Message 201

Communication from the Commission - TRIS/(2024) 1247

Directive (EU) 2015/1535

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

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1. MSG 201 IND 2024 0159 DE EN 24-06-2024 08-05-2024 DE ANSWER 24-06-2024

2. Germany

3A. Bundesministerium für Wirtschaft und Klimaschutz

3B. Bundesministerium für Digitales und Verkehr

4. 2024/0159/DE - SERV60 - Internet services

5.

6. Question 1: The Commission services would like to receive further information regarding the envisaged measures, and in particular whether telemedia providers will be able to also integrate consent management services that have not received the recognition of the German Federal Commissioner for Data Protection and Freedom of Information. If so, please specify how will this be ensured.

Answer: The integration of consent management services is voluntary for telemedia providers, cf. § 18 (1) EinwV. Telemedia providers can integrate all consent management services available on the market. This applies regardless of whether these services have been recognised by the German Federal Commissioner for Data Protection and Freedom of Information.

A recognised service must meet requirements in terms of user-friendliness and compliance with competition law that are verified by the German Federal Commissioner for Data Protection and Freedom of Information. The integration of recognised services should therefore have the advantage for telemedia providers that
• end users trust these consent management services and
• there is a reliable procedure by which telemedia providers can request and obtain consent.

Question 2: The German authorities are kindly requested to provide explanations on how they see the interplay of the planned rules – also the underlying Article 26 TTDSG - with chapter III of Regulation (EU) 2022/868 (the Data Governance Act) that regulates the type of provider.

Answer 2:

The provisions of Chapter III of Regulation (EU) 2022/868 remain unaffected

The notified draft lays down the conditions to become recognised by the German Federal Commissioner for Data Protection and Freedom of Information as a recognised consent management service. These services firstly assist

individuals in exercising their rights under Directive 2002/58/EC.

Unlike Chapter III of Regulation (EU) 2022/868 the notified draft is not aimed at procedures for data sharing, data exchange or making personal data available. Recognised services for consent management expressly only manage the decision to grant or deny consent in accordance with Art. 15 (3) Directive 2002/58/EC, cf. § 2 (1) N. 1, 4 EinwV.

However, these services are not hindered to also assist individuals in exercising their rights under Regulation (EU) 2016/679. To the extent that these services voluntarily provide additional functions as mentioned in EC 30 of Regulation (EU) 2022/868 and that these additional functions would qualify them as data intermediation services, they are subject to the provisions of Regulation (EU) 2022/868. But: These additional functions would not be subject to the recognition procedure according to the notified draft.

Question 3: The German authorities are kindly requested to provide additional explanations on their assessment on the viability of financial models that would support such services. In particular if there are examples already emerging.

Answer 3: There are already existing consent management systems that take care of consent management on behalf of telemedia providers [Consent Management Platforms CMP]. Germany assumes that it could also be a business model for such providers to offer a recognised consent management service. Telemedia providers could pay for the integration of such services. However, there are also ideas being developed in academia and the NGO sector that could provide a cost-effective model where the end user eventually pays a fee. These services could also become commercially viable by offering additional features.

The economic viability of recognised consent management services will also be part of the evaluation.

To date, we are not aware of any services or examples that are already available on the market.

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