Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

30 May 2013 *

(Failure of a Member State to fulfil obligations — Directive 2006/24/EC — Retention of data generated or processed in connection with the provision of electronic communications services — Judgment of the Court establishing a failure to fulfil obligations — Non-compliance — Article 260 TFEU — Pecuniary penalties — Imposition of a lump sum payment)

In Case C-270/11,

ACTION under Article 260(2) TFEU for failure to fulfil obligations, brought on 31 May 2011,

European Commission, represented by C. Tufvesson and D. Maidani and by F. Coudert, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Kingdom of Sweden, represented by A. Falk and C. Meyer-Seitz, acting as Agents,

defendant,

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, President of the Chamber, J. Malenovský, U. Lõhmus (Rapporteur), M. Safjan and A. Prechal, Judges,

Advocate General: N. Jääskinen,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 9 January 2013,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Swedish.

Judgment

1 In its application, the European Commission claims that the Court should:

— declare that, by failing to take the necessary measures to comply with the judgment of the Court in Case C-185/09 *Commission* v *Sweden* [2010] ECR I-14 concerning the failure to transpose Directive 2006/24/EC of the European Parliament and of 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 (OJ 2006 L 105, p. 54) into Swedish law, and by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with that directive, the Kingdom of Sweden has failed to fulfil its obligations under Article 260(1) TFEU;

— order the Kingdom of Sweden to pay the Commission, to the account 'European Union own resources', a daily penalty of EUR 40 947.20 for each day that the necessary measures are not taken to comply with the judgment in *Commission* v *Sweden*, from the day on which the judgment is delivered in the present case until the day on which the judgment in *Commission* v *Sweden* is complied with;

— order the Kingdom of Sweden to pay the Commission, to the same account, a fixed daily amount of EUR 9 597 for each day that the necessary measures have not been taken to comply with the judgment in *Commission* v *Sweden*, from the day on which the judgment in *Commission* v *Sweden* was delivered until the day on which judgment is delivered in the present case, or until the day on which the necessary measures are taken to comply with the judgment in *Commission* v *Sweden* if that is earlier; and

— order the Kingdom of Sweden to pay the costs.

Legal context

2 Recital 22 in the preamble to Directive 2006/24 states:

'This Directive respects the fundamental rights and observes the principles recognised, in particular, by the Charter of Fundamental Rights of the European Union ["the Charter"]. In particular, this Directive, together with 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) (OJ 2002 L 201, p. 37)], seeks to ensure full compliance with citizens' fundamental rights to respect for private life and communications and to the protection of their personal data, as enshrined in Articles 7 and 8 of the Charter.'

3 Article 1 of Directive 2006/24 provides:

'1. This Directive aims to harmonise Member States' provisions concerning the obligations of the providers of publicly available electronic communications services or of public communications networks with respect to the retention of certain data which are generated or processed by them, in order to ensure that the data are available for the purpose of the investigation, detection and prosecution of serious crime, as defined by each Member State in its national law.

2. This Directive shall apply to traffic and location data on both legal entities and natural persons and to the related data necessary to identify the subscriber or registered user. It shall not apply to the content of electronic communications, including information consulted using an electronic communications network.'

4 Article 15 of that directive states:

‘1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by no later than 15 September 2007. They shall forthwith inform the Commission thereof. When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

3. Until 15 March 2009, each Member State may postpone application of this Directive to the retention of communications data relating to Internet access, Internet telephony and Internet e-mail. Any Member State that intends to make use of this paragraph shall, upon adoption of this Directive, notify the Council and the Commission to that effect by way of a declaration. The declaration shall be published in the *Official Journal of the European Union*.’

The judgment in *Commission* v*Sweden*

5 In *Commission* v *Sweden*, the Court held that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 2006/24, the Kingdom of Sweden had failed to fulfil its obligations under that directive.

Pre-litigation procedure

6 By letter of 28 June 2010, the Commission gave the Kingdom of Sweden formal notice to submit its observations regarding the measures it had adopted in order to fulfil its obligations under the judgment in *Commission* v *Sweden* within two months of receiving that formal notice.

