Message 007

Communication from the Commission - TRIS/(2024) 2006

Directive (EU) 2015/1535

Notification: 2024/0379/FR

Communication by Commission containing general information regarding the above-mentioned notification.

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2. Commission

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

4. 2024/0379/FR - SERV60 - Internet services

5.

6. CORRIGENDUM - The French authorities have communicated the following corrected text to the COM:

Draft Order on the conformity of the Law on commercial influence

Sole article.

Law No 2023-451 of 9 June 2023 aimed at regulating commercial influence and combating abuses of influencers on social networks is amended as follows:

I. - Article 1 is replaced by the following provisions:

'Article 1. - I. - Natural or legal persons who, for consideration, use their reputation among their audience to communicate to the public, by electronic means, content intended to promote, directly or indirectly, goods, services or any cause, exercise the activity of commercial influence by electronic means.
'II. - The provisions of Article 4 and from I to IV of Article 5 shall apply:
'(a) persons exercising the activity of commercial influence by electronic means defined in Article 1 established in France or outside the European Economic Area and subject, for the provisions relating to I to III of Article 4, to not being, by virtue of such activity, media service providers within the meaning of Directive 2010/13/EU;
'(b) for those falling within the scope of I to III of Article 4, to persons exercising the activity of commercial influence by electronic means defined in Article 1 as a media service provider within the meaning of Directive 2010/13/EU and not under the jurisdiction of another Member State of the European Economic Area within the meaning of Article 2(2) of that Directive.
'III. - One or more of the prohibitions or requirements laid down in I to III of Article 4 and in I to IV of Article 5 may be applied, together with the corresponding penalties, in accordance with the procedures laid down in Article 3(2-5) or

Article 4(2-5) of Directive 2010/13/EU, to a person exercising the activity of commercial influence by electronic means defined in Article 1 as a media service provider under the jurisdiction of another Member State of the European Economic Area within the meaning of Article 2(2) of that Directive, provided that it is objectively necessary, applied in a non-discriminatory manner, and proportionate to the objectives of general public interest pursued by the relevant provisions of I to III of Article 4 and of I to IV of Article 5.
'IV. - Provided that it is necessary and proportionate to bring to an end an infringement, or a grave and serious risk of infringement, of public policy, in particular the protection of minors, public security, consumer protection, including of investors, or the protection of public health, one or more of the prohibitions or requirements laid down in Article 4 and I to IV of Article 5 and the related penalties may be applied, in accordance with the procedure laid down in Article 3(4)(b) and (5) of Directive 2000/31/EC, to persons exercising the activity of commercial influence by electronic means defined in Article 1, established in another Member State of the European Economic Area and provided that, for the provisions covered by I to III of Article 4, that they are not media service providers within the meaning of Directive 2010/13/EU by virtue of such activity;
'V. - At the end of the applicable procedures referred to in III and IV of this Article, an order of the administrative authority shall designate each person concerned by those paragraphs and shall specify the provisions of Article 4 and I to IV of Article 5 applicable to him and the department concerned.'

II. - Article 4 is replaced by the following provisions:

'Article 4. - I. - Any promotion, direct or indirect, of acts, processes, techniques and methods with an aesthetic purpose which may pose risks to the health of the persons referred to in Article L. 1151-2 of the Public Health Code and the interventions referred to in Article L. 6322-1 of that Code shall be prohibited for persons exercising the activity of commercial influence by electronic means.
'II. - Any promotion, direct or indirect, of non-therapeutic products, acts, processes, techniques and methods presented as comparable or preferable to or as replacements for therapeutic acts, protocols or prescriptions shall be prohibited for persons exercising the activity of commercial influence by electronic means.
'III. - Any, promotion, direct or indirect, of products considered to be nicotine products which can be consumed and are made of, even partially, nicotine shall be prohibited for persons exercising the activity of commercial influence by electronic means.
'IV. - Any promotion, direct or indirect, involving animals not included in the list referred to in I of Article L. 413-1 A of the Environmental Code shall be prohibited for persons exercising the activity of commercial influence by electronic means. This prohibition shall not apply to establishments authorised to keep those animals in accordance with Article L. 413-3 of that Code.
'V. - Any promotion, direct or indirect, of the following financial products and services shall be prohibited for persons exercising the activity of commercial influence by electronic means:
'1. The financial contracts defined in Article L. 533-12-7 of the Monetary and Financial Code;
'2. The provision of digital asset services, within the meaning of Article L. 54-10-2 of that Code, with the exception of those for which the advertiser is registered under the conditions laid down in Article L. 54-10-3 of that Code or authorised under the conditions laid down in Article L. 54-10-5 of that Code;
'3. Public token offerings, within the meaning of Article L. 552-3 of the same Code, except where the advertiser has obtained the visa provided for in Article L. 552-4 of that Code;
'4. Digital assets, except those related to services for the supply of which the advertiser is registered under the conditions laid down in Article L. 54-10-3 of that Code or approved under the conditions laid down in Article L. 54-10-5 of that Code, namely where the advertiser does not fall within the scope of Articles L. 54-10-3 and L. 54-10-5 of that Code.
'Infringements of the provisions of this V shall be subject to the penalties provided for in the fifth subparagraph of Article L. 222-16-1 and the penultimate subparagraph of Article L. 222-16-2 of the Consumer Code.
'VI. - Any promotion, direct or indirect, of subscriptions for sports tips or bets shall be prohibited for persons exercising the activity of commercial influence by electronic means.
'VII. - Commercial communications by electronic means by the persons referred to in Article 1 of this Law relating to gambling as defined in Articles L. 320-1 and L. 320-6 of the Internal Security Code shall be authorised only on online platforms offering the technical possibility of excluding from the audience of such content all users under the age of eighteen years of age and if that exclusion mechanism is actually activated by those persons.

