



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) 2866

Directive (EU) 2015/1535

Notification: 2024/0531/ES

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

MSG: 20242866.EN

1. MSG 201 IND 2024 0531 ES EN 23-12-2024 18-10-2024 ES ANSWER 23-12-2024

2. Spain

3A. SDG de Asuntos Industriales Energéticos, de Transportes y Comunicaciones, y de Medio Ambiente  
DG de Coordinación del MI y otras Políticas Comunitarias  
Secretaría de Estado para la Unión Europea  
Ministerio de Asuntos Exteriores, UE y Cooperación

3B. Secretaría General Técnica-Secretariado del Gobierno  
Ministerio de la Presidencia, Justicia y Relaciones con las Cortes  
Complejo de la Moncloa  
Avda. Puerta de Hierro, s/n, 28071, Madrid

4. 2024/0531/ES - SERV60 - Internet services

5.

6. Response report on request for additional information  
(Notification 2024/0531/ES – Preliminary Draft Organic Law for the Protection of Minors in Digital Environments)

In the framework of the notification procedure provided for in Directive (EU) 2015/1535 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, on 20 September 2024, Spain notified the Commission of the 'Preliminary Draft Organic Law for the Protection of Minors in Digital Environments' (hereinafter the 'APLO') (Notification 2024/0531/ES).

A request for additional information was received from the Commission on 7 October 2024 as follows:

1. The Commission services would welcome additional explanations on the objectives pursued by the notified draft, in particular, in view of the maximum harmonisation effect Regulation (EU) 2022/2065 and its Recital 9.
2. The Spanish authorities are kindly requested to clarify whether the right established under Article 2, and notably under its first and second paragraphs, and Article 3 of the notified draft create any correlative obligation for providers of online intermediary services, as defined in Article 3(g) of the Regulation (EU) 2022/2065, in particular to restrict certain types of content to minors. In the affirmative, the Commission would also like to receive further description what would be the concrete obligations, stemming from those Articles, for providers of online intermediary services.
3. The Spanish authorities are kindly requested to clarify the personal scope of the prohibition of Article 5 and, in particular, whether it applies to online intermediary services, such as online platforms as defined in Article 3(i) of Regulation (EU) 2022/2065.
4. In the context of the second final provision of the notified draft, in particular points one to four, seven, eight, eleven



## EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs  
Single Market Enforcement  
Notification of Regulatory Barriers

and sixteen, the Spanish authorities are invited to clarify, whether online intermediary services would have any correlative obligation therefrom, such as, but not only, checking the identity of individuals against the data concerning their users. In the affirmative, the Spanish authorities are requested to clarify the intended interplay with Article, 4 to 6 and 8 of Regulation (EU) 2022/2065.

5. The Commission services would welcome further clarifications regarding the notion of “empresario” set out in point two, four and five of the fourth final provision of the notified draft. In particular, the Spanish authorities are kindly asked to clarify whether this refers to traders selling their own products or whether this notion may also capture providers of online intermediary services which intermediate third-party products or services. In the affirmative, could the Spanish authorities clarify the intended interplay with Section IV of Chapter III of Regulation (EU) 2022/2065.

6. The Spanish authorities are kindly invited to clarify the intended interplay of the monitoring of compliance and enforcement of the notified draft with Chapter IV of Regulation (EU) 2022/2065.

7. The Spanish authorities are kindly invited to clarify whether the provisions in the notified draft, such as, but not limited to, Article 5 and point one and two of the Sixth final provision, are intended to apply to providers of information society services as per the meaning of Directive 2000/31/EC.

In the affirmative, the Commission services would like to receive further information on:

- whether the notified draft would apply to providers of information society services established in the territory of other Member States than Spain;
- what would be the obligations applicable to those service providers resulting from the notified draft;
- whether the Spanish authorities have identified those providers or what would be the basis for identifying them;
- how do the Spanish authorities intend to comply with the requirements set out in Article 3(4) of Directive 2000/31/EC, in particular in view of the CJEU judgement in case C-376/22;
- the intended interplay of point two of the Sixth final provision with Article 5 of Directive 2000/31/EC.

The Spanish authorities are kindly invited to reply by 18 October 2024.”

