

## TRIS Notification Procedure

# Hungarian Draft Law Contradicts Rules of the Single Market

4 April 2024

The Computer & Communications Industry Association (CCIA Europe) welcomes the notification of the Hungarian draft law on “Action for the Benefit of Hungarian Consumers and Businesses” [TRIS 2024/0002/HU](#) (hereinafter referred to as the Hungarian draft law).

The Hungarian draft law imposes obligations on gatekeepers, as defined in Article 3 of the Digital Markets Act (DMA)<sup>1</sup>. The Hungarian draft law remains unclear whether the obligations would apply to all services of designated gatekeepers. The additional obligations on gatekeepers imposed in Article 12C of the draft law include:

- Hungarian-language customer service and complaints handling mechanism, operating in Hungary, with in-person or telephone and electronic access;
- A strict payment deadline of 45 days;
- The provision of independent legal advice in Hungarian in case contracts are not originally in Hungarian; and
- A strict deadline of 30 days to deal with complaints received from companies.

**The obligations set out in the Hungarian draft law are inconsistent with EU laws underlying the single market and should be blocked by the European Commission.**

Incompatibility between the Hungarian draft law and European law arises from various legal considerations and principles.

First, the notion of gatekeeper to which the Hungarian draft law refers to is defined in the DMA. The DMA’s legal basis is Article 114 of the Treaty on the Functioning of the European Union (TFEU) with the aim to fully harmonise rules for gatekeepers. As such Member States are effectively prevented from adopting additional rules on the same subject matter.

Additionally, the Hungarian draft law may also be incompatible with Article 56 of the TFEU, as well as the Services Directive<sup>2</sup>. Article 56 of the TFEU prohibits member states from restricting the ability of companies from other EU countries to provide services within their borders.

The Hungarian draft law may violate this prohibition by creating national barriers for EU-based companies providing their services in Hungary, imposing onerous obligations such as requiring a physical presence in Hungary, and disrupting the smooth functioning of the EU’s single market.

<sup>1</sup> Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), available [here](#).

<sup>2</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (Services Directive), available [here](#).

By way of ricochet, the draft Hungarian law is likely to be incompatible with the Services Directive. In particular, the Hungarian draft law specifically contradicts the prohibited requirements laid down in Article 14 of the Directive. The obligation to provide Hungarian-language customer service and a complaint-handling mechanism operating in Hungary would effectively impose a separate establishment or to be a resident of the country to provide a service. Given the definition of “establishment” in Recital 37 of the Services Directive, the mandatory presence of the previously mentioned services in Hungary could be interpreted as an establishment. The Hungarian draft law’s obligations would therefore limit companies’ right to provide cross-border service.

The Hungarian draft law may also violate the E-Commerce Directive<sup>3</sup>. The E-Commerce Directive states that Member States may not restrict the freedom to provide information society services from another Member State. While the E-Commerce Directive allows for national exemptions to restrict the freedom to provide information society services, certain conditions such as the country-of-origin principle have to be respected as stated in Article 3 of the e-Commerce Directive. The Hungarian draft law does not appear to respect the test of necessity or proportionality. In a recent decision, the EU Court of Justice struck down similar national legislation, emphasising the EU law principle that information society services should be regulated in the member state where the company is based, not where it provides services.<sup>4</sup>

**Therefore, CCIA Europe invites the European Commission to block the provisions of the Hungarian draft law to preserve the functioning of the single market.** Any other national initiatives undermining the single market should be blocked to avoid fragmentation.

## 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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<sup>3</sup> 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 (E-Commerce Directive), available [here](#).

<sup>4</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](#).