



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/(2025) 0349

Directive (EU) 2015/1535

Notification: 2025/0012/FR

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

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5.

6. The French authorities have taken note of the request for additional information sent by the Commission on 23 January 2025 concerning the draft Decree implementing Article 29 of the Act on securing and regulating the digital space (SREN). They would like to recall that Article 29 and the other provisions of the aforementioned Act have already been subject to the notification procedure provided for under Directive (EU) 2015/1535.

1. Article 35(5) and (8) of the Data Act provides that the Commission may, by means of implementing acts, 'adopt common specifications based on open interoperability specifications covering all the essential requirements laid down in paragraphs 1 and 2' of the Regulation and 'publish [...] common specifications or harmonised standards for interoperability of data processing services were published in the central Union standards repository for the interoperability of data processing services'. Considering the objective to promote interoperability of services across Member states, could you clarify how the specifications referenced in this Decree will be aligned with, or positioned in relation to, this repository and the common specifications established at the EU level? Will references to harmonised standards and common specifications from the future EU repository be automatically carried over into the work of ARCEP?

The French authorities have taken note of the provisions laid down in Regulation (EU) 2023/2854 (Data Act). That



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Regulation, which is directly applicable, nevertheless requires, for its full application, the possibility to adopt technical standards quickly. As far as we are aware, although the Data Act is applicable from September 2025 in the Member States, no standard at the European level has yet been published. The objective pursued by certain articles of the SREN Act, in particular Article 29 and its draft Decree, was to enable France to best anticipate the application of the Data Act by allowing the Electronic Communications, Postal and Press Distribution Regulatory Authority (ARCEP) to begin the work necessary for the practical implementation of certain obligations of the Data Act, particularly regarding interoperability, in connection with the ecosystem and in a coherent and constructive manner with the European authorities.

In this regard, the work relating in particular to the definition of the specifications for interoperability, portability, and the opening of application programming interfaces that ARCEP could undertake, prior to the application of the Data Act, will be consistent with the guidelines to be established at the EU level, in accordance with the European work provided for by the Data Act and ensuring good coordination with the European codes of conduct on cloud computing services.

The French authorities also point out that several provisions of the SREN Act, including Article 29, are intended to anticipate the introduction of the Data Act, without, however, replacing it, since the latter will be fully and directly applicable, in accordance with Article 64(IV) of the SREN Act (the maximum date, which was set even though the date of application of the Data Act was not yet definitively known). In this respect, the work undertaken at French and European level is not intended to be in conflict and will be carried out in full coordination.

2. The Commission services would welcome more information on the personal scope of the notified draft. In particular, the French authorities are invited to indicate whether the notified draft would maintain the personal scope defined in the SREN Act (in Article 35) and would therefore apply to service providers: 1. established in France and in third countries; and 2. established in other Member States only, in accordance with Article 3 of Directive 2000/31/EC.

The French authorities emphasise that the notified draft text is intended solely to specify the detailed rules for the implementation of Article 29 of the SREN Act – which has already been the subject of the notification procedure provided for under Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 as regards technical regulations and rules on Information Society services – in particular the period within which ARCEP must specify the rules and arrangements for implementing the essential requirements mentioned. The French legislator did not confer on the regulatory authority the competence to revert to the scope retained by the SREN Act. This draft Decree has the same scope as the provisions laid down in the SREN Act. If the French authorities wished to extend the scope of the obligations laid down in Article 29 of the SREN Act and specified in this draft implementing Decree to suppliers established in other Member States of the European Union, then the procedure laid down in Article 35 of the SREN Act will have to be implemented in order to comply with the detailed rules laid down in the abovementioned Directive. This means that the notification procedure to the European Commission under Article 3 of this Directive will have to be followed.

