



EUROPEAN COMMISSION

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His Excellency
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Subject: Notifications 2024/0092/FR

Draft decision on the list of services classified as being of general interest, pursuant to the provisions of Article 20-7 of Law No 86-1067 of 30 September 1986 on freedom of communication

Delivery of comments pursuant to Article 5(2) of Directive (EU) 2015/1535 of 9 September 2015

Excellency,

Within the framework of the notification procedure laid down by Directive (EU) 2015/1535¹, the French authorities notified to the Commission on 20 February 2024 the draft “decision on the list of services classified as being of general interest, pursuant to the provisions of Article 20-7 of Act No 86-1067 of 30 September 1986 on freedom of communication” (hereinafter the “notified draft”).

The newly notified draft intends to implement Article 20-7 of Law No 86-1067 of 30 September 1986, which was introduced by Order No 2020-1642 of 21 December 2020 transposing Directive (EU) 2018/1808 (hereinafter “the AVMSD”)². According to the French authorities, Article 20-7 is rooted in Article 7a of the AVMSD, which is an optional provision for Member States allowing them to take measures to ensure the appropriate prominence of audiovisual media services of general interest.

¹ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification), OJ L 241, 17.9.2015, p. 1.

² Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities.

The notified draft concerns the list of services that automatically classify as being of general interest within the meaning of Article 20-7 of the Law of 30 September 1986 on freedom of communication (public service media in France and TV5 for the performance of its public service tasks) and those that can be subsequently designated as such by the French national regulatory authority, Arcom, based on the fact that they fulfil certain criteria. The second category may include national free television services holding a broadcasting licence issued pursuant to Article 30-1 of the Law of 30 September 1986, as well as on-demand audiovisual media services made available free of charge to the user, provided that they are intrinsically linked to those television services and made available by them, their subsidiaries or the companies controlling them within the meaning of point 2 of Article 41-3 of the Law of 30 September 1986. Service providers under this second category need to apply and communicate their list of services of general interest to the French national regulatory authority.

In the context of the notified draft, the Commission services addressed to the French authorities a request for supplementary information on 6 March 2024 to obtain clarifications on the measures of the notified draft. The answers provided by the French authorities on 15 March 2024 are taken into account in the following assessment. An examination of the relevant provisions of the notified draft has prompted the Commission to issue the following comments.

Compatibility of the notified draft with Article 56 of the Treaty on the Functioning of the European Union

In response to the Commission's request for supplementary information concerning notification 2024/0092/F, the French authorities stated that the list of services of general interest that will be drawn up by Arcom and are based on an application procedure may include companies not established in France. The French authorities specified that the eligibility of the services depends on whether they fulfil the conditions of Article 20-7 of Law No 86-1067 of 30 September 1986 on freedom of communication and/or the criteria specified in the notified draft. There is, in particular, a requirement to disseminate or distribute their services to the entire population of mainland France.

From the supplementary information provided by the French authorities, it appears therefore that there is no direct discrimination against foreign media service providers regarding the eligibility to file an application.

However, the Commission would like to recall that the CJEU has adopted a narrow interpretation of allowed restrictions to the freedom to provide services. Article 56 TFEU requires not only the elimination of all discrimination against providers of services on grounds of nationality or the fact that they are established in a Member State other than that where the services are to be provided, but also the abolition of any restriction, even if it applies without distinction to national providers of services and to those of other Member States, which is liable to prohibit, impede or render less advantageous the activities of a provider of services established in another Member State where he lawfully provides similar services.³

On the basis of the above and in line with comments issued in notifications [TRIS 2020/813/D](#) and [TRIS 2023/205/I](#), the Commission draws the attention of the French

³ See, for instance, judgment of 25 April 2013, Jyske Bank Gibraltar (C-212/11, EU:C:2013:270, paragraphs 58-59).

authorities to the need to ensure that practical conditions surrounding the application procedure laid down in the notified draft, such as language requirements and information about the call for applications, will not pose any restrictions on the freedom to provide services for media service providers established outside the territory of France. This need also stems from Article 11 of the Charter of Fundamental Rights of the EU, which enshrines *inter alia* the freedom to “receive and impart information and ideas without interference by public authority and regardless of frontiers”.

The Commission invites the French authorities to take into account the abovementioned comments.

The Commission furthermore reminds the French authorities that once the definitive text has been adopted, they are required to communicate it to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.

I remain, your Excellency, yours faithfully,

For the Commission

Roberto Viola
Director-General
Directorate-General for
Communications Networks, Content
and Technology