



EUROPEAN COMMISSION
DIRECTORATE-GENERAL HOME AFFAIRS

Director General

Brussels, 30 SEP. 2011
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**NOTE FOR THE ATTENTION OF MR LUIS ROMERO REQUENA,
DIRECTOR GENERAL OF LEGAL SERVICE**

Subject: Infringement proceedings against Romania for non-compliance with Directive 2006/24/EC (Infringement No 2011/2089)


Since the judgment of the Constitutional Court of Romania in October 2009, which annulled the national legislation transposing Directive 2006/24/EC (the Data Retention Directive), Romania has failed to adopt new measures necessary to comply with the Directive.

On 17 June 2011, the Commission sent an Article 258 letter of formal notice to Romania (ref. SG-Greffe(2011)D/9861). It appears from Romania's reply to this letter on 16 August 2011 that the authorities in Romania are currently preparing new measures for complying with Directive 2006/24/EC. A draft text of these measures was communicated to the Commission. According to Romania's reply, the draft text was foreseen to be submitted to the Government of Romania for approval in the course of September and to be transmitted to the Parliament of Romania as a matter of urgency.

On 29 September 2011, the Commission last discussed the matter with officials from the Permanent Representation of Romania to the European Union. On this occasion, Romania provided written comments on questions the Commission had sent to Romania. The Commission had requested clarifications from Romania with regard to the state of play of the preparations for new legislation for complying with Directive 2006/24/EC and the timetable for the adoption of these measures.

It appears from Romania's written comments that for the time being, the draft text mentioned above is still subject of inter-ministerial negotiations and no draft law is yet approved by the Government of Romania. Furthermore, it appears that the timetable for the adoption of new legislation for complying with Directive 2006/24/EC has been delayed, as according to Romania's written comments the approval of the draft text by the Government of Romania is now foreseen in October.

Against this background, the Commission decided to send an Article 258 reasoned opinion to Romania. As the enforcement of the Data Retention Directive is politically sensitive, it is important to us to proceed with the infringement proceedings against Romania and Germany (Infringement No 2011/2091) in parallel. We apologise for the late consultation due to new information we received by Romania only on 29 September 2011. As we would like to include the reasoned opinion to Romania in the October infringement cycle, we would be grateful for your opinion on this matter as soon as possible.


Stefano Manservigi

Cc: Mr Søren Schønberg, Member of Cabinet of Commissioner Cecilia Malmström
Mr [redacted], Legal Service



EUROPEAN COMMISSION

SECRETARIAT-GENERAL

Brussels,

SG-Greffe(2011)D/

PERMANENT REPRESENTATION
OF ROMANIA TO THE
EUROPEAN UNION
Rue Montoyer, 12
1000 BRUXELLES

RO 258 TFEU/failure to notify measures

02

Subject: Reasoned Opinion – Infringement No 2011/2089

Please find attached a reasoned opinion addressed to ROMANIA in accordance with Article 258 TFEU.

For the Secretary-General

Encl. C(2011).... final



EUROPEAN COMMISSION

Brussels,

Infringement No 2011/2089

C(2011)... final

REASONED OPINION

addressed to ROMANIA

under Article 258 of the Treaty on the Functioning of the European Union,

on account of failure to notify measures necessary to comply with 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 provisions of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC [L 105/54 of 13.4.2006]

