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Subject: Notification 2019/412/F

Law aimed at combating hate content on the internet

**Delivery of comments pursuant to Article 5(2) of Directive
(EU) 2015/1535 of 9 September 2015**

Sir,

Within the framework of the notification procedure laid down by Directive (EU) 2015/1535¹, the French authorities notified to the Commission on 21 August 2019 a draft entitled "**Law aimed at combating hate content on the internet**" (hereinafter 'the notified draft'). In the notification message, the French authorities justify the notified draft by the spread of hate speech, racism and violence on the internet, which they claim is threatening to undermine the opportunities presented by ongoing digital changes.

The Commission notes that the objective of the notified draft is in line with the European Union's policy of fighting illegal content online and creating a safe online environment for users in the Digital Single Market. With this view, the Commission recently put forward several initiatives in this regard, such as the Recommendation on measures to effectively tackle illegal content online², the revised Audiovisual Media Services Directive³ and the proposal for a Regulation on preventing the dissemination of terrorist content online.⁴ Commission President-elect Ursula von der Leyen has also recently announced an EU Digital Services Act, which could possibly harmonize certain liability standards for online platforms as regards illegal content. This EU initiative will

¹ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, OJ L 241, 17.9.2015, p. 1.

² C(2018) 1177 final

³ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU 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 view of changing market realities.

⁴ Commission proposal of 12.9.2018, COM(2018) 640 final

aim at ensuring a coherent European approach to effectively address the problem of illegal activities on the Internet, and the role of platforms in this regard, whilst supporting the growth of platforms, including small European players, to capitalise on the scale of our large digital Single Market.

The French authorities aim at imposing on certain online platforms' operators greater responsibilities and obligations as regards the fight against illegal content online. Among other obligations, these online platforms would need to remove or cease to reference manifestly illegal content within 24 hours from the notification. They would also need to put in place appropriate measures to avoid the redistribution of such unlawful content. Fines for online platforms in individual cases of non-compliance with the obligations established in the notified draft are set at EUR 250 000.

According to Article 1 of the notified draft, as well as to the notification message, the new obligations would apply to operators of online platforms, as defined in the French Consumer Code⁵, for sharing content publicly or for classifying or referencing content, by means of computer algorithms, which is offered or placed online by third parties, where this activity on French territory exceeds thresholds determined by decree. Any intermediation service, including social networks and search engines, is therefore covered by the scope of the notified draft provided they fulfil the said threshold.

The notified draft "law aimed at combating hate content on the internet" amends Law No 2004-575 of 21 June 2004 on confidence on the digital economy ("LCEN"), which transposes into French law the provisions of Directive 2000/31/EC ("e-Commerce Directive").⁶ As such, in as much as the relevant provisions of the notified draft assessed below fall within the scope of the e-Commerce Directive and the other provisions of EU law mentioned, they implement EU law for the purposes of the application of the Charter of Fundamental Rights of the European Union ("Charter").

The online platforms under the scope of the notified draft constitute information society services as defined in Article 1(b) of Directive (EU) 2015/1535 and therefore also within the meaning of Article 1 and 2 of the e-Commerce Directive, insofar as they fulfil the conditions mentioned therein ("*any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services*"). Some of the online platforms under the scope of the notified draft are also likely to qualify as video-sharing platform services, which constitute a specific category of information society services also regulated by Articles 1, 28a and 28b of the revised Audiovisual Media Services Directive ("AVMSD")⁷. Finally, some of them will also

⁵ Article L111-7(I) of the Consumer Code: « *Est qualifiée d'opérateur de plateforme en ligne toute personne physique ou morale proposant, à titre professionnel, de manière rémunérée ou non, un service de communication au public en ligne reposant sur :*

1° Le classement ou le référencement, au moyen d'algorithmes informatiques, de contenus, de biens ou de services proposés ou mis en ligne par des tiers ;

2° Ou la mise en relation de plusieurs parties en vue de la vente d'un bien, de la fourniture d'un service ou de l'échange ou du partage d'un contenu, d'un bien ou d'un service. »

The broad definition of operators of online platforms covers a very wide spectrum of online platforms, including social media, market places and search engines.

⁶ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, OJ L 178, 17.7.2000, p.1.

