



Message 961

Communication from the Commission - TRIS/(2024) 3338

Procedure for the provision of information EC - EFTA

Notification: 2024/9018/NO

Forwarding of the response of the EFTA surveillance authority to request for supplementary information (INFOSUP) / comments (5.2) from the European Union

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1. MSG 961 IND 2024 9018 NO EN 10-02-2025 13-12-2024 NO ANSWER 10-02-2025

2. Norway

3A. Royal Ministry of Trade, Industry and Fisheries

3B. Royal Ministry of Children and Families

4. 2024/9018/NO - SERV - INFORMATION SOCIETY SERVICES

5.

6. Request for supplementary information - Notification 2024/9018/NO

The Norwegian Ministry of Children and Families refers to the request for supplementary information by the European Commission regarding notification 2024/9018/NO on proposed amendments to the Marketing Control Act (hereinafter MCA), and sets out its answers to the questions received in the following.

1. The Norwegian authorities are kindly requested to clarify whether the obligation resulting from new section 21a of the notified draft:

a. Would apply to audiovisual commercial communications as defined in Article 1(1)(h) of the Audiovisual Media Services Directive 2010/13/EU, as revised by Directive (EU) 2018/1808;

b. Would apply to on-demand audiovisual media services and Article 1(1)(g) of the Audiovisual Media Services Directive 2010/13/EU, as revised by Directive (EU) 2018/1808.

c. Would apply to providers of video-sharing platform services as defined in Article 1(1)(aa) of the Audiovisual Media Services Directive 2010/13/EU, as revised by Directive (EU) 2018/1808, in view of Recital 5 of Directive (EU) 2018/1808, according to which although the aim of the Directive 2010/13/EU is not to regulate social media services as such, a social media service falls under the scope of the Directive to the extent that it meets the definition of a video-sharing platform service, notably if the provision of programmes and user-generated videos constitutes an essential functionality of the service.

The application of the draft section 21 a would be governed by the general system of the MCA. The primary subject of regulation is the "trader" (Cf. MCA sec. 5 b) that is responsible for requirements for "marketing" (Cf. MCA sec. 2), a subgroup of "commercial practice" (Cf. MCA sec. 5 d). These concepts correspond to the concepts of trader and commercial practice as defined in the Unfair Commercial Practices Directive, but also include aspects of marketing related to ethical and moral views, health and safety etc. that are not harmonised by the UCPD. In the consultation note, this is explained as "advertisers and those who decide the content of marketing".

To the extent that audiovisual commercial communications as defined in Article 1(1)(h) of the AVMSD and providers of



video-sharing platform services or on-demand audiovisual media services as defined in Article 1(1)(aa) and Article 1(1)(g) of the AVMSD overlap with the concepts of “marketing” and “trader”, respectively, the draft section 21a would apply. The Ministry’s assessment is that this generally will be the case. Please note, however, as explained in our answer to question b. below, that there would be a distinction between audiovisual commercial communication that is marketed, sold or arranged by the video-sharing platform and not, and also regarding the geographic scope of the proposed section, cf. our answer to question a directly below.

In the affirmative, the Norwegian authorities are requested to clarify whether:

- a. The notified draft is also applicable to providers of video-sharing platform services or on-demand audiovisual media services not established in the territory of Norway; and

No, the draft Section 21a of the Marketing Control Act would not be applicable to providers of video-sharing platform services or on-demand audiovisual media services not established in the territory of Norway. The geographical scope of the provisions of the MCA is governed by its section 4. The MCA applies to actions that are directed at consumers in the realm, with the exceptions that follow from other legislation. In the preparatory works of the MCA, it is emphasised that certain EEA legislation is based on the principle that traders generally only need to comply with the legislation in their state of establishment (principle of country of origin). Examples that are mentioned in the impact assessment of the proposed new provision is the E-commerce Act and the Broadcasting Act. These acts implement the Directive on electronic commerce (Directive 2000/31/EC) and the Audiovisual Media Services Directive (Directive 2010/13/EU), respectively. A bill on incorporating Directive (EU) 2018/1808 in the Broadcasting Act has been put forward by the Government to Parliament.