The requested information is provided below:

### RESPONSE:

1. The Commission services would welcome additional explanations on the objectives pursued by the notified draft, in particular, in view of the maximum harmonisation effect Regulation (EU) 2022/2065 and its Recital 9.

Due to the full harmonisation effect of Regulation (EU) 2022/2065 (hereafter the ‘DSA’) with regard to the due diligence obligations of intermediary services, and to preserve the integrity of the Single Market for Digital Services, Member States cannot adopt national measures that overlap or contradict the fully harmonising DSA framework. The protection of minors is an objective included in the harmonised scope of the DSA. In particular, recital (9) of the DSA expressly prevents Member States from adopting additional national requirements relating to the matters falling within its scope, the latter being intermediary services offered to recipients of the service having their place of establishment or located in the Union.

In relation to the question raised by the European Commission, it is noted that, although the objectives of the APLO partially overlap with those of the DSA, the measures adopted in its provisions respect the full harmonisation effect of the DSA as indicated above. However, where appropriate, the necessary distinctions or amendments to the articles would be adopted to guarantee that provision.

2. The Spanish authorities are kindly requested to clarify whether the right established under Article 2, and notably under its first and second paragraphs, and Article 3 of the notified draft create any correlative obligation for providers of online intermediary services, as defined in Article 3(g) of the Regulation (EU) 2022/2065, in particular to restrict certain types of content to minors. In the affirmative, the Commission would also like to receive further description what would be the concrete obligations, stemming from those Articles, for providers of online intermediary services.

Articles 2 and 3, respectively, establish a catalogue of rights of minors in digital environments and the general purposes that inspire the APLO.

In general, it means that both precepts have, fundamentally, a systematizing purpose, in their projection into the digital field, of common principles and rights that are already largely reflected in Spanish law and also in European Union law



## EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs  
Single Market Enforcement  
Notification of Regulatory Barriers

(principle of comprehensive protection of minors; right of information; freedom of expression; rights to privacy, honour, and personal portrayal, the secrecy of communications, and the protection of personal data; right to be heard and listened to; violence prevention, etc.).

It should not be overlooked that the principles and rights proclaimed also serve as a guide for the tasks of the general government in this area.

In line with what is stated, with regard to the question asked by the European Commission, Articles 2 and 3 do not create correlative obligations, neither for providers of intermediary services, nor for other types of providers of information society services, beyond the obligations established in the rest of the articles and provisions of the APLO.

3. The Spanish authorities are kindly requested to clarify the personal scope of the prohibition of Article 5 and, in particular, whether it applies to online intermediary services, such as online platforms as defined in Article 3(i) of Regulation (EU) 2022/2065.

In addressing that question, it must be assumed that Article 5 establishes, on the one hand, a prohibition and, on the other, an obligation, the subjective scope of which differs.

Article 5(1) of the APLO prohibits general access to content consisting of random reward mechanisms, in the terms defined therein, for all minors. That prohibition is therefore addressed to minors.

However, paragraph 2 thereof establishes, as a measure to ensure the effectiveness of the general prohibition on minors, the obligation to establish a system of age verification when the offer of random reward mechanisms is being made. In this case, compliance with this obligation shall apply to those natural or legal persons who, using intermediary services, for example, online platforms as defined in Article 3, point (i), of Regulation (EU) 2022/2065, market the products or functionalities defined in the aforementioned Article 5. That is, the parties bound by this paragraph 2 are those who market the defined products or functionalities, not the providers of online intermediary services.

4. In the context of the second final provision of the notified draft, in particular points one to four, seven, eight, eleven and sixteen, the Spanish authorities are invited to clarify, whether online intermediary services would have any correlative obligation therefrom, such as, but not only, checking the identity of individuals against the data concerning their users. In the affirmative, the Spanish authorities are requested to clarify the intended interplay with Article, 4 to 6 and 8 of Regulation (EU) 2022/2065.

The provisions of the APLO in relation to which the Commission requests clarification are analysed.

A) The Commission requests clarification in relation to paragraphs 1 to 4, 7 and 8 of the second final provision, which are worded as follows:

One. A new subparagraph (l) is added to Article 33(2) as follows:

'(l) The prohibition of access or communication through social networks, forums, communication platforms or any other place in the virtual space, for a period exceeding 5 years.'

