EDPB Report on Public Consultation: EDPB Guidelines 03/2025 on the interplay between the DSA and the GDPR

1. Background on the process of the public consultation

The EDPB organised a written consultation from 12 September 2025 to 31 October 2025 to gather stakeholder input on the interplay between the Digital Services Act (DSA) and the General Data Protection Regulation (GDPR). The consultation was held after the adoption of the first version of the Guidelines on 11 September 2025.

The target audience was the general public with a focus on controllers who are already operating in this specific field. The consultation had two main objectives: firstly, to identify specific issues and problem areas causing difficulties for stakeholders; and secondly, to determine where further support and clarification are required.

This report aims to summarise the main outcomes of the consultation.

2. Amount and nature of contributions received

A total of 33 contributions were received. The vast majority of these came from the private sector, with business associations (12) and companies/business organisations (6) accounting for over half of the submissions. Non-governmental organisations (5), public authorities (4), and academic/research institutions (4) also took part. One contribution came from DPO/professional associations, and one from private individuals. All contributions originated from the EU/EEA except for one that came from the US/UK.

Total number of contributions received: 33

Link to the page where the contributions are published: https://www.edpb.europa.eu/our-work-tools/documents/public-consultations/2025/guidelines-32025-interplay-between-dsa-and-gdpr_en

Number of contributing entities by category:

Business association	Company/business organisation	NGO	Public authority	Academic/ Research institution	DPO/Professional Association	Individual
12	6	5	4	4	1	1

Total number of contributions received from EU/EEA and third countries:

EU/EEA	Third countries
32	1

3. Main outcomes of the public consultation

The nature and content of the contributions varied depending on the entity making the contribution:

- Business associations and companies: Their contributions focused strongly on practical implementation of the Guidelines, in particular concerning Article 22 GDPR (automated decision-making), restrictions on online advertising, and age assurance measures.
- Non-governmental organisations (NGOs): They advocated for more stringent data protection standards, particularly with regard to profiling and the protection of minors, as well as clear limitations on surveillance technologies.
- Public authorities: They focused on achieving legal certainty, avoiding conflicting enforcement actions, and facilitating practical cooperation between DSCs and data protection authorities.
- Academic institutions: They provided detailed legal and technical analyses of specific topics, such as deceptive design patterns and advertising transparency.

The main positive responses from the public consultation

Stakeholders welcome the EDPB's confirmation that the DSA and GDPR hold the same hierarchical value and must be interpreted coherently and compatibly to ensure high standards of protection.

They support the Guidelines' confirmation that legitimate interest under Article 6(1)(f) GDPR may serve as an appropriate legal basis for voluntary, own-initiative investigations to detect illegal content (Article 7 DSA).

Some respondents appreciate the clarification that online platforms should not be required to identify individuals reporting illegal content (notifiers), unless it is strictly necessary, as this safeguards the privacy and safety of those reporting illegal activities.

With regard to recommender systems, some respondents welcome the fact that profiling- and non-profiling-based options should be presented equally by Very Large Online Platforms

(VLOPs) and Very Large Online Search Engines (VLOSEs) when the service is first used, without nudging, and that providers may not continue to collect and process personal data for future recommendations when users select the non-profiling-based option.

Stakeholders also welcome:

- The confirmation that the obligations under Articles 28(1) and (2) DSA may constitute a legal obligation under Article 6(1)(c) GDPR.
- The risk-based, proportionate approach to age assurance, focusing on data minimisation.
- The emphasis on sincere cooperation between DSCs and DPAs to prevent fragmentation.

The main critical responses from the public consultation

Several respondents argued that the EDPB had insufficiently cooperated with the European Board for Digital Services (EBDS) and called for stronger cross-regulatory cooperation.

Concerns were raised about:

- The application of Article 22 GDPR to the automated removal of illegal content, advertising, and recommender systems.
- The interpretation of Article 9(1) GDPR. According to a stakeholder, applying Article 9 GDPR to incidental personal data processing could hinder the protection of users online and the compliance with DSA (including the removal of illegal and harmful content).
- On the identification of notifiers, several stakeholders emphasise Recital 53 DSA (safeguarding against misuse), while academic and civil society groups warn of data minimisation risks and chilling effects.

The chapter on deceptive design has been criticised for lacking a reference to the need for carrying out a case-by-case assessment of interface design patterns. Other stakeholders questioned the scientific basis for labelling certain patterns as 'addictive'.

