



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/(2024) 0700

Directive (EU) 2015/1535

Notification: 2024/0059/BE

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

MSG: 20240700.EN

1. MSG 201 IND 2024 0059 BE EN 07-05-2024 13-03-2024 BE ANSWER 07-05-2024

2. Belgium

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4. 2024/0059/BE - SERV60 - Internet services

5.

6. Please find below Belgium's response to the European Commission's request for additional information on notification 2024/0059/B:

Answer - Question 1 and 2

Article 433quater/2 of the Criminal Code applies within the geographical zone of the Belgian legislation. Decriminalization of prostitution, regulation of the exercise of the activity and advertising of it, are applicable on the Belgian territory, but not on the territory of other Member States.

This general approach is also of application for the Royal Decree implementing Article 433quater/2. However, if advertising is carried out abroad specifically for the promotion of prostitution in Belgium, the obligations in terms of advertising laid down by the Criminal Code and the Royal Decree are applicable.

The place of establishment is not relevant in this regard. The starting point of Article 433quater/2 and the Royal Decree implementing it is the market for which the advertising is intended, in particular the Belgian market. It is worth noticing that prostitution and advertising of prostitution are forbidden by law in the Member States, even though policies of tolerance may be of application in some of them.

The Belgian approach is in conformity with the case-law of the Court of Justice (see, ruling of 5 October 1994, Case C-23/93 TV10). Carrying out advertising abroad where activities are wholly or mainly directed towards the territory of one Member State, only to avoid the obligations and restrictions imposed by national legislation of that State, should not be



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allowed.

This approach is based on the model of the Belgian Act on advertising tobacco products, which has been adopted in order to transpose Directive 2003/33/CE on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products. This also applies specifically to the provision relating to the placement of products in the country of origin but intended for the Belgian market.

Article 7, paragraph 2bis, points 1° and 2° of the law of 24 January 1977 on consumer health protection regarding foodstuffs and other products provides:

«1° Il est interdit de faire de la publicité pour et du parrainage par le tabac, les produits à base de tabac et les produits similaires, ci-après dénommés produits de tabac.

Est considérée comme publicité et parrainage, toute communication ou action qui vise, directement ou indirectement, à promouvoir la vente, quels que soient l'endroit, le support ou les techniques utilisés.

2° L'interdiction visée au point 1° ne s'applique pas à :

- la publicité pour les produits de tabac, faite dans des journaux et périodiques édités en dehors de l'Union européenne, sauf lorsque cette publicité ou l'importation de ces journaux ou périodiques a pour objet principal de promouvoir les produits de tabac sur le marché belge ou communautaire ;
- la publicité fortuite pour les produits de tabac, faite dans le cadre de la communication au public d'un événement qui se déroule à l'étranger, sauf lorsque cette publicité ou la communication au public de cet événement a pour objet principal de promouvoir les produits de tabac sur le marché belge ;
- la publicité pour les produits de tabac faite dans des publications imprimées exclusivement destinées aux professionnels du commerce du tabac.»

Free translation provided:

"1° It is prohibited to advertise and sponsor tobacco, tobacco-based products and similar products, hereinafter referred to as tobacco products.

Any communication or action aimed, directly or indirectly, at promoting sales is considered to be advertising and sponsorship, regardless of the place, medium or techniques used.

2° The prohibition referred to in point 1° shall not apply to:

- advertising for tobacco products in newspapers and periodicals published outside the European Union, except where the main purpose of such advertising or the importation of such newspapers or periodicals is to promote tobacco products on the Belgian or Community market;
- incidental advertising of tobacco products in connection with the communication to the public of an event taking place abroad, except where the main purpose of this advertising or the communication to the public of this event is to promote tobacco products on the Belgian market;
- advertising for tobacco products in printed publications intended exclusively for professionals in the tobacco trade.

Online platforms as defined in Article 3, letter (i) of Regulation (EU) 2022/2065 are included, however with significant limitations. The notion of provider must be understood in accordance with the definition set out in Article 1 of the notified draft, read in conjunction with Article 433quater/2 of the Criminal Code. The medium or restricted part of it must be specifically dedicated to the direct dissemination of offers of sexual services to residents in Belgium. Advertisements for sexual services should constitute the core activity of the platform or of a specific section on this platform. Consequently, cloud computing or web-hosting services are excluded, as well as social networks. Porn-material (video, pictures) are out of the scope.

The aim of the notified draft is to regulate the dissemination of advertisements intended to connect sex-workers with potential customers. Advertising may take place online as well as offline, that is to say using the internet, and / or using traditional media, such as newspapers.

The limitations restrict significantly the scope of the notified draft. A dynamic list of websites has been identified as well as some local or regional newspapers.

Answer – Question 3



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Belgium recently amended its criminal law to remove provisions on sex work, which was previously punishable but tolerated. While maintaining strict prohibitions on minors and forced prostitution, Belgium chose to decriminalize the provision of sexual services by independent workers, providing there is no abuse and no exploitation. New provisions were added on the abuse of prostitution.

Article 433quater/2 of the Criminal Code sets out a general prohibition of publicity of prostitution, unless specific derogations apply. The notified draft further specifies one of the derogations. Consequently, advertising of prostitution services non-compliant with the requirements of the notified draft would be considered illegal.

It is worth noticing that prostitution and advertising of prostitution are forbidden by law in all Member States, even though policies of tolerance may be of application in some of them.

Answer – Question 4

The notified draft does not impose on providers any general obligation of monitoring or fact-finding activities.

Providers will fall under the scope of the notified draft only if their core activity, or part of it, is to put in contact sex-workers with potential customers through dissemination of advertisement to the public.

