[FR] Question on determination of categories of persons subject to age verification system obligation rejected

IRIS 2025-7:1/15

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Webgroup Czech Republic AS and NKL Associates SRO raised a priority question of constitutionality in support of their requests for the annulment of decision no. 2024-20 of 9 October 2024 of the *Autorité de régulation de la communication audiovisuelle et numérique* (the French audiovisual regulator – ARCOM). The ARCOM decision concerns the reference framework for determining the minimum technical requirements applicable to age verification systems designed to prevent minors from accessing pornographic content, and was issued in accordance with Article 10(I) of the Law of 21 June 2004. The two companies claim that Article 10-2 of the aforementioned law infringes the principle of the individual nature of penalties enshrined in Articles 8 and 9 of the 1789 Declaration of the Rights of Man and of the Citizen in that it states that the said reference framework only applies to publishers of online communication services and video-sharing platform service providers, to the exclusion of "trusted third parties" brought in to ensure the "double anonymity" imposed by this reference framework, as established by the decision of 9 October 2024, and thus means that these publishers and providers may be fined for breaches that are not personally attributable to them.

The *Conseil d'Etat* (Council of State) noted that the mechanism for determining the categories of persons required, due to the nature of their activity, to implement age verification systems meeting the minimum technical requirements determined by the reference framework established by ARCOM was based on the second paragraph of Article 10(I) of the Law of 21 June 2004. The sole purpose of Article 10-2 was to specify the scope and conditions of application of these provisions, which depended on whether the persons concerned were established in France or outside the European Union on the one hand, or in another EU Member State on the other.

In these circumstances, the *Conseil d'Etat* held that the applicant companies, which had not intended to focus their priority questions of constitutionality on the provisions of the second paragraph of Article 10(I) of the Law of 21 June 2004 (which had, in any event, been declared to be in conformity with the Constitution in the grounds and operative provisions of the Constitutional Council's decision of 17 May 2024), could not validly complain that the provisions of Article 10-2 of the same Law infringed constitutional rights and freedoms by only requiring publishers of online communication services and video-sharing platform service

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providers to meet the technical requirements laid down under the reference framework established by ARCOM.

These questions did not need to be referred to the Constitutional Council because they were not considered new or serious.

CE, 10 juin 2025, n° 499624, Webgroup Czech Republic AS et a.

https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2025-06-10/499624

Council of State, 10 June 2025, no. 499624, Webgroup Czech Republic AS et al

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