



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
Single Market Enforcement
Notification of Regulatory Barriers

Message 201

Communication from the Commission - TRIS/(2024) 2228

Directive (EU) 2015/1535

Notification: 2024/0410/DK

Forwarding of the response of the Member State notifying a draft (Denmark) to request for supplementary information (INFOSUP) of European Commission.

MSG: 20242228.EN

1. MSG 201 IND 2024 0410 DK EN 22-10-2024 23-08-2024 DK ANSWER 22-10-2024

2. Denmark

3A. Erhvervsstyrelsen
Langelinie allé 17
2100 København Ø
Danmark
+45 35 29 10 00
notifikationer@erst.dk

3B. Justitsministeriet
Slotsholmsgade 10
1216 København K
Danmark
+ 45 72 26 84 00
jm@jm.dk

4. 2024/0410/DK - SERV - INFORMATION SOCIETY SERVICES

5.

6. Reply to the Commission's request for additional information

Question 1:

The draft legislative proposal for a new law on the trading of second-hand goods and pawn-broking activities applies to anyone established in Denmark who, for commercial purposes, engages in online trade of second-hand goods and in online auctions.

It follows, inter alia, from recital 18 in the preamble to Directive 2000/31/EC ('the e-Commerce Directive') that information society services cover a wide range of economic activities taking place online and that those activities may consist, in particular, of the online sale of goods.

Against this background, the Ministry of Justice is of the opinion that online trade in second-hand goods that can be assimilated to goods will be covered by the E-Commerce Directive.

It is also the view of the Ministry of Justice that online auction activities will be assimilated to online trading of second-hand goods, thus also constituting an information society service, and therefore falls within the scope of the E-Commerce Directive.



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
Single Market Enforcement
Notification of Regulatory Barriers

Question 2a:

Article 4 of the e-Commerce Directive establishes the principle excluding prior authorisation. This means that Member States shall ensure that the taking up and pursuit of the activity of an information society service provider may not be made subject to prior authorisation or any other requirement having equivalent effect. According to the Court of Justice of the European Union, the provision of Article 4 also applies in so-called internal situations without cross-border elements, cf. Case C-62/19 Star Taxi App, paragraph 75.

However, the principle excluding prior authorisation is deemed not to preclude the licence requirement laid down in the draft Act, since the requirement does not specifically and exclusively concern information society services, cf. the exemption provision in Article 4(2) of the e-Commerce Directive. Physical trade in second-hand goods and pawn-broking activities are therefore also covered by the draft legislative proposal.

Question 2b:

It follows from Section 1 of the draft legislative proposal that the draft legislative proposal applies to any person established in Denmark who, for commercial purposes, engages in trade in second-hand goods etc.

This implies that the notified draft does not apply to providers of information society services established in the territory of Member States other than Denmark.

Question 2c:

The notified draft contains certain obligations for the providers of information society services covered by the draft legislative proposal.

First of all, Section 2 (1) of the draft legislative proposal requires the operator of a business covered by the legislative proposal to hold a licence to operate. This licence is issued by the Danish police.

In order to be granted such a licence, the legislative proposal sets out requirements that licence applicants, including providers of information society services, must comply with. It follows from Section 3(1) of the draft legislative proposal that the licence may be granted to persons who (1) have a business address in Denmark, (2) are not incompetent, cf. Section 43(1) of the Guardianship Act, under guardianship pursuant to Section 5 of the Guardianship Act, or under guardianship under Section 7 of the Guardianship Act, and (3) are not subject to restructuring proceedings or bankruptcy.

In addition, under Section 3(2) of the draft legislative proposal, the licence may be refused to a person who has been convicted of a criminal offence if the circumstances give rise to an imminent risk of misuse of the licence, cf. Section 78(2) of the Criminal Code, or there are special reasons, according to the information available on the individual's personal circumstances, to believe that the person concerned will not operate the business properly. In addition, the licence may be refused to those who have significant overdue debts to the government, meaning debts of the order of DKK 50,000 or more.

In order to support police supervision, the notified draft contains an obligation for licence holders to notify the police of the location of accounting documents and any business premises, cf. Section 9(1), first sentence, of the draft legislative proposal. The licence holder shall also notify the police of any subsequent changes thereto and any subsequent change to the business address, cf. Section 9(1), second sentence, of the draft legislative proposal, and shall, upon request, inform the police of the location of the business's inventory, cf. Section 9(2) of the draft legislative proposal.

Finally, the draft contains an obligation for licence holders who are offered goods for purchase or as collateral in circumstances that may justify suspicion of a lack of lawful title to notify the police immediately and to detain the items until the police arrive, cf. Section 11(1), first sentence, of the draft legislative proposal. The same applies if, after the conclusion of the agreement, the licence holder obtains information that might justify suspicion of a lack of lawful title, cf. Section 11(1), second sentence, of the draft legislative proposal.

The purpose of these obligations is to ensure the control of trade in second-hand goods and to prevent the resale of



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
Single Market Enforcement
Notification of Regulatory Barriers

stolen, falsified or illegally exported objects.

Question 2d:

The Ministry of Justice has considered that the providers of information society services that will be covered by the notified draft are providers that engage in a commercial activity in online trading of second-hand goods or who engage in online auction activities.

The concrete identification of individual providers covered by the notified draft will be carried out by the providers themselves applying for a licence under Section 2 of the draft legislative proposal. In addition, as part of their supervision or following enquiries from the public, the police may further identify providers of information society services covered by the draft legislative proposal.

Question 2e:

Due to the fact that the draft legislative proposal will apply only to certain providers of information society services established in Denmark, similar providers of information society services established in another Member State will not be subject to the requirements of the draft legislative proposal. This implies that the legislative proposal is in line with the sending country principle under Article 3(1) and (2) of the E-Commerce Directive, as, e.g., online traders of second-hand goods established in another Member State will not be subject to the licence requirements of the draft legislative proposal and other rules falling within the coordinated field.

Since there is therefore no restriction on the freedom to provide information society services from another Member State under Article 3(2) of the e-Commerce Directive and the legislative proposal does not therefore constitute a derogation from the sending country principle, the requirements for such a derogation laid down in Article 3(4) of the Directive are not relevant.

As a result, the draft legislative proposal also differs from the general and abstract measures at issue in Case C-376/22 of the Court of Justice of the European Union, since those measures applied without distinction to any service provider in the relevant category of services, irrespective of the fact that the provider was established in another Member State.

European Commission

Contact point Directive (EU) 2015/1535

email: grow-dir2015-1535-central@ec.europa.eu