

## DIGITAL SERVICES ACT (DSA)

# Feedback to the Call for Evidence on Protection of Minors Guidelines

September 2023

## Introduction

The Computer & Communications Industry Association (CCIA Europe) is pleased to participate in the call for evidence on the protection of minors, in view of the guidelines that the European Commission is planning on adopting in the first half of 2025, as a way to help the enforcement of the Digital Services Act (DSA).<sup>1</sup> Article 28 of the DSA lays down the bases for the online protection of minors, noting that providers of online platforms need to put in place appropriate and proportionate measures to safeguard minors.

The upcoming guidelines aim to provide good practices and recommendations for providers of online platforms to ensure a high level of privacy, safety, and security when minors use their services. In this context, below you will find CCIA Europe's contribution to the main elements raised in the call for evidence:

- I. Harmonise rules to protect minors
- II. Ensure age-appropriate experiences for children
- III. Guarantee proportionality and flexibility in age assurance
- IV. Take into account existing best practices

## I. Harmonise rules to protect minors

The Digital Services Act (DSA) is a fundamental piece of the puzzle when it comes to protecting and supporting children. The DSA rightly includes specific due diligence obligations and transparency requirements to ensure the security of minors accessing and using online services.

The upcoming guidelines on the protection of minors online should strive to harmonise the rules that exist at EU level and are aimed at providing children with a high level of privacy, safety and security. Avoiding fragmented approaches when it comes to the protection of minors is crucial to achieving a unified approach that will guarantee certainty to children, parents or caretakers and businesses alike.

Article 28 DSA already applies to all online platforms establishing the general framework for the online protection of minors. This is further complemented by Articles 34 and 35, which call for very large online platforms (VLOPs) and very large online search engines (VLOSEs) to identify and mitigate systemic risks, including actual or foreseeable negative effects on the protection of minors and the rights of the child.

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<sup>1</sup> Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022R2065&qid=1666857517641>

The guidelines should aim at bringing clarity on the intertwining of the legislative corpus of the EU to avoid other laws conflicting with the DSA, affording particular discretion to VLOPs, which are subject to additional due diligence obligations. The recommendations included in the guidelines should aim at ensuring consistency between the DSA and other legislative frameworks that include provisions aimed at the protection of minors, such as the Audiovisual Media Services Directive (AVMSD),<sup>2</sup> the General Data Protection Regulation (GDPR),<sup>3</sup> and the European Digital Identity Regulation (eIDAS).<sup>4</sup>

- AVMSD: more clarity is needed to ensure consistency in the area of parental controls and age verification.
- GDPR: a clear definition of the prevailing rules as regards age assurance and age verification would be welcome.
- eIDAS: the Regulation foresees the use of initiatives such as the digital identity wallet, which have been mentioned by some as a potential way forward in the discussions around minor protection and the provision of age-appropriate online experiences but more clarity is needed to guarantee harmonisation.

Determining how all of the above would fit together under the horizontal approach of the DSA would help bring clarity and streamline the implementation of any measures aimed at protecting and safeguarding minors using online services and prevent any duplication of obligations.

Secondly, CCIA Europe observes with increasing concern that a number of Member States have begun to adopt diverging initiatives when it comes to establishing age-appropriate requirements for digital services. Economic operators in the online space have repeatedly been calling for a common approach that will ensure a uniform and coherent application across the entirety of the EU market.

In line with what is stated in Article 28 of the DSA, measures to ensure the safety of minors will apply to all providers of online services, regardless of their size. Considering that not all online services have the same capabilities and functionalities and that the risks to minors present differently among them, the guidelines should recognise that “appropriate and proportionate” measures will necessarily depend on the nature and circumstances surrounding the service. The approach taken should further establish a proportionate, easy-to-apply and flexible European approach that guarantees the protection of minors across different services while still allowing for a high level of privacy, safety and security of minors accessing and using them.

Regulatory cooperation and continued dialogue are crucial both at European and Member State levels, and within the framework of the country of origin principle, as reflected under the DSA and AVMSD, to ensure a common understanding of applicable requirements and to

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<sup>2</sup> Directive (EU) 2018/1808 of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities, available [here](#).

