



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) 1259

Directive (EU) 2015/1535

Notification: 2024/0208/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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2. France

3A. Ministères économiques et financiers Direction générale des entreprises
SCIDE/SQUALPI - Pôle Normalisation et réglementation des produits
Bât. Sieyès -Teledoc 143
61, Bd Vincent Auriol
75703 PARIS Cedex 13
d9834.france@finances.gouv.fr

3B. Autorité de régulation de la communication audiovisuelle et numérique 39-43 Quai André Citroën, 75015 Paris

4. 2024/0208/FR - SERV - INFORMATION SOCIETY SERVICES

5.

6. The French authorities would like to give the following brief reply to the Commission's requests for supplementary information.

The Commission services would like further explanations concerning the service providers that would fall under the scope of the notified draft. In particular:

- Whether those service providers would include providers of information society services, as per the meaning of Directive 2000/31/EC and the related case law of the CJEU. In the affirmative, whether the notified draft would apply to providers of information society services established in the territory of other Member States than France.

FR: As stated in the letter from the French authorities dated 2 May in response to the Commission's detailed opinion of 17 January, the territorial scope of Articles 1 and 2 of the draft law on securing and regulating the digital space ('SREN draft law') is limited only to information society services established in France or outside the European Union. The text also lays down precise conditions for the extension of the application of these rules to information society services established in other Member States of the European Union. These conditions are strictly related to those laid down in Article 3 of the E-Commerce Directive, as interpreted by the CJEU, in particular in its judgment of 9 November 2023, C-376/22, 'Google Ireland'. The system applicable to service providers established in other Member States is based in particular on a mechanism for the individual designation of the actors concerned and compliance with the substantive and procedural conditions laid down in Article 3 above.

The framework for age verification systems, adopted pursuant to Article 1 of the SREN draft law, is therefore subject to the same territorial scope.



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- In the affirmative, the practical way in which the French authorities will implement the notified draft, and the underlying law, in a way compatible with the recent CJEU case law (C-376/22)

FR: See the answer to the previous question.

Whether those service providers would include on-demand audiovisual media services within the meaning of Directive 2010/13/EU. In the affirmative, the French authorities are kindly requested to clarify whether the notified draft framework ("Référentiel relatif aux systèmes de vérification de l'âge") covers age verification tools as referred to under Article 6a of Directive 2010/13/EU.

FR: Article 1 of the SREN draft law provides that the framework is applicable, inter alia, to online public communication service editors which make pornographic content available to the public under their editorial responsibility. On-demand audiovisual media services falling within the scope of this definition are thus covered by this measure and will therefore have to comply with the framework for age verification systems. For these services, the framework therefore covers the age verification tools referred to in Article 6a of Directive 2010/13/EU.

Whether the notified draft would apply to providers of intermediary services as defined in Regulation (EU) 2022/2065. The type of services that would fall under the scope of the notified draft, and, to the extent possible, practical examples of such services.

FR: In addition to the service providers mentioned in the answer to the previous question, Article 1 of the SREN draft law is applicable to video-sharing platform services that provide pornographic content. To the extent that these platforms are intermediary services within the meaning of Regulation 2022/2065, Article 1 of the SREN draft law – and thus the notified framework – is applicable to intermediary services.

The services covered are video-sharing platform services that provide pornographic content not falling under their editorial responsibility.

The differences between the notions of "online public communication service publisher" with "editorial responsibility" over the pornographic content, as set out in Article 1 of law SREN amending Art 10 (I) of loi SCEN, and "targeted services broadcasting pornographic content" in the notified draft.

FR: The term 'targeted services disseminating pornographic content', abbreviated to 'targeted services', used, for the sake of simplification, in the notified draft refers both to publishers of online public communication services which make pornographic content available to the public under their editorial responsibility and video-sharing platform services that provide pornographic content, i.e. all the players referred to in Article 1 of the SREN draft law.

The French authorities are kindly requested to provide additional explanations on the objectives pursued by the notified draft. In particular, in view of the framework provided in Regulation (EU) 2022/2065 and the national rules transposing Directive 2010/13/EU. The French authorities are also kindly requested to describe the interplay between the notified draft, and the underlying law, and the national rules transposing Directive 2010/13/EU.

