

2011/2091	Infraction constatée	ALLEMAGNE	Service responsable : HOME/A/03	Etat du dossier au 31/05/2012	Jr.Rs.:	Eq.Jr.: Ju	Resp. Int.: SGL	Resp. Ext.:
Services associés : SGEN/X/00; SJUR/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. Because DE had not communicated any national transposing measures to COM by the said deadline, COM on 27 November 2007 sent DE a letter of formal notice (reference SG(2007) D207204). On 18 January 2008, DE notified to COM the Telecommunications Surveillance Law of 31 December 2007 (SG(2008) A/00731), which it declared to be the complete transposition of the Directive. On 2 March 2010, the DE Constitutional Court in its judgment annulled the national law transposing the Directive.				
Bases juridiques : Directive:32006L0024				II. CORRESPONDENCE WITH THE MEMBER STATE				
Stade : Non-communication		Financement communautaire : N		* On 16 June 2010, COM sent a letter to DE through EU Pilot (file number 1174/10/JLSE).				
Procédures en relation : dossier père -> ; dossiers fils ->				* On 23 June 2010, DE confirmed that its Constitutional Court had declared the national law transposing Directive 2006/24/EC to be unconstitutional.				
Fait Incriminé :				* On 17 June 2011, COM sent an Article 258 letter of formal notice to DE (ref. SG-Greffe(2011)D/9667).				
Infringement case 2011/2091 - A reasoned opinion was adopted by the Commission on 27 October 2011 concerning failure by Germany to communicate measures in compliance with obligation of Article 15 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.				* It appeared from DE's reply to this letter on 15 August 2011 that the authorities in DE were preparing new measures for complying with the Directive. However, no draft text of these measures and no timetable for the adoption of these measures had been communicated to COM.				
				* On 28 October 2011, COM sent an Article 258 reasoned opinion to DE (ref. SG-Greffe(2011)D/18335).				
				* With its reply to the reasoned opinion on 23 December 2011, DE communicated to COM a text drafted by the DE Federal Ministry of Justice for a system of 'quick freeze plus' dated 26 May 2011. COM services made clear on several occasions that a proposal for a system of 'quick freeze plus' could not, if adopted, be considered to represent sufficient transposition of Directive 2006/24/EC.				
				* On 26 March 2012, COM sent an Article 258 supplementary reasoned opinion to DE (ref. SG-Greffe(2012)D/5218) to draw DE's attention to the financial sanctions that the Court of Justice might impose pursuant to Article 260(3) TFEU and which COM would apply as set out in its Communication on the Implementation of Article 260(3) TFEU.				
Mise en demeure 258 (ex226) :		Mise en demeure 260 (ex228) :		III. ANALYSIS				
Décision : 16/06/2011:E/2011/4081 ;C(2011)4112		Décision :		It appears from DE's reply to the supplementary reasoned opinion on 25 April 2012 that DE has still not adopted all the measures necessary to comply with Directive 2006/24/EC and that no progress has been made in the preparation of these measures. It appears that the authorities in DE continue to prepare a legislative proposal on the basis of a text drafted by the DE Federal Ministry of Justice for a system of 'quick freeze plus' that was communicated to COM on 23 December 2012. COM made it clear in its supplementary reasoned opinion that this draft text would, if adopted, not amount to a full transposition of Directive 2006/24/EC.				
Envoi : 17/06/2011:SG(2011)D/9667;C(2011)4112		Envoi :		By letter of 16 August 2011, DE set out that Directive 2006/24/EC was partially transposed in DE by applicable laws and regulations. However, the obligations of Directive 2006/24/EC are not completely fulfilled by the partial transposition of Directive 2006/24/EC in DE set out by DE in this letter. It results from the information provided by DE that Articles 1, 2, 3, 5, 6, 7, 8, 10 and 13 of Directive 2006/24/EC are not fully transposed in DE by applicable laws and regulations. Such partial transposition does not achieve the objective of Directive 2006/24/EC as stipulated by Article 1.				
Réponse : 16/08/2011:INF(2011)103426		Réponse :		Consequently, DE has still not taken all new measures necessary to comply with Directive 2006/24/EC and has not indicated how and when it will adopt all the measures necessary to fully transpose Directive 2006/24/EC.				
Mise en demeure complémentaire 258 (ex226) :		Mise en demeure complémentaire 260 (ex228) :		The partial non-transposition of Directive 2006/24/EC in DE constitutes a very serious infringement of EU law, as it appears that DE deliberately refuses to take the necessary measures to comply with the Directive. In particular, DE still fails to launch the legislative procedure necessary to fully transpose Directive 2006/24/EC.				
Décision :		Décision :		IV. LATEST STEP				
Envoi :		Envoi :		Against this background, the Commission decided on 31 May 2012 to refer this case to the Court of Justice by virtue of Article 258 TFEU and Article 260(3) TFEU.				
Réponse :		Réponse :						
Avis motivé 258 (ex226) :		Avis motivé ex228 :						
Décision : 27/10/2011:E/2011/7685 ;C(2011)7509		Décision :						
Envoi : 28/10/2011:SG(2011)D/18335;C(2011)7509		Envoi :						
Réponse : 27/12/2011:INF(2011)104225		Réponse :						
Avis motivé complémentaire 258 (ex226) :		Saisine 260 (ex228) :						
Décision : 22/03/2012:E/2012/1798;C(2012)1884		Décision :						
Envoi : 26/03/2012:SG(2012)D/5218;C(2012)1884		Dépot décision :						
Réponse : 25/04/2012:INF(2012)104898		Réf.Aff. :						
		D.Arrêt :						
Saisine 258 (ex226) :								
Décision : 31/05/2012:E/2012/3476								
Dépot décision :								
Réf.Aff. : C-2012/329								
D.Arrêt :								
Origine CDO :		Correspondance avec l'état membre (2 dern. évén.):						
16/06/2010:		09/11/2010:EM - Envoi lettre:SG-EUPILOT-DOC-2010-5661						
		03/11/2010:EM - Envoi lettre:SG-EUPILOT-DOC-2010-554						
Historique des décisions (6 dernières décisions) :								
31/05/2012:E/2012/3476:Saisine 258 - 260§3.Astreinte: 315036,54 € / jour								
22/03/2012:E/2012/1798;C(2012)1884:Avis motivé complémentaire 258(ex226):Reference to Article 260(3). 1 month deadline to reply.								
27/10/2011:E/2011/7685 ;C(2011)7509:Avis motivé 258(ex226):								
16/06/2011:E/2011/4081 ;C(2011)4112:Mise en demeure 258(ex226):								