<sup>3</sup> Regulation (EU) 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), available [here](#).

<sup>4</sup> Regulation (EU) 2024/1183 of 11 April 2024 amending Regulation (EU) No 910/2014 as regards establishing the European Digital Identity Framework, available [here](#).

avoid the introduction of Member State requirements that contradict or go beyond matters already covered under the DSA. Given the cross-border nature of modern technology, clarity over which rules apply is crucial for the correct implementation and enforcement of any measures to protect minors and to guarantee a safe, trusted and predictable environment across the European Union.

Equally important will be to have regular exchanges with any stakeholders involved in the protection of minors across the board, including experts in the field, legislators, industry representatives, civil society organisations, safety and privacy experts, parents, educators, as well as minors themselves. This will help the development and deployment of industry standards that will achieve the right balance between the need for safety and age-appropriate design for services accessed by minors and the development of innovative products, which is something that is expected from providers of online services.

Thirdly, CCIA Europe hopes the guidelines will bring clarity with regard to the expectations in relation to the child impact assessment, considering this would be a departure from the architecture that the DSA and more particularly Article 28 have established. Certain services (e.g. VLOPs) are already expected to carry out a risk assessment, including on minor protection. Therefore, ensuring consistency will be necessary, as well as making sure there are no unnecessary duplications that would lead to an increased burden both for online services and for the regulators that need to assess them.

Lastly, requiring all services to run a child impact assessment based on the OECD 5c typology of risks would present a disproportionate burden. Valuable resources of providers might go into child impact assessments for products, regardless of whether the service poses any risk to children. CCIA Europe suggests the adoption of a method that is proportionate and limits the obligation to perform child impact assessments to those services that contain actual risks for children's privacy, safety and security.

## II. Ensure age-appropriate experiences for children

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In line with the general approach taken by the DSA, the Commission aims at proposing guidance that will follow a risk-based approach to online harms.

CCIA Europe and its members strongly support this ambition and consider that the guidelines should apply to all those online services that allow minors to access or use their services, whether they are primarily directed at minors or not. The guidelines should also help guide how online platforms are expected to guarantee the rights to privacy, safety and security for minors online through an appropriate and balanced line of action that does not undermine any of these stand-alone principles. By taking a risk-based approach, the guidelines will need to acknowledge that not all measures will be proportionate or appropriate for each service, and the measures presented must reflect the risk of the service.

With the European Commission examining the best ways to keep children safe online, creating experiences that are appropriate for minors will be essential. This is however not an easy task, considering that the term 'minor' encapsulates a great number of individuals with important differences when it comes to maturity and developmental levels and understanding of what a safe and appropriate use of online services entails.

Valuable insights can be drawn from minors themselves, who need to take agency for their online experiences. Parents and caretakers also hold significant responsibility when it comes to education, awareness raising and the overall safeguarding of what minors access and use online. Taking into account the best interests of the child will also be important for the upcoming guidelines,<sup>5</sup> particularly considering the significant role that digital environments currently play in children's lives.

Designing age-appropriate services further requires a fine balance between protecting minors using online services without restricting access to valuable services. The upcoming guidelines should present a streamlined and EU-wide approach that will assist online services in developing and setting up proportionate measures and ensure that their services have a high level of privacy, safety and security.

Further, considering the dynamism of online trends and how quickly they can surface and disappear, CCIA expects the upcoming guidelines to have a flexible approach towards how online services approach minor protection while balancing the needs to meet privacy, safety and security.

### III. Guarantee proportionality and flexibility in age assurance

Determining an individual's age presents challenges as well as valid concerns when it comes to privacy protections, proportionality or fairness, among others. Any system that aims to be developed to verify an individual's age would therefore need to take into account the difficult balance between the need to keep minors safe and the right for everyone to use online services in a private manner, complying with data minimisation principles.

Various age assurance methods exist currently, each with its own set of trade-offs concerning accuracy, liability, privacy and security. For example, the *Commission Nationale de l'Informatique et des Libertés* (French Data Protection Authority, CNIL) evaluated different technologies for online age verification.<sup>6</sup> Their analysis revealed that none of the analysed methods fully met three key standards: (i) sufficiently reliable verification; (ii) a comprehensive coverage of the entire population; and (iii) respect for individuals' data, privacy and security.

