Message 301

Communication from the Commission - TRIS/(2024) 2000

Directive (EU) 2015/1535

Notification: 2024/0374/IE

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

MSG: 20242000.EN

1. MSG 301 IND 2024 0374 IE EN 04-10-2024 23-07-2024 COM INFOSUP COM 04-10-2024

2. Commission

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

4. 2024/0374/IE - SERV60 - Internet services

5.

6. Within the framework of the notification procedure under Directive (EU) 2015/1535 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, the Irish authorities notified to the Commission on 3 July 2024 the draft “Part 5 of the Electoral Reform Act 2022” (hereinafter, the “notified draft”).

In order to allow the Commission services to complete their analysis under the relevant provisions of EU law, the Irish authorities are kindly invited to reply to the following request for supplementary information:
1. The Commission services kindly invite the Irish authorities to explain:
a. Whether the monitoring and investigative powers conferred to Ireland’s Electoral Commission (An Coimisiún Toghcháin) by the notified draft with regard to the dissemination of disinformation online relating to electoral processes, misinformation online relating to electoral processes as well as functions to prevent manipulative or inauthentic behaviours online in the context of electoral processes concern any online service provider, including Very Large Online Platforms and Search Engines (hereinafter, “VLOPs and VLOSEs”);
b. The intended interplay between the enforcement structure of the Electoral Commission set out in the notified draft with the enforcement powers of the European Commission under the Regulation (EU) 2022/2065, in particular its Chapter IV, Section 4.
2. The Commission services kindly invite the Irish authorities to clarify the relation between the Electoral Commission and the Coimisiún na Meán (the Irish Digital Services Coordinator) and whether the former constitutes a competent authority under Article 49 of the DSA.
3. The Commission services kindly ask the Irish authorities to clarify whether (online) “electoral process disinformation” and “electoral process misinformation” is considered to be illegal content under this or any other Irish law.

4. The Commission services kindly ask the Irish authority to clarify what are exactly the obligations that the notified draft imposes on intermediary services as defined in Regulation (EU) 2022/2065. In particular the Irish authorities are asked to identify the obligations that would apply to online platforms as defined in Regulation (EU) 2022/2065.
5. The Commission services kindly ask the Irish authorities to clarify whether (online) “electoral process disinformation” and “electoral process misinformation” is considered to be illegal content under this or any other Irish law.
6. The Irish authorities are kindly asked to explain whether online platforms, in the context of the different obligations imposed by the notified draft concerning electoral process disinformation, are obliged to actively monitor and assess themselves whether a specific piece of content falls under the scope of this definition or is the responsibility of the Electoral Commission to determine this. In this regard, the Irish authorities are also invited to explain whether intermediary services shall take down content that is considered to be disinformation or whether the decision of taking down such content can only be made by the Electoral Commission in the form of orders.
7. Subsection (2) of Section 148 of the notified draft mentions the risk assessments required from VLOPs and VLOSEs in the context of Regulation (EU) 2022/2065. The Irish authorities are kindly invited to explain how provisions of the notified draft related to the risk assessment and mitigation concerning electoral processes interplay with Articles 34 and 35 of Regulation 2022/2065. In a similar vein, the Commission kindly invites the Irish authorities to clarify what are the powers, if any, of the Irish Electoral Commission in relation to these risk assessments.
8. Section 148A of the notified draft mentions the applicability of the liability exemptions of Articles 4, 5 and 6 of Regulation 2022/2065 in relation to this part of the notified draft. The Commission services invite the Irish authorities to clarify the intended interplay between Section 148A with the one established under Articles 4, 5 and 6 of Regulation 2022/2065, which applies as regards illegal activities or content.
9. The provisions of the notified draft, such as Sections 149 and 153, empower the Electoral Commission to issue, in cases of established or suspected presence of electoral process disinformation, notices and orders in accordance with Articles 9 and 10 of Regulation 2022/2065. The Commission kindly invites the Irish authorities to explain how this mechanism interplays with the those established under Article 9 and 10 of Regulation 2022/2065.
10. Section 160(1) of the notified draft extends the notice and action mechanism of Article 16 of Regulation 2022/2065 to content concerning suspected electoral process disinformation. In this regard, the Commission services invite the Irish authorities to explain:
a. how this mechanism interplays with the one established under Article 16 of Regulation 2022/2065 applicable to content considered to be illegal.
b. whether this provision makes it mandatory for individuals to notify the provider of intermediary services suspected presence of electoral process disinformation. If yes, the Irish authorities are invited to clarify what are the consequences of not doing so for both the individuals and the reported content. If not, how the notice and action mechanism of Article 16 DSA is given prevalence in practice.
c. how the direct reporting facility on the Electoral Commission’s website (Section 160(2) of the notified draft) and the notices of Article 16 DSA mentioned in Section 160(1) of the notified draft interrelate, as well as whether there is any prevalence among them.
11. The Irish authorities are kindly invited to clarify whether the provisions in the notified draft are intended to apply to providers of information society services as per the meaning of Directive 2000/31/EC. In the affirmative, the Commission services would like to receive further information on:
a. whether the notified draft would apply to providers of information society services established in the territory of other Member States than Ireland;
b. what would be the obligations applicable to those service providers resulting from the notified draft;
c. whether the Irish authorities have identified those providers or what would be the basis for identifying them;
d. how do the Irish 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.

The Irish authorities are kindly invited to reply by 30 July 2024.

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

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