

2011/2089	Infraction constatée	ROUMANIE	Service responsable : HOME/A/03	Etat du dossier au 06/03/2012	Jr.Rs.:	Eq.Jr.:	Resp. Int.: CNIH	Resp. Ext.:
Services associés : SJUR/X/00; SGEN/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. 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 RO Constitutional Court declared Law No 298/2008 to be unconstitutional in its entirety and annulled it.				
Bases juridiques : Directive:320061/024				II. CORRESPONDENCE WITH THE MEMBER STATE				
Stade : Non-communication				On 30 March 2010, in response to COM's letter of 19 January 2010, RO explained the legal effects of Decision No 1258 of 8 October 2009 of the RO Constitutional Court which annulled the provisions of Law 298/2008 as unconstitutional. On 17 June 2011, the Commission sent an Article 258 letter of formal notice to RO (ref. SG-Greffe(2011)D/9861). It appeared from RO's reply to this letter on 16 August 2011 that the authorities in RO were preparing new measures for complying with Directive 2006/24/EC. RO's reply also included an annexed draft text and a vague timetable for the adoption of these measures.				
Procédures en relation : dossier père -> ; dossiers fils ->				On 29 September 2011, a meeting took place between COM services and a RO JAI Counsellor. According to the explanations and written comments provided, RO was still at the stage of inter-ministerial negotiations and no draft law was approved. On 28 October 2011, COM sent an Article 258 reasoned opinion to RO (ref. SG-Greffe(2011)D/13406). It appears from RO's reply to the reasoned opinion on 28 December 2011 that RO has still not taken the measures necessary to comply with the Directive. RO communicated to COM a legislative proposal that had been initiated by two Members of the RO Chamber of Deputies on 2 November 2011. It appears from RO's reply that the legislative proposal is currently being discussed in the Chamber of Deputies. However, no timetable for the adoption of these measures has been communicated to COM.				
Faît Ineriminé :				III. INITIAL REASONS TO DEPART FROM THE GENERAL USE OF ARTICLE 260(3) TFEU (it is proposed to revisit this decision)				
Infringement case 2011/2089 - Article 258 reasoned opinion was sent to Romania on 27 October 2011 concerning failure 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.				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:				
Mise en demeure 258 (ex226) :				1) RO had notified the national transposition measures, which subsequently have been annulled by the RO Constitutional Court.				
Décision : 16/06/2011:E/2011/4081 ;C(2011)4111				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.				
Envoi : 17/06/2011:SG(2011)D/9861;C(2011)4111				3) The transposition of Directive 2006/24/EC 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.				
Réponse : 18/08/2011:Ares(2011)887315				IV. REASON TO APPLY ARTICLE 260(3) TFEU				
Mise en demeure complémentaire 258 (ex226) :				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. RO 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 October 2009. COM has thus given due regard to the complex situation that arose from this judgement. However, RO still fails to adopt national legislation to comply with the Directive. Furthermore, 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).				
Décision :				V. CONCLUSION AND PROPOSAL				
Envoi :				Since the judgment of its Constitutional Court in October 2009, RO has not taken the measures necessary to comply with Directive 2006/24/EC. In view of the fact that RO has already been given a considerable amount of time to transpose the Directive into national law following the judgement of its Constitutional Courts, it is deemed necessary to revisit the decision to depart from the general use of Article 260(3) TFEU in this case. Therefore, it is proposed to send a supplementary Article 258 reasoned opinion with explicit reference to Article 260(3) to RO with a one-month deadline. This aims at giving RO a stronger incentive to transpose the Directive. As the only purpose of this supplementary reasoned opinion is to ensure that the potential application of Art 260(3) TFEU in the first referral to Court is foreseeable for RO, a one-month deadline to reply is considered sufficient.				
Réponse :								
Avis motivé 258 (ex226) :				Correspondance avec l'état membre (2 dern. évén.):				
Décision : 27/10/2011:E/2011/7685 ;C(2011)7508				10/01/2011:EM - Information:ARES (2011) 55524				
Envoi : 28/10/2011:SG(2011)D/18406;C(2011)7508				27/10/2010 EM - Information:ARES (2010) 76841				
Réponse : 29/12/2011:Ares(2011)1410764								
Avis motivé complémentaire 258 (ex226) :				Saisine 258 (ex226) :				
Décision :				Décision :				
Envoi :				Dépot décision :				
Réponse :				Réf. Aff. :				
				D. Arrêt :				
Saisine 258 (ex226) :				Origine CDO :				
Décision :				24/05/2011:MAIL DG HOME				
Dépot décision :								
Réf. Aff. :								
D. Arrêt :								
Historique des décisions (6 dernières décisions) :								
27/10/2011:E/2011/7685 ;C(2011)7508:Avis motivé 258(ex226)								
16/06/2011:E/2011/4081 ;C(2011)4111:Mise en demeure 258(ex226)								

DOCUMENT INFRINGEMENT

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 ju	
DG -> SG							Document généré par	