- b. The notified draft is addressed to video-sharing platform providers regardless of whether the concerned audiovisual commercial communication is marketed, sold or arranged by the video-sharing platform or not.

No, the draft is not addressed to video-sharing platform services regardless of whether the concerned audiovisual commercial communication is marketed, sold or arranged by the video-sharing platform or not. The proposed amendments to the Broadcasting Act mentioned above incorporate the revised AVMSD in Norwegian law, with provisions that distinguish between audiovisual commercial communications that are marketed, sold or arranged by the video-sharing platform provider and audiovisual commercial communications that are not marketed, sold or arranged by the video-sharing platform provider. In the latter case, the video sharing platform provider is only required to take appropriate measures in order to comply with the relevant requirements set out in the AVMSD and the Broadcasting Act, and is not liable for the contents of the audiovisual commercial communications. The proposed MCA sec. 21a is not part of the requirements that are to be addressed by appropriate measures.

2. The Norwegian authorities are kindly requested to clarify whether the obligation resulting from new section 21 a of the notified draft are intended to apply to providers of information society services as per the meaning of Directive 2000/31/EC.

Yes, in so far as the marketing in question is provided as an information society service by a trader. Our assessment is that this generally will be the case, as the definition of information society services is broad and covers for instance online advertising. Please note, however, that the personal scope of the MCA, “traders”, is described in the impact assessment as “advertisers and those who decide the content of marketing.” Information society service providers would only be liable for any infringements to the extent that they can be held liable for the marketing in question, in accordance with the e-commerce act (which implements the e-commerce directive’s provisions on intermediary liability and no general monitoring obligations).

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

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

With reference to our answer to a above, the draft Section 21 a of MCA will not apply to providers of information society



services established in the territory of Member States other than Norway. It is our understanding that questions 2b to 2 d therefore is not applicable. Please don't hesitate to let us know if this is not the case in your view.

- b. what would be the obligations applicable to those service providers resulting from the notified draft;
- c. whether the Norwegian authorities have identified those providers or what would be the basis for identifying them;
- d. how do the Norwegian 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;

3. The Norwegian authorities are kindly requested to clarify whether the obligation resulting from new section 21 a of the notified draft are intended to apply to providers online intermediary services as defined in Article 3 of Regulation (EU) 2022/2065, in particular to providers of online platforms. In the affirmative, the Commission services would like to receive further information on the intended interplay between the notified draft and Regulation (EU) 2022/2065, in view of the maximum harmonization effect of this Regulation, and in particular as regards its Articles 6, 8, 28, 34 and 35.

Regulation (EU) 2022/2065 (hereinafter the DSA) is not incorporated into the EEA agreement yet. After an inclusion into the EEA agreement, regulations need to be incorporated in Norwegian law in order to have effect. Any modifications to Norwegian law that is necessary for the correct implementation of a regulation would be proposed as part of the incorporation process. The following answer is given without prejudice to such procedural steps and the exercise of incorporation that will need to be taken in order for the DSA to apply in Norwegian law.

The Ministry's preliminary assessment of the questions posed by the European Commission is that in so far as an online intermediary service, as defined in article 3 of the DSA, including online platforms, is also covered by the definition of "trader" in the MCA and conducts "marketing" as also defined in that Act, the proposed provision would in principle apply to such services. This principle would however be modified by the DSA, which as lex specialis in case of conflict would override the general provisions of the MCA to the extent that they are incompatible. We also note that the primary subjects of regulation, in accordance with the system established by the MCA, are described as "advertisers and those who decide the content of marketing" in the impact assessment.

We hope that this response adequately addresses your questions, but please don't hesitate to let us know if you require more information from us.

Yours sincerely

Aslaug Skrede Gauslaa
Deputy Director General

Helge Blyberg
Senior Adviser

This document is signed electronically and has therefore no handwritten signature

European Commission
Contact point Directive (EU) 2015/1535
email: grow-dir2015-1535-central@ec.europa.eu