



## EUROPEAN COMMISSION - PRESS RELEASE

### Data retention: Commission takes Germany to Court requesting that fines be imposed

**Brussels, 31 May 2012** – More than two years after the national law transposing the EU Data Retention Directive was annulled by the German Federal Constitutional Court, Germany has still not complied with the Directive. As a result, today the Commission referred the country to the European Court of Justice, requesting it to impose financial penalties.

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. Ongoing delays in transposing the Directive into national law are 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 German national law transposing the Directive was annulled by the German Federal Constitutional Court on 2 March 2010. Germany has been given a considerable amount of time to transpose the Directive into national law. Yet, even though none of the conclusions of the Courts' judgment preclude full transposition of the Directive in a way that complies with the national Constitution, no new legislation has been adopted since.

In October 2011, the Commission sent a reasoned opinion to Germany asking the authorities to remedy this breach of EU law ([IP/11/1248](#)). On 26 March 2012, the Commission warned the country that it would request the Court to impose fines should the next step in the proceedings - a referral to the Court - be warranted.

Since then, German authorities have not indicated how and when they will adopt new legislation that fully complies with the Directive. The Commission has made clear that a system of data preservation ("quick freeze plus") as is currently being discussed in Germany would not amount to a full transposition of the Directive.

The Commission therefore decided to bring the case to Court, proposing to impose a penalty payment for each day after the Court ruling until the country ceases to be in breach of EU law (article 260.3 TFEU).

The Commission proposes the Court impose on Germany a daily penalty payment of **€315 036.54**

Today, the Commission also formally decided to end the proceedings against **Austria**, which has notified all the measures fully transposing the Directive, and to make a partial withdrawal of the case against **Sweden**.

While Sweden has now fully transposed the Directive, the Court is still expected to rule on the case following last year's second referral, when the Commission requested both a lump sum and a penalty payment ([IP/11/409](#)). In accordance with its practice in cases where a Member State transposes a Directive at a moment in time where the infringement has already reached the stage of a second referral to the Court, the Commission decided to withdraw the request for a penalty payment while maintaining the request to condemn Sweden to pay a lump sum.

## **Background**

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/12/387](#)

Homepage of Cecilia Malmström, Commissioner for Home Affairs

[http://ec.europa.eu/commission\\_2010-2014/malmstrom/welcome/default\\_en.htm](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](http://ec.europa.eu/dgs/home-affairs/index_en.htm)

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