

ROMÂNIA



Ref. Ares(2012)607716 - 22/05/2012

Exemplar nr. 1

Nr. 275142

Din 17.05.2012

MINISTERUL ADMINISTRAȚIEI ȘI INTERNELOR

MINISTRU

*Dear Ms Malmstrom,*

I would like to thank you for your letter related to the evaluation of the impact, on our national situation, of the absence of transposition of the *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* in the Romanian legislation.

Regarding the implementation of the Directive, we have to mention the fact that it was initially transposed by *Law no 298/2008 on the retention of data generated or processed by providers of publicly available electronic communication services or of public communication networks* which was subsequently annulled by the Constitutional Court Decision no. 1258/2009. This decision stated that **"the provisions of Law no. 298/2009 are unconstitutional" in full.**

To ensure the transposition of the Directive, a new law has been drafted which was rejected by the Romanian Senate in December 2011. Subsequently, the draft was favourably approved by the IT and Legal Commissions of the Chamber of Deputies and entered on the agenda of the Chamber of Deputies' plenum on the 24<sup>th</sup> April 2012. The plenum decided to retransmit the draft to the Commissions for further analyses.

Romania has always given priority to fulfilling its obligations deriving from the quality of EU member state and, at present, our attention is fully focused on the transposition of the Directive and, at the same time, observing the grounds of the Court Decision.

Ms Cecilia MALMSTRÖM

Home Affairs Commissioner

EUROPEAN COMMISSION

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Furthermore, addressing the aim of your letter, I would like to point out the following:

- The criminal investigation bodies have the right to obtain any data and information necessary for investigation of a crime, according to the Criminal Procedure Code (Cpc). According to the Law no. 506/2004 (transposing the Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector - *Directive on privacy and electronic communications*), telecommunication providers retain data for purposes of transmission of communication, billing, interconnection payments or marketing.
- Based on art. 96 and 97 of the Cpc, the General Inspectorate of the Romanian Police (GIRP), through its operational structures, and the Public Ministry, collect operational data for the purpose of the investigation, detection and prosecution of crimes. This operational data comprises e.g. data identifying the source of a communication, destination of a communication, time and date, geographic location of cells. In this sense, the Police and the Public Ministry cooperate with the Romanian Intelligence Services based on a cooperation protocol.
- Also, I would like to mention the fact that the future Criminal Procedure Code regulates "The investigation and surveillance techniques" which include procedures for the investigation bodies to access data of the nature mentioned in the Directive.

As a conclusion, I would like to point out that, in practice, there haven't been any situations, involving the GIRP or the Public Ministry, when the telecommunication providers didn't supply operational data necessary to solve a case.

In the end, I would like to mention that I will continue to support the objectives and priorities of the European Commission. I also want to express my entire availability for a meeting, as soon as possible, at a date permitted by your agenda, in order to discuss relevant matters in connection to this subject and others of mutual interests.

Reiterating once again the commitment of the Romanian authorities towards implementing the EU legislation, I avail myself of this opportunity to assure you of my highest consideration.

**Ioan RUS**

**MINISTER OF ADMINISTRATION AND INTERIOR**

**ROMANIA**