

TRIS NOTIFICATION PROCEDURE

Spanish Draft Organic Law for the Protection of Minors in Digital Environments

November 2024

Introduction

The Computer & Communications Industry Association (CCIA Europe) welcomes the notification of the Spanish draft Organic Law for the Protection of Minors in Digital Environments under procedure [TRIS 2024/0531/ES](#) (draft Law for the Protection of Minors).

The draft Law for the Protection of Minors aims to establish a framework to protect minors when accessing digital content that may be harmful to their development. CCIA Europe and its members are deeply committed to the protection of minors online and firmly believe that children should be granted a high level of security and privacy in their online experiences. Ensuring that minors have the most positive and meaningful online experiences is a collective effort that necessarily requires the involvement of all the players in the Internet ecosystem. CCIA Europe is however concerned that this draft Law contravenes EU law, in particular by proposing national legislation that:

1. Overlaps with the EU's Digital Services Act (DSA)¹, thereby undermining the direct applicability and full harmonisation effect of this Regulation.
2. Imposes further obligations on service providers irrespective of their place of establishment, which breaches the country-of-origin principle as set out in the e-Commerce Directive, the Audiovisual Media Services Directive (AVMSD) and the DSA.
3. Introduces barriers to the free movement of goods within the internal market.

In light of the above, CCIA Europe would like to call on the European Commission to issue a detailed opinion requesting the Spanish legislator to revise the draft Law for the Protection of Minors in a way that the proposed amendments are aligned with already applicable EU legislation.

I. Overlaps with the Digital Services Act

Given the direct applicability of the DSA, Member States should avoid any overlapping requirements that relate to matters falling within its scope.

The Digital Services Act (DSA) recognises that diverging national laws imposed on providers of intermediary services negatively affect the EU internal market. The DSA explicitly

¹ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), available [here](#).

requires full harmonisation for the provision of intermediary services across the EU internal market. To this end, it introduces a number of requirements at EU level with the goal of ensuring a safe, predictable and trusted online environment - including for minors -, while effectively protecting fundamental rights enshrined in the Charter of Fundamental Rights² and facilitating innovation. In respect of this full harmonisation of EU rules, Member States should not adopt or maintain additional national requirements that overlap with matters regulated under the DSA.

In particular, Article 28 of the DSA concerns the online protection of minors, requiring services to guarantee a high level of privacy, safety, and security for minors on their services. This is then complemented by Articles 34 and 35. These articles apply only to very large online platforms (VLOPs), requiring them to identify systemic risks, including actual or foreseeable negative effects on the rights of the child and the protection of minors and implement safeguards to mitigate those risks. Age verification and parental control tools are mentioned as one of the potential targeted measures that could be taken to address any such identified systemic risks on specific services.

The European Commission is currently working on guidelines on the protection of minors online, to assist with the implementation of Article 28 of the DSA, having recently held a [call for evidence](#), to which CCIA Europe [responded](#). These guidelines - expected for early 2025 - should advise online platforms on how to implement high levels of privacy, safety and security for minors online.

The European Commission is also actively working to enhance online safety for children through several initiatives. The revised Better Internet for Kids (BIK+) [strategy](#) was adopted in 2022 with the goal of complementing existing measures and ensuring that digital services are age-appropriate and minors are protected, empowered and respected online.

Other ongoing initiatives at EU level include the Age Verification Task Force, including national Digital Services Coordinators, the European Regulators Group for Audiovisual Media Services (ERGA) as well as the European Data Protection Board (EDPB), which is working to develop an EU-wide approach to age assurance, including age verification and age estimation technologies.

Against this backdrop, key concepts of the draft Law for the Protection of Minors need to be revisited as they interfere with the scope of the full harmonisation character of the DSA, notably as regards Article 28 of the DSA.

In particular, CCIA Europe observes that Article 4 of the draft Law imposes among its obligations that manufacturers of devices with an Internet connection introduce by default a parental control functionality that would allow users to restrict or control the access to services, applications and content harmful to minors. CCIA Europe considers that this provision could overlap with the obligations on the protection of minors included in Article

² Charter of Fundamental Rights of the European Union, available [here](#).

28 of the DSA, depending on the content of the upcoming guidelines foreseen by the European Commission by early 2025.

Further, the draft Law foresees amendments to Article 89.1 of Law 13/2022 of 7 July on General Audiovisual Communication, which introduces measures for video sharing service providers to protect minors against certain audiovisual content.³ In this context, CCIA Europe would like to recall that the AVMSD⁴ does not qualify inherently as a *lex specialis* but, in accordance with Article 2(4)(a) of the DSA, it only takes precedence in cases where it regulates other aspects of the provision of intermediary services or specifies and complements the DSA.

As CCIA Europe already warned in our contributions to the TRIS notification on the French law to secure and regulate the digital space ([here](#) and [here](#)), the German State Treaty on Protection of Minors in the Media ([here](#)) and the Irish Online Safety Code ([here](#)), the adoption of diverging initiatives at Member State level undermines efforts by the European Commission and creates a patchwork of different initiatives across the European Union, increasing the risk of inconsistencies as well as legal and business uncertainty.

Beyond proposals that have already been submitted through the TRIS notification procedure, CCIA Europe notes with concern that other Member States are also currently discussing bills requiring the verification of users' age. By way of example, Italy is currently examining a [proposal](#) that would require the national Authority for Communications (Agcom) to establish technical and procedural requirements that information society services must implement in order to deploy age verification systems. Considering this is not the only proposal recently presented in Italy which would require age verification systems to be introduced, CCIA Europe urges the European Commission to call on the Italian government to refrain from adopting any proposals that would conflict with the full harmonisation character of the DSA or contravene EU law. The proliferation of various versions of age verification requirements across Member States creates fragmentation, which goes against achieving a true single market.

Taking into consideration the cross-border nature of the Internet, Member States should actively participate in and support the initiatives fostered by the European Commission, instead of introducing and applying conflicting legislative actions, which may jeopardise the collective goal of safeguarding minors online in a uniform manner.

The protection of minors is a priority for legislators and the industry, and rightly so, but a consistent approach to youth and minor protection will only be achieved through agreed-upon industry-wide solutions that share the same consistent standards across the EU.

³ Law 13/2022, of July 7, General Law on Audiovisual Communication, available [here](#).

⁴ Directive (EU) 2018/1808 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, available [here](#).

II. Breach of the country-of-origin principle

Member States should avoid deviations from the country-of-origin principle that is at the core of the e-Commerce Directive and the DSA to guarantee a truly unified EU internal market.

Consistent with the e-Commerce Directive⁵, the recently adopted DSA upholds the country-of-origin principle as a cornerstone of EU law. Under this principle, EU Member States should not subject service providers which are not established in their country and regulated by another EU Member State to additional and potentially onerous obligations under their national law.

The notified draft Law for the Protection of Minors would introduce obligations for manufacturers of devices with an Internet connection (e.g. mobile phones, electronic tablets, smart TVs and personal computers) offering their devices in Spain, regardless of their country of establishment. More concretely, Article 4.2 of the draft Law requires manufacturers of data terminal equipment to provide information on data protection measures and risks related to privacy and security; the time recommended for using the products and services, appropriate to the age of the user; parental control systems; and the risks to cognitive and emotional development and to sleep quality from prolonged use of such services. Article 4.3 further obliges manufacturers to ensure that the terminal equipment includes, in its operations system, parental control functionalities activated by default during initial device configuration.

While Article 3(4) of the e-Commerce Directive provides for exceptions from the country-of-origin principle, it states that these would only be warranted in specific circumstances, taking into account the prejudice - or serious and grave risk of prejudice - of the service to the objectives invoked to justify the restrictive measures. Making use of this exception would also require abiding by a number of procedural prerequisites, such as addressing a prior request to the Member State of establishment and notifying the measures to the European Commission. CCIA Europe considers that the Spanish draft Law for the Protection of Minors does not meet the above criteria for an exception.

The Court of Justice of the EU (CJEU) recently confirmed that a similar national approach was contrary to EU law “which ensures the free movement of information society services through the principle of control in the Member State of origin of the service concerned”.⁶ Member States should therefore refrain from adopting “measures of a general and abstract nature which apply without distinction to any provider of a category of information society

⁵ 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 (‘Directive on electronic commerce’), available [here](#).

⁶ CJEU, Press Release No 167/23, Luxembourg, 9 November 2023, Judgment of the Court in Case C-376/22 | Google Ireland and Others, Combating illegal content on the Internet: a Member State may not subject a communication platform provider established in another Member State to general and abstract obligations, available [here](#).

services”, as this would undermine mutual trust between Member States and conflict with the principle of mutual recognition under the e-Commerce Directive.

III. Barriers to the free movement of goods

The fragmentation of the Internal Market should always be avoided, as well as contradictory approaches when it comes to the protection of minors.

Insofar as operating systems may be qualified as goods, the mandatory parental control functionalities that the draft Law foresees would constitute barriers to the free movement of goods within the internal market. CCIA Europe considers that the notified draft Law for the Protection of Minors doesn't justify imposing new requirements that could potentially stifle innovation and market competition, and risk further fragmenting the Digital Single Market. CCIA Europe warns against the fragmentation of the Internal Market, which creates compliance challenges for businesses operating across borders and is aggravated by the fact that other Member States have recently adopted differing approaches to parental controls (e.g. France and Germany) and others are planning on deploying similar approaches.

Moreover, the parental control requirements under the draft Law for Protection of Minors conflict with the Radio Equipment Directive (RED),⁷ which grants the EU exclusive authority to set technical standards for radio equipment.

To avoid fragmentation, CCIA Europe favours an EU-wide approach, including initiatives in the space of parental controls that apply across the whole ecosystem. Due consideration should be given to an approach that tries to reconcile and enhance existing age-appropriate design and parental control tools instead of outruling them, in any event with the ultimate objective of creating tools for parents that guarantee a high standard of child protection.

Conclusion

CCIA Europe asks the European Commission to issue a detailed opinion requesting the Spanish government to make the necessary changes to ensure that the draft Law for the Protection of Minors does not contravene EU law nor conflict with the full harmonisation effect of the DSA. If Member States believe that additional legislation is necessary, national laws and treaties should respect and uphold the country-of-origin principle in order to guarantee a consistent and integrated Digital Single Market.

⁷ Directive 2014/53/EU on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC, available [here](#).

About CCIA Europe

The Computer & Communications Industry Association (CCIA) is an international, not-for-profit association representing a broad cross section of computer, communications, and internet industry firms.

As an advocate for a thriving European digital economy, CCIA Europe has been actively contributing to EU policy making since 2009. CCIA's Brussels-based team seeks to improve understanding of our industry and share the tech sector's collective expertise, with a view to fostering balanced and well-informed policy making in Europe.

For more information, visit: twitter.com/CCIAEurope or www.ccianet.org

CCIA is registered in the EU Transparency Register with number 281864052407-46.

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