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His Excellency
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Subject: Notification 2024/0208/FR

Reference framework for age verification systems

Issue of comments pursuant to Article 5(2) of Directive (EU) 2015/1535 of 9 September 2015

Excellency,

As part of the notification procedure provided for in Directive (EU) 2015/1535 ⁽¹⁾, the French authorities notified to the Commission on 15 April 2024 the draft decision from the Regulatory Authority for Audiovisual and Digital Communication (Arcom) to establish a “*Reference framework for age verification systems*” (hereinafter referred to as “the notified draft”).

According to the notification message, the notified draft intends to implement Article 1 of the Law n° 2024-449 of 21 May 2024 on securing and regulating the digital space (hereinafter referred to as “law SREN”, notified to the Commission under the reference numbers 2023/352/FR, 2023/461/FR and 2023/632/FR). Law SREN empowers Arcom to establish and publish, a reference framework setting out the minimum technical requirements for age verification systems to ensure that pornographic content made available to the public by a provider of a communication service to the public online, under its editorial responsibility, or provided by a video-sharing platform service, within the meaning of Article 2 of Law No 86 1067 of 30 September 1986 on freedom of communication, is not accessible to minors. The notified draft concerns these technical requirements.

¹) 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 rules on Information Society services, OJ L 241 dated 17.9.2015, p. 1.

In the context of the notified draft, the Commission addressed to the French authorities a request for supplementary information on 29 April 2024 to obtain clarifications on the envisaged measures. The answers provided by the French authorities on 13 May 2024, and the supplementary information provided on 13 May 2024, in addition to the complementary information provided on 12 July 2024, are taken into account in the present assessment.

The examination of the relevant notified provisions led the Commission to issue the following comments.

1. Introduction

The notified draft sets out the technical requirements for the age verification systems in implementation of the Article 1 of law SREN, which was notified to the Commission under Directive (EU) 2015/1535 under the reference numbers 2023/352/FR, 2023/461/FR and 2023/632/FR. The notified draft pursues the same objective as the previous notifications of the relevant provisions of law SREN concerning the protection of minors when using online services.

The Commission shares the objective of the notified provisions to protect minors online, in particular against content that may be prejudicial to their development. The Commission also notes that the objectives of the notified provisions are clearly aligned with those of the European legal framework for online services, in particular Regulation (EU) 2022/2065 (the Digital Services Act, hereinafter “the DSA”) ⁽²⁾ and Directive 2000/31/EC (Directive on Electronic Commerce) ⁽³⁾.

The protection of minors is one of the enforcement priorities of the Commission under the DSA. In autumn last year the Commission sent detailed requests for information to the five Very large online platforms (VLOPs) with the highest underaged user baser (namely TikTok, Snapchat, YouTube, Instagram and Facebook) to enquire about the measures they have taken to protect minors, who use their services. Based on an assessment of the responses, together with the information received in the risk assessment reports, the Commission has started formal enforcement proceedings against TikTok (on 19 February ⁽⁴⁾ and 22 April 2024 ⁽⁵⁾) as well as Instagram and Facebook (on 16 May 2024 ⁽⁷⁾), as the Commission suspects that these platforms are not compliant with their obligations under the DSA in relation to the protection of minors. This includes the potential non-compliance with the requirement to prevent access by minors to inappropriate content, notably through age-verification tools.

On 13 June 2024, the Commission requested the three pornographic platforms designated as VLOPs in December 2023 to provide more detailed information on the measures they have taken to diligently assess and mitigate risks related to the protection of minors online, as well as requiring details on age assurance mechanisms they have adopted ⁽⁶⁾.

²) Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (DSA), OJ L 277, 27.10.2022, p. 1-102.

³) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce), OJ L 178, 17.7.2000, p. 1-16.

⁴) https://ec.europa.eu/commission/presscorner/detail/en/ip_24_926.

⁵) https://ec.europa.eu/commission/presscorner/detail/en/ip_24_2227.

2. Comments

As described in the Commission's detailed opinion issued to notification 2023/461/FR, in the absence of a EU-wide solution to verify the age of users, a Member State could provide a transitional solution within its jurisdiction in compliance with EU law but it should also envisage a mechanism to withdraw or repeal any national measures that become redundant once the European technical solution is implemented.

The Commission takes note that the notified draft would be adopted in the context of the margin of national action indicated in the detailed opinion issued by the Commission to notification 2023/461/FR.

The Commission therefore invites the French authorities to ensure that notified draft provides for a mechanism that allows to withdraw or repeal the national measure as soon as the European solution is implemented.

The Commission also invites the French authorities to ensure that the scope of application of the notified draft is in line with the amendments introduced to the law SREN to bring it in line with Article 3(4) of the Directive on electronic commerce as interpreted by the CJEU ⁽⁷⁾. In particular, as confirmed by the recent case law of the CJEU, the application of the provisions of law SREN to providers established in other Member States should not concern a "category of given information society services described in general terms and applying without distinction to any provider of that category" [emphasis added]. On the contrary, any application to cross-border providers established in other Member States needs to precisely identify the concerned service providers, as well as the Member State of establishment, and fulfil the requirements established in Article 3(4) of the Directive on electronic commerce.

Finally, the Commission invites the French authorities to continue their active participation in the task force that has been set up in the field of age verification systems of European application, as well as for the preparation of the guidelines announced in Article 28 of the DSA with the aim of ensuring an adequate level of consistency in the application of this provision, which is enforced jointly by the Commission and the competent national authorities.

The Commission invites the French authorities to take into account the above comments in the final text of the notified draft and its implementation.

The Commission furthermore reminds the French authorities that once the definitive text has been adopted, they are required to communicate it to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.

⁶⁾ <https://digital-strategy.ec.europa.eu/en/news/commission-sends-request-information-illegal-content-and-protection-minors-pornhub-xvideos-and>.

⁷⁾ Case C-376/22, *Google Ireland*, ECLI:EU:C:2023:835., and recently confirmed in joined cases Cases C-662/22 and C-667/22, *Airbnb and Amazon*, ECLI:EU:C:2024:432; case C-663/22, *Expedia*, ECLI:EU:C:2024:433; case C-664/22, *Google*, ECLI:EU:C:2024:434; case C-665/22, *Amazon Services Europe*, ECLI:EU:C:2024:435.

Yours faithfully,

For the Commission,

Roberto Viola
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and Technology