7 By letters of 27 August and 23 November 2010 and 21 January 2011, the Swedish authorities responded to the letter of formal notice by informing the Commission of the progress made in transposing Directive 2006/24 into national law and, in particular, informed that institution that the draft bill to that end had been sent to the Swedish Parliament on 8 December 2010 and that processing of that draft by that body was to take place in the second half of March 2011.

8 By letter of 25 March 2011, the Kingdom of Sweden informed the Commission that, on 16 March 2011, its Parliament had decided to postpone the adoption of that draft bill for a year. That decision had been made by a sixth of the members of the Parliament, in accordance with a specific constitutional procedure. According to that Member State, at the end of that one-year period the Parliamentary Committee in charge of the file would then submit to the Parliament a proposal for transposing Directive 2006/24 into national law.

9 It was in that context that the Commission, considering that the Kingdom of Sweden had not taken the necessary measures to comply with the judgment in *Commission* v *Sweden*, decided to bring the present action.

Developments in the course of the present proceedings

10 By letter of 22 March 2012, the Kingdom of Sweden informed the Commission that, on 21 March 2012, the Swedish Parliament had adopted the Government’s proposal regarding the transposition into the domestic legal system of Directive 2006/24, which was scheduled to come into force on 1 May 2012; it then, by letter of 3 April 2012, informed the Commission of the measures transposing

that directive into national legislation. As a result, on 7 June 2012 the Commission declared that it was withdrawing the part of its action relating to the daily penalty of EUR 40 947.20. However, it maintained its claim regarding the payment of a lump sum and the amount of that lump sum.

11 In relation to costs, the Commission took the view that, as the withdrawal of its head of claim seeking that the Kingdom of Sweden be ordered to pay a daily penalty was a result of that Member State's conduct following the closure of the written procedure, the Member State must bear the costs relating to that aspect of the case.

12 In its defence, the Kingdom of Sweden contests, first, the Commission's request concerning the payment of a lump sum and, second, the amount of that lump sum. That Member State also contests the Commission's head of claim in relation to costs and asks the Court to order each party to bear its own costs.

The failure to fulfil obligations

Arguments of the parties

13 As regards the alleged infringement, the Commission notes that, under Article 260(1) TFEU, where the Court finds that a Member State has failed to fulfil an obligation under the FEU Treaty, that Member State must take the necessary measures to comply with the judgment of the Court. With regard to the period within which a judgment must be complied with, the Commission states that it is clear from the case-law of the Court that the importance of immediate and uniform application of European Union law means that the process of compliance must be initiated at once and completed as soon as possible.

14 The Kingdom of Sweden agrees that it did not adopt the necessary measures to comply with the judgment in *Commission* v *Sweden* within the period set out in the letter of formal notice of 28 June 2010.

Findings of the Court

15 Under Article 260(2) TFEU, if the Commission considers that the Member State concerned has not taken the necessary measures to comply with a judgment of the Court, it may bring the case before the Court after giving that State the opportunity to submit its observations, specifying the amount of the lump sum or penalty to be paid by that State which it considers appropriate in the circumstances.

16 In that respect, the reference date for assessing whether there has been a failure to fulfil obligations under Article 260(1) TFEU is the date of expiry of the period prescribed in the letter of formal notice issued under that provision (Case C-610/10 *Commission* v *Spain* [2012] ECR, paragraph 67, and Case C-374/11, *Commission* v *Ireland* [2012] ECR, paragraph 19).

17 During the pre-litigation procedure, the Kingdom of Sweden stated that its national law had been brought into line with the judgment in *Commission* v *Sweden* through, in particular, the Government's proposal concerning the transposition of Directive 2006/24, which was due to come into force on 1 May 2012.

18 Thus, it is common ground that, at the end of the two-month period following the Kingdom of Sweden's receipt of the letter of formal notice referred to in paragraph 6 of this judgment, namely, on 28 August 2010, that Member State had not, in any event, adopted all the necessary measures to ensure compliance with the judgment in *Commission* v *Sweden*.

19 In those circumstances, it must be found that, by failing to adopt the necessary measures to comply with the judgment in *Commission* v *Sweden*, the Kingdom of Sweden has failed to fulfil its obligations under Article 260 TFEU.

The lump sum payment

Arguments of the parties

20 In calculating the lump sum payment, the Commission is relying on Case C-304/02 *Commission* v *France* [2005] ECR I-6263 and its Communication SEC(2005) 1658 of 13 December 2005, entitled 'Application of Article 228 of the EC Treaty', as updated by its Communication SEC(2010) 923/3 of 20 July 2010, entitled 'Application of Article 260 of the Treaty on the Functioning of the European Union – Up-dating of data used to calculate lump sum and penalty payments to be proposed by the Commission to the Court of Justice in infringement proceedings' ('the 2010 Communication'). According to the Commission, the fixing of financial penalties must be based on the seriousness of the infringement, its duration, and the need to ensure that the penalty is a deterrent to further infringements.

21 As regards, in the first place, the seriousness of the infringement, the Commission argues that it is taking into account the importance of the provisions of EU law infringed, the consequences of the infringement for public and private interests, and the conduct of the defendant State.

22 First, concerning the importance of the provisions in question, the Commission is of the view that the failure to comply with the judgment in *Commission* v *Sweden* represents a particularly serious failure to fulfil obligations since it concerns the failure to transpose a directive, the provisions of which are of great importance to providers of electronic communications services. Those provisions also guarantee (i) a balanced legal framework safeguarding the functioning of the internal market while ensuring that law enforcement authorities are able to use relevant data in order to combat serious crime and (ii) the protection of EU citizens' fundamental rights.

23 Second, the Commission submits that the consequences of the infringement for public and private interests are particularly serious in that the Kingdom of Sweden's failure to transpose Directive 2006/24 has caused financial damage to undertakings established throughout the European Union and to other Member States. That failure has given private Swedish telecommunications operators a competitive advantage, as they are not obliged to retain the data that their competitors in other Member States must retain, nor are they obliged to invest in a workforce or in equipment for the purposes of supplying data to the authorities.

24 Third, concerning the factors to be taken into consideration when assessing the seriousness of the infringement of EU law, the Commission is of the view that the failure to fulfil obligations complained of is clearly established by the fact that the Kingdom of Sweden neither adopted nor notified the appropriate national transposing measures within the prescribed period, namely by no later than 15 September 2007. However, account should be taken of the fact that the Member State in question has never failed to comply with any judgment previously given by the Court under Article 258 TFEU.

25 In the light of the foregoing, the Commission proposes to apply a coefficient for seriousness of 10 on a scale of 1 to 20.

26 Next, with regard to the condition relating to the duration of the infringement, in the context of complying with the judgment in *Commission* v *Sweden*, the Commission notes that, in total, 426 days have elapsed between the date of that judgment (4 February 2010) and the date on which the decision was made by the Commission to initiate infringement proceedings against the Kingdom of Sweden (6 April 2011).

27 Lastly, as regards the need to ensure that a penalty is a deterrent to further infringements, the Commission has fixed, applying the 2010 Communication, the factor 'n' at 4.57, based on the Kingdom of Sweden's ability to pay and the number of votes which it has in the Council of the European Union.

28 Accordingly, the Commission explains in its application that the amount of the lump sum payment requested, namely EUR 9 597 for each day of the infringement, is the result, pursuant to the conditions laid down in the 2010 Communication, of multiplying the basic lump sum (EUR 210 per day) by the infringement's coefficient for seriousness, set at 10, and by the factor 'n', set at 4.57. The total amount thus arrived at is EUR 4 088 322 for the 426-day infringement period.

29 In its defence, the Kingdom of Sweden chiefly submits that the Commission's assessment of the infringement in question is too severe, as regards both the seriousness of the infringement and the need to ensure that the penalty is a deterrent. In particular, it claims that the Commission has not established the existence of circumstances justifying applying a coefficient for seriousness of as much as 10 in respect of that infringement.

30 In that regard, that Member State claims, first, that Directive 2006/24 is not as important for the functioning of the internal market as the Commission asserts. According to Sweden, that directive involves only a marginal harmonisation of the laws of the Member States on the topic; the obligation for operators to retain data varies from Member State to Member State, leaving them free to legislate in the field of authorities' access to communications traffic data or in the field of distributing the data retention costs borne by operators. In addition, according to the Kingdom of Sweden, EU law, in particular the Directive on privacy and electronic communications, already includes rules which enable, under certain conditions, communications traffic data to be retained for the purposes of fighting crime.

31 Second, Sweden argues that the Commission has not shown that its failure to transpose that directive has had the consequences for public and private interests that are claimed. Moreover, the rules currently in force in Swedish law have enabled such effects to be avoided by guaranteeing the availability of data for the purpose of the investigation, detection and prosecution of serious crime.

32 That Member State also submits that, in its assessment, the Commission did not take into account the fact that the judgment in *Commission* v *Sweden* concerns only a partial failure to implement Directive 2006/24. To that end, the Kingdom of Sweden states that it made use of the ability granted under Article 15(3) of that directive to postpone the application thereof until 15 March 2009 in respect of Internet access, e-mail and Internet telephony. Therefore, in its view, the judgment in *Commission* v *Sweden* concerned the failure to transpose into Swedish law only those provisions whose application could not be postponed beyond the deadline set, that is, 15 September 2007.

33 Moreover, the Kingdom of Sweden points out that it has never failed to comply with a judgment of the Court under Article 258 TFEU. It also emphasises that it attaches great importance to its duty to cooperate in good faith. By way of justification for its delay in complying with the judgment in *Commission* v *Sweden*, it claims that it has had to respond to an extensive political debate concerning the transposition of Directive 2006/24 into domestic law and that the implementation of the measures required to effect that transposition has led to problems at the legislative procedural level and to difficult choices involving weighing the protection of privacy against the need to combat crime effectively.

34 In its reply, the Commission submits, first, that, although Directive 2006/24 is not intended to achieve total harmonisation, it cannot be concluded therefrom that that directive has no consequences for the internal market or for private and public interests. Differences between the way in which the directive is implemented in each of the Member States in no way diminishes the importance of the obligation to retain communications data as established by that directive.

35 Next, regarding the pre-existing EU legislation referred to by the Kingdom of Sweden, in particular the Directive on privacy and electronic communications, the Commission states that that directive does not establish an EU-wide obligation to retain certain traffic data during a defined period.

36 In addition, regarding the pre-existing provisions of national law invoked by the defendant Member State, the Commission submits that, even if it were to be accepted that the Kingdom of Sweden has certain data made available to it for the purposes of fighting crime, that would not be as a result of complying with the judgment in *Commission* v *Sweden*, as the availability of such data would be entirely dependent on the commercial decisions taken by the various telecommunications operators.

37 Moreover, with regard to the Member State's line of argument relating to the fact that the failure to comply with the judgment in *Commission* v *Sweden* concerned only part of Directive 2006/24, the Commission notes that although, under Article 15(3) of that directive, the Member States were allowed to postpone applying the obligation to retain data until 15 March 2009, it did not mean that those Member States were authorised to avoid adopting any measures relating to the obligation provided for in that provision before 15 March 2009. Accordingly, that line of argument is based on a misreading of the judgment in *Commission* v *Sweden*.

38 Lastly, regarding the defendant Member State's argument concerning the internal difficulties connected with the legislative procedure, the Commission refers to the settled case-law of the Court pursuant to which internal difficulties may not be taken into consideration when assessing the infringement committed.

39 As regards those internal difficulties, the Kingdom of Sweden submits that it invoked them, not in order to justify its failure to transpose Directive 2006/24, but in order to show that, in the present case, the transposition was fraught with difficulties – difficulties so unusual that they cannot be attributed to the Kingdom of Sweden's normal approach and conduct when implementing directives and complying with judgments of the Court. It also emphasises that the legislative procedure mentioned above is applicable only in exceptional circumstances.

Findings of the Court

40 As a preliminary point, it should be borne in mind that the imposition of a lump sum payment must, in each individual case, depend on all the relevant factors pertaining both to the particular nature of the infringement established and to the conduct of the Member State involved in the procedure initiated under Article 260 TFEU. In that respect, that provision confers a wide discretion on the Court in deciding whether or not to impose such a penalty (*Commission* v *Spain*, paragraph 141, and *Commission* v *Ireland*, paragraph 47).

41 Accordingly, the Commission's suggestions cannot bind the Court and merely constitute a useful point of reference. Similarly, guidelines such as those contained in the communications of the Commission are not binding on the Court but contribute to ensuring that the action brought by the Commission is transparent, foreseeable and consistent with legal certainty (see Case C-369/07 *Commission* v *Greece* [2009] ECR I-5703, paragraph 112).

42 Regarding, first, the principle of imposing a lump sum pursuant to Article 260 TFEU, it should be borne in mind that that principle is essentially based on the assessment of the effects on public and private interests of the failure of the Member State concerned to comply with its obligations, in particular where the breach has persisted for a long period after the judgment initially establishing it was delivered (see Case C-121/07 *Commission* v *France* [2008] ECR I-9159, paragraph 58).

43 In the present case, it must be found that, in view of the aim of Directive 2006/24, which is intended, as is apparent from Article 1(1) thereof, to ensure that electronic communications data are available for the purpose of the investigation, detection and prosecution of serious crime, the failure to comply with the judgment in *Commission* v *Sweden*, which had previously held that there had been a failure to fulfil obligations under that directive, is liable to undermine the private and public interests involved. Moreover, since the Kingdom of Sweden's failure to fulfil its obligations in that respect has lasted for over two years from the date on which that judgment was delivered, it must be found that the breach persisted for a considerable period after that date.

44 Accordingly, the Court holds that it is necessary, in the present case, to order the Kingdom of Sweden to make a lump sum payment.

45 Concerning, second, the amount of that lump sum payment, it should be borne in mind that it is for the Court to determine that amount in a manner that is appropriate to the circumstances and proportionate both to the breach that has been established and the ability to pay of the Member State concerned (see, to that effect, *Commission* v *Greece*, paragraph 146, and *Commission* v *Spain*, paragraph 143).

46 Relevant considerations in this respect include factors such as the seriousness of the infringement, and the length of time for which the breach of obligations complained of has persisted since the judgment establishing it was delivered (see, to that effect, *Commission* v *Spain*, paragraph 144).

47 First, regarding the seriousness of the failure to fulfil obligations in view of the importance of the provisions of EU law infringed, it should be borne in mind that Directive 2006/24 covers the activities of providers of electronic communications services within the internal market and that the European Union legislature pursues the objective of safeguarding the proper functioning of that market through the adoption of harmonised rules in the field of retaining electronic communications data (see, to that effect, Case C-301/06 *Ireland* v *Parliament and Council* [2009] ECR I-593, paragraph 72).

48 Through the harmonisation of national laws which it provides, Directive 2006/24 seeks, as is apparent from Article 1(1) thereof, to ensure that those data are available for the purpose of the investigation, detection and prosecution of serious crime, as defined by each Member State in its national law. In addition, it is apparent from recital 22 in the preamble to that directive that it seeks in particular to ensure full compliance with citizens' fundamental rights to respect for private life and communications and to the protection of their personal data, as enshrined in Articles 7 and 8 of the Charter.

49 In that context, it must be held that a failure to fulfil the obligation to transpose such a directive could impede the proper functioning of the internal market. As a result, it has a certain degree of seriousness, regardless of the level of harmonisation provided by Directive 2006/24.

50 With regard to the consequences for private or public interests of the failure to comply with the judgment in *Commission* v *Sweden*, it should be emphasised, as regards the Commission's argument set out in paragraph 23 of this judgment, that it is clear from Points 6.1 and 6.2 of Commission Report COM(2011) 225 final of 18 April 2011, entitled 'Report from the Commission to the Council and the European Parliament – Evaluation Report on the Data Retention Directive (Directive 2006/24/EC)',

that the directive has not fully achieved its aim of establishing a level playing field for operators in the European Union. Accordingly, the Commission should have established the supposed threat to the conditions of competition in the telecommunications services internal market, which it has failed to do.

51 Moreover, the Kingdom of Sweden's argument that EU law already includes rules which enable, under certain conditions, communications traffic data to be retained for the purposes of fighting crime and that the rules currently in force in Swedish law have enabled the consequences for public and private interests mentioned by the Commission to be avoided cannot be accepted: it is common ground that those rules do not meet the requirements of Directive 2006/24 since, otherwise, it would not have been found that that Member State had failed to fulfil its obligation to transpose Directive 2006/24 into national law.

52 As for the Kingdom of Sweden's argument alleging that the judgment in *Commission* v *Sweden* concerns only a partial failure to implement Directive 2006/24, it is unfounded.

53 Indeed, in the judgment in *Commission* v *Sweden*, the Court declared that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 2006/24, the Kingdom of Sweden had failed to fulfil its obligations under that directive. Article 15(3) of Directive 2006/24 allowed the Member States to postpone the application of the obligation to retain communications data until 15 March 2009, but did not allow them to postpone the transposition of the directive itself, which should have been carried out before 15 September 2007.

54 Regarding the Kingdom of Sweden's conduct in respect of its obligations under Directive 2006/24, the justifications put forward by that Member State pursuant to which the delay in complying with that judgment was attributable to extraordinary internal difficulties connected with specific aspects of the legislative procedure, to the extensive political debate on the transposition of Directive 2006/24, and to the issues raised in terms of difficult choices involving weighing the protection of privacy against the need to combat crime effectively cannot be upheld. As the Court has repeatedly emphasised, a Member State cannot plead provisions, practices or situations prevailing in its domestic legal order to justify failure to observe obligations arising under European Union law (see, inter alia, Case C-407/09 *Commission* v *Greece* [2011] ECR I-2467, paragraph 36). The same is true of a decision, such as the one made by the Swedish Parliament, to which paragraph 8 of this judgment makes reference, to postpone for a year the adoption of the draft bill intended to transpose that directive.

55 However, the fact that the Kingdom of Sweden has never failed to comply with any judgment previously given by the Court under Article 258 TFEU should be taken into account as a mitigating circumstance.

56 Second, concerning the duration of the continuation of the infringement with which this action is concerned, it should be recalled that, although Article 260 TFEU does not specify the period within which a judgment must be complied with, it is, nevertheless, beyond dispute that the action required to give effect to a judgment must be set in motion immediately and be completed as soon as possible (see, inter alia, *Commission* v *Greece* [2011], paragraph 34).

57 In the present case, it should be noted that the failure to fulfil obligations lasted for almost 27 months from the date on which the judgment in *Commission* v *Sweden* was delivered (4 February 2010) to the date on which the Kingdom of Sweden brought its legislation completely into line with the requirements of that judgment (1 May 2012).

58 It must therefore be held that the Kingdom of Sweden's failure to fulfil obligations which is complained of continued for a significant period of time following the delivery of the judgment in *Commission* v *Sweden*.

59 In the light of the foregoing and – in particular – in view of the considerations set out in paragraphs 47 to 58 of this judgment, the Court considers it a just reflection of the circumstances of the present case to set the amount of the lump sum payment to be made by the Kingdom of Sweden at EUR 3 000 000.

60 The Kingdom of Sweden must therefore be ordered to make a lump sum payment of EUR 3 000 000 to the Commission, to the account 'European Union own resources'.

Costs

61 Under Article 138(1) of the Rules of Procedure of the Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Kingdom of Sweden has been unsuccessful, it must be ordered to pay the costs, as requested by the Commission.

On those grounds, the Court (Fourth Chamber) hereby:

1. **Declares that, by failing to take the necessary measures to comply with the judgment of the Court in Case C-185/09 *Commission* v *Sweden* [2010] ECR I-14 concerning the failure to transpose into Swedish law Directive 2006/24/EC of the European Parliament and of 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 by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with that directive, the Kingdom of Sweden has failed to fulfil its obligations under Article 260 TFEU;**

2. **Orders the Kingdom of Sweden to pay the European Commission, to the account 'European Union own resources', a lump sum payment of EUR 3 000 000;**

3. **Orders the Kingdom of Sweden to pay the costs.**

[Signatures]