

Meta's submission to the TRIS procedure on the Spanish Draft Organic Law on the protection of minors in the digital environment

On September 20, 2024, the Spanish government notified the European Commission of the Spanish Draft Organic Law for the Protection of Minors in Digital Environments under procedure TRIS 2024/0531/ES (Draft Law for the Protection of Minors). The Draft Law is now being reviewed by the Commission under the framework of the notification procedure laid down in Directive (EU) 2015/1535.

Meta Platforms Ireland Limited ("Meta") thanks the European Commission for the opportunity to provide comments on this Draft Law, and highlights the fact that it has also participated in the national public consultation the Spanish government opened in June 2024 when it published the first version of this Draft Law.

Goal of the law & the need for harmonisation

Keeping young people safe online is a top priority for Meta. With more than 3 billion people from all over the world using Meta's family of apps and billions of pieces of content posted on our platforms every day, we take the issue of safety on our platform very seriously, especially the safety of young people. It's one of our most important responsibilities.

As a consequence, Meta strongly supports the underlying goal of the Draft Law "to establish measures with the aim of guaranteeing the protection of minors in digital environments." Meta welcomes that Spain believes binding rules to provide parental controls and especially to establish an age verification system are needed, and that these rules should be applied at a central level, such as the device, or - from Meta's point of view - the operating system or app store. However, Meta believes that instead of fragmented national regimes, Member States should work together to develop harmonised European rules to reach this goal. To that end, Meta urges Spain to work with other Member States and the European Commission to propose a comprehensive legislative framework on youth that applies across all Member States and for all apps teens use. The best way to achieve this is through new EU Regulation that holds all apps to the same age-appropriate content standards and includes mandatory rules on age verification and parental approvals.

In line with this, Meta recently submitted a proposal for a suitable legislative framework to the European Commission as part of their consultation on the Digital Services Act, and a range of

other digital platforms shared similar views, demonstrating widespread support for this solution across industry. The principles of the submitted proposal are set out below.

Benefits of age verification & parental approval at the OS/app store level

When a teen wants to download an app, the operating system (OS) or app store should be required to notify their parents so they can decide if they want to approve the requested download, much like when parents are notified if their teen attempts to make a purchase. Placing the point of approval within the OS or app store simplifies the verification process and leverages optional approval systems that are already in place by app stores. With this solution, parents can also easily verify the age of their teen, which helps apps to place teens in the right experience for their age. Furthermore, because parents already provide age data to app stores when they purchase a teen's phone and set up their account, it avoids sensitive information such as ID data having to be shared with multiple apps to achieve the same outcome.

Need for consistent content standards and parental supervision features across all apps teens use

Meta believes that common industry standards for what is age-appropriate is needed: standards that parents can rely on, as different platforms have different rules and various processes. Built-in protections should apply equally across all apps teens use, in particular social media apps. Similar to our approach with Teen Accounts, certain apps should be required to offer parental supervision tools, including the ability for parents to set daily time limits. We also need broader alignment across the industry on the types of content companies should consider age appropriate, as there is for other media like movies and video games.

Concerns about national approach - violation of EU law

Meta is concerned, however, that the Spanish Draft Law establishes a separate national path that may undermine existing harmonized EU frameworks. In particular, the Draft Law is inconsistent with a number of aspects of the EU's Digital Services Act (the "DSA") and violates the country-of-origin principle pursuant to Art. 3 e-Commerce Directive, thereby leading to unwanted fragmentation of the European Digital Single Market. While we support the goals of the Draft Law, we would like to use this opportunity to highlight some legal issues brought to light by its publication.

Amongst others, Meta is particularly concerned about the proposed new national rules in Art. 4, requiring manufacturers of digital terminal equipment that has an operating system and a connection to the internet to 1. include in their operating systems a parental control that allows their users to restrict or control the access to services, applications and content which is harmful to minors, and 2. provide age-accessible information warning of the risks arising from content which is damaging to the health and development of minors, as these rules risk setting national standards in silos where European-wide regulation is deemed necessary to ensure that rules are fit for the future and reduce unnecessary burdens to citizens across all Member States.

