EU KIDS Act proposal: the legality and effectiveness of Social Media age-gating mechanisms

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Introduction

On 17 September 2026, the EU Commission proposed the 'EU Keeping Internet Digital Spaces Accountable and Trustworthy' Regulation referred to as EU KIDS Act. The proposal specifically entails that providers of certain social networking and video-sharing services shall not allow children under 15 to create autonomous accounts, while permitting limited, guardian-managed accounts for children aged 13 and 14. Children under 13 are hence excluded from these services, which has caused legal and social controversy (European Commission, 2026, art. 6(1)). Social media age-gating restricts

personal rights and it is contested which technological tools should be used for online age-verification (Veale, 2026). Therefore, this publication seeks to examine the KIDS Act's conformity with the freedom of expression and information as well as the proposal's effectiveness in achieving the set out objectives.

Objective of the proposal

The Commission extensively addresses the objectives and reasons of the proposal. It elaborates on the legal framework and the validity of the proposed measures, and incorporates an analysis on their proportionality. Hence, it provides an important primary source in assessing the Regulation's conformity with the freedom of expression and information.

The Commission argues that the primary aim of the Regulation is to "improve, promote and support the respect of the rights of the child online". In particular, age-gating shall protect children's mental and physical well-being, their health, privacy and security. The Commission concedes that social-media networking services are an integral component of children's rights to freedom of expression and information. Age-gating and restricting the access to these services would thus constitute an infringement. However, the Commission holds that the specificity of limiting the access solely to social-media networking services justifies the restriction, since these services are proven to be harmful to the health and safety of minors. In order to assess this justification, one must specifically regard the concept of proportionality.

The proportionality test

As laid down in art. 5 of the Treaty on the European Union (TEU, 2012), the principle of proportionality enshrines that the content and form of EU acts shall not exceed what is necessary to achieve the objective set out in the treaties. In practice, the Court of Justice (CJEU) has consistently examined the principle of proportionality through the lense of suitability and necessity. Suitability entails that a measure is capable to attain the objective they pursue, whereas necessity encompasses that an act must not go beyond what is necessary to attain that objective (Gebhard, 1995, para. 37). A third concept, which the courts applied less frequently, is the proportionality *sensu stricto*. It requires the precise balancing of benefits gained and harm caused in order to establish whether a legal act is in fact proportional (Bendor und Sela, 2012 p. 538).

Applying this test to the Commission's proposal, it becomes apparent that the legal argument was cleverly drafted to withstand a proportionality test, as one should expect from an important legislative body. The specific age-gating measures for social media networking services is capable of pursuing the objective of the Regulation, namely the protection of children's mental and physical health in online spaces. The targeted nature of the

proposed restrictions supports the argument that the measures are suitable for protecting children online. Yet, establishing necessity requires further consideration of whether less restrictive alternatives could achieve comparable protection.

The proportionality of an interference with the freedom of expression and information is a naturally extensively discussed and quite contested, multi-faceted affair. As such, it falls outside the scope of this article and, for the purposes of this analysis, the formal criteria of suitability and necessity can be considered to be met.

The effectiveness of age-gating

The concept of online age-gating faces multi-faceted ciriticism. From a technological point of view, it is scruitinized questioning the effectiveness of the technical solutions intended to carry out the age-certification mechanism (Apthorpe et al., 2024). Furthermore, the practice of online age-gating is often inextricably linked to data protection concerns with regard to possible ceritification mechanism processing biometrical and other sensitive personal data (Robinson II, 2025).

In order to assess whether the Commission's proposal substantially addresses these issues, one must first analyse the specific concerns regarding age-gating. In a further step, the substantive nature of the proposed regulation must then be examined through the lens of these issues.

Age-gating mechanisms

The technical solutions to online age-gating mechanisms have been a focal point of controversy, with a wide range of possibilities. Simple self-attestation, age estimation and age verification are the most commonly used systems (Anthorpe et al., 2024).

In a self-attestation mechanism users indicate their age or date of birth, mostly in conjunction with an agreement to the terms and conditions, upon accessing a service. The main problem with self-attestation is its vulnerability to circumvention by users that do not indicate their correct age (Dhesi et al., 2025). Consequently, the threshold to user circumvention is particularly low, because indicating an incorrect age does not carry substantial consequences. Thus, Anthorpe describes self-attestation mechanism as a mere "security theater" that operators impose to prevent being subject to regulation.

Age estimation mechanisms entail the inference of a user's age based on biometric features and voice patterns. They are mostly carried out by advanced machine learning systems that analyse user's face images and categorises them into a certain age group. While still under development, these system show specific promise in recognizing minors between 6-13. However, with regard to estimating the age of users close to particular thresholds these systems still show ambiguities (Anthorpe et al, 2024).

Lastly, age verification is the most commonly used technological solution. It involves an authoritative and official document, either a traditional ID-card or a digital ID, which is processed as proof of age. With regard to traditional IDs, data misuse is more prevalent since they include more data than necessary for age-gating (Apthorpe et al., 2024). Digital IDs are more safer in that regard. However, there are general data protection concerns, specifically regarding the processing for age-gating purposes by private companies (Köhler-Dauner et al., 2025). For instance, scanning a traditional ID card inevitably includes processing of data unnecessary for the purpose of age-verification, such as place of birth, eye colour or height. Furthermore, third party processors functioning as service providers for private companies such as Meta, are likely to not meet EU data protection standards of data minimisation and transparency.

The KIDS Act approach:

The Commission's proposal does not specify which of these methods shall be employed by social media networking services. However, it establishes the framework under which age assurance systems shall be developed and utilised – the standards and obligations arising from Regulation 910/2014 and Commission Recommendation (EU) 2026/1035. They specifically regulate the establishment of so-called trusted service providers (Regulation 910/2014, art. 21), which shall be employed by private companies as the means to age-verification. A particular burden of supervision is given to the Member States, by obliging them to publish lists encompassing which services are considered (art. 22). The Commission's recommendation aims at unifying these efforts into a EU wide framework of age-verifification mechanisms with similar commodities. Its incorporated EU Digital Identity Wallet project seeks to eliminate the necessity of private third party age-verfification providers completely, by incorporating age-verification mechanisms into the digital identity infrastructure. Under Article 29 of the proposed KIDS Act, the relevant providers would be required to use certified EU age-verification solutions. These may be integrated into the European Digital Identity Wallet or provided through separate compliant applications.

The Digital Identity Wallet concept would certainly circumvent issues with regard to data protection that were voiced in relation to age verifying mechanisms in other jurisidictions such as the UK and Australia (Mbioh, 2026). However, the current state of the framework set out to govern the age-verification mechanism in the KIDS Act is underprepared and not conditoned to maintain community wide social media age-gating. Entirely new infrastructure has to be created, implemeneting and delegating acts specifying the EU age verification framework need to be imposed, and compliance by social media network providers needs to be ensured (Veale, 2026).

Conclusion

The EU KIDS Act proposal by the Commission is an ambitious endeavor. Notwithstanding the moral and ethical components of social media age gating, the proposal may pass the formal proportionality test of suitability and necessity. However, a limitation of the freedom of expression and information must be considered more extensively before being legally enacted. Furthermore, the proposal employs a thorough EU age verification scheme that mitigates and regulates the issues regarding data protection that would arise if social media networking services processed the data privately. However, it is fairly questionable whether the EU age verification scheme is conditioned to be employed in the near future due to gaps and uncertainties in the development and infrastructure.

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