

DOT Europe contribution

Notification 2024/0531/ES under the TRIS process

DOT Europe would like to take the opportunity to contribute to the notification of the Draft Organic Law for the Protection of Minors in Digital Environments, as notified by the Spanish Government in September 2024 (thereafter, the bill).

According to the notification of the bill, it “aims to establish measures with the aim of guaranteeing the protection of minors in digital environments.” Among other things, the bill requires manufacturers of data terminal equipment with an internet connection to provide information and establish parental control mechanisms; restricts access to random reward mechanisms or their activation by minors; promotes training on the proper use of digital media in schools and the regulation of their use within them; promotes the adoption of preventive measures and specialised care by health administrations; raises the minimum age for the consent to personal data processing from 14 to 16 years; and provides for various measures for the protection of minors in the field of audiovisual media services, including measures on age verification and restrictions on access to harmful content.

While DOT Europe and its members are supporters of a safe experience online for all users, including children, we believe that legislation proposed at the national level should align and build on the EU's harmonized framework and single market principles. It is important that these principles are decided at the EU level, particularly where significant technological standards are concerned. Additionally, we warn against the Spanish bill's overlaps with, and in some instances oversteps on, provisions of the Digital Services Act (DSA); which introduce a potential conflict of interest with the Country-of-Origin Principle while disrupting the Free Movement of Goods.

Incompatibility and overlap with the DSA

The bill introduces provisions that duplicate those already envisaged in the DSA, such as those contained in Article 28 to ensure a high level of privacy, security and safety for minors online. Moreover, Articles 34 and 35 introduce specific obligations for Very Large Online Platforms regarding the identification of systemic risks (including potential harms to children's rights and wellbeing); and the implementation of mitigation measures depending on the risks identified (e.g., age assurance measures and parental controls). It must be pointed out that the DSA, as a Regulation, is a maximum harmonisation instrument that establishes a comprehensive framework which is directly applicable and therefore is already protecting European consumers of all ages, including minors.

Moreover, the DSA seeks to prevent Member States from imposing additional national rules that would threaten the integrity of the Single Market. It clearly warns in the Recital 2 that "Member States are increasingly introducing, or are considering introducing, national laws on the matters covered by this Regulation" and those "diverging national laws negatively affect the internal market". Introducing separate legislation at the national level goes against the spirit of the DSA and its harmonised approach. This harmonised approach is particularly important in a very sensitive area such as the protection of minors in online environments and this is why the DSA does not establish any type of national exceptions in this field.



In addition, the draft law duplicates initiatives on minor protection online at the EU level. For example, the European Commission has recently launched a call for evidence and a tender to gather information on its planned guidelines on the protection of minors online. These guidelines, expected in May 2025, should provide advice on how to implement high levels of privacy, safety and security for minors online. At the same time, relevant work is ongoing on the Better Internet for Kids Strategy (BIK+); on the Task Force on Age Verification (composed of Member State DSCs, the European Regulators Group for Audiovisual Media Services, and the European Data Protection Board); and as part of a Call for tender for a new Age Verification App.

Country-of-Origin and Free Movement of Goods

By mandating that internet-connected devices include specific parental control functionalities, the draft law risks undermining the Country-of-Origin principle, a key feature of the Single Market that ensures online service providers are primarily regulated in their Member State of establishment; and a principle that is upheld in the DSA, eCommerce Directive and AVMSD. Imposing a specific model or default activation of parental controls can be a barrier to services that comply with regulations in their own Member States. Such a barrier threatens the integrity of the Single Market.

More specifically, the draft Spanish Law introduces obligations on manufacturers to ensure their devices include parental control functionalities in their operating systems, which must be activated by default during initial device setup; and to provide information on product packaging and in user manuals/guides of warnings of risks related to harmful content, data protection, recommended usage time, parental controls, and potential impact on cognitive development, emotional well-being, and sleep quality. Imposing a certain model of minor protection functionality may violate the Country-of-Origin principle, since both terminals and services, applications and content may include functionalities certified in other European Union Member States.

Although exceptions to the Country-of-Origin principle are possible, as established in the e-Commerce Directive, these are limited to specific circumstances: they have to be very targeted (e.g., at specific providers); the service in question must pose a serious risk; certain procedural steps must be followed, such as notifying the provider's home Member State and the European Commission. The requirements in this draft law do not appear to meet these criteria. Indeed, Member States should refrain from introducing measures "of a general and abstract nature", as recently confirmed in a CJEU ruling.¹

Introducing country-specific requirements on parental controls creates inconsistencies between different Member States and poses compliance challenges for businesses operating cross-border. To avoid fragmentation of the Single Market, EU policymakers must develop an EU-wide approach to online child safety. Such an approach should be built on existing solutions.

¹ 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 on <https://curia.europa.eu/jcms/upload/docs/application/pdf/2023-11/cp230167en.pdf>



Moreover, the parental control requirements under the bill clash with the Radio Equipment Directive (RED), which reserves the power to define such essential requirements and technical standards for radio equipment solely for the EU.

To avoid fragmentation of the digital market, European policymakers must adopt a EU-wide approach to online child safety, including ecosystem-wide initiatives related to parental controls. Crucially, any EU-level approach should build on existing solutions; instead of dismissing existing tools, the focus should be on integrating and enhancing them. In addition, the development of technical standards on age verification should be undertaken at the EU level to ensure a harmonised, easily scalable approach that guarantees the same level of user experience across Europe.

Conclusion – more than an isolated case

The draft Spanish law poses significant overlaps with provisions already introduced in the DSA and with the various workstreams on minor protection already underway at the EU level. It also creates an unnecessary duplication since the European Commission is already working on initiatives such as the Guidelines on Article 28 DSA and a separate workstream on age verification. Moreover, the proposed measures threaten the integrity of the Single Market and the free movement of goods. We believe that the drafting of technical standards planned in this draft Bill, should not be considered at Member State level, but at European level to drive better scalability and adoption.

Moreover, DOT Europe observes that this initiative is not an isolated case. There is currently a similar [bill](#) in the Italian Senate that seeks to introduce age verification obligations on information society service providers, as well as touching on technical measures service providers must follow to implement age verification systems. This initiative raises concerns similar to those expressed in our response to the Spanish Draft Degree.

Against this backdrop, we urge the European Commission to formally request that the Spanish government revise the notified draft law to ensure its compliance with EU law, particularly the Digital Services Act (DSA).

Any national legislation must respect the DSA's harmonising effect and uphold the Country-of-Origin principle. This is crucial for maintaining a consistent and integrated digital single market. We urge the European Commission to intensify its scrutiny of national rules in the sphere of minor protection and age verification to ensure the Single Market is not fragmented through the imposition of diverging national rules.