

Position of Polish Confederation Lewiatan on Commission's consultation "Protection of minors – guidelines"

The DSA risk based approach is already present in the distinction between access/caching/hosting/OPs and VLOPs and the various levels of obligations that apply to each. Compliance with these obligations, along with compliance with GDPR and (in the case of retail) all the various consumer laws on marketing, contracting, prohibited products etc etc are what the legislators have already deemed the necessary approach to ensuring a high degree of protection for the safety and security of minors. The choice of the legislators was to impose specific obligations on all services and only to impose mandatory risk assessments on VLOPs and VLOSES. We would welcome guidelines that do not duplicate the obligations under Articles 34 and 35 for VLOPs, and that remain flexible, allowing all online platforms within the scope to treat them as guidelines, rather than strict rules.

1. We encourage the Commission to use the drafting of these Guidelines to clarify its thinking of age assurance. While the Guidelines feature age assurance, it remains unclear in what capacity, scope, content type, or through which standards Online Platforms are expected to deploy such technologies. We do not recommend that the Guidelines mandate age assurance, at this stage, due to the reduced scope of Article 28 (only Online Platforms). However, should age assurance be highlighted in further detail, we recommend that the Commission introduce an incremental approach to understand the impact and effectiveness of any of the technologies being highlighted for age assurance and age verification. For example, we believe it would be best to impose these first on "adult" sites, and if successful consider trialling this approach with other services that assess a higher risk. Only after a careful review of these uses should any wider adoption be considered- and not without a concrete consultation with impacted industry players.
2. The VLOP and VLOSE Risk Assessments do not mandate the reporting of specific risks – and for good reason: The DSA is a risk agnostic legislation. This takes into account that different services will pose different risks and mitigations depending on their design, features, and functionalities. We call on the Commission to clarify that any additional impact assessment using the 5C approach done by an Online Platform is not made mandatory to VLOPs. Additionally, in the spirit of the risk-agnostic method of the DSA, we recommend the Commission clarify that the Best Practices put fourth

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are not mandated as a path to compliance for Online Platforms. This will help ensure that the similar flexibility offered in the Risk Assessments of Articles 34 and 35 are offered to Online Platforms – which share a similar (if not wider) diversity.

3. All age-appropriate/child safety solutions, including age assurance or age verification should be an EU-level solution to avoid fragmentation of the single market and to enable consistent and efficient adoption by those services for whom this is appropriate.
4. The cast of Art 28 is much wider than that of Article 33. The EC, at the time of writing, applies to over 10,000 Online Platforms, many of which are entirely different from one another. In order for the Guidance to be widely adopted, regardless of the Online Platforms ‘type’ the Commission must ensure its guidance are not overly prescriptive. This is because mitigation measures against a certain risk can only be successful if a risk is appropriately identified. For example, should one of the Best Practices identified be ‘reduced scrolling time’, any platform without a scrolling feature will be unable to ‘comply’. We hence recommend a ‘shopping list’ menu of options to ensure maximum applicability to all Online Platforms – and even other services covered by the scope of the DSA such as hosting providers, that may wish to strive for Article 28 compatibility to maximize their youth safety outcomes.
5. As aforementioned, not all Online Platforms are equal; they propose different types of content, target different audience, and offer diverse design features. It would be wrong to impose strict age assurance solutions on all sites rather than those in which some risk of harm to minors is materially measured. For services where some risk is material, age-related solutions should only apply at the point of significant potential harm to minors, so that minors gain the maximum benefit from access to information and participation in cultural life whilst being protected in a proportionate manner. It would be disproportionate and discriminatory to impose rules on all sites accessible to the public, and therefore by implication to children.
6. For retail, children can look in windows, walk the aisles, even take products off shelves and put them in trolleys and baskets, other than for specific items that are regulated – and are regulated offline as well as online already. Online retail sites (whether 3P under the DSA or 1P outside it) often adopt good practices such as suppressing various categories of goods from the home page or from general search results if the visitor is not logged in to an account. Many of the regulatory requirements for specific goods are achieved at check out or on delivery – e.g. requiring proof of ID before deliveries are handed over. The DSA should not undermine well established and well-functioning processes established under other regimes. The focus for services under the DSA should be to address gaps.