'Such commercial communications shall be accompanied by a reference to the prohibition of such content for persons under the age of 18. This statement shall be clear, legible and understandable on any medium used.
'The exclusion mechanisms provided for in this VII shall comply with a reference framework drawn up by the Regulatory Authority for Audiovisual and Digital Communication after consulting the National Gaming Authority and the National Commission for Informatics and Freedoms.
'Promotion contracts with gambling operators shall include a clause whereby the persons defined in Article 1 of this Law certify that they have familiarised themselves with the laws and regulations applicable to commercial communications relating to gambling and undertake to comply with them.
'Infringements of the provisions of this VII shall be liable to the fine provided for in Article L. 324-8-1 of the Internal Security Code.
'VIII. - After point 2 of Article L. 6323-8-1 of the Labour Code, a subparagraph worded as follows is inserted:
'Any sale or promotional offer of a product or any payment in return for subscription to programmes referred to in the same Article L. 6323-6 shall also be prohibited.'
' IX. - Infringement of the provisions of I to IV and VI of this Article shall be punishable by the penalty provided for in Article L. 132-2 of the Consumer Code.
' In respect of those offences and the offence provided for in VII, the offender may also be prohibited, either definitively or temporarily, in accordance with the procedures laid down in Article 131-27 of the Criminal Code, from exercising the professional or social activity in the exercise of which the offence was committed or the activity of commercial influence by electronic means defined in Article 1 of this Law.
'X. - After point 31 of Article L. 511-7 of the Consumer Code, the following point 32 is inserted:
'"32. V, VI and VII of Article 4 of Law No 2023-451 of 9 June 2023 aimed at regulating commercial influence and combating abuses of influencers on social networks".'

III. - Article 5 is replaced by the following provisions:

'I. - Content communicated by the persons referred to in Article 1 of this Law comprising images which have been subjected to:
'1. Modification by any image processing process to refine or thicken the silhouette or to alter the appearance of the face shall be accompanied by the words: 'Retouched images';
'2. Production by any artificial intelligence process to represent a face or silhouette shall be accompanied by the statement: 'Virtual images'.
'The references set out in this I shall be clear, legible and understandable on any medium used.
'II. - Where the promotion is carried out by the persons referred to in Article 1 of this Law and concerns registration for a vocational training activity referred to in Article L. 6313-1 of the Labour Code, financed by one of the bodies referred to in Article L. 6316-1 of that Code, the reference set out in V of this Article shall include information relating to the associated financing, commitments and eligibility rules, the identification of the provider(s) responsible for that training programmes and the provider referenced on the electronic service referred to in Article L. 6323-9 of the Labour Code.
'III. - Infringement of the provisions of I and II of this Article shall be punishable by one year's imprisonment and a fine of EUR 4 500.
'IV. - The detailed rules for the application of I and II of this Article shall be laid down by decree made after hearing the Council of State.
'V. - It is a misleading commercial practice within the meaning of Article L. 121-3 of the Consumer Code and under the conditions laid down in that Article, for a natural or legal person exercising an influence activity within the meaning of Article 1 of this Law not to indicate, in a clear, legible and comprehensible manner, on any medium used, the commercial intention it has, if that intention is not already apparent from the context.
'Commercial intent may be explicitly indicated by the use of the terms 'advertising' or 'commercial collaboration' or by an equivalent term adapted to the characteristics of the influence activity and the format of the medium used.'

IV. - Article 9 is replaced by the following provisions:

'I. - Where they carry out the activity defined in Article 1 and are not established in the territory of a Member State of the European Union, the Swiss Confederation or the European Economic Area and target an audience in France, legal persons

or natural persons engaged in an independent activity under the status defined in Articles L. 526-6 to L. 526-21 of the Commercial Code or Articles L. 526-22 to L. 526-26 of that Code shall designate in writing a legal or natural person to ensure a form of legal representation in the territory of the European Union.
'The person designated to provide a form of legal representation is responsible for ensuring the conformity of contracts which have as their object or effect the implementation of an activity of commercial influence by electronic means directed, in particular, at an audience established in French territory. That person shall also be responsible for responding, in addition to or in place of the persons referred to in the first subparagraph of this I, to all requests from the competent administrative or judicial authorities for compliance with this Law.
'The persons referred to in that first subparagraph shall give the person so designated the necessary powers and sufficient resources to ensure effective cooperation with the competent authorities to comply with this Law.
'The persons referred to in that first subparagraph shall, upon request, communicate to the competent administrative authorities the name, postal address, e-mail address and telephone number of the person designated pursuant to that first subparagraph.
'This designation shall not constitute an establishment in the European Union.
'II. - A person pursuing the activity defined in Article 1 who is established outside the European Union, the Swiss Confederation or the European Economic Area shall be required to take out civil insurance against the financial consequences of his civil and professional liability with an insurer established in the European Union, where that activity is aimed at an audience established in French territory.
'III. - The implementation procedures for this Article shall be defined by decree made after consultation with the Council of State.'

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