



Message 201

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

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4. 2024/0288/HU - SERV20 - Electronic commerce

5.

6. 1. Question 1

Government Decree No 210/2009 of 29 September 2009 on the conditions of carrying out commercial activities (hereinafter referred to as Government Decree) serves the implementation of Act CLXIV of 2005 on trade (hereinafter: Trade Act), and establishes the detailed rules thereof. The draft amendment to the Government Decree, which was notified to the Commission on 30 May 2024 (hereinafter: notified draft), lays down that:

'In the case of mail order trading, products which are intended for children and the essential element of which is the direct, natural or self-intended representation of sexuality or the promotion or portrayal of sex reassignment or homosexuality or gender identities that do not correspond to the sex assigned at birth, may be marketed in such a way that the commercial communication enabling the transactional decision to purchase must include the information "Sensitive content!" in a clearly visible manner.'

The envisaged obligation therefore applies to mail order trade, which is defined in Section 2(4) of the Trade Act as follows:

'mail-order trade means the commercial activity in the course of which the trader provides the buyer with commercial communication, including the features and price of the product, which makes it possible for the buyer to take the decision whether he wishes to enter into a transaction to buy the product, and delivers the product (has it delivered) to the address provided, as ordered on the basis of such commercial communication.'



The term 'commercial activity' is defined in Section 2(9) of the Trade Act in the following way: 'commercial activity means retail and wholesale activity, as well as commercial agent activity'.

'Mail-order trade' within the scope of commercial activities according to the Trade Act, by definition, falls within the scope of 'information society services'. Pursuant to Section 1 of the Trade Act, the scope of the Act extends to the basic requirements and control of commercial activities, the pursuit of service activity for commercial purposes and the pursuit of tourist service activity for commercial purposes as well as the marketing of products, excluding health services specified in a separate act, activities subject to a metal trade licence as defined in a separate act, activities subject to a licence for the retail sale of tobacco products specified in a separate act, and the related commercial activity for the sale of other products sold in tobacco shops as defined in the decree of the President of the Supervisory Authority for Regulatory Affairs.

Pursuant to Section 3(1) of the Trade Act, with the exception of commercial activities subject to authorisation, any person wishing to engage in commercial activities in Hungary must notify the commercial authority of their intention to do so. This provision also governs the present case, based on which the notified draft is applicable to mail order trade activities conducted in Hungary.

According to Section 6(1) of the Government Decree, the notification made by the trader under Section 3(1) of the Trade Act must contain the data specified in point A of Annex 1. The notification shall be registered by the authority specified in Section 2(a) and (b) (hereinafter: notary) with the data content specified in Annex 2, point A. With regard to the data specified in Annex 2, point A, the register shall be regarded as a public official register, with the exception of the data that are recognised as public, by law, as part of another register. The obligation arising from the notified draft constitutes a condition for marketing, according to which the commercial communication facilitating a transactional decision to purchase must contain, in a clearly visible manner, the informative words 'Sensitive content!' in the case of any product which is distributed through mail order trade, is intended for children and the essential element of which is the direct, natural or self-intended depiction of sexuality or the promotion or portrayal of sex reassignment or homosexuality or gender identities that do not correspond to the sex assigned at birth. The notified draft is a measure for the protection of minors within the meaning of Article 3(4)(a) of Directive 2000/31/EC.

2. Question 2 and 3

As explained in point 1, the notified draft concerns traders that pursue their mail order trade activities in Hungary.

3. Question 4

The amendment according to the notified draft is aimed at strengthening parental competences when buying products for children online, in line with Hungary's commitment to child protection. There is a legitimate need for consumers (which can also be supported by consumer protection instruments) to know in advance that a product has a content that is incompatible with their world view. Therefore, the aim is to protect minors and to facilitate informed consumer decisions. This is special information on products which are distributed via mail-order trade, are intended for children, and the essential element of which is the direct, natural or self-intended depiction of sexuality or the promotion or portrayal of sex reassignment or homosexuality or gender identities that do not correspond to the sex assigned at birth.

4. Question 5

The Government had already amended the Government Decree, even before this draft was notified. Now Section 20/A of this Government Decree contains the rules which are applicable essentially to 'offline' forms of trade, and thus also apply to traditional shops in the context of the marketing of products whose essential element is the direct, natural or self-intended depiction of sexuality or the promotion or portrayal of sex reassignment or homosexuality or gender identities that do not correspond to the sex assigned at birth.

These provisions establish the following:



'Section 20/A (1) It shall be prohibited to place in the shop-window or display any product which is intended for children and which, as an essential element, directly, naturally or self-intendedly depicts sexuality or promotes or portrays sex reassignment or homosexuality or gender identities that do not correspond to the sex assigned at birth.

