

2011/2089	Infraction constatée	ROUMANIE	Service responsable : HOME/A/03	Etat du dossier au 06/10/2011	Jr.Rs.:	Eq.Jr.:	Resp. Int.: CNH	Resp. Ext.:
Services associés : SGEN/X/00; SJUR/X/00				I. FACTS 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 Constitutional Court declared Law No 298/2008 to be unconstitutional in its entirety and annulled it.				
Non-transposition of the data retention DIRECTIVE 2006/24/EC								
Bases juridiques : Directive:32006L0024								
Stade : Non-communication		Financement communautaire : N		II. CORRESPONDENCE WITH THE MEMBER STATE 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 Romanian Constitutional Court which annulled the provisions of Law 298/2008 as unconstitutional. In that letter, RO stated that it had set up a national, inter-institutional working party to draw up new transposing measures which would comply with the Court's decision. On 27 October 2010, COM invited RO officials to meet officials from DG Home Affairs to discuss the status and timescales of preparations of the new legislation. The meeting took place on 21 January. During the meeting, RO authorities undertook to send draft law to the Commission. Over four months later, however, no further notification has been forthcoming from Romania. On 17 June 2011, the Commission sent Article 258 letter of formal notice to Romania (ref. SG-Greffe(2011)D:9861). It appears from Romania's reply to this letter on 16 August 2011 that the authorities in Romania are currently preparing new measures for complying with Directive 2006/24/EC. Romania's reply also includes an annexed draft law and a vague timetable for the adoption of these measures. On 29 September 2011, a meeting with RO JAI Counselor took place. According to the explanations and written comments provided, RO is still at the stage of inter-ministerial negotiations and no draft law is yet approved by the government. Furthermore, it appears that the timetable for the adoption of new legislation for complying with Directive 2006/24/EC has been delayed, as according to Romania's written comments the approval of the draft text by the Government of Romania is now foreseen in October.				
Procédures en relation : dossier père -> ; dossiers fils ->								
Fait Incriminé :				III. CONCLUSION AND PROPOSAL In the absence of a draft law which would fully transpose the Data Retention Directive and a detailed timetable for its adoption, we propose reasoned opinion to be sent to Romania. 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 considers that it is appropriate to depart from those general criteria and not to use the Article 260(3) instrument due to several reasons linked to the specificity of the present case: 1) Romania had notified the national transposition measures, which subsequently have been annulled by the Romanian Constitutional Court. 2) It is not certain that the Court of Justice will follow the interpretation by the Commission of the application of Article 260(3) in an exceptional situation of annulment a posteriori of the transposition measures. 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.				
Infringement case 2011/2089 - Article 258 letter of formal notice was sent to Romania on 17 June 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.								
Mise en demeure 258 (ex226) :		Mise en demeure 260 (ex228) :		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 considers that it is appropriate to depart from those general criteria and not to use the Article 260(3) instrument due to several reasons linked to the specificity of the present case: 1) Romania had notified the national transposition measures, which subsequently have been annulled by the Romanian Constitutional Court. 2) It is not certain that the Court of Justice will follow the interpretation by the Commission of the application of Article 260(3) in an exceptional situation of annulment a posteriori of the transposition measures. 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.				
Décision : 16/06/2011:E/2011/4081;C(2011)4111		Décision :						
Envoi : 17/06/2011:SG(2011)D:9861;C(2011)4111		Envoi :						
Réponse : 18/08/2011:Ares(2011)887315		Réponse :						
Mise en demeure complémentaire 258 (ex226) :		Mise en demeure complémentaire 260 (ex228) :						
Décision :		Décision :						
Envoi :		Envoi :						
Réponse :		Réponse :						
Avis motivé 258 (ex226) :		Avis motivé ex228 :						
Décision :		Décision :						
Envoi :		Envoi :						
Réponse :		Réponse :						
Avis motivé complémentaire 258 (ex226) :		Saisine 260 (ex228) :						
Décision :		Décision :						
Envoi :		Dépot décision :						
Réponse :		Réf.Aff. :						
		D.Arrêt :						
Saisine 258 (ex226) :								
Décision :								
Dépot décision :								
Réf.Aff. :								
D.Arrêt :								
Origine CDO :		Correspondance avec l'état membre (2 dern. évén.):						
24/05/2011.MAIL DG HOME								
Historique des décisions (6 dernières décisions) :								
16/06/2011:E/2011/4081;C(2011)4111:Mise en demeure 258(ex226):								

Etat des consultations :							Prop. du service responsable :	30/09/2011:Avis motivé 258(ex226):
	MD258(ex226)	MDC258(ex226)	AM258(ex226)	AMC258(ex226)	MD260(ex228)	MDC260(ex228)	Prop. des chefs de cabinet :	24/10/2011:Avis motivé 258(ex226):
DG -> SJ							Prop. décision de la Commission :	
SJ -> DG							Position du service juridique :	13/10/2011:Accord SJ sur AM:verbale
DG -> SG							Document généré par	E le 25/10/2011 09:21 cette information est enregistré dans un fichier d'audit

