

Subject: Contribution to notification 2023/0461/FR under the TRIS procedure

Wikimedia Europe would like to share its concerns on the notification of the French legislative project “Dispositions législatives visant à sécuriser et réguler l'espace numérique”, as notified by the French Ministry of Economy.

The French bill aiming at securing and regulating the digital space (widely known by its acronym, SREN) was introduced in France by an accelerated legislative procedure, which greatly limited public consultation. We are extremely concerned that it will undermine the effectiveness of the recently adopted DSA, while harming the digital single market more generally.

Indeed, the DSA is designed to introduce a maximum level of harmonization in view of achieving a true European digital single market. Achieving this goal - particularly with the participation of less well-resourced organisations, such as in the non-profit and educational sectors - will definitely be much harder, if not almost impossible, if at the same time as they are supposed to concentrate on DSA implementation, additional Member State rules affecting online content and user moderation are introduced.

The last few years have seen the Union’s digital rulebook dramatically increase, in both size and complexity - including the GDPR, the NIS+NIS2 Directives, the EU’s copyright reforms, the EU’s Regulation addressing the dissemination of terrorist content online (TERREG), and the latest DSA. Additional EU rulemaking is imminent, such as the anti-CSAM regulation, the AI Act, and the EMFA.

A major corresponding influx of national (Member State) regulation distracts resources from platforms’ compliance with EU-level rules (especially smaller, global platforms). Since those resources are finite, this in turn will result in a less vibrant and diverse internal market, since operating existing services, and developing new ones, will become much harder for not-for-profit entities and small actors who do not have the resources to implement different national rules in

addition to the large new EU rulebook. As a consequence, those who will lose the most from this situation will be EU citizens.

Moreover, we have significant concerns regarding the fundamental rights implications - for both natural and legal persons across the EU - regarding the SREN proposal. Our concerns are not just with the provisions of national law it creates, but also older local rules that it maintains and modifies (such as a generalised and undifferentiated obligation to retain personal data about a platform's users - which the CJEU declared illegal, in 2020), despite the DSA's harmonisation objective. The EU's legislators, when they designed the DSA, built in several conscious and very important measures to ensure proportionality - such as the privacy protections inherent in the child safety duty of DSA Article 28, or the circumscribed scope of the reporting obligation in DSA Article 18 (concentrating on serious threats to life). SREN is set to strike a very different balance.

This very moment - the SREN's notification to the EU - is a real test of the European Union's commitment to ensuring that the digital single market is protective of its citizens *while at the same time* continuing to offer projects such as Wikipedia a viable environment in which to thrive. Inaction on SREN will be the signal to all other Member States that, regardless of the compromises agreed within the DSA, this is in fact their chance to force their will on the EU's digital single market, no matter the consequences.

While we - and the host of Wikipedia (the Wikimedia Foundation, a U.S. nonprofit organisation) - are in the process of fully digesting the SREN's implications for projects such as Wikipedia, we have at the very least identified some major concerns:

1. Article 1

Article 1 prohibits platforms - even, it seems, encyclopaedias - from showing content that has a "pornographic characteristic" to users who have not proven that they are aged 18+ ("Le service de communication au public en ligne mentionné au premier alinéa du présent I prévoit l'affichage d'un écran noir ne comportant aucun contenu à caractère pornographique tant que l'âge de l'utilisateur n'a pas été vérifié"). If applied to materials that have been selected for their

educational value on Wikipedia (e.g. <https://fr.wikipedia.org/wiki/Pornographie> and https://commons.wikimedia.org/wiki/Scavi_archeologici_di_Pompei include drawings that hundreds or even thousands of years old), this would mean that adults and minors everywhere in the world must be blocked from Wikipedia, unless users from France can be specifically geolocated to a legally-certain standard (which is impossible, and has privacy implications for citizens every else in the world), *and* then those French users have their ages verified. The negative implications for the EU's digital single market, and for fundamental rights, seem clear.

2. Article 3

This Article introduces a criminal sanction (1 year of imprisonment or a fine of 250.000 € - in case of a legal person the fine could be increased up to 4% of its global turnover) for not implementing within 24 hours an order from ARCOM to remove pedopornographic content. This rule appears to be redundant in light of the new DSA provisions (and conflicts with them, insofar as it introduces a specific time period, which the DSA does not, *and* selected such a short time period that the DSA (Article 10(5))'s obligation to inform affected users cannot properly be complied with).

Furthermore, for a rather small organization like Wikimedia, this provision could turn out to be quite difficult, if not impossible, to implement even in its basic requirements. Borderline content displayed in educational contexts - such as 200-year old artworks that were designed to shock audiences - can be difficult to assess within such a short period of time; but the severity of fines and impossibility of mature analysis in less than 24 hours, means that platforms will have to adopt a kneejerk reaction to simply remove first - ask questions later. More generally, it is questionable whether this Article is compatible with fundamental rights.

3. Article 4(II)

This new Article introduces a new version of Article 11 in the law n° 2004-575 du 21 juin 2004 for the confidence in the digital economy (loi pour la confiance dans l'économie numérique - LCEN). The new provision empowers ARCOM to order hosting service providers to remove content - for example, it seems, from Wikipedia - in order to implement EU's economic sanctions that were adopted pursuant to Article 215 TFEU (e.g., against the Russian Federation). In other words, Wikipedia risks being turned into a geopolitical battleground, rather than a universal

encyclopedia for the benefit of all humanity, controlled by citizens all over the world. In case of failure to comply with ARCOM's order, the latter can issue a pecuniary penalty up to 4% of global turnover and 6% in case of a repeated breach.

