[FR] *Conseil d'Etat* reinstates age verification requirement for pornographic websites established in other EU member states

IRIS 2025-8:1/16

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The French Minister for Culture and the Minister for AI and the Digital Economy had sought the annulment of the interim order of 16 June 2025 (see IRIS 2025-7:1/14) which, at the request of the operator of the Cyprus-based xHamster website, had suspended the order of 26 February 2025 requiring 17 pornographic websites (including its own) established in another EU member state to implement an effective system for verifying their users' age.

The *Conseil d'Etat* (Council of State) ruled that the interim relief judge of the Paris Administrative Court had erred in law by relying solely on the fact that, in his view, there was serious doubt as to the compatibility of the order of 26 February 2025 with European Union law, to rule that the urgency justified suspending its implementation.

The interim relief judge had also erred in law, the *Conseil d'Etat* ruled, in deducing the existence of such a serious doubt from the mere fact that, in a decision of 6 March 2024, it had stayed proceedings concerning appeals against Decree no. 2021-1306 of 7 October 2021 on the implementation of measures to prevent minors accessing pornographic websites, issued on the basis of the since repealed provisions of Article 23 of the Law of 30 July 2020, until the Court of Justice of the European Union had ruled on a number of questions referred for a preliminary ruling concerning, in particular, the scope of the "coordinated field" within which the principle of control in the member state of origin enshrined in Directive 2000/31/EC of 8 June 2000, known as the "Directive on electronic commerce", applies.

The contested order is based on the provisions of part II of Article 10-2 of the Law of 21 June 2004, resulting from the Law of 21 May 2024, by which the legislature intended to organise, with a view to the possible application of the provisions of Articles 10 and 10-1 of the same law to information society service providers established in other EU member states, recourse to the possibility of derogation from that principle provided for in Article 3(4) and (5) of the same directive.

The company had also argued that the implementation of the contested order would infringe the freedom of expression and the right to privacy of major users

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of the xHamster service. However, the *Conseil d'Etat* pointed out, firstly, that the provisions of Articles 10 and 10-1 of the Law of 21 June 2004, which this order made applicable in this situation, were designed to protect minors from exposure to pornographic content: they had neither the purpose nor the effect of prohibiting it from distributing such content to adults but only of requiring it, in order to prevent minors from accessing it, to set up age verification systems that met the minimum technical requirements set out in the reference system established by the *Autorité de régulation de la communication audiovisuelle et numérique* (the French audiovisual regulator – ARCOM). Secondly, it followed from the wording of the second paragraph of part I of Article 10 of the same law that the requirements of this reference system, established after consultation with the *Commission nationale de l'informatique et des libertés* (the French data protection authority – CNIL), related not only to the reliability of the age verification mechanism but also to respect for users' privacy.

It followed from all of the above, having regard also to the public interest in protecting minors from exposure to pornographic content, that the condition of urgency set out in Article L. 521-1 of the Code of Administrative Justice could not be regarded as having been met.

The interim order of 16 June 2025 was quashed and the obligation for 17 distributors of pornographic content established in other EU member states to verify their users' age was reinstated.

Conseil d'État, 15 juillet 2025, n° 505472, Ministres de la Culture et chargé de l'Intelligence artificielle et du Numérique c/ Hammy Media Ltd

https://www.conseil-etat.fr/fr/arianeweb/CE/decision/2025-07-15/505472

Council of State, 15 July 2025, no. 505472, Minister for Culture and Minister for AI and the Digital Economy v. Hammy Media Ltd.

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