REASONED OPINION

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1. Paragraph 1 of Article 15 of Directive 2006/24/EC stipulates that Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by no later than 15 September 2007. They shall forthwith inform the Commission thereof.
2. Paragraph 3 of Article 15 of Directive 2006/24/EC stipulates that until 15 March 2009, each Member State may postpone application of this Directive to the retention of communications data relating to internet access, internet telephony and internet email. ROMANIA made use of this paragraph.
3. Because ROMANIA had not communicated any national transposing measures to the Commission by the said deadline, the Commission launched a procedure under Article 258 of the Treaty on the Functioning of the European Union (former Article 226 TEC) against ROMANIA by sending a letter of formal notice on 27 November 2007 (reference SG(2007)D/207221). ROMANIA responded to the letter of formal notice on 30 January 2008 (reference SG(2008)A/00979) informing the Commission that work was underway on national measures transposing Directive 2006/24/EC into national law.
4. Having not received further information concerning transposition which would have enabled it to close the case, the Commission issued on 23 September 2008 a reasoned opinion (reference SG(2008)D/205717) inviting ROMANIA to take the necessary measures within two months of receipt of the reasoned opinion. ROMANIA, in its response of 26 November 2008 (reference SG(2008)A/08868), informed the Commission that it had adopted Law No 298/2008 that was published in the Official Gazette of ROMANIA No 780 of 21 November 2008. ROMANIA declared this law to be the complete transposition of Directive 2006/24/EC.
5. Against this background, the Commission closed the case in June 2011.
6. On 8 October 2009, by Decision No 1258, the Constitutional Court of ROMANIA declared Law No 298/2008 to be unconstitutional. The Decision was published in Official Gazette No 798 of 23 November 2009.
7. On 19 January 2010, the Commission sent a letter to ROMANIA (JLS/F3/JVcnD(2009)19422) requesting clarifications with regard to the transposition of Directive 2006/24/EC.

8. By letter of 30 March 2010, ROMANIA confirmed that the Constitutional Court had declared the national law transposing Directive 2006/24/EC to be unconstitutional in its entirety. ROMANIA informed the Commission that Law No 298/2008 had ceased its legal effect.
9. It is not disputed that ROMANIA must take new measures to comply with Directive 2006/24/EC as it is clear from ROMANIA's letter of 30 March 2010.
10. In view of the fact that ROMANIA has not informed the Commission of any new provisions adopted to comply with Directive 2006/24/EC following the ruling of the Constitutional Court of ROMANIA and the Commission had no other information enabling it to conclude that ROMANIA had adopted the necessary provisions, the Commission had to assume that ROMANIA had not yet adopted such new provisions.
11. Therefore, in the Commission's view, ROMANIA has failed to fulfil its obligations under Article 15 of Directive 2006/24/EC. It follows from Paragraph 1 of Article 15 that Member States shall not only bring into force the laws, regulations and administrative provisions necessary to comply with this Directive, but shall also take the necessary measures to preserve the validity of these laws, regulations and administrative provisions as long as this Directive is in force.
12. By letter No C(2011)4111 of 17 June 2011 (ref. SG-Greffe(2011)D/9861), and in accordance with the procedure set out in Article 258 of the TFEU, the Commission consequently gave ROMANIA the opportunity to submit its observations on the matter within two months.
13. By letter of 16 August 2011, ROMANIA submitted its observation on the matter to the Commission.
14. On 29 September 2011, the Commission last discussed the matter with officials from the Permanent Representation of ROMANIA to the European Union.
15. It appears from the observations communicated by ROMANIA by letter of 16 August 2011 and confirmed at the meeting on 29 September 2011 that the authorities in ROMANIA are currently preparing new measures for complying with Directive 2006/24/EC.
16. However, as far as the Commission is aware, these measures have still not been adopted, no communication having been made to the Commission to this effect.
17. The Commission considers that it is for the authorities of ROMANIA to implement whatever procedures are necessary in order to comply with Directive 2006/24/EC without delay, and to inform the Commission accordingly.
18. The Commission must therefore conclude that ROMANIA has still not taken new measures necessary to comply with Directive 2006/24/EC and, in any event, has failed to notify it of any such measures.

FOR THESE REASONS

THE EUROPEAN COMMISSION

after giving the Government of ROMANIA the opportunity to submit its observations by letter dated 17 June 2011 (ref. SG-Greffe(2011)D/9861) and in view of the reply of the Government of ROMANIA dated 16 August 2011,

HEREBY DELIVERS THE FOLLOWING REASONED OPINION

under the first paragraph of Article 258 of the Treaty on the Functioning of the European Union, by failing to adopt the laws, regulations and administrative provisions necessary to comply with 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 provisions of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC [L 105/54 of 13.4.2006] or, in any event, by failing to notify such provisions to the Commission, ROMANIA has failed to fulfil its obligations under Article 15 of this Directive.

Pursuant to the first paragraph of Article 258 of the Treaty on the Functioning of the European Union, the Commission invites ROMANIA to take the necessary measures to comply with this Reasoned Opinion within two months of receipt of this Opinion.

Done at Brussels,

For the Commission
Cecilia MALMSTRÖM
Member of the Commission