



EUROPEAN COMMISSION - PRESS RELEASE

Data retention: Commission requests Germany and Romania fully transpose EU rules

Brussels, 27 October 2011 – Today the Commission formally requested Germany and Romania take action to ensure full compliance with EU rules on data retention within two months. Since the judgements of their Constitutional Courts, which annulled the respective national laws that transposed the Data Retention Directive, Germany and Romania have not indicated how and when they will adopt new legislation.

The Data Retention Directive makes it mandatory for telephone companies and Internet service providers to store telecommunications traffic and location data for law enforcement purposes. Germany and Romania's ongoing delay in transposing the Directive into national law is likely to have a negative effect on the internal market for electronic communications and on the ability of police and justice authorities to detect, investigate and prosecute serious crime. The Commission therefore decided to send reasoned opinions to both countries asking them to remedy this breach of EU law (article 258 TFEU).

Background

Germany (in January 2008) and Romania (in November 2008), had notified the Commission of national measures transposing the Data Retention Directive. However, on 2 March 2010 the German Constitutional Court annulled certain provisions of the Telecommunications Surveillance Law of 31 December 2007. A similar decision was made on 8 October 2009 by the Romanian Constitutional Court who declared the Law No 298/2008 to be unconstitutional. The German and the Romanian courts did not rule that the Data retention Directive as such was unconstitutional. Yet, though none of the conclusions of both Constitutional Courts' judgments preclude full transposition of the directive in a way that complies with the German and Romanian constitutions, no new legislation has been adopted yet.

On 17 June 2011 the Commission sent a letter of formal notice to Germany and Romania. Germany replied on 16 August 2011, informing the Commission that the German Ministry of Justice has developed a proposal for implementing the Directive which is currently at the stage of inter-ministerial consultation. Information provided by the Romanian authorities also confirms that negotiations on a new law are still going on at inter-ministerial level.

In the absence of draft laws which would fully transpose the Data Retention Directive and detailed timetables for their adoption, the Commission decided to issue Germany and Romania with an Article 258 reasoned opinion.

The Data Retention Directive ([2006/24/EC](#)) was adopted in 2006 and should have been transposed into national law by 15 September 2007, with the option of postponing the retention of communications data relating to Internet access, Internet telephoning and Internet e-mail until 15 March 2009.

Data retention refers to the storage of traffic and location data resulting from electronic communications (not data on the content of the communications). Under the Directive, traffic and location data retained by Internet service providers and phone companies will be made available only to national law enforcement authorities in specific cases and in accordance with national law, relevant provisions of EU law and public international law

In April 2011, the Commission adopted an evaluation report analysing how Member States have transposed the Directive and assessing the use of retained data and the impact on operators and consumers ([IP/11/484](#) and [MEMO/11/251](#)).

For more information

[MEMO/11/739](#)

Homepage of Cecilia Malmström, Commissioner for Home Affairs

http://ec.europa.eu/commission_2010-2014/malmstrom/welcome/default_en.htm

Homepage DG Home Affairs:

http://ec.europa.eu/dgs/home-affairs/index_en.htm

Infringement procedures for Home Affairs policy areas

http://ec.europa.eu/home-affairs/news/infringements/infringements_en.htm

Contacts :

[Michele Cercone](#) (+32 2 298 09 63)

[Tove Ernst](#) (+32 2 298 67 64)