Strengthening Children's Rights through the Digital Services Act (DSA): Towards Best Practice Approaches

A position paper by the project SIKID - Security for Children in the Digital World

20 November 2023

Summary

This paper aims to constructively accompany the implementation of the Digital Services Act (DSA) from a children's rights perspective. It shows which potentials arise from the DSA to strengthen children's rights in the digital environment. Special attention is given to provider measures as well as the prevention of harm, and the empowerment of children. The paper delineates what constitute best practice approaches in fulfilling the requirements of the DSA and shows the importance of a positive platform governance.

The BMBF project SIKID is dedicated to current issues of civil security for children in digital environments. The focus is on growing security threats that arise from risks of interaction online. The aim is to improve media regulation and to strengthen networks of central actors to empower children and their rights online.

The SIKID project is a joint research project of the University of Tübingen, Technical University Berlin and the Leibniz-Institute for Media Research/Hans-Bredow Institute.

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The SIKID project is funded by the Federal Ministry of Education and Research under grant number 13N15884.
Funding period: September 2021 - August 2024

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1. THE DIGITAL SERVICES ACT (DSA) AS AN OPPORTUNITY FOR CHILDREN'S RIGHTS

The **Digital Services Act (DSA)** is intended to have a lasting impact on the reorganisation of the use of online services. Its aim is to strengthen the rights of users, creating transparency, and improving the moderation of content for the common good.

This paper develops **points to consider for the DSA from an interdisciplinary perspective**. It takes as a basis **children's rights aspects** for smaller and medium-sized providers of online platforms that do not fall under the EU legal requirements for very large online platforms (VLOPs) with more than 45 million users. Presented here are possible approaches to technical, pedagogical, or supportive measures for the protection, provision, and participation of adolescents. The paper also aims to guide policy makers and media governance actors in the **current design of the DSA** as well as to illustrate that the **inclusion and implementation of children's rights can be understood as an opportunity for providers.** We explain which factors can contribute to **conditions for success.** We hope to achieve **orientation and sensitisation** for the children's rights perspective.

The above implies understanding **children**[1] **as acting subjects** and taking into account development-related vulnerabilities in order to be able to promote child self-determination. As a particularly vulnerable group of actors in the digital environment, children **fundamentally need security and protection** to be able to realise their rights, especially their rights to participation, education, information, but also their rights to play and communication. Current examples of online risks and **security threats** (cf. Brüggen et al. 2022) show that human rights on the Internet and **central aspects of democracy** are affected by a lack of efficient regulation. Therefore, current regulatory measures such as the DSA are promising if they also take into account the interests of particularly vulnerable groups and not only protect them through regulation, but also actively strengthen and empower them. **Fostering digital literacy and competence among users of technology is** – especially in view of growing online risks such as cybergrooming or hate speech – a central component of free democracies for securing fundamental rights for *all* people.

The **Digital Services Act** aims to create a safe, predictable, and trusted online environment. As an attempt to create a single set of common rules for the European Union (EU), its provisions are intended to better protect users and provide legal certainty for businesses in a European single market. It applies to all digital intermediary services that make third-party content, services, or goods accessible (e.g., Internet providers, cloud or web hosting services, online forums, app stores, but also social media and gig economy platforms). All providers who mediate goods, services, or content to consumers in the EU are affected by the law, regardless of whether they are located inside or outside of the EU. Due to the particular risks – e.g., for the dissemination of illegal content and potential damage to society – special rules apply to very large online platforms and search engines.

The DSA came into effect on 16 November 2022 and will **be fully applicable from 17 February 2024.** In the course of this, Member States must **adapt existing national provisions** (in Germany, for example, provisions in the Telemediengesetz, TMG (Telemedia Act), and in the Jugendschutzgesetz, JuSchG (Youth Protection Act)), to **the new European legal requirements** or **existing sets of standards will become inapplicable and be repealed** (in Germany, for example, the Netzwerkdurchsetzungsgesetz, NetzDG (Network Enforcement Act)). Supervision of digital services in each EU member state will be coordinated by an independent national coordination body.

The following best practice suggestions were developed within the context of the German **BMBF-funded project SIKID** (Security for Children in the Digital World), which aims to improve regulation, strengthen networks of relevant actors, and promote children's rights in the digital world.

