



DOT Europe contribution

Notification 2023/0362/FR under the TRIS process

DOT Europe would like to take the opportunity to contribute to the notification of the Bill, “Dispositions législatives visant à sécuriser et réguler l'espace numérique”, as notified by the French Ministry of Economy in July 2023 (thereafter, the bill).

While DOT Europe and its members are supporters of a safe experiences online for all users, including children, we believe the French bill, as notified, is not in line with European Union legislation and could risk undermining the Digital Services Act (DSA), the horizontal framework governing online services, and other fundamental pieces of EU law.

Article 2bis of the bill is especially concerning in terms of regulatory fragmentation. Indeed, it is adding a new sanction to the failure of age-verification measures for "online social network services". These provisions would be in violation of Articles 26 and 56 to 62 of the Treaty on the Functioning of the European Union, which guarantee the freedom to provide services within the EU and ensure that companies which are legally operating in one Member State may offer and provide their services in other Member States. Furthermore, Article 2bis of the French bill goes contrary to the Services Directive (Directive 2006/123/EC) which strengthens the freedom to provide services within the EU by aiming to create an open single market for services within the EU, while at the same time ensuring the quality of services provided to consumers.

As such, Article 2bis of the bill would require companies to put in place specific regulatory compliance solutions for France. On the contrary, the DSA, but also other legislative initiatives (such as the new Better Internet for Kids Strategy¹ released in May 2022) are already inviting stakeholders and companies to participate in the elaboration of standards at European level for targeted measures to protect minors online (see Article 44 DSA or the BIK+ code on age-appropriate design envisaged under the aforementioned BIK+ Strategy).

There is currently no satisfactory long-term solution for age assurance that protects user privacy². We think that it is therefore vital to properly assess existing solutions before enshrining a specific system in law. Otherwise, this could de facto result in an obligation for many individual services to each develop their own age verification solutions, without being able to rely on a clearly agreed industry approach on this important issue. As this is an area where the Commission expects to make progress as part of the Better Internet for Kids Strategy and the code of conduct that will emanate from it, there should be no national initiatives legislating on a contested and evolving matter. National legislators should instead defer to the BIK+ strategy for the development of an appropriate age verification

¹ Communication A Digital Decade for children and youth: the new European strategy for a better internet for kids (BIK+), May 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2022:212:FIN>

² This has been demonstrated by the French Data Protection Authority itself in the following article, published in September 2022 for the English version: <https://www.cnil.fr/en/online-age-verification-balancing-privacy-and-protection-minors>





approach and mechanisms and encourage a multistakeholder discussion in the context of the upcoming code to develop effective solutions.

The debate surrounding age verification is technologically complex and will have broader consequences for fundamental rights, data, security and privacy. In order to consider all possible outcomes, prior to introducing any new obligations targeting a specific group of digital service providers, DOT Europe sees the value in a multistakeholder discussion to develop sustainable technical and technological approaches.

The potential risk to the integrity of the Single Market is heightened by the fact that national regulators throughout Europe closely observe each other's actions. Consequently, there is a genuine possibility that this bill could serve as inspiration for other Member States and result in a breakdown of the desired harmonization sought by the DSA or the BIK+ Strategy, which this bill undermines.

Therefore, DOT Europe calls on the European Commission to invite the French government to withdraw the text in order to avoid fragmentation of the Single Market. Future national legislation should also be assessed in this light.

