



EUROPEAN COMMISSION

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

Message 301

Communication from the Commission - TRIS/(2024) 2879

Directive (EU) 2015/1535

Notification: 2024/0531/ES

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 információkérése - 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 2024 0531 ES EN 23-12-2024 21-10-2024 COM INFOSUP COM 23-12-2024

2. Commission

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

4. 2024/0531/ES - 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 Spanish authorities notified to the Commission on 20 September 2024 the draft “Anteproyecto de Ley Orgánica para la protección de las personas menores de edad en los entornos digitales” (hereinafter, the “notified draft”).

On 7 October 2024 the Commissions services addressed a first request for supplementary information, to which the Spanish authorities replied on 18 October 2024. The Commission services take note of the information provided therein and in order to allow the Commission services to complete their analysis under the relevant provisions of EU law, the Spanish authorities are kindly invited to reply to the following additional request for supplementary information:

1. The Commission services take note of the information provided in the replies to questions 3 and 7 according to which the obligation to set up and operate an age verification system would not apply to providers of online intermediary services as per the meaning of Article 3 of Regulation (EU) 2022/2065:

“En este caso, el cumplimiento de esta obligación corresponderá a aquellas personas, físicas o jurídicas que, utilizando servicios intermediarios, por ejemplo, plataformas en línea definidas en el artículo 3, letra i) del Reglamento (UE) 2022/2065, comercialicen al público los productos o funcionalidades definidas en el mencionado artículo 5. Esto es, los sujetos obligados por este apartado 2 son quienes comercialicen los productos o funcionalidades definidas, no los prestadores de servicios intermediarios en línea.” (reply to question 3)

“El artículo 5 contiene una definición de mecanismo aleatorio de recompensa y, tal y como se ha señalado más arriba, en su apartado 2 determina que sólo cuando se cuente con un sistema de verificación de edad se podrá ofrecer ese tipo de



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funcionalidades. Por lo tanto, en la medida en que una funcionalidad como la definida en el artículo 5.1 fuera puesta a disposición de los consumidores por servicios de la sociedad de la información en el sentido de la Directiva 2000/31/CE la exigencia de un sistema de verificación de edad les resultaría de aplicación (con la excepción arriba señalada -ver contestación a pregunta 3- de aquellos que tuvieran naturaleza de servicios de intermediación).” (reply to question 7)

The Commission services would welcome practical examples of the providers that would be subject to the above obligation concerning age verification, as well as the practical way in which they are expected to comply with the said obligation when those providers offer their functionalities using online intermediary services. Finally, the Commission services would request the Spanish authorities to confirm that, in view of the above, functionalities provided by providers of online platforms similar to the case of TikTok Lite (for Commission opening decision of 22 April 2024 and decision making commitments of 5 August 2024 binding please consult this link) would not be covered by the scope of Article 5 of the notified draft.

2. Concerning Article 4, paragraph 3 second subparagraph, the Commission services would welcome a clarification on the obligations for providers of information society services as per the meaning of Directive 2000/31/EC, such as operating systems, that would result from this provision. The Commission services would also ask the Spanish authorities to clarify whether those obligations, if any, would also apply to providers of information society services established in other Member States in view of CJEU case law C-376/22.

The Spanish authorities are kindly invited to reply by 25/10.

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