To ascertain the identity and majority of the sex-worker, the provider must collect one piece of identity (not necessarily an identity card, it can be a driving license or birth certificate, or any other document establishing identity) and a recent picture of the sex-worker.

The provider must check if the phone number provided is valid, and eventually the email address by sending a confirmation link.

Only if the picture obviously does not match with the information provided in the identity document, the provider may require more information. The objective of the measure is to prevent prostitution of minors.

Article 5 sets out a specific obligation. The provider must visibly mention the contact details of the Belgian contact point for victims of trafficking in human beings to the attention of the advertiser.

Regarding online platforms, this information may, for instance, be published on a page in a sufficiently visible manner, or even communicated via an automatically generated email drawing the attention of the advertiser on this point.

Regarding offline media, this information may be communicated to the advertiser in a letter or in any other form that may leave a written trace (e.g. email).

According to Article 6 of the notified draft, the provider must make its staff in charge of handling the advertisements aware of what abuse of prostitution and trafficking in human beings consist of. The aim is to raise awareness of the phenomenon among their staff, which in turn can also help them spot suspicious cases.

The provider must be able to demonstrate that some action is undertaken, but the form and content of the awareness-measure(s) is entirely let to their discretion. According to its size, budget, number of staff concerned, the provider is free to choose the best way to achieve this objective.

This raising-awareness measure may take various forms e.g. providing a list of risk indicators, definitions of the phenomenon and information on the practices of pimps, on the assistance that can be provided by recognized specialized centers for trafficking in human beings, etc. It could, for example, take the form of an annual training course. The associations supporting sex workers may help in this regard.

Answer – Question 5

Third party content disseminated on the online platforms (e.g. comments, posts created by users) will not fall under the obligations set out in the notified draft, as there is no contractual relationship between the provider and the third party. In case third party comments or posts contain advertisement for sexual services, these advertisements would fall out of



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the scope of the notified draft. Advertisement by an adult for his own sexual services is legal according to Article 433quater/2.

Regarding providers, dissemination of advertising of prostitution non-compliant with the requirements of the notified draft would fall under the general prohibition of publicity according to Article 433quater/2 of the Criminal Code. The sector is expecting a legal frame to fully legalize their activities.

Answer – Question 6

The overall objective pursued by regulating the sex work sector is to grant sex workers a social status and decriminalise their activities, while at the same time prevent and combat situation of abuses and sexual exploitation.

The UN stressed that the criminalisation of sex work negatively affects sex workers' rights, safety and health. Various UN entities pointed out that the illicit status of sex workers can increase arbitrary arrest and detention, police abuse and violence, while impeding their access to justice, housing, healthcare and financial institutions. Therefore, several UN entities advocate decriminalisation and recommend the establishment of appropriate regulatory frameworks within which sex workers can enjoy safe working conditions.

Protecting sex workers' rights and social conditions can also contribute to the prevention of organised crime, which exploits people's vulnerabilities and illegal practices to develop criminal activity.

Regulating advertising of prostitution is part of the same approach and has a twofold objective: help sex-workers by providing them useful information on the exercise of their activities and preventing and combatting situation of abuses and exploitation.

The expected benefit is to promote a smooth cooperation between internet platforms and law enforcement authorities, as experience has shown that this cooperation is of utmost importance in order to detect minors in distress, or other situations of abuses.

The provider shall not have liability for the content of the advertisement. The notified draft does not impose on providers any general obligation to monitor advertisements, nor actively seek facts or circumstances indicating illegal activity.

Minors should not be allowed to access internet platforms dedicated to advertising of prostitution. The most reliable system to prohibit minors from having such access would however have entailed the collection of additional personal data to assess whether the visitor on a website is a minor (e.g. itsme or ID identification). In conformity with article 28 of the Regulation (EU) 2022/2065, a more proportionate measure has been chosen. Consequently, the only obligation of the provider is to add on the log-in on the website a banner indicating that the website is reserved for adults.

Situations covered by the notified draft do not meet the definition of 'distance contract' as the contractual relationship that may be concluded between the sex-worker and the potential customer, following the dissemination of the advertisement, will occur later and imply a physical contact between them.

Given the limitations to the notion of providers (see answer to questions 1 and 2), there are no providers of very large online platforms and of very large online search engines that do fall under the scope of the notified draft. It is worth noticing that porn-material (video, pictures) are out of the scope.

Providers are not required to carry out general monitoring of advertisements published on their medium. However, they are required to act promptly and inform the law enforcement authorities in case they spot a suspicious case of abuse of prostitution or sexual exploitation, or if a case is brought to their attention in a way or another. Hence Article 7 of the notified draft further specifies the obligation of notification of suspicions of criminal offences by determining more precisely specific requirements applicable for online and offline providers.

Article 8 read in conjunction with Article 10 of the notified draft does not target illegal content as such, but situations of abuse, prostitution of minors or sexual exploitation.



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Answer – Question 7

Article 433quater/2 of the Criminal Code sets out a general prohibition of publicity of prostitution, unless specific derogations apply. The notified draft further specifies one of the derogations. Compliance with and enforcement of the Criminal Code is ensured by law enforcement authorities, within their remit of preventing, detecting, investigating and prosecuting criminal offences. It will be up to the Public Prosecution's Office to determine their priorities in this regard. The Belgian Digital Service Coordinator will not be tasked with the monitoring of compliance and enforcement of the notified draft.

It is worth noticing that prostitution and advertising of prostitution are forbidden by law in the Member States, even though policies of tolerance may be of application in some of them.

Answer – Question 8

On-demand audiovisual media services or video-sharing platform services do not fall under the scope of the notified draft.

European Commission

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