

DOT Europe contribution

Notification 2023/0362/FR under the TRIS process

DOT Europe would like to take the opportunity to contribute to the notification of the Bill, amended by the French Senate, “aimed at establishing an age of digital maturity and combating online hate”, as notified by the French Ministry of Economy in June 2023 (thereafter, the bill).

The text sets an age limit of 15 years for users who wish to access an online media service. A minor under 15 years old may use a social media service only if the service provider has obtained an express authorization from one of the holders of the parental authority.

While DOT Europe and its members are supporters of a safe experiences online for all users, including children, we believe the French bill, as notified, is not in line with European Union legislation and could risk undermining the Digital Services Act (DSA), the horizontal framework governing online services.

Ban of all users under the age of 15, including for existing accounts – against data minimization principles

The bill provides that the ban on accounts held by users under 15 years old shall also apply to existing accounts. However, there is no way for companies to be certain an account is held by someone under this age. This may be for several reasons: multiple users of the same account, connection of different family members with a single device... Complying with the requirements of this bill would mean that companies would have to request age verification only from French users of their service . This is in contradiction with the data minimization principle enshrined in the Regulation (EU) 2016/679 (Article 5(1)(c)) and with the spirit of Article 28(3) of the DSA. While Article 28(2) DSA prevents online platforms from using minors’ personal data for serving them ads based on profiling, Article 28(3) indicates that this ban “shall not oblige providers of online platforms to process additional personal data in order to assess whether the recipient of the service is a minor”. The bill is therefore not in accordance with existing EU law.

Monitoring system for minors’ use of social media services – against obligation not to profile minors

Another provision of the bill introduces an obligation for companies to “activate a system to monitor the time of use of their service when registering a minor”. Similarly to the argument made above, this profiling will run counter to either the obligation not to profile minors or the ban on general monitoring under the DSA (Article 8).

Obligation to implement an age verification system – risk of regulatory fragmentation

Finally, we are concerned with the obligation put on providers to implement an age verification system “as soon as possible” which should also be used to “verify the authorization of holders of parental authority”. The age verification systems should all the more be certified by the French Data Protection Authority and another regulatory authority.



We believe this requirement will introduce regulatory fragmentation in the European Union because it would require companies to put in place specific regulatory compliance solutions for France while the DSA but also other legislative initiatives (such as the new Better Internet for Kids Strategy¹ released in May 2022) are already inviting stakeholders and companies to participate in the elaboration of standards for targeted measures to protect minors online (see Article 44 DSA or the BIK+ code on age-appropriate design envisaged under the aforementioned BIK+ Strategy).

There is currently no satisfactory long-term solution for age assurance that protects user privacy². We think that it is therefore vital to properly assess existing solutions before enshrining a specific system in law. Otherwise, this could de facto result in an obligation for many individual services to each develop their own age verification solutions, without being able to rely on a clearly agreed industry approach on this important issue. As this is an area where the Commission expects to make progress as part of the Better Internet for Kids strategy and the code of conduct that will emanate from it, there should be no national initiatives legislating on a contested and evolving matter. National legislators should instead defer to the BIK+ strategy for the development of an appropriate age verification approach and mechanisms and encourage a multistakeholder discussion in the context of the upcoming code to develop effective solutions.

The debate surrounding age verification is technologically complex and will have broader consequences for fundamental rights, data, security and privacy. In order to consider all possible outcomes, prior to introducing any new obligations targeting a specific group of digital service providers, DOT Europe sees the value in a multistakeholder discussion to develop sustainable technical and technological approaches.

The potential risk to the integrity of the Single Market is heightened by the fact that national regulators throughout Europe closely observe each other's actions. Consequently, there is a genuine possibility that this bill could serve as inspiration for other Member States and result in a breakdown of the desired harmonization sought by the DSA or the BIK+ Strategy, which this bill undermines.

Therefore, DOT Europe calls on the European Commission to invite the French government to withdraw the text in order to avoid fragmentation of the Single Market. Future national legislation should also be assessed in this light.

¹ Communication A Digital Decade for children and youth: the new European strategy for a better internet for kids (BIK+), May 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2022:212:FIN>

² This has been demonstrated by the French Data Protection Authority itself in the following article, published in September 2022 for the English version: <https://www.cnil.fr/en/online-age-verification-balancing-privacy-and-protection-minors>

