Message 103

Communication from the Commission - TRIS/(2025) 2663

Directive (EU) 2015/1535

Notification: 2025/0336/FR

Forwarding of the observations of a Member State (Luxembourg) (article 5, paragraph 2, of Directive (EU) 2015/1535). These observations do not have the effect of extending the standstill period.

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1. MSG 103 IND 2025 0336 FR EN 30-12-2025 29-09-2025 LU COMMS 5.2 30-12-2025

2. Luxembourg

3A. ILNAS
1 Avenue du Swing
L-4367 Belvaux
Tél : 00352 247 743 52
E-mail : notification@ilnas@etat.lu

3B. Ministère de l'Économie
Service Marché intérieur et Concurrence
19-21 boulevard Royal, L-2449 Luxembourg
Tél. (+352) 247 84139
Sergej Baumann - Sergej.Baumann@eco.etat.lu

4. 2025/0336/FR - X30M - Textiles and furnishings

5. article 5, paragraph 2, of Directive (EU) 2015/1535

6. In application of Directive (EU) 2015/1535 (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), on 27 June 2025 the French Government notified a proposal for a law amended by the Senate, aiming at reducing the environmental impact of the textile industry, addressing in particular the phenomenon of ultra-fast fashion (hereinafter, 'the notified bill').
The Luxembourgish authorities would first like to point out that protecting the environment is an essential objective for Luxembourg and that the phenomenon of ultra-fast fashion is indeed creating a negative impact on the environment.
The Luxembourgish authorities thus fully support the efforts underway at European level to introduce harmonised measures to achieve this same objective, as this issue concerns the whole of the European Union and is not limited to the territory of a single Member State. It is therefore necessary to find effective and coherent solutions at European Union ('EU') level. An approach based on national initiatives is likely to fragment the internal market, while also not delivering the expected effectiveness.
However, the European Union has already established a horizontal and harmonised legal framework for the creation of an integrated internal market for digital services. This framework consists of Directive 2000/31/EC on electronic commerce (the 'e-Commerce Directive') and Regulation (EU) 2022/2065 on a single market for digital services (the 'Digital Services Act' or 'DSA').
Luxembourg considers that the notified bill falls within the scope of the e-commerce Directive and the DSA (I), and raises some compatibility issues with those two texts (II).

I. Applicability of the e-Commerce Directive and the DSA

The notified bill covers the following categories of suppliers: electronic interfaces, marketplaces, platforms or portals or similar devices for distance selling of goods (Article 541-9-1-1). I-bis of the notified bill).
The Luxembourgish authorities are of the opinion that the provisions in the notified bill therefore fall within the scope of the e-Commerce Directive and the DSA:
• The e-Commerce Directive applies to 'information society services', meaning any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a service recipient (Article 2(a) of the e-Commerce Directive);

• The DSA applies to 'intermediary services', which cover several types of subcategories of information society services, including 'online platforms'. These are defined as hosting services that, at the request of a recipient of the service, store and disseminate information to the public (Article 3(i) of the DSA). The DSA lays down more specific rules concerning online platforms enabling consumers to enter into distance contracts with traders (hereinafter 'online marketplaces').
The scope of the notified bill therefore indirectly reproduces the criteria for the legal classification of the concepts of 'information society services' (i.e. use of an electronic interface to sell goods remotely) and 'online marketplaces' (i.e. 'use of an electronic interface such as a marketplace, platform'). The notified bill must therefore be analysed in the light of the e-Commerce Directive and the DSA.

II. Compatibility of the notified bill with the e-Commerce Directive and the DSA

Article 1 of the notified bill lays down obligations for providers of online marketplaces. Those provisions set out:
- online marketplace provider interface display obligations (Article L.541-9-1-1 – II and Article 541-9-1-12);
- guidelines for online advertising and a ban on the use of the word 'free' in the context of advertising promoting ultra-fast fashion (Article 3);
- obligations concerning influencers (new Article 3-bis).
The Luxembourgish authorities consider that these obligations are contrary to the principles of the e-Commerce Directive and to the maximum harmonisation of the DSA.

A. E-Commerce Directive

The e-Commerce Directive introduces the internal market clause, under which 'Member States may not, for reasons falling within the coordinated field, restrict the freedom to provide information society services from another Member State' (Article 3(2)). Thus, the regulatory competence to regulate an information society service falls exclusively to the Member State in which that service is established.
The coordinated field refers to the requirements laid down by Member States which are applicable to information society service providers or information society services, regardless of whether they are of a general nature or are specifically designed for them. The coordinated field relates in particular to requirements that the service provider must comply with and which concern the taking up of the activity of an information society service, including qualifications, authorisation or notification requirements, and the pursuit of the activity of such a service, such as requirements concerning the behaviour of the service provider, the quality or content of the service (Article 2(h)).
The destination Member State of such a service may adopt measures against a provider, for reasons falling within the coordinated field, only under the conditions set out in Article 3(4). These measures must be necessary to achieve one of the objectives set out in that article and must be taken against an information society service which undermines these objectives. Finally, these measures must be proportional.
In its case law, the Court of Justice of the European Union ('CJEU') has repeatedly interpreted strictly the exception to the internal market clause in Article 3 (by analogy, see: judgment of 22 November 2012, Probst, C-119/12, paragraph 23; and judgment of 21 June 2022, Ligue des droits humains, C-817/19, paragraph 70). In addition, in judgment C-376/22 Google Ireland & Others, the CJEU recalled that Member States may not adopt measures of a general and abstract scope in the field coordinated by the e-commerce Directive against information society service providers established in other Member States (judgment C-376/22 Google Ireland & Others, paragraphs 59 and 60). Nor can a Member State impose additional obligations on an online service provider established in another Member State (judgment of 30 May 2024, joined cases

C-662/22, C-667/22, C-663/22, C-664/22, C-666/22 and C-665/22 Airbnb Ireland UC, Expedia Inc., Google Ireland Limited, Amazon Services Europe Sàrl, Eg Vacation Rentals Ireland, paragraphs 64 and 65).

As indicated above, the notified bill lays down a number of general and abstract obligations with regard to display and commercial communication vis-à-vis providers of information society services, irrespective of whether the latter are established in France or in other Member States of the European Union. Consequently, these obligations are contrary to the internal market clause in the e-Commerce Directive.

B. Digital Services Act ('DSA')

The DSA fully harmonises the rules applicable to intermediary services (recital 9 of the DSA), including online marketplaces, in particular in Articles 29 to 32.
In addition, Article 30 of the DSA requires online marketplaces to ensure that a trader can use their services only when they have obtained information about the trader listed in paragraph 1 of that article.
Since this list is exhaustive, requiring online marketplaces to collect additional information, such as the geographical origin of the product sold, would be going beyond the framework harmonised by the DSA. Consequently, this requirement is contrary to the rules laid down in the DSA, applicable to intermediary services.

For all the aforementioned reasons, the Luxembourgish authorities are of the opinion that the obligations envisaged in the notified bill (Article L.541-9-1-1 – II; Article 541-9-1-12; Article 3; new Article 3-bis) are incompatible with the internal market clause in the e-commerce directive and the maximum harmonisation achieved through the DSA.

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European Commission
Contact point Directive (EU) 2015/1535
email: grow-dir2015-1535-central@ec.europa.eu