex228)	MDC260(ex228)	<b>Prop. des chefs de cabinet :</b>	10/06/2011.Mise en demeure 258(ex226):
DG -> SJ							<b>Prop. décision de la Commission :</b>	
SJ -> DG							<b>Position du service juridique :</b>	31/05/2011:Accord SJ sur Mise en demeure 258:Ares(2011)521823
DG -> SG							Document généré par	le 10/06/2011 14:54 cette information est enregistré dans un fichier d'audit