Regarding recommender systems, on the one hand, stakeholders requested further acknowledgement of the benefits of profiling, as they argued that innovation in content curation would be at risk if GDPR requirements were applied in a restrictive manner. On the other hand, civil society organisations advocate a more cautious approach, highlighting the systemic risks of large-scale personalisation.

Regarding child protection, stakeholders argued that prohibiting providers from storing a child's age or age range would conflict with ensuring age-appropriate settings and content as children grow. They also called for aligning the Guidelines with the European Commission's recent guidelines on measures to ensure a high level of privacy, safety, and security for minors online (Article 28(4) of Regulation (EU) 2022/2065).

Finally, stakeholders noted the absence of guidance on Article 40 DSA. However, the EDPB will address this issue separately from these Guidelines.

Having considered the feedback received, the EDPB has incorporated the following elements into the Guidelines:

Some contributions to the public consultation emphasised the importance of closer cooperation between the EBDS and the EDPB, referencing the Helsinki Statement. It can be

noted that a meeting with the EBDS was held. As a result of the feedback received from the EBDS, the Guidelines, now address, among other things, whether the GDPR applies to the options that VLOPs and VLOSEs are mandated to provide to recipients of the service under Article 38 DSA with regard to recommender systems, or the functionality that allows recipients to select and modify their preferred option under Article 27(3) DSA. They also cover whether VLOPs and VLOSEs should honour the chosen option for a recommender system that is not based on profiling, until the recipient of the service actively alters their choice.

Other changes to the Guidelines after public consultation, among others, include:

- Section 2.1, voluntary own-initiative investigations (Article 7 DSA): Amendments have been made to acknowledge that processing personal data is often necessary to detect illegal content. A new paragraph clarifies the legal basis under Article 6(1) GDPR for voluntary, own-initiative investigations.
- Section 2.2, notice and action mechanisms (Article 16 DSA): A reference has been added to Recital 53 DSA to highlight that notifiers may need to be identified as a safeguard against misuse of the service. Content moderation is recognised as being of a substantial public interest, and, through the DSA, is subject to suitable measures to safeguard data subjects' rights and freedoms under Article 22(2)(b) GDPR (cf. Article 16(6) DSA).
- Section 2.3, deceptive design patterns (Article 25 DSA): The example in paragraph 44 of the first version of the Guidelines has been revised to clarify that the focus is on deceptive design patterns that manipulate the data subject into providing (additional) personal data, as the initial version risked including non-deceptive patterns.
- Section 2.4, advertising transparency (Article 26 DSA): A new paragraph has been introduced to clarify that 'legal obligation' is the most appropriate legal basis for processing in order to comply with Article 26(1) DSA. A footnote has been added to address criticisms regarding a broad interpretation of Article 22 GDPR.
- Section 2.5, recommender systems (Article 27, Article 38 DSA): It has been clarified that not all recommender systems pose risks, and that users should not be profiled during their use of the non-profiling-based version for the purpose of recommendations. It has also been clarified that users' choices should only be processed to comply with the DSA, unless there is another legal basis for processing.
- Section 2.5, protection of minors (Article 28 DSA): Amended to acknowledge that storing age/age range may be justified on a legal basis outside the DSA. References to European Commission guidelines on the protection of minors have also been added to further clarify age assurance methods.

Further, the EDPB has not incorporated the following elements into the Guidelines:

- It was requested that specific rules on cooperation between DSCs, the European Commission and DPAs be established. However, establishing formal cooperation mechanisms between the relevant authorities is a task that only the European or Member State legislators can undertake.
- Some stakeholders have misinterpreted the Guidelines as suggesting that actions taken by providers under Article 7 DSA to detect and remove illegal content and that recommender systems always produce automated decisions under Article 22(1) GDPR. The correct interpretation is that such practices may qualify as automated decisions under Article 22(1) GDPR, depending on the characteristics of the case (i.e.,

the seriousness of the interference with the fundamental rights of the data subject, notably his or her freedom of expression).

- Stakeholders often mistakenly interpreted the examples of addictive design patterns as constituting addictive design patterns in all cases. However, the wording clearly states that these examples may cause addictive behaviour.

Other contributions that fell outside the scope of the Guidelines and were not considered included: the extent of personal data processing covered by Article 9 GDPR; to explicitly acknowledge cybersecurity risks as part of systemic risks; to require that risk assessments explicitly cover potential and factual grooming, sexual exploitation, addictive design, and harmful online communities affecting children. These contributions were not included as they were either not relevant for the Guidelines, or not appropriate for interpretation by the EDPB.