Two. A new subparagraph (m) is added to Article 33(3) as follows:

'(m) The prohibition of access or communication through social networks, forums, communication platforms or any other place in the virtual space, for a period of 6 months to 5 years.'

Three. A new subparagraph (j) is added to Article 33(4) as follows:

'(j) The prohibition of access or communication through social networks, forums, communication platforms or any other place in the virtual space, for a period of 1 month to less than 6 months.'

Four. A new subparagraph (k) is added to Article 39 as follows:

'(K) The prohibition of access or communication through social networks, forums, communication platforms or any other place in the virtual space.'

Seven. Paragraph 4 is amended and a new paragraph 5 is added to Article 48 as follows:

'(4) The judge or court may agree that the control of the measures provided for in the previous paragraphs shall be



## EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs  
Single Market Enforcement  
Notification of Regulatory Barriers

carried out through those electronic means that allow it.

5. The prohibition of access or communication through social networks, forums, communication platforms or any other place in the virtual space deprives the person sentenced of the power of access or communication through the internet, by telephone or any other information or communication technology during the time of the sentence, when they are directly related to the crime committed.

The content or scope of the prohibition shall be expressly specified and reasoned in the court decision.'

Eight. A new subparagraph 4 shall be added to Article 56(1) as follows:

'4.<sup>9</sup> Prohibition of access or communication through social networks, forums, communication platforms or any other place in the virtual space, when they are directly related to the crime committed.'

In these articles, a prohibition on access or communication is being proposed through, among others, 'social networks, forums, and communication platforms', which are, in all or many cases, intermediary services. Therefore, the principle of no general monitoring or active fact-finding obligations established in the DSA Regulation applies to them.

For the purpose of the question raised by the Commission, it is clarified that these provisions should not be interpreted as imposing a general and abstract obligation on providers of social media services, forums, and platforms: neither an obligation to verify the identity of users, nor other obligations to prevent access or communication of users.

In addition, and in particular in relation to point 4 of Article 48, according to which 'the judge or court may agree that the control of the measures provided for in the previous paragraphs shall be carried out through those electronic means that allow it,' it is clarified that the use of electronic means for the control of the measures provided for in paragraphs 1 to 3 of Article 48, and also for the control of the measure prohibiting access or communication through social networks, forums, communication platforms, or any other place in the virtual space, may possibly be specified in collaboration orders sent to providers of intermediary services, such as telecommunications operators, or as the social networks, forums, or platforms to which access is prohibited, which is understood to be compatible with the DSA Regulation provided that in its particular formulation the conditions established in the DSA Regulation itself are met, among which is the principle of no general monitoring or active fact-finding obligation that would also be applicable to this case.

Excerpts from the DSA Regulation that are particularly relevant in this regard are set out below.

Articles 4 to 6 of the Regulation, which define conditions for the exemption from liability of providers of intermediary services in relation to content provided by users, state that the provisions of these articles 'shall not affect the possibility for a judicial or administrative authority, in accordance with a Member State's legal system, to require the service provider to terminate or prevent an infringement', as could be the case in this article of the Criminal Code. Thus, the recital clarifies that: 'The exemptions from liability established in this Regulation should not affect the possibility of injunctions of different kinds against providers of intermediary services, even where they meet the conditions set out as part of those exemptions. Such injunctions could, in particular, consist of orders by courts or administrative authorities, issued in compliance with Union law, requiring the termination or prevention of any infringement, including the removal of illegal content specified in such orders, or the disabling of access to it.'

Article 8 of the DSA Regulation also states: 'No general obligation to monitor the information which providers of intermediary services transmit or store, nor actively to seek facts or circumstances indicating illegal activity shall be imposed on those providers.'

However, this provision is limited to 'general monitoring obligations'. And, in relation to this issue, Recital 30 clarifies the following: 'Providers of intermediary services should not be, neither de jure, nor de facto, subject to a monitoring obligation with respect to obligations of a general nature. This does not concern monitoring obligations in a specific case and, in particular, does not affect orders by national authorities in accordance with national legislation, in compliance with Union law, as interpreted by the Court of Justice of the European Union, and in accordance with the conditions established in this Regulation. Nothing in this Regulation should be construed as an imposition of a general monitoring obligation or a general active fact-finding obligation, or as a general obligation for providers to take proactive measures in relation to illegal content', with the judgment of the Court of Justice of the European Union in case C-18/18, Glawischnig-Piesczek, being particularly relevant.

