

Ecommerce Europe feedback on EDPB guidelines 3/2025 on the interplay between the DSA and the GDPR

[Ecommerce Europe](#) is the united voice of the European Digital Commerce sector, representing the interests of companies selling goods and services online to consumers in Europe. We welcome the European Data Protection Board's (EDPB) efforts to ensure a coherent and harmonised interpretation of the General Data Protection Regulation (GDPR), and the Digital Services Act (DSA). The guidelines are well-structured and provide valuable clarifications on key areas such as content moderation, recommender systems, advertising transparency, and the protection of minors. Kindly find below our observations on targeted aspects of the guidelines.

Recommender systems and automated decision-making

The guidelines suggest that certain recommender systems may constitute automated decision-making within the meaning of Article 22 GDPR. While we share the concern about potential significant impacts on data subjects, we believe further clarification is needed on the extent to which Article 22 GDPR applies to systems that do not produce legal or similarly significant effects.

We believe that the final guidelines would benefit from **more nuanced criteria to help providers assess whether their recommender systems fall within the scope of Article 22 GDPR**, taking into account the context, purpose, and actual impact on users.

Advertising and the use of special categories of data

In relation to advertising and the use of special categories of data, we support the prohibition on using sensitive data for profiling-based advertising. However, we believe the guidelines would benefit from greater clarity on:

- **What constitutes “reasonable certainty” that a user is a minor**, especially in services not specifically targeted to children;
- **Which age assurance methods are acceptable under the data minimisation principle**, avoiding mechanisms that require unambiguous identification or permanent storage of the user's age or age range.

In this regard, we welcome the recognition in the guidelines that Articles 28(1) and 28(2) DSA may constitute a valid legal basis under Article 6(1)(c) GDPR, provided that the processing is necessary and proportionate, and that such necessity can be demonstrated by the controller.