



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL HOME AFFAIRS

Director General

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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-communication of national transposition measures to comply with Directive 2006/24/EC (Infringement No 2011/2089)**

The Constitutional Court of Romania, with its judgement of 8 October 2009, annulled the national legislation transposing 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 and amending Directive 2002/58/EC (the Data Retention Directive).

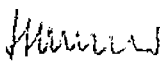
In view of the fact that Romania had not informed the Commission of any new provisions adopted to comply with Directive 2006/24/EC following the ruling of the Constitutional Court of Romania, and that Romania consequently failed to fulfil its obligations under this Directive, the Commission launched infringement proceedings against Romania by sending a letter of formal notice on 17 June 2011 (ref. SG-Greffe(2011)D/9861), followed by a reasoned opinion on 28 October 2011 (ref. SG-Greffe(2011)D/18406) and a supplementary reasoned opinion on 26 March 2012 (ref. SG-Greffe(2012)D/5264).

On 21 June 2012, Romania notified Act No 82 of 13 June 2012 on the retention of data generated or processed by providers of public electronic communications networks and providers of publicly available communications services, and amending Act No 506/2004 concerning the processing of personal data and the protection of privacy in the electronic communications sector (ref. MNE(2012)52797) that was published in the Official Gazette of Romania, Part I, No 406 of 18 June 2012. An English translation of the law is attached to this note. Romania declared this law to be the complete transposition of Directive 2006/24/EC.

On the basis of a prima facie analysis, my services have concluded that the law notified by Romania amounts to a complete transposition of Directive 2006/24/EC. However, the obligation for providers of electronic communication services and providers of public electronic communications networks to retain traffic and location data for a period of six months (Article 3(1) and (2)) only enters into force six months after the entry into force of the law (Article 25(3)).

This situation is comparable to the infringement proceedings against Austria for non-communication of national transposition measures (Infringement No 2011/2089), where transposing legislation adopted by Austria entered into force on 19 May 2011 but the obligation for service providers to retain communications data for a specific period was delayed until 1 April 2012. In this case, we agreed that the case should remain open until all provisions of the Austrian transposing law would enter into force.

Against this background, it is proposed to leave the infringement proceedings against Romania open in order to monitor if all provision of the law notified by Romania will obtain legal effect after the transitional period of six months, while not further advancing the infringement proceedings against Romania at this stage. I would be grateful for your opinion on this matter at your earliest convenience.

  
Stefano Manservigi

Cc: Mr Søren Schønberg, Member of Cabinet of Commissioner Cecilia Malmström  
Ms Mr Legal Service