B) The Commission also requests clarification regarding paragraph 11 of the second final provision, which reads as follows:



## EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs  
Single Market Enforcement  
Notification of Regulatory Barriers

Eleven. A new Article 173 bis is added as follows:

‘Article 173 bis.

A term of imprisonment of 1 to 2 years shall be imposed on anyone who, without the permission of the person concerned and with a view to impairing his or her moral integrity, disseminates, displays or cedes his or her body image or voice audio generated, modified or recreated by means of automated systems, software, algorithms, artificial intelligence or any other technology, in such a way that it appears real, simulating situations of sexual or seriously vexatious content. The penalty shall be applied in its upper half if such deepfake material is disseminated through a means of social communication, through the internet or through the use of technologies, so that it becomes accessible to a large number of people in the virtual space.’

Intermediary services and, in particular, online platforms play an important role in the dissemination of user-facilitated content, which may include deepfakes such as those described in the proposed Article 173 bis. However, as mentioned above, the DSA Regulation lays down conditions for the exemption from liability of providers of intermediary services in relation to user-provided content, and also lays down the principle of no general monitoring or active fact-finding obligations.

In line with this, it is clarified that this provision should not be interpreted as imposing an obligation on providers of intermediary services and, in particular, as imposing a general obligation to monitor content (i.e. obligation to proactively monitor user-provided content in order to detect such deepfakes and prevent their dissemination).

C) The Commission requests clarification in relation to paragraph 16 of the second final provision, which is worded as follows:

Sixteen. Article 186 is amended to read as follows:

‘Article 186.

Whoever knowingly and by any means sells, disseminates, displays or makes available pornographic material to minors or persons with disabilities in need of special protection shall be punished by imprisonment from 6 months to 1 year or a fine from 12 to 24 months.

Where, in order to facilitate the execution of the conduct, the person responsible has used a fictitious or imaginary identity, or an age, sex or other personal conditions different from his own have been attributed, the penalty shall be imposed in the upper half.’

Intermediary services, and in particular online platforms, play an important role in the dissemination and making available of user-provided content, which may include pornographic material.

In line with the provisions above, based on the conditions for the exemption of providers of intermediary services from liability for user-provided content, and the principle of no general monitoring or active fact-finding obligations, this Article should not be interpreted as imposing a general monitoring obligation (i.e. obligation to monitor the age of users, general obligation to proactively monitor content to detect and block pornographic content, etc.).

Nor can this Article itself be interpreted as imposing other obligations (e.g. age verification) on providers of intermediary services.

5. The Commission services would welcome further clarifications regarding the notion of “empresario” set out in point two, four and five of the fourth final provision of the notified draft. In particular, the Spanish authorities are kindly asked to clarify whether this refers to traders selling their own products or whether this notion may also capture providers of online intermediary services which intermediate third-party products or services. In the affirmative, could the Spanish authorities clarify the intended interplay with Section IV of Chapter III of Regulation (EU) 2022/2065.

The fourth final provision of the APLO amends the consolidated text of the General Law for the Protection of Consumers and Users, approved by Royal Legislative Decree 1/2007 of 16 November (TRLGDCU).

Consequently, the term ‘trader’ referred to in paragraphs two, four and five of the fourth final provision is defined in Article 4 of the TRLGDCU, means ‘any natural person, or any legal person irrespective of whether it is privately or publicly owned, who is acting directly or through any person acting in his or her name or following his or her instructions, for purposes relating to his or her trade, business, craft or profession’.



## EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs  
Single Market Enforcement  
Notification of Regulatory Barriers

On this basis, the obligations established through the APLO would fall on traders who place their products on the market in such a way that they can be acquired by a final consumer. Where those products are marketed through a provider of online intermediation services, the trader who markets the products should ensure that that provider has sufficient mechanisms in place to comply with the obligations of APLO.

However, the responsibility for compliance with the requirements set out in the APLO would lie solely with the trader who markets the products, not with the provider of online intermediation services.

6. The Spanish authorities are kindly invited to clarify the intended interplay of the monitoring of compliance and enforcement of the notified draft with Chapter IV of Regulation (EU) 2022/2065.