Meta acknowledges that certain areas relating to the safety and wellbeing of minors online, such as age verification, remain insufficiently regulated and would benefit from comprehensive regulation in a new EU law. This notwithstanding, the Digital Services Act (DSA) establishes an existing fully harmonized regime applicable to intermediary services in the internal market with the objective of ensuring a safe, predictable and trusted online environment, addressing the dissemination of illegal content online and the societal risks that the dissemination of disinformation or other content may generate, and within which fundamental rights enshrined in the Charter are effectively protected and innovation is facilitated. This includes several youth related provisions. As confirmed in recital 71, *“the protection of minors is an important policy objective of the Union. [...]”* The protection of minors is specifically addressed in Art. 14 (Terms and Conditions), 28 (Online protection of minors), 34 (Risk assessment) and 35 (Mitigation of risks). In particular, the DSA refers to age verification systems as an example of effective and targeted enforcement measures to protect children’s rights (Article 35(1) (j)). Moreover, the European Commission is already working to bring forward guidelines on the implementation of Article 28 from the DSA informed by the BIK + strategy, as part of its implementation procedures.¹

Member States should not adopt or maintain additional national requirements relating to the matters falling within the scope of the DSA, unless explicitly provided for in the DSA, since this would affect the direct and uniform application of the fully harmonized rules applicable to providers of intermediary services in accordance with the objectives of the DSA². Introducing or maintaining overlapping national measures in this field would run counter to the objective of the EU co-legislators of having EU wide guidelines on Article 28 of the DSA, even where these are still in the making.

Notably, the European Commission highlights the protection of minors online as one of the main objectives and an essential aspect of the DSA³. Consequently, it continues to criticize national legislation in this space as infringement of the direct applicability of the DSA⁴. Meta calls on the European Commission to apply the same standards to the Spanish Draft Law at hand and to critically review it. Moreover, these national laws - including the Spanish Draft Law at hand - run counter to the supervisory and enforcement system provided for by the DSA, according to which supervision and enforcement is within the sole competence of the European Commission and the Digital Services Coordinator of a provider’s state of establishment, in case of Meta - the Irish Coimisiún na Meán.

By introducing additional national obligations, the Spanish Draft Law at hand runs counter to the full harmonization effect of the DSA, thereby fragmenting the Digital Single Market. Consequently, the draft is in clear violation of EU law and - if adopted - cannot be applied to foreign EU providers.

¹ <https://digital-strategy.ec.europa.eu/en/policies/strategy-better-internet-kids>.

² Recital 9 of the DSA, reiterated in Art. 1 DSA.

³ <https://digital-strategy.ec.europa.eu/en/library/digital-services-act-dsa-explained-measures-protect-children-and-young-people-online>; European Commission, detailed opinion re Notification 2024/188/DE, C(2024) 4659 final, dated 1 July 2024.

⁴ European Commission, opinion re Notification 2023/0362/FR and 2023/0237/FR, dated 14 August 2023; European Commission, detailed opinion re Notification 2024/188/DE, C(2024) 4659 final, dated 1 July 2024; European Commission, further statement re Notification 2024/188/DE, dated 11 November 2024.

Moreover, the Spanish Draft Law violates the country-of-origin principle, enshrined in Art. 3 e-Commerce Directive. According to this article, foreign EU providers cannot be subjected to additional obligations beyond the requirements of the EU Member State in which they are established. However, that's exactly what would happen if the Spanish Draft Law was adopted as no exception to the country-of-origin principle can be invoked here.

The Court of Justice of the European Union confirmed in two recent decisions that general and abstract measures aimed at a category of given information society services described in general terms and applying without distinction to any provider of that category of services do not fall within the concept of measures taken against a 'given information society service' ⁵. Thus, national laws like the Spanish Draft Law cannot qualify for an exception.

By introducing additional national obligations, the Spanish Draft Law runs counter to the country-of-origin principle as one of the core principles of European law, thereby fragmenting the Digital Single Market. Consequently, the draft is in clear violation of EU law and - if adopted - cannot be applied to foreign EU providers.

⁵ CJEU, decision of 9 November 2023, C-376/22; CJEU, decision of 30 May 2024, joined cases C-662/22 and C-667/22.