



## 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/(2025) 0583

Directive (EU) 2015/1535

Notification: 2024/0531/ES

Forwarding of the response of the Member State notifying a draft (Spain) to of European Commission.

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1. MSG 201 IND 2024 0531 ES EN 23-01-2025 27-02-2025 ES ANSWER 23-01-2025

2. Spain

3A. Subdirección de Asuntos Industriales, Energéticos, de Transportes, Comunicaciones y de Medioambiente  
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4. 2024/0531/ES - SERV60 - Internet services

5.

6. 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 European Commission on 7 October 2024, which was replied to on 18 October 2024.

A second request for additional information was received from the European Commission on 21 October 2024, which was answered on 25 October 2024.

By letter dated 16 December 2024, the Commission issued a detailed opinion, under Article 6(2) of Directive 2015/1535, affecting the regulation of random reward mechanisms (Article 5 of the APLO) and video sharing platform services (sixth final provision of the APLO) and 'comments', under Article 5(2) of Directive 2015/1535, concerning, on the one hand, Regulation 2022/2065 on Digital Services and its relationship with Article 5 of the APLO and, on the other hand, the relationship of the Treaty on the Functioning of the European Union with the obligations relating to terminal equipment with an internet connection laid down in Article 4 of the APLO.

The above details are reported below, following however the order of contents of the APLO:

1. Article 4 (Obligations of manufacturers of digital terminal equipment with an Internet connection):



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Paragraph 3.2 of the Commission's letter makes a number of comments on Article 4 of the APLO in the light of the Treaty on the Functioning of the European Union (TFEU).

Specifically, in Section 3.2, the Commission takes the opportunity to remind the Spanish authorities that non-discriminatory obstacles to the fundamental principle of the free movement of goods and merchandise must be justified under one of the exemptions referred to in Article 36 TFEU or on the basis of mandatory requirements developed in the case law of the Court of Justice. For a national measure to be justified under Article 36 TFEU or on the basis of one of the mandatory requirements established in the case law of the Court of Justice, it must comply with the principle of proportionality (Judgment in Case C-390/99 *Canal Satélite Digital*).

The measure that is promoted with the obligation stipulated in Article 4 of the APLO is the least invasive, most proportionate and most appropriate and necessary to achieve the objective pursued, taking into account the transcendent goods and legal principles that are to be protected with this measure and with the APLO in all its extension, which are the protection of minors in digital environments through, among other measures, the guarantee of respect and compliance with the rights of children and adolescents in the digital environment, especially the rights to privacy, honor and self-image, the secrecy of communications and the protection of personal data and access to age-appropriate content.

Article 4 of the APLO establishes the obligation for manufacturers of digital terminal equipment that have an operating system and that have the ability to connect to the internet to ensure that the equipment includes in its operating system a parental control functionality that allows its users to restrict or control the access of those persons to services, applications and content harmful to minors, the activation of which must occur by default at the time of the initial configuration of the terminal equipment. The inclusion of the functionality, its activation, configuration and update shall be free for the user.

First, it should be noted that the measure and the obligation to implement do not apply to all manufacturers or equipment, but only to digital terminal equipment that cumulatively meets two very specific requirements:

- Equipment that has the ability to connect to the Internet
- Equipment with an operating system

Consequently, manufacturers of digital terminal equipment that do not have the capacity to connect to the internet, such as mobile telephone equipment that lacks this capacity and only enables voice calls and the sending of SMS, are not subject to complying with the obligation. Furthermore, manufacturers of digital terminal equipment which, while fulfilling the above requirement and thus having the ability to connect to the internet, do not have an operating system, are also not required to comply with the obligation.

Therefore, the measure must not be complied with by the manufacturers of any digital terminal equipment, but rather, in a very selective and specific manner, must be complied with only by manufacturers of digital terminal equipment in which both conditions of having the capacity to connect to the Internet and having an operating system exist simultaneously.

Consequently, the measure selectively targets those equipment that has the capacity to connect to the Internet and, therefore, have the capacity that its use by a minor and access to certain content and information through that connection by minors may affect their rights to privacy, honour and self-image, the secrecy of communications, the protection of personal data, and access to age-appropriate content that enables the proper development of the personality of minors and preserves their dignity and fundamental rights.

In addition, for digital terminal equipment to be an objective subject of this measure, in addition to meeting the above condition, it must have an operating system installed, so that digital terminal equipment that lacks an operating system, such as a personal or portable computer without an operating system, is not the subject of this measure.



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In short, the measure is only applicable in a selective and specific manner with regard to a subset of digital terminal equipment, i.e. those that have the capacity to connect to the Internet and, at the same time, have an operating system and, consequently, the measure exclusively targets those digital terminal equipment that can be used immediately by users without further action than switching on the equipment, without the need for additional configuration by the user beyond very specific adjustments (date, time, etc.), so that minors, without any intermediate action or additional configuration, can immediately connect to the Internet and through that connection access content and information that may seriously infringe their fundamental rights or the proper development of their personality.

The measure in Article 4 of the APLO is therefore aimed at establishing guarantees for the use by minors of a specific and selective group of digital terminal equipment, characterised by its immediacy of use and the ability that access to certain content and information may affect the rights of minors. These guarantees are the minimum to be imposed in order to fulfil the objective of protecting the rights of minors, by establishing the obligation for the operating system installed in the equipment to have a parental control system, which must be configured with its first use or subsequent updating to avoid that immediacy in the use of the equipment, allowing the initial possibility of establishing controls that guarantee parental control of access to certain content and information by minors and, ultimately, a conscious and effective control and protection by the persons in charge of minors that guarantee their fundamental rights and adequate personal development.

