

Message 104

Communication from the Commission - TRIS/(2017) 01610
Directive (EU) 2015/1535
Translation of the message 103
Notification: 2017/0127/D

Forwarding of the observations of a Member State (Sweden) (article 5, paragraph 2, of Directive (EU) 2015/1535).
These observations do not have the effect of extending the standstill period.

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1. MSG 104 IND 2017 0127 D EN 28-06-2017 28-06-2017 COM 5.2 28-06-2017

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5. article 5, paragraph 2, of Directive (EU) 2015/1535

6. Sweden, while in essence supporting Germany's ambition to improve compliance with the current legislation on social networks, wishes to submit the following questions and comments with regard to certain details of the notified draft act:

- The structure and scope of the act

The draft act shall apply to certain social networks. These are defined as 'telemedia service providers' who for profit-making purposes use internet platforms which allow users to exchange and share content with other users or to make such content available to the public.

Since the proposed act partly creates extraterritorial application of German law to service providers not established in Germany (e.g. as regards the legislative acts listed in § 1(3) which define 'unlawful content') and partly introduces extensive reporting requirements in German, as well as an obligation to appoint a national representative, it is desirable that the scope of the act be limited to the kinds of social networks that have the issues that the act aims to counteract. In view of this, Sweden wishes to ask whether Germany intends to limit the scope of the act and exempt from it, for example, digital music services or gaming platforms or other platforms where the same issues do not exist?

If the act is also to be applied to digital music services or gaming platforms, Sweden wishes to convey that questions may arise whether the regular reporting (besides having to be made in German), the requirement to assess within short time limits, that which is meant by 'manifestly unlawful' or 'unlawful' according to German legislation, as well as the obligation to designate a national representative could be considered disproportionate for service providers who are not established in Germany.

- National data storage requirements

In accordance with § 3(2), point 4 of the proposed draft act, social networks are required to store removed content within Germany for a period of 10 weeks. In Sweden's assessment, this is a burdensome obligation, especially for service providers who are not established in German, as well as an obstacle to the freedom to provide data storage services in the EU.

In view of the above, Sweden wishes to ask Germany if there might be alternative, less invasive measures - e.g. an obligation to save and, upon request, hand over removed content to German authorities - which would achieve the same purpose without restricting the free movement of services in this area?

- Relation to the e-Commerce Directive's rules

According to § 3(2), points 2 and 3 of the draft act, social networks are required to delete or block 'manifestly unlawful' and 'unlawful' content within 24 hours and 7 days respectively from the date the network received complaints about the content. As stated in the paragraph on EU legal compatibility of the impact assessment linked to the draft act, these obligations should be read in light of the e-Commerce Directive's (Directive 2000/31/EC) provisions on the protection of hosting services from liability for information stored at the request of a recipient of the service. This protection is limited in accordance with Article 14(1)(b) of the e-Commerce Directive

when the service provider becomes aware of the occurrence of illegal information, with a special regulation requiring awareness when it concerns claims for damages.

As, inter alia, stated in the paragraph on EU legal compatibility of the impact assessment linked to the draft act, it is assessed that the draft act's regulation of obligations for hosting services constitutes a restriction on the free movement of information society services. Although it can be justified by reference to public order, it may in the long term adversely affect the European Commission's and the Member States' common objectives for a functioning digital internal market, as well as the overall objective of the e-Commerce Directive to ensure the free movement of information society services.

In view of the above - and for a clearer understanding of how the draft act relates to the e-Commerce Directive - Sweden wishes to ask Germany how § 3(2), points 2 and 3 of the proposal relate to Article 14 of the e-Commerce Directive, and in particular whether receipt of a complaint (which may need to be investigated) indicates knowledge of the existence of unlawful activity or illegal information?

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