⁷ Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU 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 view of changing market realities.

constitute “hosting service providers” within the meaning of the proposal for a Regulation on terrorist content online (“TCO Regulation”).⁸

The territorial scope and specific obligations for online platforms in the notified law prompted the Commission services to address to the French authorities a request for supplementary information on 11 October 2019, in order to obtain clarifications as regards the scope, objective and aim of the notified draft. The answers provided by the French authorities on 23 October 2019 are taken into account in the following assessment.

Examination of the notified draft has prompted the Commission to issue the following comments.

Compatibility with Article 3 of the e-Commerce Directive

Article 3(1), (2) and (3) of the e-Commerce Directive

Article 3(1) and (2) of the e-Commerce Directive contain an internal market principle, also known as country of origin principle. Under paragraph 1, Member States are required to ensure that information society services provided by service providers established in their territory comply with the applicable provisions of their respective national law which fall within the coordinated field. Paragraph 2 adds that Member States may not, for reasons falling within the coordinated field, restrict the freedom to provide such services from another Member State.

The notified new obligations relevant for this assessment fall within the coordinated fields of the e-Commerce Directive as defined in its Article 2(h), as they concern the obligations for online platforms as regards illegal content provided by third parties and the conditions for their liability for such content. The obligations under the notified draft are, in addition, not covered by any of the fields listed in the Annex to the e-Commerce Directive, which are exempted pursuant to its Article 3(3).

As regards, the territorial scope of the notified draft, the French authorities confirmed in their reply to the Commission's request for supplementary information that the measures contained in the notified draft would apply to online platforms meeting a threshold of connections from the French territory (to be established by decree), regardless of whether they are established in the French territory. This means that online platforms established in other Member States than France are covered as well, in as far as they provide relevant services and connections from French territory exceed the threshold.

In the Commission's view, the obligations set out in the draft law could constitute a restriction to the cross-border provision of information society services, in violation of Article 3(2) of the e-Commerce Directive, in as much as they would apply to those online platforms established in other Member States. This is the case, in particular, for especially burdensome obligations for online platforms laid down in the notified draft, such as the requirement to appoint a legal representative in the French territory (Article 3); the need to provide a notification mechanism in the language of the user (Article 2), the obligation to put in place appropriate measures to avoid the redistribution of illegal content (Article 2, paragraph 5 bis); and the need to comply with the guidelines and

⁸ Commission proposal of 12.9.2018, COM(2018) 640 final.

recommendations of the *Conseil Supérieur de l'Audiovisuel* (CSA) (Article 4), as well as with the transparency and reporting obligations (presumably in French) to be determined by the CSA (Article 3). The CJEU has adopted a broad interpretation of what measures have the potential of restricting the freedom to provide services.⁹

In their reply, the French authorities seem to argue that the proportionality of the measures is ensured by the scope of the notified draft, which is to only cover online platforms fulfilling a certain threshold of connections from the French territory.

However, in the view of the Commission, these arguments do not alter the fact that the intended obligations would entail restrictions of the freedom to provide information society services from another Member State, within the meaning of Article 3(2) of the e-Commerce Directive. In particular, the measures referred to by the French authorities might limit the number of service providers affected, but the fact remains that said freedom of at least a significant number of them is likely to be restricted in a significant manner.

In relation to the intended threshold, it is at present unclear whether the threshold would be established following a quantitative and qualitative impact assessment and, consequently, the scope of the notified draft remains unclear, in particular with regard to restrictions imposed on service providers established in other Member States than France that are, or might wish to become, active in France. In addition, no information was provided that would justify the direct correlation between the number of connections from the French territory and the size of the online platform.

Article 3(4) of the e-Commerce Directive

The French authorities argue in their reply that the eventual restriction to the freedom to provide information society services from other Member States would be justified by the objective pursued by the notified draft which is the protection of fundamental rights and, in particular, of human dignity.

The Commission would like to recall that the protection of fundamental rights as such is not part of the grounds for derogation listed exhaustively in Article 3(4) of the e-Commerce Directive. However, Article 3(4)(a)(i), first indent, regarding derogations for reasons of public policy, refers expressly to “*violations of human dignity concerning individual persons*”. That being so, it appears that the objective pursued by the notified draft could, in principle, potentially constitute a valid reason for derogation from the rule laid down in Article 3(2).¹⁰

However, Article 3(4)(a) also contains several other requirements, notably that any derogation has to be targeted (“taken against a given information society service”) as well as proportionate to the objective pursued. This follows from points (ii) respectively point (iii) of that provision.

