Message 301

Communication from the Commission - TRIS/(2023) 3324

Directive (EU) 2015/1535

Notification: 2023/0632/FR

Request for supplementary information from the Commission.

Request for supplementary information - Demande d'informations complémentaires - Žádost o doplňující informace - Ersuchen um ergänzende Informationen - Искане за допълнителна информация - Žádost o dodatečné informace - Anmodning om supplerende oplysninger - Αίτηση συμπληρωματικών πληροφοριών - Solicitud de información complementaria - Lisateabe edastamise palve – Lisätietopyyntö - Zahtjev za dodatne informacije - Kiegészítő információ kérése - Domanda di informazioni complementari - Prašymas pateikti papildomos informacijos - Papildu informācijas pieprasījums - Talba għal tagħrif addizzjonali - Verzoek om aanvullende inlichtingen - Prośba o uzupełnienie informacji - Pedido de informações complementares - Solicitare de informații suplimentare - Žiadosť o ďalšie informácie - Zahteva za dodatne informacije - Begäran om kompletterande upplysningar - Iarraidh ar fhaisnéis fhorlíontach

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1. MSG 301 IND 2023 0632 FR EN 09-02-2024 29-11-2023 COM INFOSUP COM 09-02-2024

2. Commission

3. DG GROW/E/3 - N105 04/63

4. 2023/0632/FR - SERV - INFORMATION SOCIETY SERVICES

5.

6. Notification 2023/632/F - Request for supplementary information.

Within the framework of the notification procedure under Directive (EU) 2015/1535, the French authorities notified to the Commission on 8 November 2023 Articles 2 ter, 3 bis A, 5 bis B, 5 quinquies, 15, 15 bis, 16 and 36 of the “Projet de loi visant à sécuriser et réguler l'espace numérique adopté en première lecture par l’Assemblée nationale” (hereinafter, ‘the notified draft’) in its version adopted by the French Assemblée Nationale on 17 October 2023.
In order to allow the Commission services to complete their analysis under the relevant provisions of EU law, the French authorities are kindly invited to reply to the following request for supplementary information:
1. The Commission services note that the French authorities have only formally notified certain Articles of the notified draft. The Commission services would like to understand whether the notified draft in its version of 17 October 2023 is composed of other provisions that are not part of the notified draft. In the affirmative, the Commission services would like to ask the reason why these provisions have not been notified under the procedure laid down by Directive (EU) 2015/1535.

2. The Commission services kindly ask the French authorities whether they could provide the latest consolidated version of the full text of “Projet de loi visant à sécuriser et réguler l'espace numérique adopté en première lecture par l’Assemblée nationale”. This would be necessary to enable the assessment of compatibility of the notified provisions with EU law, in view of the several notifications received of this draft law and the on-going modifications in the national legislative process.

3. The French authorities are kindly invited to clarify whether the provisions in the notified draft are intended to apply to

providers of information society services established in Member States other than France. In the affirmative, the Commission services would like to receive further information regarding: (i) the exact obligations that would apply to those providers; (ii) whether the French authorities have identified those providers or what would be the basis for identifying them; and (iii) how do the French authorities intend to comply with the requirements set out in Article 3(4) of Directive 2000/31/EC (in particular in view of the CJEU judgement in case C-376/22).

4. The Commission services would welcome more information on the notion of personnes exerçant l'activité d'influence commerciale set out in Article 2 ter and, in particular:
a. whether this notion would also apply to influencers which fulfill the relevant criteria set out in the Directive2018/1808 (hereinafter 'the revised AVMSD') and therefore qualify as on-demand media service providers within the meaning of that Directive;
b. in the affirmative, whether the above-mentioned prohibition would also apply to influencers who are not established in the territory of France according to Article 2 of the revised AVMSD;
c. what are the practical implications for "online platforms" of the prohibition set out in Article 2 ter;
d. whether this category of online platforms also includes video-sharing platform providers, as defined in Article 1(1)(aa) of the revised AVMSD;
e. whether this provision would apply to any type of online platform or only to online platforms whose principal purpose is to provide pornographic content.