Furthermore, it is necessary to highlight that the obligation to be implemented by Article 4 of the APLO, in addition to being limited in its subjective and objective scope of application (manufacturers of digital terminal equipment that have the ability to connect to the Internet and, at the same time, have an operating system), is an obligation for the fulfilment of which a series of caveats and safeguards have been imposed again aimed at protecting the rights of minors, so that it is established that the personal data of minors collected or generated during the activation of the parental control functionality may not be used in any case, even when the user acquires the age of majority, for commercial purposes, such as direct marketing, profiling and behaviour-based advertising.

Finally, it must be pointed out that the obligation only requires that all digital equipment have the ability to connect to the internet and, at the same time, have an operating system, that operating system has an additional functionality or application, which is to have a parental control system of that equipment. It is therefore a measure which merely requires the operating system to have an additional facility without drastically or significantly changing the functioning of that operating system but merely affecting the use which certain functionalities of the operating system may be configured at the user's choice, like many others, and which in any event aims to enable persons in charge of children to carry out an active and conscious control of the access of dependent minors to certain content and information which may adversely affect their fundamental rights or the proper development of their personality.

The establishment of parental control to achieve these objectives and to prevent access to certain content already applies to certain services such as the services provided by video-sharing platform providers (Article 28b of 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).

In short, it has been demonstrated that the obligation to be implemented in Article 4 of the APLO is a necessary and timely measure to guarantee the rights of minors in digital environments and prevent them from accessing certain content and information that may adversely affect their fundamental rights or the proper development of their personality, and that it is a proportionate and least intrusive measure possible to achieve the objective pursued, taking into account its selectivity, its restricted scope, the safeguards imposed for the imposition and exercise of the obligation and the least possible or minimal impact on the activity of the manufacturers of those limited digital terminal equipment.

This assessment of necessity, proportionality and minimal intervention was also carried out by the French authorities and inspired the adoption of Law No 2022-300 of 2 March 2022 to strengthen parental control over means of internet access.



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### 2. Article 5 (Regulation of access and activation of random reward mechanisms).

#### (A) Proposal notified to the Commission.

The proposal notified to the European Commission reads as follows:

"Article 5. Regulation of access and activation of random reward mechanisms.

1. Access to random reward mechanisms or their activation by minors is prohibited. For the purposes of this paragraph, a random reward mechanism shall mean a virtual functionality the activation of which is carried out with money of legal tender or through a virtual object, such as a code, key, in-game currency, cryptocurrency or other element, acquired with money directly or indirectly, where the result of such activation is random and consists of obtaining a virtual object that can be exchanged for money or other virtual objects. Where appropriate, regulations may determine the exceptional cases in which this prohibition may be relaxed, always guaranteeing the principle of protection of children that inspires this Law.

2. For the purpose of ensuring the effectiveness of this prohibition, the offer of random reward mechanisms can only be made when there are systems of age verification of users that prevent access or activation of these contents to minors.

Such systems shall ensure security, privacy and data protection, in particular as regards data minimisation and purpose limitation.'

#### (B) New proposal following the detailed opinion of the Commission.

Following the detailed opinion of the Commission, it is decided to replace the aforementioned wording of Article 5 with one in which:

(i) The subjective scope of the provision is clearly defined in relation to minors as addressees of the prohibition on access or activation of random reward mechanisms.

(ii) The legal obligation provided for in the previous wording to have systems for verifying the age of users that prevent access or activation of these contents to minors is omitted.

It also incorporates a new final provision (numbered as tenth, the previous tenth being the eleventh) that, without establishing any age verification system or predisposing the mandatory existence of its existence, incorporates a clause of regulatory development by which the Government is empowered to eventually adopt technical provisions that allow verification of the age of users of random reward mechanisms, which in any case must comply with European Union regulations.

The new proposal would read as follows:

"Article 5. Regulation of access and activation of random reward mechanisms.

Access to random reward mechanisms or their activation by minors is prohibited. For the purposes of the provisions of this article, a random reward mechanism shall mean virtual functionality present in video games and other electronic games the activation of which is carried out with legal tender or through a virtual object, such as a code, key, in-game currency, cryptocurrency or other element, acquired with money directly or indirectly; where the result of such activation is random and consists of obtaining a virtual object that can be exchanged for money or other virtual objects. Where appropriate, regulations may determine the exceptional cases in which this prohibition may be relaxed, always guaranteeing the principle of protection of children that inspires this Law".

"Tenth final provision. Regulatory development of the ban on access to random reward mechanisms.



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In order to ensure the effectiveness of the prohibition on access or activation by minors of random reward mechanisms, the Government, by regulation, on the proposal of the Ministry of Social Rights, Consumer Affairs and Agenda 2030 or the department responsible for consumer protection and gambling, may adopt the relevant technical provisions to allow age verification of users of this type of functionality. In any event, the adoption of these measures must comply with Community legislation and, in particular, those dealing with unethical commercial techniques and practices in relation to dark patterns, the marketing of influencers, the addictive design of digital products and online profiling, especially when they exploit consumer vulnerabilities for commercial purposes."

3. Sixth Final Provision (amendment of Law 13/2022 of 7 July, General Audiovisual Communication) and the application of the country of origin principle to video-sharing platform service providers.

With regard to video-sharing platform service providers defined in Article 2.17 of General Law 13/2022 of 7 July 2022 on Audiovisual Communication, it is clarified that the scope of application provided for in Article 3.3 of the aforementioned law remains in force. In that sense, the country of origin principle, the cornerstone of the Audiovisual Media Services Directive, has not been affected by the amendments set out in the APLO.

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