FR: As stated in the letter from the French authorities dated 22 December 2023, Article 28b(1)(a) of Directive 2010/13/EU ('AVMSD') calls on the Member States to ensure that 'video-sharing platform providers under their jurisdiction take appropriate measures to protect minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development'. Article 28b (3.f) states: " For the purposes of the protection of minors provided for in paragraph 1(a), the most harmful content shall be subject to the strictest access control measures. These measures shall consist of [...] setting up and using systems to verify the age of users of video-sharing platforms with regard to content likely to harm the physical, mental or moral development of minors."

Article 60 of Law No 86-1067 of 30 September 1986 on the Freedom of Communication empowers the French Media Regulatory Authority (ARCOM) to ensure that video-sharing platforms comply with the obligations laid down in Article 28b of the AVMSD.



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In this respect, Article 1 of the SREN draft law, which provides for the application by video-sharing platforms of an age verification system under the control of ARCOM, appears to be a complementary measure to the system of national rules transposing the AVMSD.

The obligation will apply, on the one hand, to video-sharing platforms and, on the other hand, to websites with editorial responsibility over their content (which fall outside the scope of the DSA), as long as they make pornographic content available to the public.

The French authorities are kindly requested to clarify whether the notified draft framework ("Référentiel relatif aux systèmes de vérification de l'âge") covers age verification systems applicable to video-sharing platforms in accordance with Article 28b of Directive 2010/13/EU.

See the answer to the previous question.

The Commission services would like to receive further information regarding the notified draft and the concrete situations it aims to address. Especially in view of the maximum harmonization effect of Regulation (EU) 2022/2065 and its Recital 9, and its supervisory and enforcement regime set out in its Chapter IV.

FR: As stated in the letter from the French authorities dated 22 December 2023, the Commission's detailed opinion on the SREN draft law, issued by letter of 25 October, argues that the protection of minors is an integral part of the political objectives pursued by Regulation (EC) No 2022/2065 ('DSA'). The French authorities recognise and welcome the Commission's ambition to improve the protection of minors online. They also point out that the latter is linked to the AVMSD.

Article 2 of the DSA Regulation explicitly states that "this Regulation shall be without prejudice to the rules laid down by other Union legal acts governing other aspects of the provision of intermediary services in the internal market or specifying and supplementing this Regulation, in particular the following acts: Directive 2010/13/EU". Furthermore, recital 10 states that it applies: "without prejudice to other acts of Union law governing the provision of information society services in general, governing other aspects of the provision of intermediary services in the internal market or specifying and supplementing the harmonised rules laid down in this Regulation, such as Directive 2010/13/EU of the European Parliament and of the Council (7), including the provisions of that Directive on video-sharing platforms".

The European co-legislators have therefore explicitly provided that the DSA Regulation does not affect the rules laid down by the Audiovisual Media Services Directive ("AVMSD") as revised in 2018.

The French authorities therefore consider that the DSA Regulation does not affect the rules laid down in the AVMSD and that, under the terms of this Directive, a Member State is entitled to adopt measures aimed at video-sharing platforms and requiring, in particular, the setting up of systems for verifying the age of users.

Article 1 of the draft law, which provides for video-sharing platforms to apply an age verification system under the supervision of ARCOM, thus appears to be a complementary measure to the system of national rules transposing the AVMSD.

The Commission services would like to better understand the intended interplay between the notified draft, and the underlying law, and the on-going Task Force on Age Verification under the Digital Services Act (DSA), as well as its objective to set up an EU wide solution for age assurance.

FR: Pursuant to the law on securing and regulating the digital space, ARCOM 'shall establish and publish [...], following an opinion by the French Data Protection Authority (CNIL), a framework setting out the minimum technical requirements applicable to age verification systems. These requirements concern the reliability of user age verification and respect for their privacy.' The 'notified draft' is part of the implementation of this legislative provision.

