



EUROPEAN COMMISSION

SECRETARIAT-GENERAL

Brussels,


SG-Greffe(2012)D/

PERMANENT REPRESENTATION  
OF THE CZECH REPUBLIC TO THE  
EUROPEAN UNION  
Rue Caroly 15  
1050 BRUXELLES

**RO 258 TFEU/failure to notify measures****02****Subject: Reasoned Opinion – Infringement No 2011/1143**

Please find attached a reasoned opinion addressed to the CZECH REPUBLIC in accordance with Article 258 TFEU.

For the Secretary-General



Encl. C(2012).... final



EUROPEAN COMMISSION


Brussels,

Infringement No 2011/1143  
C(2012).... final

**REASONED OPINION**

addressed to the CZECH REPUBLIC

under Article 258 of the Treaty on the Functioning of the European Union,  
on account of failure to adopt or maintain in force measures necessary to comply with  
Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006  
on the retention of data generated or processed in connection with the provisions of  
publicly available electronic communications services or of public communications  
networks and amending Directive 2002/58/EC [L 105/54 of 13.4.2006]



## **REASONED OPINION**

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on account of failure to adopt or maintain in force measures necessary to comply with Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provisions of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC [L 105/54 of 13.4.2006]

1. Paragraph 1 of Article 15 of Directive 2006/24/EC stipulates that Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by no later than 15 September 2007. They shall forthwith inform the Commission thereof.
2. Paragraph 3 of Article 15 of Directive 2006/24/EC stipulates that until 15 March 2009, each Member State may postpone application of this Directive to the retention of communications data relating to internet access, internet telephony and internet email. The CZECH REPUBLIC made use of this paragraph.
3. The Czech Republic notified Act No. 247/2008 Coll. of 5 June 2008 amending Act No. 127/2005 Coll. on electronic communications and amending certain related laws (the Electronic Communications Act), which it declared to be the complete transposition of Directive 2006/24/EC.
4. On 31 March 2011, the Constitutional Court of the Czech Republic annulled certain provisions of the Czech legislation implementing Directive 2006/24/EC.
5. On 3 June 2011, the CZECH REPUBLIC informed the Commission that, due to changes in the national legislation, Directive 2006/24/EC was only partially transposed in the CZECH REPUBLIC.
6. On 15 June 2011, the Commission discussed the matter with officials from the Government of the CZECH REPUBLIC. During the meeting it was made clear that, in the Commission's view, the judgement of the Constitutional Court of the Czech Republic did not justify non-transposition of Directive 2006/24/EC.
7. By letter of 20 June 2011 (ref. 23598/11/05100/05000), the CZECH REPUBLIC confirmed that the Constitutional Court of the Czech Republic had annulled Paragraph 3 and Paragraph 4 of Article 97 of Act No. 127/2005 Coll. and Decree No. 485/2005 Coll., which led to a situation of partial transposition of Directive 2006/24/EC into Czech law.
8. On 24 August 2011, the Commission sent a letter (ref. home.a.3(2011)951579) to the CZECH REPUBLIC requesting a fuller analysis of the effects of the judgement of the Constitutional Court of the Czech Republic and clarifications with regard to the planned procedures and timetable for ensuring that the CZECH REPUBLIC complies with EU law.

9. By letter of 23 September 2011 (ref. 33038/2011/05100/05000), the CZECH REPUBLIC informed the Commission that the Constitutional Court of the Czech Republic had annulled provisions of Paragraph 3 and Paragraph 4 of Article 97 of Act No. 127/2005 Coll. and Decree No. 485/2005 Coll. relating to the retention of traffic and location data and to the transmission of this data to competent national authorities. The CZECH REPUBLIC informed the Commission that the obligation to retain traffic and location data and to make this data available to competent national authorities ceased its legal effect.
10. Paragraph 1 of Article 1 of Directive 2006/24/EC stipulates that the Directive aims to harmonise Member States' provisions concerning the obligations of the providers of publicly available electronic communications services or of public communications networks with respect to the retention of certain data which are generated or processed by them.
11. Paragraph 1 of Article 3 of Directive 2006/24/EC stipulates that Member States shall adopt measures to ensure that the data specified in Article 5 of the Directive are retained in accordance with the provisions thereof, to the extent that those data are generated or processed by providers of publicly available electronic communications services or of a public communications network within their jurisdiction in the process of supplying the communications services concerned.
12. It is not disputed that the obligations of Directive 2006/24/EC are not completely fulfilled by the partial transposition of the Directive in the CZECH REPUBLIC as set out by the CZECH REPUBLIC by letter of 23 September 2011. Such partial transposition does not achieve the objectives of the Directive as stipulated in Article 1.
13. In view of the fact that the CZECH REPUBLIC had not informed the Commission of any new provisions adopted to comply with Directive 2006/24/EC following the judgement of the Constitutional Court of the Czech Republic and the Commission had no other information enabling it to conclude that the CZECH REPUBLIC had adopted the necessary provisions, the Commission had to assume that the CZECH REPUBLIC had not yet adopted such new provisions.
14. By letter of 25 November 2011 (ref. SG-Greffe(2011)D/21311), and in accordance with the procedure set out in Article 258 TFEU, the Commission consequently gave the CZECH REPUBLIC the opportunity to submit its observations on the matter within two months.
15. By letter of 19 January 2012 (ref. 91783/2012-OKP), the CZECH REPUBLIC expressed its view that Directive 2006/24/EC was partially transposed in the CZECH REPUBLIC by applicable laws and regulations. The CZECH REPUBLIC expressed its view that the transposition of Directive 2006/24/EC would be completed with the adoption of an act amending Act No 127/2005 on electronic communications and certain related acts and of a decree on storing and transmission of traffic and location data.
16. It appears from the observations communicated by the CZECH REPUBLIC by letter of 19 January 2012 that the authorities in the CZECH REPUBLIC are currently preparing new measures for complying with Directive 2006/24/EC.

17. However, as far as the Commission is aware, these measures have still not been adopted, no communication having been made to the Commission to this effect.
18. The Commission considers that it is for the authorities of the CZECH REPUBLIC to implement whatever procedures are necessary in order to comply with Directive 2006/24/EC without delay, and to inform the Commission accordingly.
19. The Commission must therefore conclude that the CZECH REPUBLIC has still not taken new measures necessary to comply with Directive 2006/24/EC and, in any event, has failed to notify it of any such measures.
20. The Commission draws your Government's attention to the financial sanctions that the Court of Justice may impose pursuant to Article 260(3) of the Treaty and which the Commission will apply as set out in its Communication of 11 November 2010 on the Implementation of Article 260(3) of the Treaty<sup>1</sup>.

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<sup>1</sup> OJ C 12, 15.1.2011, p.1.