As regards the targeted nature of the measures, the Commission is not convinced that this requirement is met in the case at hand. It notes that the notified draft applies generally to

⁹ See e.g. CJEU Case C-678/11, *Commission v. Spain*.

¹⁰ The Commission has not received sufficient information at this stage that would justify that all the categories of content covered by the scope of the law would aim at protecting the human dignity of individual persons. More information and further assessment would be needed to reach a conclusion on this point.

virtually any online platform. It is not clear that all online platforms covered prejudice the objective invoked by the French authorities or present a serious and grave risk to that objective, as is required under point (ii) of Article 3(4)(a).

As regards the proportionality, the Commission has doubts as well. In particular, it should be assessed whether less restrictive means to obtain a similar result could be envisaged. However, thus far, the French authorities have not provided an assessment of the proportionality of the obligations imposed on online platforms, in particular for those established in other Member States, including smaller ones, and of the potential less restrictive measures available that could achieve the stated objective.¹¹

From the above considerations it appears that the notified draft is likely to create restrictions to the free cross-border provision of information society services. In particular, it can be questioned whether the requirements of targeting and proportionality for derogations from the home state control principle under Article 3(4)(a) are met.

Compatibility with Articles 14 and 15 of the e-Commerce Directive

Article 14 of the e-Commerce Directive

The online platforms mainly covered by the notified draft (as confirmed by the French authorities in the message accompanying the notification) are any intermediation services and search engines, which constitute hosting services within the meaning of Article 14 of the e-Commerce Directive, as recognized by established CJEU case law.¹²

The e-Commerce Directive enshrines, at European level, the principle that Internet intermediary service providers should not be held liable for the information which they transmit, store or host for the recipients of their services (Articles 12 to 14). Article 14 of the e-Commerce Directive provides for a liability exemption for hosting service providers under certain conditions. In order to benefit from such liability exemption, hosting service providers are to act expeditiously to remove or disable access to illegal information that they store upon obtaining actual knowledge thereof, or becoming aware of facts or circumstances indicating illegal activity.

The Commission's Recommendation on measures to effectively tackle illegal content online also recommends the implementation, under certain conditions, of “notice and take down” procedures aimed at tackling illegal content.¹³ While not legally binding, Member States are required to take due account of the Recommendation.¹⁴

Actual knowledge or awareness as a condition for liability of hosting service providers

In its current version, Article 6 I (5) LCEN establishes certain minimum information requirements for notices of illegal content sent to online platforms. Article 1bis of the

¹¹ The French reply states: “On the other hand, the provisions of the draft law, limited to only some online platform operators among information society service providers, and only to those who exceed a high threshold of monthly connections on French territory, do not target any operator on the ground of nationality and appear necessary for the protection of the interests that the law aims to ensure. Furthermore, this protection cannot be achieved by less restrictive measures, as no mechanism directly applicable in the European Union provides effective suppression and control of these reprehensible behaviours.”

¹² See e.g. CJEU Case C-324/09, *L’Oreal v. eBay*.

¹³ Commission Recommendation (EU) 2018/334 of 1 March 2018.

¹⁴ See e.g. CJEU Case C-16/16P, *Belgium v. Commission*.

notified law intends to amend LCEN by seemingly reducing the minimum requirements of the notification able to trigger actual knowledge or awareness on the side of the online platform in respect of the illegal content in question.¹⁵

The ability for the notices to trigger actual knowledge or awareness of third party illegal content is a highly relevant matter since it opens the door to their liability for such content. Following the CJEU's case law, in order to trigger actual knowledge or awareness for the purposes of Article 14 of the e-Commerce Directive, a notification needs to be neither insufficiently precise nor inadequately substantiated.¹⁶ The Commission has codified this standard in its Recommendation on measures to effectively tackle illegal content online.¹⁷

In the Commission's view the minimum conditions for notices as established in the notified draft would not meet the standards set out by the CJEU and the Recommendation. In particular, under Article 1bis of the notified draft, and contrary to the current standard under the LCEN, notices would not be required to identify the exact location of the notified content, thus placing on the platform the burden of actively searching for the location, for instance by scanning through individual pieces of content (which could be long videos or lengthy texts).

