



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: Supplementary 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

**SUPPLEMENTARY REASONED OPINION**

addressed to ROMANIA

under Article 258 of the Treaty on the Functioning of the European Union,  
on account of failure to adopt or maintain in force 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]

## SUPPLEMENTARY REASONED OPINION

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on account of failure to adopt or maintain in force 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]

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. 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.
12. By letter of 16 August 2011, ROMANIA submitted its observation on the matter to the Commission.
13. By letter No C(2011)7508 (ref. SG-Greffe(2011)D/18406) of 28 October 2011, and in accordance with the procedure set out in Article 258 TFEU, the Commission concluded that 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 and to notify them to the Commission, or, in any event, by failing to maintain such measures in force, ROMANIA had consequently failed to fulfil its obligations under Article 15 of this Directive and under Article 4(3) TEU. The Commission invited ROMANIA to take the necessary measures to comply with this Reasoned Opinion within two months of receipt of the Opinion.
14. By letter of 29 December 2011, ROMANIA communicated to the Commission a legislative proposal for a law on the retention of data generated or processed by the providers of public electronic communications networks and by providers of publicly available electronic communications services as submitted to the Permanent Office of the Chamber of Deputies on 2 November 2011.
15. On 20 January 2012, the Commission last discussed the matter with an official from the Government of ROMANIA and officials from the Permanent Representation of ROMANIA to the European Union.
16. It appears from the observations communicated by ROMANIA by letter of 29 December 2011 and confirmed at the meeting on 20 January 2012 that the authorities in ROMANIA are currently preparing new measures for complying with Directive 2006/24/EC.
17. 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.

18. 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.
19. 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.
20. The Commission draws your Government's attention to the financial sanctions that the Court of Justice may impose pursuant to Article 260(3) of the Treaty and which the Commission will apply as set out in its Communication of 11 November 2010 on the Implementation of Article 260(3) of the Treaty<sup>1</sup>.

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<sup>1</sup> OJ C 12, 15.1.2011, p.1.

## **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;

after concluding by letter dated 28 October 2011 (ref. SG-Greffe(2011)D/18406) that 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 and to notify them to the Commission, or, in any event, by failing to maintain such measures in force, ROMANIA had consequently failed to fulfil its obligations under Article 15 of this Directive and under Article 4(3) TEU;

in view of the reply of the Government of ROMANIA to the Reasoned Opinion dated 29 December 2011;

### **HEREBY DELIVERS THE FOLLOWING**

#### **SUPPLEMENTARY 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] and by failing to notify them to the Commission, or, in any event, by failing to maintain such measures in force, ROMANIA has failed to fulfil its obligations under Article 15 of this Directive and under Article 4(3) TEU.

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 one month of receipt of this Opinion.

Done at Brussels,

For the Commission  
Cecilia MALMSTRÖM  
Member of the Commission