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2025-0.818.296-2-A - Contribution by KommAustria on the guidelines 3/2025 on the interplay between the DSA and the GDPR Version 1.1

Dear Sir or Madam,

As the Austrian Digital Services Coordinator tasked with enforcing the Digital Services Act (DSA), KommAustria aligns with the European Data Protection Board's (EDPB) perspective that when the DSA intersects with other regulatory frameworks, a coherent interpretation and application of both the DSA and the respective frameworks is vital. This coherence is essential for providing legal certainty to intermediary service providers and effectively safeguarding users' rights and freedoms. Consequently, KommAustria welcomes the EDPB's guidelines, which offer valuable insight into the interaction between the DSA and the General Data Protection Regulation (GDPR). In this context, KommAustria wishes to share several reflections on key issues concerning the enforcement of the DSA.

I. Regarding section 2.6 Protection of minors (Article 28):

On the outset, we note that section 2.6 of the EDPB guidelines on the protection of minors according to Article 28 DSA must be read in concurrence with the Commission guidelines on the protection of minors under the DSA (PoM Guidelines).¹

1. Para 90 of the EDPB guidelines states the following: [...] *There are other means than processing (additional) personal data through which the provider of an online platform may be aware that its service is used by minors, e.g., "when its terms and conditions permit minors to use the service, when its service is directed at or predominantly used by minors [by reason of certain features or content promoted on the service], or where the provider is otherwise aware*

¹ Communication C/2025/5519 of the European Commission of 10 October 2025 on guidelines on measures to ensure a high level of privacy, safety and security for minors online, pursuant to Article 28(4) of Regulation (EU) 2022/2065 ([OJ C, C/2025/5519](#) ELI: <http://data.europa.eu/eli/C/2025/5519/oj>)

that some of the recipients of its service are minors, for example because it already processes personal data of the recipients of its service revealing their age for other purposes.”¹¹¹

Firstly, we note that the purpose of this cited passage of Recital 71 DSA is to define which online platforms can be considered to be accessible to minors in the context of Article 28(1) DSA. These considerations have to be made at the outset when determining applicability of Article 28 DSA to an online platform within the meaning of Article 3 lit. i DSA. However, in the context of para 90 of the EDPB guidelines, which seems to elaborate on the requirements of implementing appropriate and proportionate measures within the scope of Article 28 DSA, the current phrasing, would, in our view, suggest that these three categories could be understood as providing such appropriate and proportionate measures.

Due to ongoing ambiguities in the implementation of appropriate and proportionate measures for age assurance within the scope of Article 28 DSA, we would consider it important to be clear on the fact that the cited passage does not extend to providing measures for age assurance. This already derives from the fact that the mere assumption that minors may be among the recipients of a service does not qualify as a measure for age assurance, which requires a level of certainty in determining the age of the recipients. In this context, section 6.1 of the PoM Guidelines sets requirements for implementing measures for age assurance, particularly focussing on their accuracy, reliability, robustness, non-intrusiveness and non-discrimination.

Therefore, it is our understanding that the reference to Recital 71 merely intends to stress the general importance of service providers giving preference to using the information derived from personal data of the recipients of its service that has already been processed over processing additional personal data of the recipients for the purpose of implementing measures under Article 28 DSA. In our view it should be made clear, however, that this only applies to online platforms, which are not required to implement measures for age assurance due to the identified risks associated with their service.

For the purpose of coherently applying Article 28 DSA, we therefore consider it important to clearly distinguish the requirements to qualify as an online platform accessible to minors as defined in Recital 71 DSA from measures for age assurance as identified in the PoM Guidelines. In this regard, it should be noted that the requirement to implement measures for age assurance as well as the type of measure depends on the identified risks for minors on the online platform in question, in particular taking into account the type of service, probability of minors as recipients of the service or lack of alternative protection measures that are appropriate and proportionate in ensuring a high level of safety, security and privacy for the minor who are considered to be recipients of the relevant service. The most prominent case of online platforms requiring the implementation of measures for age assurance in accordance with the PoM Guidelines being adult content platforms.

Therefore, we would consider it important to clarify that the reference to Recital 71 DSA, which defines the scope of application of Article 28 DSA for online platforms, cannot be understood as identifying measure for age assurance under Article 28 DSA.

2. Secondly, para 93 of the EDPB guidelines states that age assurance could also take place without identification of the respective user of the platform, e.g. by using privacy-preserving technologies such as zero knowledge proofs (ZKP). However, considering the fact that the ZKP protocol is not yet available, we believe that it would be extremely beneficial to clarify the EDPB's recommended way forward concerning (available) technologies for age assurance. Particularly in light of numerous conflicting expert opinions on existing technologies for age assurance as well as the fact that currently many service providers seem to have implemented solutions, which cannot be considered as meeting the requirements of section 6.1 of the PoM Guidelines in terms of their accuracy, reliability, robustness, non-intrusiveness and non-discrimination.

II. Regarding sections 2.3 Deceptive design patterns (Article 25) and 2.9.1 Cooperation between competent authorities and duty of sincere cooperation with DPAs:

1. Firstly, KommAustria emphasizes the critical need for effective cooperation between the authorities responsible for enforcing legislation that intersects with the DSA, as highlighted in Chapter 2.9.1 of the EDPB's guidelines. To this end, KommAustria has already established a Memorandum of Understanding with the Austrian Data Protection Authority to promote collaboration. While national coordination undoubtedly enhances legal certainty within the Member States, the increasingly international dimension of digital services necessitates a more harmonized approach across borders.
2. Secondly, KommAustria would like to address the issue of deceptive design patterns, commonly referred to as "dark patterns", as regulated in Article 25 and elaborated upon in Recital 67 of the DSA. While KommAustria acknowledges the groundwork laid by the EDPB and the Consumer Protection Cooperation (CPC) network in identifying and addressing dark patterns within the context of the GDPR and the Unfair Consumer Practices Directive (UCPD), there is a growing need for clarification regarding the scope and enforcement of Article 25. This concern has been voiced by both KommAustria's national stakeholders and DSCs. In light of this, KommAustria echoes the European Parliament's resolution of 12 December 2023, which addresses the addictive design of online services and consumer protection within the EU single market (2023/2043(INI)) and calls upon the European Commission to exercise its authority to issue respective guidelines as stipulated in Article 25(3).

As a proactive measure to address this pressing issue, and in anticipation of the forthcoming Digital Fairness Act, KommAustria advocates for strengthened collaboration among the EDPB, the European Board for Digital Services, and the CPC network. Such coordinated efforts will be crucial in addressing the challenges posed by dark patterns, enabling enforcing authorities to apply their respective legal frameworks with confidence with the ultimate goal of protecting users in the rapidly evolving digital landscape.

We believe that the guidelines would benefit from the considerations expressed herein.

With best regards,

Kommunikationsbehörde Austria

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(Vorsitzende-Stellvertreterin)