In addition, the notified draft would eliminate the current requirement under the LCEN to identify the legal provisions allegedly infringed. This would entail that online platforms would possibly need to assess all the national provisions regarding all the categories of content covered in Article 1 of the notified draft.

Therefore, the Commission finds that the minimum conditions for notification as enshrined in the notified draft would arguably not be sufficiently precise nor adequately substantiated as to lead to actual knowledge or awareness by online platforms in the sense of Article 14 of the e-Commerce Directive. In such case, the subsequent imposition of liability for third party illegal content under the notified draft would therefore be incompatible with the liability exemption as set out in Article 14 of the e-Commerce Directive. In addition, the measures in question could lead to a violation of Article 15(1) of that Directive, as they may effectively force online platforms in a general manner to engage in active fact-finding in respect of the content stored.

Obligation to act expeditiously within a set time period

In order to benefit from the liability exemption under Article 14 of the e-Commerce Directive, upon obtaining actual knowledge or awareness, hosting services are required to act *expeditiously* against the notified illegal content. In the Commission's view the e-Commerce Directive does not, in principle, preclude national rules that would require hosting service providers established in the Member State concerned to act within a certain time period upon receiving a notice.

¹⁵ In the explanatory memorandum of the notified draft, the French authorities argue that the current minimum requirements for notices are considered too burdensome for private users.

¹⁶ CJEU Case C-324/09, *L'Oreal v. eBay*, par. 122.

¹⁷ See its Chapter II, point 6. « *Those mechanisms should allow for and encourage the submission of notices which are sufficiently precise and adequately substantiated to enable the hosting provider concerned to take an informed and diligent decision in respect of the content to which the notice relates, in particular whether or not that content is to be considered illegal content and is to be removed or access thereto is to be disabled. Those mechanisms should be such as to facilitate the provision of notices that contain an explanation of the reasons why the notice provider considers that content to be illegal content and a clear indication of the location of that content.* »

However, particularly in order to safeguard fundamental rights, it needs to be ensured that the set time period is proportionate and reasonable taking into account, among other things, the specific illegal content concerned. In particular, any set time period for online platforms to act upon notices of illegal content should also foresee a possibility for deviation in justified cases, for instance where the nature of the content would require a more extensive contextual assessment that could not reasonably be carried out within such time period.

Without questioning the objective pursued by the notified draft, the Commission observes that the obligation for platforms to remove notified illegal content within 24 hours, combined with the high level sanction in Article 4 of the notified draft, the wide-range of crimes subject to this obligation (which may require different intensity of contextualization of the assessment) and the reduced requirements for notices mentioned above, could lead to unacceptable outcomes, in particular disproportionate burdens for the online platforms and, in certain circumstances, a risk of over-removal and hence negative effects on freedom of expression. This risk is particularly high in particular for online platforms that have limited resources.

The Commission notes that, to mitigate this risk, the above obligation to remove if the online platform wishes to benefit from the liability exemption is limited to “manifest” illegal content and that a counter notice mechanism is provided for. As mentioned in the reply of the French authorities, these are key safeguards for guaranteeing that the implementation of this obligation does not unduly restrict the freedom of expression. The Commission also notes that the reply of the French authorities explains that when exercising its power of sanction the CSA must take into account the seriousness of the breach and its repetitive occurrence. This, too, could serve to reduce said risk and the role of supervisory authority in monitoring the implementation of this obligation will be crucial.

Nevertheless, while important, these measures are according to the Commission unlikely to suffice to eliminate the risk connected to the very short and rigid time period, and the high level of sanction in Article 4, which appear to arise in connection to the notified draft, as outlined above.

Prohibition of general obligations to monitor or active fact-finding

Under Article 2, paragraph 5bis, of the notified draft online platforms would need to implement appropriate resources to prevent the redistribution of removed or dereferenced content. Article 4 of the notified law foresees the imposition of sanctions on online platforms for individual failure to comply with said obligation.