[1] In this text, we refer to 'children' as the term is used in the UN Convention on the Rights of the Child, i.e., referring to young people from birth to the age of majority.

2. DSA BASICS FROM A CHILDREN'S RIGHTS PERSPECTIVE

The DSA establishes a new European legal framework for intermediary services, which applies directly, i.e., without further transposition through national laws. The act foresees graduated requirements depending on the type of online service. The DSA establishes basic obligations for all intermediary services, and then lays down further requirements for hosting providers and online platforms, which providers must implement. For very large online platforms (VLOPs), the DSA provides the most far-reaching measures and reporting obligations.

2.1 How (digital) children´s rights are embedded in the DSA

The substance of the requirements and obligations in the DSA relates to the awareness and handling of illegal content. In the course of the legislative process, **provisions** were created at various points that **specifically include the (protection-related) interests of children.** For example, **Art. 14 (3) DSA** provides an obligation to provide child-friendly general terms and conditions as well as community standards. This applies to all intermediary services that are specifically aimed at children or where children are the predominant users. For VLOPs, Art. 34, 35 DSA provide systemic risk assessment and risk mitigation obligations. In conjunction with this, children's rights are explicitly mentioned so that they must inform the aforementioned activities.

The **central norm from a children's rights perspective** is **Art. 28 (1) DSA**, which applies to all online platforms (not only to VLOPs). Here, the new legal framework requires online platforms to implement measures and accompanying procedures to ensure a high level of privacy, safety, and security of minors. **Art. 28 (4)** empowers the EU Commission to issue guidelines; these are currently being developed by the "Special group on the EU Code of conduct on age-appropriate design." **Art. 28 (2)** also provides a ban on profiling-based advertising if the service provider knows that the user is a minor. However, **Art. 28 (3)** clarifies that the providers of online platforms are not obliged to determine the age of users in order to comply with Art. 28 DSA.

> ***Article 28: Online protection of minors***
>
> *1. Providers of online platforms accessible to minors shall put in place appropriate and proportionate measures to ensure a high level of privacy, safety, and security of minors, on their service.*
>
> *2. Providers of online platform shall not present advertisements on their interface based on profiling as defined in Article 4, point (4), of Regulation (EU) 2016/679 using personal data of the recipient of the service when they are aware with reasonable certainty that the recipient of the service is a minor.*
>
> *3. Compliance with the obligations set out in this Article shall not oblige providers of online platforms to process additional personal data in order to assess whether the recipient of the service is a minor.*
>
> *4. The Commission, after consulting the Board, may issue guidelines to assist providers of online platforms in the application of paragraph 1.*

The EU legislator enacts these children-related provisions in view of **Art. 24 CFR (EU Charter of Fundamental Rights)**. This article makes the rights of the child binding for all EU institutions, particularly regarding their rights to protection, provision, and participation. It furthermore prescribes the mandatory consideration of children's best interests in all state and private decisions. Art. 24 CFR is based on central norms of the **UN Convention on the Rights of the Child (UNCRC)**, in particular **Art. 3, 9, 12 and 13 UNCRC,** which remain abstract and have only been concretised by further documents (such as General Comment No. 25 of the UN Committee on the Rights of the Child).

If one reads Art. 24 CFR in the light of these legal and political decisions, it becomes clear that the Charter of Fundamental Rights assumes that childhood is a special developmental period in which **children are entitled to special rights and claims due to their developmental need for protection**. Insofar as children are not able to fully and directly contribute their interests, the principle of "the best interest of the child" is intended to ensure that state and private bodies give special consideration ("priority") to their interests when making decisions. **Thus, Art. 24 CFR not only gives rise to provision and protection rights of children, but also to specific participation rights. Both dimensions are to be read into the due diligence obligations of Art. 28 (1) DSA accordingly.**

Against this background, it becomes clear that **Art. 28 (1) DSA is a key element in the new legal framework obliging providers to take children's rights into account in the design of their services, interfaces, and procedures.** Beyond being a legal requirement, an age-appropriate perspective, which takes different developmental stages of children into account, can be a promising design approach to identify empirically based and practice-relevant measures for the design of child-friendly experiences. Thus, Art. 28 DSA appears as a promising first step for the systematic consideration of children's rights in the design of online environments.

