

# Criteo's comments on the EDPB draft guidelines on the interplay between the GDPR and the DSA

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We welcome the public consultation of the EDPB on its Draft Guidelines 3/2025 on the interplay between the Digital Services Act (**DSA**) and the General Data Protection Regulation (**GDPR**). Given the significance of the DSA and the GDPR, clear and actionable guidelines are essential to ensure that these frameworks are implemented harmoniously to ensure legal clarity both for industry and for data subjects.

We want to highlight, however, some areas for improvement below:

- In the [Helsinki statement](#), the EDPB recently affirmed its commitments to foster cross-regulatory cooperation with other regulators and to ensure real world effectiveness of its guidelines. Unfortunately, the Draft Guidelines that are at the crossroads of two landmark legislations are being drafted without the involvement of the digital services coordinators (DSCs) through the European Board for Digital Services (EBDS) and the EU Commission. This does not align with the approach taken for the DMA guidelines, drafted with the EU Commission, and the AI Act guidelines, drafted with the AI Office. We therefore recommend that the EBDS and the EU Commission take an active part in the drafting of the Guidelines.
- We would welcome a genuine practical approach providing concrete solutions to the organizations having to comply with both texts, in alignment with the commitments made by the EDPB in the Helsinki statement (“*develop common practices, methods, tools and common actions to review guidelines to ensure their real-world effectiveness*”).
- The absence of involvement of the EBDS leads the EDPB to make findings and analysis that are outside of its remit. For instance, in paragraphs 15 and 16 on the assessment of available technologies for detecting illegal content, the EDPB considers that the mistakes are high in relative and absolute numbers. It should be for the EBDS to make this type of assessment and for the EDPB to rely on its expert assessment.
- The Draft Guidelines consider, in paragraph 62, that Article 26(1) of the DSA on the obligation to provide information on the parameters used to present the advertisement to a user may fall within the scope of automated individual decision-making and profiling under Article 22(1) GDPR, referring to previous EDPB Guidelines on Automated individual decision-making and Profiling adopted in 2018. This analysis overlooks the fact that article 22 of the GDPR requires that automated individual decision-making and profiling create a legal effect or a substantially equivalent effect, which is not the case for advertising, including personalised advertising that has no such direct or indirect legal effect on users. Moreover, this reasoning is not aligned with the risk classification of the more recent AI Act, that classifies high risk AI as having an adverse impact on fundamental rights and does not include advertising or personalised advertising as such (see article 7 and Annex III of the AI Act). This has the effect of introducing more complexity by reducing coherence and enhancing legal uncertainty contrary to the general objective of the Guidelines.

- In paragraphs 62 and 83, the EDPB wrongly assumes that the organisation presenting the advertisement would be aware of the vulnerability of the data subject. This overlooks the fact many ad tech providers only process pseudonymised data and do not profile individuals based on their vulnerability. The GDPR data minimisation principle and the prohibition of the DSA to profile individuals based on special categories of data render the potential identification of potential vulnerabilities even more complicated.
- Article 26(1) of the DSA imposes the obligation for online platforms to provide information on the parameters used to present the advertisement to a user. To do so, the online platforms most often need to rely on the actors of the ad tech supply chain. The Guidelines should make clear that “legal obligation” is deemed to be the most appropriate legal basis for processing personal data under the GDPR to comply with article 26(1) of the DSA. This should apply not only to the online platforms that are directly subject to the legal obligation but also to the other actors of the supply chain that are contractually bound to delivering the relevant information to the platforms. Therefore paragraphs 51 to 56 should be amended to reflect these considerations.