3. With reference to Article 1 of the Decree, could you clarify the meaning of the provision stipulating that ARCEP ‘shall specify the rules and procedures for implementing the essential requirements referred to in Article 28(II) of the abovementioned Act after consulting the public’? Specifically, what does this public consultation process entail? Will it be conducted on a single occasion, or will it involve multiple engagements? Furthermore, will the consultation be limited exclusively to French cloud providers and customers, or will it encompass a broader scope of stakeholders? Lastly, could you confirm whether such consultation activities have already commenced? If so, further details regarding their status and scope are kindly requested.

Article 29 of the SREN Act entrusts ARCEP with the task of specifying the rules and procedures for implementing the essential requirements referred to in Article 28(II) of that Act. The draft implementing Decree specifies that a public consultation will be conducted prior to this enactment. The purpose of this consultation is to gather the views of all stakeholders involved in the use of cloud computing services (e.g. cloud service providers, integrators, infrastructure managers, professional users of cloud computing services, etc.) regarding the guidance that ARCEP intends to adopt to clarify the rules and modalities for the implementation of the essential requirements, including through the enactment of the specification of interoperability and portability, which will be applicable to cloud computing service providers, in accordance with the SREN Act. In doing so, it enables the ecosystem to be involved in identifying regulatory needs in the context of switching providers and the development of the multi-cloud.

ARCEP services conducted a public consultation on the regulation of cloud computing services from 14 October 2024 to



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16 December 2024. Through this consultation, ARCEP sought to share its understanding of existing practices and tools that could facilitate migration and the multi-cloud. It was also an opportunity to listen to the reactions of the ecosystem to the needs for transparency and harmonisation identified during the meetings with users. The Authority's services are processing the feedback collected as part of this work. To this end, another public consultation is to be conducted by ARCEP on a draft decision to specify the rules and procedures for implementing the essential requirements referred to above.

4. With regard to Article 1 of the Decree, could you explain why it is less specific than Article 29(I) of the SREN Act, and in particular does not provide further details on the implementation of the essential requirements? Article 1 provides that ARCEP shall specify the rules and procedures for the implementation of the requirements 'including through the enactment of interoperability and portability specifications to facilitate, where possible, the interoperability of cloud computing services covering the same type of service and the improvement of the portability of assets between different cloud computing services', while the Data Act makes a clear distinction between, on the one hand, services corresponding to scalable and variable computing resources limited to infrastructure elements such as servers, networks and virtual resources necessary for the operation of the infrastructure, without providing access to the operating services, software or applications that are stored, processed or deployed on those infrastructure elements, and, on the other hand, other cloud computing services.

The wording of Article 29 is already extremely comprehensive. The objective sought through this draft Decree was not to complicate the body of Article 29 but to specify, as indicated in Article 29(V), 'the conditions for the implementation of this Article and the time limit for specifying the rules and procedures for implementing the requirements referred to in Article 28(II) shall be specified by a Decree adopted after the opinion of the Electronic Communications, Postal and Press Distribution Regulatory Authority'. Therefore, for the purposes of simplification and readability of the Act, it was decided to draft the Decree in this way. Moreover, the scope of the Decree is not intended to specify this type of technical clarification, since the SREN Act has entrusted ARCEP with the task of specifying these technical aspects in relation to the realities of ecosystem practices to enable intelligent application of these new rules. This work is now being undertaken through the public consultation launched at the end of 2024.

In addition, as regards the distinction between IaaS services and other cloud computing services, ARCEP will differentiate the rules and the modalities for implementing the essential requirements which it has the task of specifying according to the nature and recipients of the services concerned, in accordance with the Data Act.

5. Could you provide details on the scope and nature of the rules and procedures referred to in the first paragraph of Article 1 of this Decree, which must be established by ARCEP? Does the date of 12 September 2025 correspond to the planned public announcement of these rules and procedures, aligned with the date of entry into force of the Data Regulation?