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7. Similarly, for retail, restricting accounts to adults in terms and conditions and requiring payment instruments like credit cards held by adults should be sufficient given the low risk to minors generally from retail. Any additional elements that come with their own specific risks should be addressed through regulation of this functionality and the Art 28 guidance should simply be highlighting such a risk and that services need to be aware of their obligations under general consumer legislation.
8. Popular music has often contained lyrics, cover art, videos and artist behaviours that may not always be appropriate for all ages. Record stores and general stores with record sections have continued to sell these, just as streaming services have continued to offer them in their repertoire. Record labels have labelled “parental advisory” or offered both “clean” and “explicit” versions of albums. In each area of retail (and now service) there are particular norms that have been adopted and proved their worth over many years that should not be disrupted. Similarly, children can browse stores selling or renting DVDs and Blu-ray discs of audiovisual productions, although they are labelled with age ratings without selling them on or renting them out. Audiovisual online services have developed parental controls which function whatever device the user is accessing the service from.
9. There is a risk that an over-prescriptive approach to age assurance may lead to unintended consequences such as:
 - restricting children from, accessing information about LGBTQI+ rights or personal and health matters that they do not wish to disclose to their parents;
 - exclusion of children without access to identification or parental supervision
 - exclusion of children with disabilities;
 - extensive processing of personal data;
 - a reduced user experience for adults.
10. We believe it is important to empower parents and caregivers and to give them the tools and knowledge to protect their families from potential risk. These tools put parents and caregivers in control of the content and experience that their children can access, giving them the flexibility to choose what is right for their children and their families, taking into account different maturity levels and developmental abilities. Linked parental controls are account-based in order to allow for greater protection of children across all products and services and greater and more easily accessible and comprehensible controls for parents and caregivers. Compared to device-level parental controls, we think account-based parental controls are better way for providers of online platforms to achieve a high level of privacy, safety and security for minors on their services for the following reasons:

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- Account-based controls allow parents and caregivers to modify their preferences when they need to, even if they are not with the child at the time. For example, a parent or caregiver who has set a screen time limit for their child may give the child more screen time if they unexpectedly need to stay later at school, or if their child does not go home straight after school and their parent or caregiver needs to contact them. Similarly, if a child downloads an app which the parent or caregiver would like to block, they can do so without the need to find and access the device.
 - Parents can use account-based parental controls to centrally manage their child's online experiences by allowing them to set limits on multiple devices at once. This way, the child cannot bypass the limits set by their parents by simply switching to another device which the parent has not configured in the same way.
 - Providers can identify users under the age of consent from the start and implement appropriate protections.
 - Account-based controls are more secure. Local controls rely on local security mechanisms like pin codes. Children, who tend to be more tech-savvy than their parents, often find ways to bypass these mechanisms. Online controls provide additional security, e.g. by requiring multi-factor authentication, notifying parents and caregivers of new sign-ins and allowing parents and caregivers to change passwords remotely.
11. We believe that age assurance - which can range from declaration to inference and verification - should be risk-based, balancing the need to protect children with users' right to privacy and to access information and services. This is reflected in the DSA itself, which requires targeted measures to protect the rights of the child - including age verification - which are reasonable and proportionate (Article 35(1)(j) DSA). To the extent that the Guidelines address age assurance, we encourage the Commission to consider a workable, interoperable standard that preserves the potential for anonymous or pseudonymous experiences. The Guidelines should avoid requiring collection or processing of additional personal information for the purposes of age assurance, treating all users like children or impinging on the ability of adults to access information. Further, the Guidelines should encourage providers of online platforms to explore and adapt to improved technological approaches, both proprietary and third-party. In particular, the Guidelines should enable existing and new privacy-protective ways to ensure users are at least the required age before engaging in certain activities. Currently, there is no single valid approach to age assurance. In most cases, the most effective approach involves a combination of mechanisms. As such, the Guidelines should not, in our view, be focused on any single method, but allow for flexibility to ensure that providers of online platforms are able to evolve their approach as technology, threats and risks continue to evolve.

12. The guidelines should be focused exclusively on platforms in the DSA sense. Therefore using terms like “streaming platforms” which could be interpreted in different ways should be avoided. In this context, we would like to highlight the differences between regulated and editorially responsible audiovisual media services applying children and protections measures under the Audiovisual Media Services Directive and online platforms in the DSA. Therefore, it is important to maintain an approach that reflect the specificities of services and their existing safeguards for minors and legal obligations.

Yours faithfully,



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