As stated in Article 2(4) and recital 10 of the DSA Regulation, the DSA Regulation should be without prejudice to other rules, such as Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), including the provisions laid down therein as regards video-sharing platforms.

Law 13/2022 of 7 July on General Audiovisual Communication transposes Directive 2010/13/EU into national law.

Although the APLO will amend the General Law on Audiovisual Communication, and in particular its provisions applicable to providers of video sharing platform services, the amendments incorporated by the APLO do not impose new obligations on providers, but rather clarify and specify them.

Therefore, as regards providers of video sharing platform services regulated by the General Law on Audiovisual Communication, it is considered that the APLO does not entail changes as regards the coordination of the supervision of the DSA and Directive 2010/13/EU.

7. The Spanish authorities are kindly invited to clarify whether the provisions in the notified draft, such as, but not limited to, Article 5 and point one and two of the Sixth final provision, are intended to apply to providers of information society services as per the meaning of Directive 2000/31/EC.

Article 5 contains a definition of a random reward mechanism and, as noted above, paragraph 2 of said article states that the offer of such functionalities can only be made when there are systems of age verification in place. Therefore, to the extent that a functionality such as that defined in Article 5(1) is made available to consumers by information society services within the meaning of Directive 2000/31/EC, the requirement for an age verification system would apply to them (with the exception mentioned above—see reply to question 3—of those that have the nature of intermediation services). In relation to the clarification requested on the sixth final provision, the answer is that it will apply to information society services, notably providers of video sharing platform services.

The provisions of the sixth final provision shall apply to those subject to Law 13/2022 of 7 July, General Law on Audiovisual Communication, which transposes the Audiovisual Media Services Directive (AVMSD) into national law. In particular, it is established that providers of audiovisual media services and providers of video sharing platform services will be subject to the provisions of that Law, and that the latter have the dual status of providers subject to the aforementioned Law and, at the same time, are information society services.

7.a. whether the notified draft would apply to providers of information society services established in the territory of other Member States than Spain;

Article 5 would apply to information society service providers established in the territory of Member States other than Spain.

On the contrary, the provisions of the sixth final provision will not apply to providers established in the territory of Member States other than Spain, but will only apply to those established in Spain and to those of other States not members of the European Union or the European Economic Area (EEA)—in the latter case, in the terms provided for in paragraphs 8 and 9 of Article 3, introduced by paragraph one of the sixth final provision.

As previously stated, the provisions of the sixth final provision will apply to those who are subject to the provisions of Law 13/2022 of July 7, General Audiovisual Communication. It establishes that providers of audiovisual media services and of providers of video sharing platform services established in Spain will be subject to it. This scope respects the country-of-



## EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs  
Single Market Enforcement  
Notification of Regulatory Barriers

origin principle and the freedom of establishment and the freedom to provide services enjoyed by providers within the EU. Any provider established in another Member State of the EU or the European Economic Area shall be subject to the regulations of its country of establishment.

### 'Article 3. Scope of application

1. The audiovisual media service shall be subject to the provisions of this Law as long as the provider of said service is established in Spain. [...]

3. The video sharing platform service provider shall be subject to the provisions of this Law provided that it is established in Spain, in accordance with Law 34/2002 of 11 July 2002 on information society services and electronic commerce. [...]'.

The amendments made by the APLO in Law 13/2022, of 7 July, subjects to its scope of application of its provisions on the protection of minors, those providers of audiovisual media services or video sharing platform services that are not established in any country of the European Union (EU) or the European Economic Area (EEA).

7.b. what would be the obligations applicable to those service providers resulting from the notified draft;

#### A) Provisions relating to Article 5:

As noted above, they should establish an age verification system when they offer functionalities with the characteristics described in Article 5.1. This system must guarantee the security, privacy, and protection of data, in particular in terms of data minimisation and purpose limitation, without the rule providing for a certain technological option.

#### B) Provisions relating to the sixth final provision:

Providers of televisual media services and video sharing platform services that are not established in any EU or EEA Member State shall be subject to a regime for the protection of minors against content that may cause them harm or may be detrimental to them. In particular, they are treated on an equal footing with national providers and must comply with the same obligations for the protection of minors. Therefore, the obliged parties shall be:

- o Audiovisual media service providers established in Spain.
- o Audiovisual media service providers established in third countries that are not members of the EU or the EEA. This provision is in line with Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive). Recital 54 provides that Member States are free to take whatever measures they deem appropriate with regard to audiovisual media services which come from third countries and which do not satisfy the conditions laid down in Article 2, provided they comply with Union law and the international obligations of the Union.
- o Video sharing platform service providers established in Spain.
- o Video sharing platform service providers established in third countries not members of the EU or EEA.