Etat des consultations :							Prop. du service responsable :	
	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 juridique :	
DG -> SG								

2011/2089	Infraction constatée	ROUMANIE	Service responsable : HOME/A/03	Etat du dossier au 31/05/2012	Jr.Rs.:	Eq.Jr.:	Resp. Int.: CNH	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:32006L0024				II. CORRESPONDENCE WITH THE MEMBER STATE				
Stade : Non-communication			Financement communautaire : N	* 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.				
Procédures en relation : dossier père -> ; dossiers fils ->				* On 17 June 2011, COM 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.				
Fait Incriminé :				* 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.				
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.				* On 28 October 2011, COM sent an Article 258 reasoned opinion to RO (ref. SG-Greffe(2011)D/18406).				
				* It appeared from RO's reply to the reasoned opinion on 28 December 2011 that RO had still not taken the measures necessary to comply with the Directive. RO communicated to COM a legislative proposal that had been submitted to the RO Chamber of Deputies on 2 November 2011. It appeared from RO's reply that the legislative proposal was being discussed in the Chamber of Deputies. However, no timetable for the adoption of these measures had been communicated to COM.				
				* On 26 March 2012, COM sent an Article 258 supplementary reasoned opinion to RO (ref. SG-Greffe(2012)D/5264) to draw RO's attention to the financial sanctions that the Court of Justice might impose pursuant to Article 260(3) TFEU and which COM would apply as set out in its Communication on the Implementation of Article 260(3) TFEU.				
Mise en demeure 258 (ex226) :				III. ANALYSIS				
Décision : 16/06/2011:E/2011/4081 ;C(2011)4111				It appeared from RO's reply to the supplementary reasoned opinion on 26 April 2012 that the Chamber of Deputies as the legislative body in RO's bicameral Parliament continued to discuss a legislative proposal that had been initiated by two Members of the Chamber of Deputies on 2 November 2011. RO communicated this legislative proposal to the COM by letter of 29 December 2011. However, no date of adoption of these measures was communicated to the COM in RO's reply to the Supplementary Reasoned Opinion.				
Envoi : 17/06/2011:SG(2011)D/9861;C(2011)4111				IV. LATEST DEVELOPMENTS				
Réponse : 18/08/2011:Ares(2011)887315				Against this background, it was initially proposed to refer this case to the Court of Justice by virtue of Article 258 TFEU and Article 260(3).				
Mise en demeure complémentaire 258 (ex226) :				However, on 22 May 2012, RO informed the Commission that legislation transposing the Directive had been adopted by the RO Parliament on the same day. Against this background, DG HOME withdrew the case from M05/2012. DG HOME is currently analysing the new transposing legislation adopted by RO.				
Décision :								
Envoi :								
Réponse :								
Avis motivé 258 (ex226) :								
Décision : 27/10/2011:E/2011/7685 ;C(2011)7508								
Envoi : 28/10/2011:SG(2011)D/18406;C(2011)7508								
Réponse : 29/12/2011:Ares(2011)1410764								
Avis motivé complémentaire 258 (ex226) :				Saisine 260 (ex228) :				
Décision : 22/03/2012:E/2012/1798;C(2012)1883				Décision :				
Envoi : 26/03/2012:SG(2012)D/5264;C(2012)1883				Dépot décision :				
Réponse : 22/06/2012:INF(2012)105223				Réf.Aff. :				
				D.Arret :				
Saisine 258 (ex226) :								
Décision :								
Dépot décision :								
Réf.Aff. :								
D.Arret :								
Origine CDO :				Correspondance avec l'état membre (2 dern. évén.):				
24/05/2011:MAIL DG HOME				21/06/2012:EM - Courrier :MNE(2012)52797				
				10/01/2011:EM - Information:ARES (2011) 5552				
Historique des décisions (6 dernières décisions) :								
30/05/2012:SG(30/05/2012):Retrait:Retrait du M05/2012								
22/03/2012:E/2012/1798;C(2012)1883:Avis motivé complémentaire 258(ex226):Reference to Article 260(3). 1 month deadline to reply.								
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):								

Etat des consultations :							Prop. du service responsable :	
	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 juridique :	
DG -> SG								