This provision can have negative consequences for Wikipedia: i.e. what if there are references to the banned media on Wikipedia? Do they have to be removed even if they were there before? One can think of pages like this one: https://fr.wikipedia.org/wiki/Propagande_en_Russie#Liens_externes. Also in this case, the negative implications vis-à-vis fundamental rights appear evident.

3. Article 5

Article 5 introduces modifications to the French criminal code. More particularly, it introduces an accessory penalty, consisting in the suspension up to six months (one year in case of a repeated breach of the law) of an account used to commit one of the crimes listed in its Paragraph II (e.g. sexual or moral harassment, provocation or apology of terrorist offence). The provision at the same time aims at preventing those convicted citizens from creating any new accounts on the platform.

In order to prevent someone in France from creating a new account on Wikipedia, it would be necessary for every new user, all over the world, to provide proof of their identity to the platform's operator (the Wikimedia Foundation), so that such ID can be checked against a French "blocklist". Costs and impracticality aside, this is an extraordinary attack on the Foundation's commitment to data minimisation, which is designed to make it easy for users (even those living under dictatorships) to participate in projects like Wikipedia. Not only does user verification create frictions even worse than cookie banners - meaning innocent users will not *want* to create accounts, simply because of the hassle - but it also exposes those who *do* create accounts to major harassment or even imprisonment: https://en.wikipedia.org/wiki/List_of_people_imprisoned_for_editing_Wikipedia. This has a severe negative impact on fundamental rights.

4. Article 6bis

The recently-introduced Article 6bis of SREN creates a wide range of new regulatory cooperation, internal procedure and moderator support obligations for DSA “VLOP” platforms, regardless of whether France is the VLOP’s place of main establishment. This not only greatly increases the DSA/DSA-adjacent burden for those platforms, but it possibly renders the national Digital Services Coordinator for France competent to enforce DSA-overlapping rules even in cases where, under DSA, it may not be competent to do so. The DSA’s proportionality and efficient design, including its “one stop shop” provisions, are yet again undermined.

5. Article 22 (Mesures d’adaptation de la loi n° 2004-575 du 21 juin 2004 pour la confiance dans l’économie numérique LCEN)

This new Article introduces several changes to Article 6 LCEN (this is the law that transposed the EU e-Commerce Directive into the French legal system). The new formulation of Article 6 LCEN poses several challenges for Wikimedia, given that the new text goes further than the DSA provisions and, in certain cases, it seems in conflict with it.

Paragraph V (notification of suspicions of criminal offences) goes much further compared to what is foreseen in DSA Article 18, because it greatly expands the list of suspected offences that must be reported to Member State authorities. This is a very costly obligation, since detailed legal expertise (about French criminal law) is required in order to assess and triage suspicions (investigating if they have a link to France, for example, and then researching what French criminal law says about a topic), and then additional resources are required in order to make the submission. It also sets a very bad precedent internationally: should the EU and its Member States be legitimizing any future efforts by authoritarian countries, to turn platforms into informers of the state, helping identify citizens posting undesirable content? This development should at least be subjected to major public consultation and debate, given those potential effects. DSA Article 18 should, therefore, not be overridden in this way, without a proper European debate and consultation.

Also, Paragraph VI, which maintains and modifies generalized, indiscriminate data retention obligations for hosting service providers (requiring them to maintain, for extend periods of time, data to identify people who exercise their rights to free speech online), has not been aligned with the CJEU jurisprudence (which prohibits such laws, when applied to platforms: Case

C-511/18 - *La Quadrature du Net and Others*, ECLI:EU:C:2020:791, paragraph 212): such laws violate the GDPR.

The Wikimedia Foundation has operated Wikipedia for over 20 years; in that period, it is our understanding that it has faced authoritarian governments, abusive civil litigants (SLAPPs) and potentially corrupt authorities all over the world. It will have learned the *critical* importance of privacy and data protection for free speech and civic participation online. The DSA does not require platforms to systematically retain data to enable user identification; but if one Member State requires it, then this becomes a *de facto* rule all across the EU, and maybe the world, because we believe that Wikipedia's nonprofit host cannot (and would not want to) locate and geotarget French users to a legally watertight standard - which is what would be required, in order to treat them differently (i.e., to keep their data much longer) than citizens elsewhere. This would mean that France is then able to *de facto* add rules to the DSA system itself (circumventing the EU's carefully negotiated design for the DSA) - rules that could have major privacy and safety implications for citizens of other countries.

Therefore, our position is that these aspects of this legislative proposal in France are either redundant or not compatible with the Digital Services Act and fundamental rights.

We also reiterate our great concern regarding the limited time and consultation that this proposal has had - quite simply, it has not allowed us, and other organisations we associate with, to fully digest the proposal. We note with concern that this proposal now - as of just 7 days ago - even overrides the GDPR's basic territorial scope provisions (Article 32*bis*, adopted on 13 October). We have not had the opportunity to digest the significance of this further departure from yet another EU maximum harmonization Regulation (the GDPR).



Wikimedia Europe

Wikimedia Europe (WMEU) is an international, non-profit organisation dedicated to advocating for **free knowledge, access to information, and freedom of expression** as mandated by the Wikimedia communities throughout the European continent, working to advance the common good and serving the public interest.

WMEU is part of the [Wikimedia Movement](#), a grassroots network of projects, organisations and communities that has championed the ideals of sharing, joint responsibility over a public-interest internet, and the preservation of fundamental digital rights. All in pursuit of a shared vision: to make knowledge freely accessible to everyone, everywhere.

Transparency Register number: 191538712765-84

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