The obligations shall be those set out below:

#### A. Televisual media service providers (Linear [open and conditional] and On-demand)

##### B. Video sharing platform service providers

##### A.1.1 Providers of linear and open televisual media services:

- Prohibition on programs with gratuitous violence or pornography.
- Be part of the co-regulation code.
- parental control mechanisms or digital encoding systems
- R18-rated content to only be broadcast between 10 pm and 6 am.

##### A.1. 2. Providers of linear and conditional televisual media services:

- Be part of the co-regulation code.
- parental control mechanisms.
- age verification systems.



## EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs  
Single Market Enforcement  
Notification of Regulatory Barriers

### A.2. On-demand televisual media service providers:

- gratuitous violence or pornography in separate catalogues.
- Be part of the co-regulation code.
- parental control mechanisms.
- Age verification systems.

### B. Video sharing platform service providers

- Child and user protection
- Implement the measures, including the age verification measure
- Protection of personal data

### A. Televisual media service providers (Linear [open and conditional] and On-demand)

- Absolute prohibitions on commercial communications that promote harmful behaviours, child protection.

### B. Video sharing platform service providers

- Comply with obligations regarding commercial communications

7.c. whether the Spanish authorities have identified those providers or what would be the basis for identifying them;

#### A) Provisions relating to Article 5:

An a priori and general identification of the specific providers of information society services that could be affected by the obligation to incorporate an age verification system is not possible, since these will be determined by the possible existence in the service offered of a functionality such as that defined in Article 5.1. Therefore, the effective application of this requirement will only be allowed by a case-by-case approach in which the existence of functionalities such as the one described is assessed.

#### B) Provisions relating to the sixth final provision:

The wording of the provision itself requires providers to target their services specifically at the Spanish market.

Therefore, when assessing whether a service is specifically directed to Spain, the following criteria mentioned in Directive 2018/1808 (Recital 38) can be taken into account:

- a. Language of the service. The use of Spanish as the main language of the service or its presence in certain audiovisual content may be a first indication to affirm that the service is directed to Spain
- b. Advertising disseminated through the audiovisual media service: advertisements and advertisers. If the service includes commercial communications in Spanish or aimed specifically at residents in Spain, or with specific promotions for such consumers, or with advertisers established in Spain, it is another indication that makes it possible to affirm that the service is directed to our country.

7.d. how do the Spanish authorities intend to comply with the requirements set out in Article 3(4) of Directive 2000/31/EC, in particular in view of the CJEU judgement in case C-376/22;

#### A) Provisions relating to Article 5:

Article 3(4) of Directive 2000/31/EC regulates the possibility of restricting the freedom to provide information society services where a number of conditions are fulfilled:

1. the measures are necessary, for example, for the protection of public health, minors, or consumers;
2. proportionate to those objectives;
3. with the prior adoption of a series of measures (notifications to the Member State and the Commission).

For its part, the CJEU judgment in Case C-376/22, interpreting Article 3(4), concluded, on the basis of a literal, systematic and teleological interpretation and on the basis of the control rule in the Member State of origin, that '... general and abstract measures aimed at a category of given information society services described in general terms and applying without distinction to any provider of that category of services do not fall within the concept of measures taken against a "given information society service" within the meaning of that provision.'

Therefore, for the purposes of complying with Article 3(4) of Directive 2000/31/EC as interpreted by the CJEU, and as



## EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs  
Single Market Enforcement  
Notification of Regulatory Barriers

already stated above, the obligation to establish an age verification system where a functionality as defined in Article 5(1) is offered will be determined by a singular examination by the competent national administrative authority. Where, as a result of that examination, it is possible to verify the existence of a situation requiring the establishment of a system of age verification by a provider established in a third State of the European Union, the adoption of that measure would be carried out in accordance with the terms laid down in Article 3(4)(b) of Directive 2000/31 itself, which reads as follows:

'(b) before taking the measures in question and without prejudice to court proceedings, including preliminary proceedings and acts carried out in the framework of a criminal investigation, the Member State has:

- asked the Member State referred to in paragraph 1 to take measures and the latter did not take such measures, or they were inadequate,
- notified the Commission and the Member State referred to in paragraph 1 of its intention to take such measures.'