5. As regards the scope and obligations under Article 3bis(A) of the notified draft, the French authorities are kindly invited to provide additional explanations regarding:
a. the services that would fall under the scope and, in particular, to clarify whether the definition of hosting service providers also includes intermediary services as defined in Article 3, letter g, of Regulation (EU) 2022/2065 or video-sharing platform providers, as defined in Article 1(1)(aa) of the revised AVMSD;
b. in the affirmative, whether the above-mentioned provision would also apply to video-sharing platform providers not established in the territory of France according to the jurisdiction criteria set out in Article 28a of the revised AVMSD, which makes reference to Article 3 of Directive 2000/31/EC;
c. what the concept of "dissemination" would imply;
d. what mechanisms are intended to enable hosting service providers to know when pornographic content has been disseminated without consent.

6. As regards the scope and obligations under Article 5bis(B) of the notified draft, the French authorities are kindly invited to provide additional clarifications regarding:
a. the services providers that would fall under the scope of the mediation system and, in particular, whether the definition of providers of online social networking services, mentioned in Article 5bis(B) the notified draft, also includes intermediary services as defined in Article 3, letter g, of Regulation (EU) 2022/2065 or video-sharing platform providers, as defined in Article 1(1)(aa) of the revised AVMSD;
b. in the affirmative, whether the mediation system would also apply to video-sharing platform providers not established in the territory of France according to the jurisdiction criteria set out in Article 28a of the revised AVMSD;
c. whether the concept of 'not manifestly illegal content' would cover audiovisual content within the meaning of the revised AVMSD, including with respect to the definitions of 'programme' and 'user-generated video' set out respectively in Article 1(1)(b) and Article 1(1)(ba) of the revised AVMSD;
d. the meaning of 'not manifestly illegal content' and, in particular, to clarify whether this concept would cover the categories of legal but harmful content, including as referred to in Article 28b (1) letters (a) to (c) of the revised AVMSD (e.g., content which may impair the physical, mental or moral development of minors or content inciting to violence or hatred.)

7. The French authorities are kindly invited to clarify the intended interplay between the mediation system envisaged in Article 5bis(B) of the notified draft and the out-of-court redress mechanisms set out in Article 28b (6) of the revised AVMSD and the out-of-court dispute settlement bodies set out in Article 21 of Regulation (EU) 2022/2065. In particular, the Commission services would welcome clarifications as to whether the mediation system can be considered an out-of-court redress mechanism within the meaning of Article 28b (6) – and represents therefore a transposition of the revised

AVMSD – or whether it would run in parallel with other out-of-court redress mechanisms transposing Article 28b (6) of the revised AVMSD.

8. The Commission services would also welcome clarifications as to whether users resorting to the mediation system set out in Article 5a(B) of the notified draft would still be able to rely on the legal protection afforded by national law, including by enforcing their rights before a court of law.

9. The Commission services kindly invite the French authorities to provide more information on the notion of entreprises de jeux à objets numériques monétisables used in Articles 15 and 15 bis; and whether it could include providers of intermediary services as defined in Article 3, letter g, of Regulation (EU) 2022/2065.

10. The Commission services would welcome further information regarding the objectives pursued by the notified draft, and in particular Article 2 ter, 3bis A, Article 5 bis B, Article 5 quinquies and 16, and to what extent the obligations set out therein are needed in order to attain such objectives, in view of the maximum harmonization rules and obligations set out in Regulation (EU) 2022/2065.

11. The Commission services would like to receive further information to better understand the scope of Article 16 of the notified draft and the eventual obligations for providers of intermediary services as defined in Article 3, letter g, of Regulation (EU) 2022/2065. The Commission services would welcome more information regarding the intended interplay of this provision with Articles 40 and 56 of that Regulation.

12. In as much as the French authorities reply on the affirmative to questions 5a, 6a, and 9 the Commission services would like to receive further information regarding the monitoring of compliance and enforcement of the draft law, in particular, in view of Chapter IV of Regulation (EU) 2022/2065.
The French authorities are kindly invited to reply by 13 December 2023.

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