The Commission has assessed this obligation against Article 15(1) of the e-Commerce Directive. As touched upon above, this provision prohibits Member States from imposing a general obligation on intermediary service providers, including hosting service providers, to monitor the information which they transmit or store, or to actively seek facts or circumstances indicating illegal activity. In this sense, the Commission has paid due regard to the interpretation of such general monitoring prohibition under CJEU case law.¹⁸

¹⁸ See e.g. CJEU Case C-18/18, *Facebook Ireland*; CJEU Case C-360/10, *SABAM v Netlog*.

In their reply, the French authorities refer to the CJEU ruling in case C-18/18, *Facebook Ireland*. It should be recalled that the case concerned a particular piece of defamatory content found to be illegal by a court. The obligation for the service provider to prevent the redistribution of such content also resulted from a court order. In this particular case and context, the CJEU set out clear conditions to safeguard the compatibility of an obligation to prevent redistribution of illegal content with Article 15(1) of the e-Commerce Directive.¹⁹

The obligation provided for in Article 2, paragraph 5bis, of the notified draft relates to a different context and does not meet these conditions. It imposes a general obligation resulting from users' notices, which would apply to all categories of illegal content covered by the scope (including ones requiring a contextual assessment) and fails to provide for appropriate and proportional safeguards. It cannot be ruled out that, in order to comply with such obligations, online platforms would be forced, in practice, to apply general automatic filtering of content which would be incompatible with Article 15(1) of the e-Commerce Directive.

It is recalled from the CJEU case law that the prohibition to impose a general monitoring obligation enshrined in Article 15(1) of the e-Commerce Directive must also be assessed in the light of the Charter. In particular, when adopting measures on this matter, national authorities and courts must strike a fair balance between the various, conflicting fundamental rights that are often at stake in this connection, including freedom of expression, right to protection of privacy and personal data, and freedom to conduct a business.

Automatic filtering tools can be efficient and precise in terms of identifying some types of illegal content, such as child sexual abuse pictures. However, the scope of the notified draft also includes types of content that require a high level of context to allow for the assessment of its legality. Given the differences in resources between online platforms and the cost implications of such assessments, it cannot be excluded that certain online platforms, especially those with limited resources, would respond to the requirement by simply applying the automated filter to sift out legal as well as illegal content, without actually assessing the relevant context. This could lead to the removal of legal content and thus affect freedom of expression. Where, on the other hand, the online platforms extensively monitor and assess the third party content that they store, there may be negative implications for the users' privacy and protection of personal data. Further, considering the costs and technological challenges involved, the online platform's freedom to conduct a business is likely to be affected, too, although this may depend in part on the applicable threshold, which still remains to be determined.

Neither the wording of the provision in Article 2, paragraph 5bis, nor the replies of the French authorities, provide sufficient safeguards on its compatibility with Article 15(1) of the e-Commerce Directive and the abovementioned fundamental rights in the light of which that provision should be interpreted. The French authorities have not addressed how the proportionality of the measures was assessed in relation to the need to prevent the dissemination of the illegal content covered by the scope of the law, the risk of exposure of such content for different types of online platforms, against the impact on said fundamental rights. Therefore, in the Commission's view, as it stands, the obligation

¹⁹ In particular, the CJEU concluded that court orders can impose such stay down obligations for specific pieces of defamatory content and only for identical and for specified equivalent content (see para. 41 and 45).

under Article 2, paragraph 5 bis, of the notified law risks amounting to a general monitoring obligation forbidden by Article 15(1) of the e-Commerce Directive.

Conclusions in relation to the e-Commerce Directive

For the reasons described above, the Commission concludes that there is a risk that the notified draft could breach Articles 3, 14 and 15(1) of the e-Commerce Directive.

The Commission highlights its overall support to the purpose of the notified draft and expresses its availability to continue an open and constructive dialogue with the French authorities about the measures contained in the notified draft.

Interplay with the AVMSD

The recently adopted Directive (EU) 1808/2018 has amended the AVMSD. Pursuant to its Article 2(1), the amending Directive is to be transposed by 19 September 2020.

As noted above, Articles 1, 28a and 28b of the revised AVMSD regulate the subcategory of information society services qualifying as video-sharing platform services. Specifically, the abovementioned amendment extended the scope of the AVMSD to cover video-sharing platform services and certain social media services, whose main purpose or an essential functionality thereof is the provision of user-generated videos or programmes. Taking account of their lack of editorial control²⁰, the AVMSD requires platforms to put in place measures to protect users from certain illegal audiovisual content.

