



EUROPEAN COMMISSION

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His Excellency
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Subject: Notification 2025/0012/FR

**Decree implementing Article 29 of Law No 2024-449 of 21 May 2024
to secure and regulate the digital space**

**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 9 January 2025 *the draft Decree implementing Article 29 of Law No 2024-449 of 21 May 2024 to secure and regulate the digital space* (hereinafter referred to as “the notified draft”).

According to the notification message, the notified draft specifies the conditions for the application of Article 29 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) and the time limit for specifying the rules and procedures for implementing the aforementioned requirements.

In particular, the notification message explains that law SREN entrusted new powers to the Regulatory Authority for Electronic Communications, Postal Services and Press Distribution (ARCEP) regarding the regulation of cloud computing services. In particular, it requires providers of cloud computing services to ensure the compliance of their services with essential requirements regarding interoperability, portability, and openness of application programming interfaces. Article 29 of law SREN confers on

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.

ARCEP the task of specifying the rules and procedures for implementing these essential requirements.

In the context of the notified draft, the Commission addressed to the French authorities a request for supplementary information on 23 January 2025 to obtain clarifications on the envisaged measures. The answers provided by the French authorities on 5 February 2025 are taken into account in the present assessment.

The examination of the notified draft has led the Commission to issue the following comments.

1. Introduction

The notified draft sets out the technical requirements and procedural framework concerning the rules and procedures for implementing the essential requirements referred to in Article 28(II) of the law SREN. In particular:

- The notified draft, in Article 1, envisages that ARCEP, shall specify after consulting the public, in particular by laying down interoperability and portability specifications aimed at facilitating, where possible, the interoperability of cloud computing services covering the same type of service and improving the portability of assets between different cloud computing services. The same provision of the notified draft also envisages that such rules and procedures shall be specified by ARCEP before 12 September 2025.
- In addition, the notified draft envisages, in Article 2, that the technical reference offer for interoperability, as referred to in Article 29(II) of law SREN, shall include, in particular, the following information:
 1. The procedures available for changing providers and porting to the cloud computing service, including the methods and formats of changing provider and porting available, as well as the restrictions and technical limitations known to the cloud computing service provider in this regard;
 2. The arrangements for making available the information referred to in Article 28(II)(3) of the law SREN.

The notified draft pursues the same objective as the previous notifications of the relevant provisions of law SREN concerning the regulation of provision of cloud computing services in France.

The Commission shares the objective of the notified provisions to remove technical barriers for switching providers of the cloud computing services and for the multi-cloud. 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) 2023/2854 of 13 December 2023 on harmonised rules on fair access to and use of data (the Data Act, hereinafter “the DA”) ⁽²⁾ and Regulation (EU) 2022/1925 (the Digital Markets Act, hereinafter “the DMA”) ⁽³⁾.

² () Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (Data Act) (Text with EEA relevance), OJ L, 2023/2854, 22.12.2023.

³ () Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (Text with EEA relevance), OJ L 265, 12.10.2022.

Ensuring fair and contestable markets in the digital sector, notably with respect to cloud services, in the Union's internal market is one of the key priorities of the Commission as reflected in particular in the two recalled legislations. Compliance with DA and DMA is crucial to ensure that customers of cloud computing services have free choice and the effective ability to switch seamlessly between different providers of such services and enjoy the possibility to combine services from different cloud providers ("multi-cloud").

3. Comments

Concerning the scope of the notified draft, the Commission takes note of the explanations provided by the French authorities in their replies to the request for supplementary information concerning the eventual future notification under Article 3, paragraph 4, of Directive 2000/31/EC. In this context, the Commission recalls the case law of the CJEU concerning the scope of measures under Article 3(4) of Directive 2000/31/EC which should not apply as regards 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.

The DMA lays down harmonized rules having the objective to ensure contestable and fair markets in the digital sector across the Union where gatekeepers are present. The DMA applies to a set of core platform services identified in Article 2, point 2 thereof, including cloud computing services. The DMA also lays down obligations that apply to designated gatekeepers, including obligations related to data access by business users, such as users of cloud computing services, and prohibitions to restrict switching between different services, including cloud services.

In their reply to the Commission's request for supplementary information, the French authorities confirmed that the notified draft would apply also to gatekeepers within the meaning of the DMA.

Under the DMA, Member States shall not impose further obligations on gatekeepers by way of laws, regulations or administrative measures for the purpose of ensuring contestable and fair markets.

While no undertaking providing cloud computing services has been designated as a gatekeeper under the DMA to date, the Commission invites the French authorities to ensure that the notified draft does not lay down rules that impose further obligations on gatekeepers providing cloud computing services for the purpose of ensuring contestable and fair markets. Imposing such further obligations, would run counter to the harmonizing effect of the DMA and obligations applicable to gatekeepers, thus leading to fragmentation of the internal market and to legal uncertainty not only as to the European legal framework as such, but also of its enforcement and governance.

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.

Yours faithfully,

For the Commission,

Roberto Viola
Director General for
Communications Networks, Content
and Technology