There is no one-size-fits-all approach to such a complex topic as age assurance, and different services are opting for a variety of methods, adapted to their products. CCIA Europe considers that any approach envisaged should in any case allow a certain degree of flexibility in order to be adaptable, both across services and over time, as trends and technological advancements evolve and the threat landscape changes.

Following the line established in the DSA - which requires measures to protect children that are reasonable and proportionate -, CCIA Europe believes the guidelines should ensure that any envisaged age assurance method is clearly based on existing risks, takes into account the industry's best practices as well as the best interest of the child and carefully balances

<sup>5</sup> While this is a dynamic concept and there is no single understanding of what it entails, [general comment no. 25](#) of the UN Convention on the Rights of the Child can provide a basis for what the best interests of the child are.

<sup>6</sup> 'Online age verification: balancing privacy and the protection of minors', CNIL September 2022, available [here](#).

the needs to protect children with all user's right to privacy and to access services and information online. The upcoming guidelines should also take into account additional considerations to maximise the protection of minors' rights. These include but are not limited to: the variety of existing systems and services and the need for these methods to be sufficiently privacy-friendly and secure, easy to understand and use. Further, any upcoming guidance should be very clear about the need to minimise data collection or processing of additional personal information when it comes to assuring a minor's age.

In most cases, the best approach to age assurance combines a series of methods, which is why the guidelines should be flexible enough to allow online services to evolve in their approaches to age assurance and verification as well as parental supervision, as the online landscape and risks evolve. Further, any new design and test of new tools should also involve both children and their parents or guardians, to ensure that they meet the different requirements of safety, privacy, necessity, proportionality and user-friendliness.

## IV. Take into account existing best practices

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CCIA Europe members take a proactive and responsible approach towards minor protection, having implemented a number of initiatives that guarantee robust and safe designs of their websites and platforms. Considering the dynamic environment when it comes to the protection of minors, the approaches taken by CCIA Europe members are also constantly evolving, with teams dedicated to providing a safe and trustful online experience for everyone, and a particular focus on minors as some of the most vulnerable users of their services.

Online safety tools vary depending on the nature of the services, the likelihood of the services being used by minors as well as the products that are made available by the different online operators. These tools can range from parental controls and supervision tools, dedicated accounts for children or teenagers, to restrictions on data processing for minors. From proactive trend identification to content reporting, restrictions of content or even account blocks in cases of repeat infringements, most online services undeniably make great efforts to ensure that their services are safe for minors that access and use them.

A great number of online resources and guides that can be accessed by any user who feels a responsibility towards a minor (e.g. tutors, educators, caretakers) are already readily available, easy to understand and user-friendly.<sup>7</sup> Some of these include but are not limited to transparency notices, resource libraries, health centres, and literacy programmes developed by certain services.

Further, online services often count on the expertise of various teams within their service and outside, including civil society and experts as well as minors and parents or caretakers to build and set up online experiences that adequately meet and balance the need for safety with the rights to privacy and security.

In this context, it is fundamental to count on ongoing collaboration within the industry and outside between the different players, which make great efforts to develop and align

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<sup>7</sup>Competitive Enterprise Institute list of resources to keep children online safe, available [here](#).

themselves towards the collective goal of ensuring more meaningful and secure online interactions for minors using their services.

## Conclusion

Minor protection is and shall remain a priority for legislators and industry. CCIA Europe and its members are strongly committed to promoting an online environment that is safe and appropriate for all users, in particular for children.

While most online players take this responsibility towards minors seriously, it will only be with a strong commitment from all of the actors in the online ecosystem that the collective goal to achieve appropriate and meaningful experiences for minors online will be met.

A continued collaboration among all actors involved in the online chain is key, as well as strong commitments towards ensuring high levels of privacy, safety and security of minors in their online experiences, while at the same time empowering children and people around them.

CCIA Europe and its members look forward to continuing to productively engage with the Commission to ensure that minors are safeguarded online, that the overall implementation of the DSA stays consistent, and to guarantee legal certainty for users and businesses throughout the European Union.

## 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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