In their reply to the request for supplementary information sent by the Commission services, the French authorities confirmed that the online platforms under the scope of the notified draft also include video-sharing platforms in as much as they fulfil the definition set out in the AVMSD.

As a subcategory of information society services, Article 3 of the e-Commerce Directive also applies to video-sharing platform services. Therefore, the Commission's remarks above on the compatibility of the notified draft with Article 3 of the e-Commerce Directive also apply to the specific category of video-sharing platform services.

Furthermore, in this context, the notified draft presents some overlaps with the AVMSD as regards its material scope and content. On the one hand, the two instruments cover similar categories of illegal content (e.g. incitement to violence and hatred and public provocation to commit a terrorist offense). On the other hand, they contain similar obligations, in particular:

- Flagging and reporting mechanisms allowing users to readily notify the existence of illegal content to the platform (Article 1 and Article 2 of the notified draft);
- Providing an explanation to the user on the effect given to the flagging or reporting (Article 2 of the notified draft);

²⁰ Such online platforms do not have editorial responsibility over the content uploaded by third parties (user-generated videos or programmes) but still determine the organisation of such content, including by automatic means or algorithms in particular by displaying, tagging and sequencing.

- Operating complaint mechanisms for the handling of user complaints (Article 2, paragraph 5, of the notified draft)

Although in their reply to the Commission services' request for supplementary information the French authorities indicated not to consider the notified draft a measure intended to transpose the amended AVMSD into French law, the fact remains that, from a purely substantial point of view, some of the provisions in the notified draft overlap with the measures that Member States are required to take under Article 28b of the AVMSD in relation to video-sharing platform services.

Interplay with the proposed TCO Regulation

The notified draft regulates a number of aspects that are also covered by the proposed TCO Regulation.

As discussed above, Article 1 of the notified draft includes an obligation for online platforms to take down or stop the referencing of notified content manifestly constituting different crimes, including incitement to commit terrorist acts and apology of terrorism, within 24 hours. The Commission's proposal for the TCO Regulation, as well as the negotiating mandates of the European Parliament and of the Council on the TCO Regulation, would all require relevant companies to remove such content within 1 hour.

Furthermore, the notified draft also includes the following obligations that are also covered under the proposed TCO Regulation:

- Article 1 regarding the preservation of removed illegal content for a maximum of one year for the purposes of investigation
- Article 1*bis*, 1*ter*A and 1*ter* B on the requirements for notifying the disputed content
- Article 2 on the duty of cooperation by hosting service providers
- Article 3 on transparency obligations regarding the internal and judicial appeal mechanisms available to the victims of content, regarding the penalties, including judicial sanctions, that their users will incur should they publish the disputed content, regarding the general procedures associated with the mechanism that they have implemented for moderation of this content, and the reporting on the human and technological resources that they have implemented and the procedures they have adopted to meet the obligations.

The institutions are currently holding political trilogue meetings on the proposed TCO Regulation. The common objective by the co-legislators is to reach a political agreement before the end of 2019.

The Commission recalls that, when the TCO Regulation is adopted, the French authorities would no longer have the possibility to regulate the matters falling within the scope of that Regulation.

Announced Digital Services Act initiative

For the sake of completeness, the Commission would also like to point out that the notified draft may overlap with the EU Digital Services Act initiative recently announced

by Commission President-elect Ursula von der Leyen in her political guidelines. As announced, this EU initiative would update the liability and other rules applicable to relevant providers of online intermediary services and complete the Digital Single Market. The initiative at EU level aims at addressing the need for a clear and harmonized set of rules on the responsibility of those providers, while avoiding the regulatory fragmentation of the Internal market that national initiatives can entail.

The Commission shares with the French authorities the policy objective of fighting illegal content online. However, in view of the Commission's intention and on-going work towards proposing and adopting EU legislation on the matter in the near future, it is suggested that Member States exercise restraint and postpone the adoption of national initiatives on this same matter, such as the notified draft. The Commission is committed to work closely with Member States throughout the preparation and negotiation of this file and invites the French authorities to actively participate in the process.

Conclusion

For the reasons stated above, the Commission invites the French authorities to take the above comments into account.

Yours faithfully,

For the Commission

Timo Pesonen
Director-General

Directorate-General for Internal
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and SMEs