(2) It shall be prohibited to place in a shop-window or display a product whose design, appearance or packaging clearly – directly, naturally or self-intendedly – depicts or portrays sexuality, gender identities that do not correspond to the sex assigned at birth, or sex reassignment or homosexuality.

(3) It shall be prohibited to market, within a (road) distance of 200 metres from any entrance to educational, child and youth welfare institutions, churches and other places dedicated to worship, any product whose essential element is the direct, natural or self-intended depiction of sexuality or the promotion or portrayal of sex reassignment or homosexuality or gender identities that do not correspond to the sex assigned at birth.

(4) Products which are intended for children and the essential element of which is the direct, natural or self-intended depiction of sexuality or the promotion or portrayal of sex reassignment or homosexuality or gender identities that do not correspond to the sex assigned at birth, may be marketed separately from other products that are intended for children, in closed packaging.'

If adopted, the notified draft would fall within the scope of Section 20/B of the Government Decree; consequently it would contain the requirement for mail order trade and web shops, following the provisions laid down in Section 20/A.

The measure in the notified draft specifically makes it obligatory for the commercial communication, which facilitates transactional decisions to buy products which are intended for children and fall within its scope, to include the informative words 'Sensitive content!' in a clearly visible manner, by taking into account the specific characteristics of mail order trade.

5. Question 6

It is the duty of the Hungarian State, also by virtue of its sovereignty, to protect the legal institutions and enforce the principles laid down at constitutional level. Article XV(5) of the Fundamental Law states that the Hungarian State has an objective obligation to protect children, since 'By means of separate measures, Hungary shall protect families, children, women, the elderly and those living with disabilities'. Explaining the previous section in more detail, Article XVI of the Fundamental Law explains that 'every child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development. Hungary shall protect the right of children to a self-identity corresponding to their sex at birth, and shall ensure an upbringing for them that is in accordance with the values based on the constitutional identity and Christian culture of our country.' [Article XVI(1) of the Fundamental Law]. The Fundamental Law also lays down that 'Parents shall have the right to choose the upbringing to be given to their children.' [Article XVI(2) of the Fundamental Law].

The explanatory memorandum of the Ninth Amendment to the Fundamental Law, in effect as of 23 December 2020, establishes that: 'Article XVI(1) of the Fundamental Law has expressly laid down, even earlier, that every child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development. By amending the Fundamental Law, the constitution maker imposed an additional duty of institutional protection on the State, i.e. a duty for the lawmaker to create a legislative environment and a system of institutions which guarantee the protection of children's self-identity corresponding to their sex assigned at birth. Modern ideological trends in the western world, which tend to raise doubts regarding the created nature of the male and female genders, endanger the children's right to healthy development as laid down in the Fundamental Law. In order to be able to guarantee this specific right of children, the right of children to self-identity corresponding to their sex assigned at birth must be ensured, and shall be protected by the State via all available means. Sex at birth is a gift or a factor that cannot be changed: it is a biological principle. Human dignity thus includes the right of every child to self-identity according to their sex at birth.'

As is intended by the constitution maker, the State has an objective duty of institutional protection to protect the



fundamental rights of children to physical, mental and moral development under Article XVI(1) of the Fundamental Law, since every child has the right to self-identity corresponding to their sex at birth, and children shall be protected against any mental or biological interference affecting their physical and mental integrity. In that context, however, the State has a constitutional duty to develop and maintain legislation that provides adequate protection for children in order to give effect to the fundamental right under Article XVI(1) of the Fundamental Law and its constitutional purport.

It follows from the above that Hungary has a legal obligation to actively assist and support parents in fulfilling their parental responsibilities, while at the same time parents have an unequivocal right to do so according to their moral and philosophical values, in line with the maturity and age of the child.

6. Question 7

According to the formal explanation of the notified draft: 'Taking into consideration the continuous growth of e-commerce, and the objectives concerning children protection and the protection of consumers online, which are set out in Government Resolution No 1353/2022 of 21 July 2022 on consumer protection policy, these aspects will also be reflected in mail order trading following the amendment. According to the amendment, in mail order trading, the trader shall publish specific information in connection with products which are intended for children and the essential element of which is the promotion or portrayal of gender identities that do not correspond to the sex assigned at birth, sex reassignment or homosexuality or potentially the direct, natural or self-intended representation of sexuality. In this case, the product intended for children can only be marketed if the product information sheet contains the information "Sensitive content!" in a clearly visible manner.' (see <https://kormany.hu/dokumentumtar/210-2009-ix-29-korm-rendelet-modositasarol>)

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