At the same time, the ARCOM's departments, as well as those of the CNIL and of the government administrations concerned, are actively involved in the work of the Taskforce on Age Verification, which they welcome. The French authorities are convinced that the European Union is, in the long term, the most relevant level of regulation for ensuring the implementation of online age verification solutions, in particular by publishers of pornographic websites which operate in several Member States and which have so far been particularly reluctant to adopt effective measures to protect minors.

The French authorities welcome the fact that the Commission has expressed its openness, in the absence of a Europe-wide solution in the short term, to the French age verification scheme.



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As regards the future, they undertake to revise in whole or in part their internal legal framework where a sufficiently precise legal basis at EU level will make it possible to impose an effective age verification system on all or some of the platforms concerned by access to pornographic content.
In these circumstances, they consider the notified draft as a transitional solution, pending an effective European solution.

What is France understanding of the difference between age verification, age assurance and age estimation (see Research Report: Mapping age assurance typologies and requirements).

FR: The French authorities have taken note of the Commission's report 'Mapping age assurance typologies and requirements'. In the SREN Law, and consequently in the notified draft, the term 'age verification', which in this case refers to confirming that the user has reached the age of majority, is used as a generic term (which can be called 'age assurance') intended to cover both solutions for generating proof of age based on age estimation and age verification within the meaning of this report.

Whether age estimation is regarded in the notified draft as an effective solution to distinguish with certainty between minors users and adult users in relation to pornographic content.

FR: As regards, in particular, solutions for generating proof of age based on age estimation, ARCOM considers them to be effective if they fulfil the criteria set out in the first part of the notified draft entitled 'Reliability of age verification systems'. Where the technical solution put in place is based on an estimation of the age of the user, it must be configured in such a way as to exclude the risk of a minor user being considered an adult user ('false positives').

The Commission services would welcome more information on the outcome of the testing of the "double anonymity" or "double confidentiality" mechanisms confirming its technical feasibility and its ability to meet the need for privacy protection.

FR: At the outset, it should be noted that 'double anonymity' does not correspond to a well-defined technical standard, and that the term itself may be confusing, as it is not used to speak of systems that would only process anonymous data within the meaning of the GDPR.

The concept of 'double anonymity' initially proposed by the CNIL may be understood as a separation between the systems responsible for issuing proof of age, on the one hand, and the services requesting the submission of such proof on the other. This can be done at several levels (organisational, legal and technical).

In practice, the aim is twofold:

- the visited website can verify a valid proof without knowing the identity of the internet user or any information other than the fact that he presents a valid proof;
- the system for issuing a proof of age has no information on the website on which the proof was used.

The French authorities also note that this concept of 'double anonymity' can therefore make it possible to bring the Key Requirements mentioned at the meeting of the Taskforce on Age Verification organised by the Commission on 18 March 2024 closer to reality or to achieve them:

- Proof of age does not disclose any information about the identity of the user
- Proof of age does not disclose any information about the process of providing proof of age to any third party involved in the process (= the exchange is only known to the user and the online platform)

ARCOM and CNIL met with several private, French and European stakeholders, proposing different technical and organisational solutions to meet this requirement of 'double anonymity'. These exchanges confirmed the technical feasibility of age-verification systems that protect privacy and the willingness of the industry to adapt quickly to the current regulatory framework even though no system is yet in production.

The Commission services would also welcome further information regarding the timeline for adoption of the technical standards set out in the notified draft.



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FR: The 'notified draft' of the framework is currently subject to public consultation until 13 May.

Article 1 of the SREN Law provides that ARCOM, after consulting the CNIL, 'shall establish and publish the standard [...] within two months of its enactment.'

To adopt the notified draft framework, ARCOM will collect feedback from the public consultation and will have to refer the matter to the CNIL beforehand for an opinion.

The Authority 'shall take into account', in accordance with Article 5(2) of Directive 2015/1535, the comments of the European Commission and, in any event, the text will not be adopted before the end of the standstill period provided for in Directive 2015/1535.

European Commission

Contact point Directive (EU) 2015/1535

email: grow-dir2015-1535-central@ec.europa.eu