



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

Deputy Secretary-General - Policy Coordination

Brussels
SG.E.3

NOTE TO THE MEMBERS OF THE EU LAW NETWORK

Subject: Interconnection clause in directives – publication of transposition measures in EUR-Lex - pilot phase

The interconnection clause in a directive obliges Member States, when transposing a directive, to refer to the directive in question. This can be done either directly in the provisions that are adopted to transpose the directive, or when these provisions are officially published. This requirement also applies for national laws that already existed when the directive was adopted, but that ensure the transposition of certain provisions of the directive.

The Commission gave details of the legal obligations resulting from the interconnection clause at the EU Law Network meetings of 25 May 2023 and 1 December 2023. At the EU Law Network meeting of 1 December 2023, several Member States pointed to legal and procedural difficulties in publishing official notices for legislation pre-dating a directive. Other Member States explained the methods they used to comply with the requirements of the interconnection clause. Overall, there was widespread support by Member States for relying on the publication of national transposition measures in EUR-Lex to satisfy the requirements of the interconnection clause. The Commission informed Member States' delegations that in its view, legal considerations make it difficult to accept publication of transposition measures on EUR-Lex as a substitute for an official publication at the national level.

In the light of the arguments and concerns brought forward by Member States, the Commission committed to reconsidering its approach.

Following further consideration, and while the Commission maintains its legal position explained at the EU Law Network meeting on 1 December 2023, it is acknowledged that the publication of national transposition measures on EUR-Lex gives citizens and businesses easy and reliable access to the implementation of directives by Member States. Provided that appropriate information is published on EUR-Lex, publication in this way could be considered an effective instrument to establish the link between national transposition measures and the directive, including for national legislation pre-dating the directive.

Currently, the meta-data of the transposition measures of all Member States are available on EUR-Lex following their notification via THEMIS/Directives. For 19 Member States, EUR-Lex also publishes a hyperlink to their transposition measures and/or the measures in .pdf format, following their agreement given to the Publications Office.

The Commission is willing to explore a pragmatic way forward, to ensure appropriate publicity for national transposition measures – in particular those pre-dating a directive – and to effectively link ('inter-connect') those measures to the directive. The Commission would therefore like to propose a **one-year test phase, during which the official publication of national transposition measures required by the interconnection clause is ensured via**

EUR-Lex. This publication should be complete and cover all national transposition measures, both post- and pre-dating the directive. All notifications will continue to be done exclusively via THEMIS/Directives.

During the test phase, it will be required that the reference in EUR-Lex to the national transposition measures **includes a hyperlink** that gives direct access to the national official publications of those measures **and/or the text of the measures in .pdf format**. The meta-data alone are not sufficient.

At the end of the test phase, the Commission will evaluate the results and Member States' practices. If the test phase is not found to have delivered the required results, the Commission reserves its right to resume enforcing the obligations flowing from the interconnection clauses. In the meantime, grievances in ongoing pre-litigation proceedings or enquiries about the fulfilment of the requirements under interconnection clauses will not be pursued, if Member States have agreed to the publication of hyperlinks and/or documents directly on EUR-Lex.

Despite the clear advantages of the EUR-Lex solution in terms of accessibility, Member States have the right to opt out of this publication method if they commit to referring systematically and directly to the directives in their national transposition measures or to publishing national official notices to that effect, both for national legislation pre-dating and post-dating the directive.

We would therefore ask you to **confirm by email to the functional mailbox SG EU LAW NETWORK by 15 June 2024 the option chosen** for your Member State as regards the interconnection clauses in EU law:

1. Publication of hyperlinks/ELI links on EUR-Lex;
2. Publication of measures in .pdf format on EUR-Lex;
3. Publication of hyperlinks/ELI links and measures in .pdf format on EUR-Lex;
4. Publication of a reference to the directive on the occasion of the national official publication of the transposition measures.

Of course, Member States are encouraged to continue their practice of adding a direct reference of the directive concerned to the national transposition measures, where possible. This is still the most direct way of making the link between the relevant national and EU laws.

We hope that the proposed pilot phase can provide a good basis to find a pragmatic solution to the problems encountered with the application of the interconnection clause. Your cooperation in this matter is appreciated.

Elisabeth WERNER