

2011/2091	Infraction constatée	ALLEMAGNE	Service responsable : HOME/A/03	Etat du dossier au 06/03/2012	Jr.Rs.:	Eq.Jr.:	Resp. Int.: SGL	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 DE had not communicated any national transposing measures to COM 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 notified to COM the 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 DE Constitutional Court in its judgment annulled the national law transposing the Directive.				
Bases juridiques : Directive:32006L0024				II. CORRESPONDENCE WITH THE MEMBER STATE				
Stade : Non-communication			Financement communautaire : N	On 16 June 2010, COM sent a letter to DE (through EU Pilot (file number 1174/10JLSE). On 23 June 2010, DE confirmed that its Constitutional Court had declared the national law transposing Directive 2006/24/EC to be unconstitutional in its entirety. On 17 June 2011, COM sent an Article 258 letter of formal notice to DE (ref. SG-Grefte(2011)D/9667). It appeared from DE's reply to this letter on 16 August 2011 that the authorities in DE were preparing new measures for complying with the Directive. However, no draft text of these measures and no timetable for the adoption of these measures had been communicated to COM. On 28 October 2011, COM sent an Article 258 reasoned opinion to DE (ref. SG-Grefte(2011)D/18335). It appears from DE's reply to the reasoned opinion on 23 December 2011 that DE has still not taken the measures necessary to comply with the Directive. DE communicated to COM a proposal by the DE Federal Ministry of Justice for a system of 'quick freeze plus' dated 26 May 2011. COM services have made clear on several occasions that a proposal for a system of 'quick freeze plus' could not, if adopted, be considered to represent sufficient transposition of Directive 2006/24/EC. It must thus be concluded that DE is currently not taking any measures necessary to comply with the Directive.				
Procédures en relation : dossier père -> ; dossiers fils ->				III. INITIAL REASONS TO DEPART FROM THE GENERAL USE OF ARTICLE 260(3) TFEU (it is proposed to revisit this decision)				
Faît Incriminé :				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 considered that it was 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				
Infringement case 2011/2091 - A reasoned opinion was adopted by the Commission on 27 October 2011 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.				1) DE had notified the national transposition measures, which subsequently have been annulled by the DE Constitutional Court.				
Mise en demeure 258 (ex226) :		Mise en demeure 260 (ex228) :		2) It is not certain that the Court of Justice will follow the interpretation by COM of the application of Article 260(3) in an exceptional situation of annulment a posteriori of the transposition measures.				
Décision : 16/06/2011:E/2011/4081 ;C(2011)4112		Decision : Envoi :		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 : 17/06/2011:SG(2011)D/9667;C(2011)4112		Envoi :		V. REASON TO APPLY ARTICLE 206(3) TFEU				
Réponse : 16/08/2011:INF(2011)103426		Réponse :		The fundamental criteria guiding the application of Article 260(3) include the seriousness of the infringement, its duration and the need to ensure that the sanction itself is a deterrent to further infringements. DE has already been given a considerable amount of time to transpose Directive 2006/24/EC into national law following the judgement of its Constitutional Court in March 2010. COM has thus given due regard to the complex situation that arose from this judgement. However, DE still fails to adopt national legislation to comply with Directive 2006/24/EC. Furthermore, the non-transposition of the Directive in DE constitutes a very serious infringement of EU law, as it appears that DE deliberately refuses to take the necessary measures to comply with the Directive. Finally, in a similar infringement proceeding against CZ (case 2011/1143) following a judgement by the CZ Constitutional Court in March 2011 annulling Directive 2006/24/EC, COM did not decide to depart from the general use of Article 260(3).				
Mise en demeure complémentaire 258 (ex226) :		Mise en demeure complémentaire 260 (ex228) :		VI. CONCLUSION AND PROPOSAL				
Decision :		Decision :		DE has not indicated how and when it will transpose Directive 2006/24/EC. It is thus deemed necessary to revisit the decision to depart from the general use of Article 260(3) TFEU in order to give DE a stronger incentive to transpose the Directive. It is proposed to send a supplementary Article 258 reasoned opinion with explicit reference to Article 260(3) to DE with a one-month deadline to reply. As the only purpose of this supplementary reasoned opinion is to ensure that the potential application of Article 260(3) TFEU in the first referral to Court is foreseeable for DE, a one-month deadline to reply is considered sufficient.				
Envoi :		Envoi :						
Réponse :		Réponse :						
Avis motivé 258 (ex226) :		Avis motivé ex228 :						
Décision : 27/10/2011:E/2011/7685 ;C(2011)7509		Decision : Envoi :						
Envoi : 28/10/2011:SG(2011)D/18335;C(2011)7509		Envoi :						
Réponse : 27/12/2011:INF(2011)104225		Réponse :						
Avis motivé complémentaire 258 (ex226) :		Saisine 260 (ex228) :						
Decision :		Decision :						
Envoi :		Dépot decision :						
Réponse :		Ref. Aff. :						
		D. Arrêt :						
Saisine 258 (ex226) :								
Decision :								
Depot decision :								
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-2010-553						
Historique des décisions (6 dernières décisions) :								
27/10/2011:E/2011/7685 ;C(2011)7509.Avis motivé 258(ex226)								
16/06/2011:E/2011/4081 ;C(2011)4112.Mise en demeure 258(ex226)								

Etat des consultations :							Prop. du service responsable :	13/02/2012: Avis motivé complémentaire 258(ex226): Reference to Article 260(3). 1 month deadline to reply.:
	MD258(ex226)	MDC258(ex226)	AM258(ex226)	AMC258(ex226)	MD260(ex228)	MDC260(ex228)	Prop. des chefs de cabinet :	
DG -> SJ							Prop. décision de la Commission :	
SJ -> DG							Position du service juridique :	
DG -> SG							Document généré par	16/06/2012 09:47 cette information est enregistrée dans un fichier d'audit