The text giving rise to this notification is a draft Decree implementing Article 29 of the SREN Act. The date of 12 September 2025 chosen is intended to ensure a good link with the entry into application of the Data Act, which will apply directly from the same date. In addition, and as mentioned above, the work that will be undertaken following the publication of the Decree is intended to contribute to and align with the discussions that will be conducted at the European level on common specifications for the interoperability of data processing services. That is why, in a spirit of consistency with the Data Act, the draft Decree implementing Article 29 of the SREN Act provides that the rules and procedures will be specified before 12 September 2025, since from that date the Data Act will come into force.

6. With reference to Article 2 of the Decree, could you provide details on the technical reference offer for interoperability and its implications for suppliers? Specifically, where is this information required to be published, and with what frequency? Does that obligation extend to the exceptions provided for in Article 29(IV) of the SREN Act? Furthermore, will it be mandatory for providers to disclose this information to prospective or actual customers in a visible and transparent manner? Additionally, shall this information be provided for distinct categories of commercially available services, as outlined in the CSP's catalogue, depending on the complexity of the procedures involved?

Article 29 of the SREN Act provides that providers of cloud computing services are to publish and regularly update a technical reference offer for interoperability in order to enable users to assess, for each service, the arrangements for interoperability with equivalent services, and the arrangements for the portability of data and related assets.



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Article 2 of the draft Decree implementing Article 29 of the SREN Act seeks to specify the minimum content of the technical reference offer for interoperability. These clarifications constitute a repetition of the provisions of Article 26 of the Data Act. Thus, Article 2 of the draft Decree specifies that providers of cloud computing services must provide customers with information on the procedures available for switching providers and porting, as well as on the restrictions and technical limitations known to the provider of data processing services. This obligation will not apply to the actors referred to in Article 29(IV) of the SREN Act, in accordance with the exceptions defined in that legislative provision. As part of its public consultation, ARCEP asked the sector about the content and form that this reference technical interoperability offer should take in order to allow users to have easy access to information, in particular on changing providers and on portability procedures.

This seemed necessary to ensure optimal application from its entry into force in view of the technicality of the newly imposed rules. In any event, ARCEP will pay particular attention to ensuring that the work is in line with the European work provided for in the Data Act, and that the European codes of conduct on cloud computing services are taken into account.

7. Article 29(I) of the SREN Act specifies that ARCEP shall ensure that these specifications are properly linked to those established by the competent authorities of other Member States of the European Union, or included in the European codes of conduct for cloud computing services. Could you please clarify why this provision was omitted from the Decree? The implementing Decree, which is of a regulatory nature, is limited to the provisions that must be specified by the Act to enable it to be applied. It is not intended to reformulate the provisions of the Act, which remain enforceable against ARCEP in the acts it enacts, but only to specify those for which it has been provided for by the legislator. Thus, ARCEP's work on the clarification of the rules and arrangements for implementing the essential requirements will be a continuation of the work provided for by the Data Act and will take into account the European codes of conduct for cloud computing services. ARCEP will also ensure that the specifications are properly coordinated with those of the other Member States of the European Union.

8. The French authorities are kindly requested to indicate whether the notified draft would apply or is intended to apply to gatekeepers designated pursuant to Regulation (EU) 2022/1925. If so, the French authorities are invited to clarify how they envisage the compatibility of the notified draft with Regulation (EU) 2022/1925, in particular with Articles 5, 6 and 7 thereof.

The draft Decree implementing Article 29 of the SREN Act, like the aforementioned Article, is intended to apply to cloud computing providers meeting the definition of those services, aligned with that of the Data Act, without prejudice to European law, and in particular the e-commerce directive. As such, the draft Decree could apply to gatekeepers that will be designated for cloud computing services, pursuant to Regulation 2022/1925, also known as the Digital Market Act, in so far as they meet that definition. Thus, the interactions between the notified draft Decree and Regulation (EU) 2022/1925 will be the same as those existing today between the Data Act and the Digital Market Act at the European level.

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