



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR JUSTICE AND CONSUMERS

The Director-General

Brussels
JUST.A.5/TM

His Excellency Ambassador
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Excellency,

In order to align Framework Decision 2002/465/JHA ⁽¹⁾ and Directive 2014/41/EU ⁽²⁾ with Directive (EU) 2016/680 ⁽³⁾ and to amend them in order to ensure a consistent approach to the protection of personal data within the scope of those legal acts, the co-legislators adopted two Directives – (EU) 2022/211 ⁽⁴⁾ and (EU) 2022/228 ⁽⁵⁾.

In accordance with Article 2(1) of Directive (EU) 2022/211 and with Article 2(1) of Directive (EU) 2022/228, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with those Directives by 11 March 2023 and by 14 March 2023 respectively, and notify them to the Commission. Importantly, according to the second subparagraph of Article 2(1) of Directive (EU) 2022/211 and of

⁽¹⁾ Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams.

⁽²⁾ Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.

⁽³⁾ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.

⁽⁴⁾ Directive (EU) 2022/211 of the European Parliament and of the Council of 16 February 2022 amending Council Framework Decision 2002/465/JHA, as regards its alignment with Union rules on the protection of personal data.

⁽⁵⁾ Directive (EU) 2022/228 of the European Parliament and of the Council of 16 February 2022 amending Directive 2014/41/EU, as regards its alignment with Union rules on the protection of personal data.

Directive (EU) 2022/228, when Member States adopt those measures, they shall contain a reference to the respective Directive or shall be accompanied by such reference on the occasion of their official publication (so-called “interconnection clause”).

The authorities of Estonia notified transposition measures on 14 March 2023. By way of these notifications, the authorities of Estonia indicated in a sufficiently clear and precise manner the national measures by which they consider that they transposed the different obligations imposed by the Directives and declared the transposition of the Directives to be complete.

It is noted that the obligation of Member States “*to state, for each provision of the directive, the national provision or provisions ensuring its transposition*”⁽⁶⁾ does not, *a priori*, exclude that national legislation pre-dating the Directives may be notified as a valid means of transposing one or more of their provisions, provided such notification is accompanied by the required explanatory documents (such as a correlation table) containing “*sufficiently clear and precise information on the substance of the national rules which transpose a directive*”⁽⁷⁾.

The principle of legal certainty however requires appropriate publicity for the national measures adopted pursuant to EU rules in such a way as to enable the persons concerned by such measures to ascertain the scope of their rights and obligations in the particular area governed by EU law⁽⁸⁾. Therefore, where the directive contains a provision, such as the second paragraph of Article 2(1) of Directive (EU) 2022/211 and Directive (EU) 2022/228, the Court has consistently held that “*lorsqu’une directive prévoit expressément que les dispositions de transposition de cette directive contiennent une référence à celle-ci ou sont accompagnées d’une telle référence lors de leur publication officielle, il est en tout état de cause nécessaire d’adopter un acte positif de transposition*”⁽⁹⁾⁽¹⁰⁾. It follows, that only a specific transposition measure (*acte positif de transposition*) that explicitly refers to the Directives can be accepted as a valid notification. On this basis, notifications [only] referring to national law pre-dating the Directives are insufficient if they are not accompanied by a specific transposition measure (*acte positif de transposition*), such as a specific act published in the Member State’s official journal, which unequivocally indicates the pre-existing laws, regulations or administrative provisions by means of which the respective Member State considers that it has satisfied the obligations imposed by those Directives.

The transposition measures notified by Estonia on 14 March 2023 lack such an ‘*acte positif de transposition*’. For this reason, the Commission considers that Estonia has

⁽⁶⁾ Judgment of the Court of Justice (Grand Chamber) of 8 July 2019, *Commission v Belgium*, C-543/17, EU:C:2019:573, paragraph 59.

⁽⁷⁾ Judgment of the Court of Justice (Grand Chamber) of 8 July 2019, *Commission v Belgium*, C-543/17, EU:C:2019:573, paragraph 51.

⁽⁸⁾ Judgment of the Court of Justice of 27 February 2003, *Commission v Belgium*, C-415/01, EU:C:2003:118, paragraph 21.

⁽⁹⁾ Non-official translation: “where a directive expressly provides that the provisions transposing that directive are to contain a reference to it or are to be accompanied by such a reference on the occasion of their official publication, it is in any event necessary to adopt a positive act of transposition”.

⁽¹⁰⁾ Judgment of the Court (Seventh Chamber) of 29 October 2009, *Commission v Poland*, C-551/08, EU:C:2009:683, paragraph 23 and further case-law cited; Judgment of the Court of Justice of 11 June 2015, *Commission v Poland*, C-29/14, EU:C:2015:379, paragraph 49; Judgment of the Court of Justice of 4 October 2018, *Commission v Spain*, C-599/17, EU:C:2018:813, paragraph 21.

failed to fully implement the second subparagraph of Article 2(1) of Directive (EU) 2022/211 and of Directive (EU) 2022/228.

The Commission therefore invites your Government to remedy this issue in transposition within two months from receipt of this letter and notify, by means of the dedicated secure interface for national implementing measures (THEMIS), the relevant measures taken for this purpose.

Yours faithfully,

(e-signed)
Ana GALLEGO