

**Action brought on 11 July 2012 — European Commission
v Federal Republic of Germany**

(Case C-329/12)

(2012/C 287/42)

Language of the case: German

Parties

Applicant: European Commission (represented by: P. Hetsch und B. Schima, Agents)

Defendant: Federal Republic of Germany

Form of order sought

The applicant claims that the Court should:

- rule that, by failing to enact in full the laws, regulations and administrative provisions necessary to ensure transposition of Directive 2006/24/EC ⁽¹⁾ of the European Parliament and the Council of 15 March 2006 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 and, in any event, by not notifying those provisions in full to the Commission, the Federal Republic of Germany has failed to fulfil its obligations under that directive;
- impose, under Article 260(3) TFEU, by reason of the infringement of the obligation to notify transposition measures, a penalty payment in the amount of EUR 315 036,54 per day on the Federal Republic of Germany, payable to the own resources account of the European Union;
- order the Federal Republic of Germany to pay the costs of the proceedings.

Pleas in law and main arguments

The period within which the directive at issue had to be transposed expired on 15 September 2007.

By a judgement of 2 March 2010, the Bundesverfassungsgericht (German Federal Constitutional Court) ruled that the transposition measures adopted by the Federal Republic of Germany were unconstitutional and void. As a result, the German Government first informed the Commission that the directive had been partially transposed through legislation in force. Subsequently the German Government notified the draft version of a Law transposing the remaining provisions of the directive.

Since the draft concerned has not, as yet, been adopted, it is, according to the Commission, not open to dispute that the Federal Republic of Germany has failed to meet its obligation to transpose the directive in full. The abovementioned partial

transposition is, in the Commission's view, insufficient to attain the objectives of the directive under Article 1. Finally, the Commission points out that, in its opinion, the draft Law notified to it by Germany is insufficient for purposes of full implementation of the directive.

⁽¹⁾ OJ 2006 L 105, p. 54.

**Action brought on 9 July 2012 — European Commission v
Republic of Poland**

(Case C-330/12)

(2012/C 287/43)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: P. Hetsch, L. Nicolae and J. Hottiaux, acting as Agents)

Defendant: Republic of Poland

Form of order sought

- declare that, by not adopting the laws, regulations and administrative provisions necessary to give effect to Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services, ⁽¹⁾ and in any event by not informing the Commission of those provisions, the Republic of Poland has failed to fulfil its obligations under Article 5 of that directive;
- impose on the Republic of Poland, in accordance with Article 260(3) TFEU, a periodic penalty payment for failure to comply with its obligation to notify the Commission of the measures for transposing Directive 2009/140, at a daily rate of EUR 56 095,2, payable from the date on which judgment is delivered in the present case;
- order the Republic of Poland to pay the costs.

Pleas in law and main arguments

The period within which Directive 2009/140 had to be transposed expired on 25 May 2011.

⁽¹⁾ OJ 2009 L 337, p. 37.