

## TRIS NOTIFICATION PROCEDURE

# French Influencer Law Contravenes EU's DSA

July 2023

## Introduction

The Computer & Communications Industry Association (CCIA Europe) welcomes the opportunity to provide its contribution to [TRIS notification procedure](#) 2023/0237/F, regarding the French draft bill to regulate commercial influence and combat abuses by so-called “influencers” on social media networks (hereon after the “draft bill”).

The provisions of the draft bill notified to the European Commission:

- Prohibit the promotion by influencers of certain types of products (e.g. financial products, healthcare products, etc);
- Regulate the promotion by influencers of other types of products (e.g. gambling, labelling, and transparency requirements);
- Seek to implement, or go beyond, the Digital Services Act (DSA).

CCIA Europe considers that the French draft bill contravenes the EU's recently adopted DSA for three main reasons:

- I. Discrepancies with the DSA
- II. Unnecessary duplication of the DSA's provisions
- III. Breach of the country-of-origin principle

Therefore, CCIA Europe calls on the European Commission to issue a detailed opinion that will lead the French government to remove the proposed provisions from the draft bill. The Association also points out that that draft bill has already been promulgated into Law on 9 June 2023 (hereon after the “Influencer Law”), well before the end of the standstill period on 14 August 2023.<sup>1</sup> While the application of the notified provisions is conditioned by the end of the TRIS notification procedure, Article 9(1) of Directive 98/34/EC states that the standstill period prevents the adoption of the notified text.<sup>2</sup>

## I. Discrepancies with the DSA

*Any changes to the wording of the Digital Services Act by a Member State greatly increase the risk of fragmenting the DSA's implementation.*

Article 4 of the draft bill adds a new provision to the French law for the confidence in the digital economy (“LCEN”), creating discrepancies with the DSA.<sup>3</sup> It states that “providers of intermediary services shall take the necessary measures to give effect, within the shortest

<sup>1</sup> Loi n° 2023-451 du 9 juin 2023 visant à encadrer l'influence commerciale et à lutter contre les dérives des influenceurs sur les réseaux sociaux, available [here](#).

<sup>2</sup> Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations, available [here](#).

<sup>3</sup> The LCEN is the transposition in French Law of the 2000 e-Commerce Directive - 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, available [here](#).

possible time, to the order to act issued by the relevant national judicial or administrative authorities, in accordance with the conditions laid down in Articles 9 and 10 of the [DSA].”

However, Article 9(1) of the DSA only requires intermediary services to “inform the authority issuing the order, or any other authority specified in the order, of its receipt and of the effect given to the order, specifying if and when effect was given to the order.” The DSA does indeed not require the intermediary service to “give effect” to the order. Similarly, Article 9(1) of the DSA requires the information to be provided “without undue delay” while the draft bill indicates a shorter timeframe by requiring action “within the shortest possible time”.

## II. Unnecessary duplication of the DSA’s provisions

*Member States should avoid unnecessary, and potentially harmful, duplication of European regulation in national law. The confusion and fragmentation this creates could lead to less accessible and intelligible rules, to the detriment of European citizens and businesses.*

Articles 3 and 3bis of the draft bill add new provisions to the French LCEN which copy excerpts of, and refer to, Articles 15, 16, and 22 of the DSA. While this does not *per se* create additional obligations for information society services providers, the practice of copying applicable European regulations directly into national law should be prevented by the Commission as it would set a dangerous precedent.

This kind of practice could even harm the smooth implementation of the DSA. The needless duplication of similar provisions creates confusion, as national courts could either use the Regulation or its national implementation. This can become even more harmful if duplications are only partially copied or rephrased. Blurring the direct effect of European regulation can also lead to diverging case law developing in Member States. As a result, information society service providers would have to carry the regulatory burden of monitoring national legislative and judicial processes to ensure there are no deviations from the DSA. Such duplication would result in fragmentation of the market, instead of harmonising it as intended by the DSA (Recital 9).

It should be noted that this would also duplicate the ongoing process of adapting French law to the DSA. Indeed, French legislators are currently reviewing a bill securing and regulating the digital space, which aims to adapt national law so that the DSA can be applied.<sup>4</sup> That is why the provisions of the draft bill would add an unnecessary layer.

## III. Breach of the country-of-origin principle

*Member States should justify any deviations from the country-of-origin principle that is at the core of the e-Commerce Directive and the DSA. This is something the draft bill fails to do.*

Article 4-ter of the draft bill requires providers of online platform services – without excluding those established in other Member States – to adopt a protocol with the French State to raise awareness, promote training, and encourage flagging of influencer content.

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<sup>4</sup> Projet de loi visant à sécuriser et réguler l’espace numérique, Texte n° 593 (2022-2023) de M. Bruno LE MAIRE, ministre de l’économie, des finances et de la souveraineté industrielle et numérique, déposé au Sénat le 10 mai 2023, available [here](#).

Other articles of the Influencer Law, which were not notified to the European Commission, go beyond the DSA. Article 4 (VII) prohibits influencers from promoting gambling on online platforms unless they exclude minors from their audience, thus implicitly requiring online platforms to either adopt age verification mechanisms or prohibit such content on their platform. Articles 5 (I), (II), and (III) require the labelling of influencers' commercial communication, airbrushed images, and AI-generated images, while also imposing transparency requirements for content on professional training, thus implicitly requiring online platforms to adapt their services so that their users can comply with these obligations.

While Recital 9 of the DSA allows for additional national legislation applicable to providers of intermediary services, certain conditions such as the country-of-origin principle have to be respected. In this case, the above-mentioned articles of the Influencer Law do not respect the conditions laid down in Article 3 of the e-Commerce Directive, as they apply to all online platforms. Therefore, the French Influencer Law does not respect the conditions to be exempted from the country-of-origin principle.

While the Influencer Law does not explicitly state that it applies extraterritorially, the legislator's intention was for it to apply to all information society services providers that are accessible from France. To ensure that the principles underlying the DSA are not breached before its full implementation, the Commission should ask France to withdraw these provisions.

## Conclusion

CCIA Europe asks the European Commission to issue a detailed opinion to ensure that the draft bill does not undermine the ongoing implementation of the Digital Services Act. If Member States believe that additional legislation is necessary, national laws should respect the country-of-origin principle so that the level of harmonisation the DSA is supposed to provide won't be undermined.

## 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](https://twitter.com/CCIAEurope) or [www.ccianet.org](http://www.ccianet.org)

CCIA is registered in the EU Transparency Register with number 15987896534-82.

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