### B) Provisions relating to the sixth final provision:

The obligations included in the sixth final provision apply only to, in a non-discriminatory manner, providers established in Spain, and to those established in countries that are not members of the EU or the EEA. In accordance with the scope laid down in Article 3 of Law 13/2022 of 7 July, they will never apply to providers established in other Member States.

7.e. the intended interplay of point two of the Sixth final provision with Article 5 of Directive 2000/31/EC.

Paragraph 2 of the sixth final provision, relating to the obligations of publicity and transparency of the system of ownership of audiovisual media service providers and video sharing platform service providers, applies only to providers established in Spain, since, in accordance with Article 3 on the scope of Law 13/2022 of 7 July 2022, providers established in other Member States are only required to comply with the obligation to pre-finance European audiovisual works.

Article 5 of Directive 2000/31/EC provides:

'Article 5. General information to be provided

1. In addition to other information requirements established by Community law, Member States shall ensure that the service provider shall render easily, directly and permanently accessible to the recipients of the service and competent authorities, at least the following information:

- (a) the name of the service provider;
- (b) the geographic address at which the service provider is established;
- (c) the details of the service provider, including his electronic mail address, which allow him to be contacted rapidly and communicated with in a direct and effective manner;
- (d) where the service provider is registered in a trade or similar public register, the trade register in which the service provider is entered and his registration number, or equivalent means of identification in that register;
- (e) where the activity is subject to an authorisation scheme, the particulars of the relevant supervisory authority;
- (f) as concerns the regulated professions:

- any professional body or similar institution with which the service provider is registered,
- the professional title and the Member State where it has been granted,
- a reference to the applicable professional rules in the Member State of establishment and the means to access them;
- (g) where the service provider undertakes an activity that is subject to VAT, the identification number referred to in Article 22(1) of the sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment(29).

2. In addition to other information requirements established by Community law, Member States shall at least ensure that, where information society services refer to prices, these are to be indicated clearly and unambiguously and, in particular, must indicate whether they are inclusive of tax and delivery costs.'

Although the content of Article 5, transposed into national law by Article 10 of Law 34/2002 of 11 July on information society services and electronic commerce, is applicable to information society services, Article 42 of Law 13/2022 of 7 July applies in a non-discriminatory manner to audiovisual media service providers (which cannot all be considered information society services, as there are differences between the service provided by traditional broadcasters and on-demand services), and to video sharing platform services as competitors for the same audience. Likewise, Article 42 is focused on publicising the regime of ownership of the medium, not so much on the identification of the provider itself. However, the amendment made by the APLO to Article 42 of Law 13/2022, of 7 July, only establishes a new obligation



## EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs  
Single Market Enforcement  
Notification of Regulatory Barriers

with respect to the one present in the AVMSD, which is that audiovisual media service providers and video sharing platform service providers must include, among the information to be made public, an easily recognizable and accessible link to the website of the competent audiovisual authority, so that users can notify possible infringements of audiovisual regulations. This is a slight modification to Article 5 of the AVMSD, which only requires providers to publish the Member State under whose jurisdiction they fall, as well as the regulatory bodies supervising their service. It is not always easy for users to find the reporting pages that are enabled by national regulators, and it has therefore been deemed appropriate to require providers to publish a direct link to regulators' notification and reporting channels.

On the other hand, in order to establish a level playing field between the different types of providers present in the audiovisual market, this obligation is extended to users of particular relevance who use video sharing platform services, who must publish, on their services, in an easily recognisable and accessible way, a link to the website of the audiovisual supervisory authority in order for users to be able to notify possible infringements of audiovisual regulations, since they compete with other providers.

(1) CURIA - Documents (europa.eu)

(2) <https://www.boe.es/search/act.php?id=BOE-A-2002-13758>

Madrid, 18 October 2024

\*\*\*\*\*

European Commission

Contact point Directive (EU) 2015/1535

email: [grow-dir2015-1535-central@ec.europa.eu](mailto:grow-dir2015-1535-central@ec.europa.eu)