

Mr Prabhat Agarwal  
Head of Unit for Digital Services (CNECT.F.2)  
European Commission

Mr Radek Maly  
Head of Unit for Notification of Regulatory Barriers (GROW.E.3)  
European Commission

14 March 2024

**Re: Lack of TRIS Notification of a Romanian Draft Law Deviating from the DSA**

Dear Mr Agarwal, Dear Mr Maly,

I am writing to you on behalf of the Computer & Communications Industry Association (CCIA Europe), a trade association representing a broad cross-section of computer, communications, and internet industry firms.

CCIA Europe would like to call your attention to a draft law “on the responsible use of technology in the context of the deepfake phenomenon” under legislative scrutiny in Romania. We understand that the proposal is in final reading by the Chamber of Deputies.

While the draft law did not originally impose obligations on online platforms, amendments adopted during the legislative process introduced obligations which overlap and deviate from the Digital Services Act (DSA). The main problematic amendments to the draft law are:

- The generation, dissemination, or broadcast of manipulated content, commonly known as “deep fakes” on online platforms, would be subject to a mandatory warning notice. This warning notice shall cover a minimum of 10% of the visual exposure area and explicitly state “This material contains imaginary scenarios”.
- The violation of the above provision would constitute a criminal offence, punishable by a monetary fine ranging or imprisonment for a maximum of 2 years.
- The National Audiovisual Council would be empowered to request online platforms to temporarily suspend the distribution of “deep fakes” until a court determines whether a criminal act has occurred.

**CCIA Europe considers that these additions to the Romanian draft law are a deviation from the DSA and breach the country-of-origin principle.** The DSA aims to provide a harmonised framework for the operation of intermediary services in the EU, as stated in its Recital 2. The Romanian draft law with these amendments would be in contradiction with the EU-wide rules established by the DSA. The amendments described above would notably deviate from Article 9 on authorities’ orders to act against illegal content appearing on online services, Articles 34 and 35 on risk assessments and mitigations which exhaustively regulate requirements which must be put in place in relation to harmful content as well as Articles 6-8 on the safe harbours and prohibition of general monitoring obligations.

Recital 9 of the DSA states: “Member States should not adopt or maintain additional national requirements relating to the matters falling within the scope of this Regulation, unless explicitly provided for in this Regulation, since this would affect the direct and

uniform application of the fully harmonised rules applicable to providers of intermediary services in accordance with the objectives of this Regulation.”

Even in situations where additional national legislation is permissible, certain conditions such as the country-of-origin principle have to be respected as stated in Article 2 of the DSA and Article 3 of the e-Commerce Directive. In this case, the Romanian draft law does not respect these conditions as it appears to apply to all online platforms, regardless of establishment. The Court of Justice of the EU 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”.<sup>1</sup> It is particularly important, as the DSA is now fully applicable, that the European rules retain their primacy over national initiatives that would end up creating fragmentation in the single market. Beyond these concerns, local NGOs have also warned of the detrimental effects of the Romanian draft law on freedom of expression.<sup>2</sup>

**CCIA Europe calls the European Commission to ask for the notification of the draft law’s amendments to the Technical Regulations Information System (TRIS).** As the draft law imposes the definition of rules on services, and is therefore a technical regulation, Romania should immediately communicate the draft to the European Commission, as foreseen by articles 1 and 5 of Directive 2015/1535.<sup>3</sup> A TRIS notification will empower the European Commission to assess the provisions’ compatibility with EU Law, as described above, and to empower affected stakeholders to contribute. The European Commission’s assessment should particularly focus on the law’s compatibility with the pre-existing DSA rules.

We hope that this information is useful to your services and we remain at your disposal should you need any further elements.

Sincerely,

Mathilde Adjutor  
Senior Policy Manager, CCIA Europe

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<sup>1</sup> 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](#).

<sup>2</sup> HotNews.ro, “Don’t vote for a Chinese version of the Deepfake Law! It contains dangerous provisions, such as prison sentences” - nine NGOs, appeal to parliamentarians, 12 February 2024, available [here](#).

<sup>3</sup> Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification), 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.

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