



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL HOME AFFAIRS

Director General

Brussels, **27 MARS 2013**  
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**NOTE FOR THE ATTENTION OF MR LUIS ROMERO REQUENA,  
DIRECTOR GENERAL OF LEGAL SERVICE**

**Subject: Infringement proceedings against Germany (case C-329/12) – comments on interventions from Greece, Ireland, Netherlands and Slovakia**

Thank you for consulting us on the interventions from Greece, Ireland, Netherlands and Slovakia in the ECJ case C-329/12 Commission v. Germany (ref BSC/kp sj.b(2013)340836).

The submissions each address the principle of whether Article 260(3) is applicable in the current case, and each argue, in support of Germany, that it is not.

The arguments advanced are convoluted and attempt to attach to the article an 'intention' on the part of the legislator which is far from apparent. With regard to the current case, none of the interventions is able to refute the central argument of the Commission, which is that Germany has had over three years in which to transpose fully an important directive. The Federal Constitutional Court did not find the Data Retention Directive or mandatory data retention *per se* to be incompatible with the national constitution. **Contrary to the argument (found in several of the interventions, e.g. paragraphs 55-56 of the Greek intervention) that the situation in Germany is somehow unique, the other Member States which have faced similar circumstances, namely Bulgaria, Romania and Czech Republic, have each adopted appropriate measures in recent years.** Therefore it is clear that Germany have not made appropriate efforts of compliance since the annulment of the previous transposing measures.

My services are available to provide further support in this matter.

Stefano Manservigi

Cc:

