



**COUNCIL OF
THE EUROPEAN UNION**

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INFORMATION NOTE

from: Legal Service

to: COREPER (Part 2)

Subject: **Case before the Court of Justice**

- Request for a preliminary ruling: Case C-594/12 – Seitlinger et al.
(referring court: *Verfassungsgerichtshof* - Austria)
= Validity of Articles 3 to 9 of 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
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1. By order of 28 November 2012, notified to the Council by the Registrar of the Court of Justice on 31 January 2013, the *Verfassungsgerichtshof* (Constitutional Court) (Austria) asked the Court of Justice, pursuant to Article 267 TFEU, to give a preliminary ruling on the validity of Articles 3 to 9 of Directive 2006/24/EC of the European Parliament and of the Council¹ 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.

¹ OJ L 105, 13.4.2006, p. 54.

2. The question referred for a preliminary ruling arises from an action before the Austrian Constitutional Court lodged by the Kärntner Landesregierung (regional government) for the purpose of annulling the national provisions transposing the abovementioned Directive and from an action by Michael Seitlinger, an employee of A1 Telekom Austria AG, in which he claims inter alia that his rights have been directly affected by the unconstitutionality of the Austrian provision transposing the above Directive. According to him, the contested provision would require the operator of his communication network to conserve for no reason the more detailed data on the applicant, irrespective of technical requirements or invoicing purposes and irrespective of - if not against - his will, and the applicant sees this as, in particular, an infringement of Article 8 of the Charter of Fundamental Rights of the European Union.
3. Given the court's own doubts as to the validity of the provision in question, the *Verfassungsgerichtshof* has decided to ask the Court of Justice to give a preliminary ruling on the following question.

"Are Articles 3 to 9 of 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, compatible with Articles 7, 8 and 11 of the Charter of Fundamental Rights of the European Union?"

4. Within two months of notification of the referral order, the Council may submit a statement of case or written observations to the Court, in accordance with Article 23 of the Statute of the Court of Justice. As the validity of a Directive of the European Parliament and of the Council is potentially called into question in this case, the Council should exercise this right. In accordance with practice in this area, the Council's agents will limit their observations to defending the validity of the Directive and will not intervene on questions of interpretation posed by the referring court.
5. The Director-General of the Legal Service has appointed Mr Eric SITBON and Ms Inese SŪLCE, legal advisers of the Legal Service, as the Council's agents in this case.