Important documents on children's rights

- *"Protection of the rights of the child" as a generally declared objective of the EU in Art. 3 (3) TEU*
- *"EU Guidelines for the Promotion and Protection of the Rights of the Child" (2007)*
- *"EU External Action: A Special Place for Children" (2008)*
- *"EU Agenda for the Rights of the Child" (2011)*
- *"European Strategy for a Better Internet for Kids" (BIK Strategy 2012 as well as BIK+ 2022)*
- *General Comment No. 25 to the UNCRC – "On children's rights in relation to the digital environment" (2021)*
- *"European Declaration on Digital Rights and Principles for the Digital Decade" (2023)*

2.2 What does the children's rights perspective entail and what potential does it offer?

The children's rights perspective is based on the tradition of human rights. In 1989, human rights for children were explicitly enshrined in the **Convention on the Rights of the Child** (UNCRC). **Protecting children but also empowering and involving them** is therefore central to the children's rights perspective.

Art. 3 of the UNCRC states that **the child's best interest is a central value in all aspects concerning children.** In order to be able to consider the child's best interest in a given context, researchers have **developed criteria** that are oriented towards **the needs of children according to their still developing capacities ("evolving capacities").** Basic needs that are central to children´s well-being include stable social relationships, love, nutrition, care, education, self-determination, and support (Zitelmann 2022).

From a children's rights perspective, the **participation of children is of central importance**. This is enshrined in Art. 12 of the UNCRC. According to this, the state parties "shall ensure to the child who is *capable of forming his or her own views the right to express those views freely in all matters affecting*

Children from marginalised groups often do not have the chance to benefit from the normal forms of participation available to the general public. They need **additional support and special attention** so that their right to participation is not violated. Children with a migration background have difficulties in taking advantage of educational and participation opportunities, especially at a young age, due to **language barriers** (Ballaschk & Anders 2020, p. 4). Children with a refugee background often suffer from **health impairments**, including psychological vulnerabilities (Wihstutz 2019, p. 17). Children with physical impairments lack communicative measures, such as Braille or sign language (Flieger 2020, p. 136f.). These factors have an impact on children's ability to be heard on issues affecting them. However, refugee and migrant children may also possess **capacities such as resilience** and experiences navigating new environments that should be considered assets and centered in asset-based participatory research and design (see section 3.5).

the child, and shall give due weight to the views expressed by the child in accordance with his or her age and maturity" (Art. 12 (1) UNCRC). Children's participation can be interpreted in different ways, for example, with regard to its scope (cf. Robert Hart's "Ladder of Participation" as well as the subsequent discussion on the different levels of children's participation (Hart 2008, 2013)).

While some forms of participation aim at having children voice their opinions, other forms strive for co-decision-making. There are thus **different levels of participation that have different levels of impact** (Rieker et al. 2016, p. 3). However, Laura Lundy (2007) criticises the stagnation of children's participation at the level of co-decision-making. She argues, to **actually** influence **decision-making processes,** decision-makers should take the results of a participatory decision-making process back to the children involved and discuss the results with them (Lundy 2007, p. 939). Enabling and realising participation is a goal from the point of view of children's rights, yet it should also be understood as an instrument for enabling further rights (e.g., achieving education through participation or empowering self-protection). For participation to be implemented not only as a "sham" or as an isolated "event," **long-term and recurring opportunities for children's participation** are needed. For example, through institutionalised opportunities for co-determination (Rieker et al. 2016), a culture of participation can emerge that allows children to be heard and provides the necessary instruments for this.

A participatory approach implies that all children are included, regardless of gender, education level, physical or mental impairment, or migration or refugee background (Reitz 2015, p. 3).

The children's rights perspective has the potential to shape **a democratic, inclusive society**. This is due to the potential it has to develop a safe and participatory digital public sphere, as well as to promote the digital empowerment of children in liberal democracies. Taking children into account in technology development can have **benefits for society as a whole.** For example, plain language is often used to communicate complex content to children but this measure can be equally effective for adults with a lack of German language skills or adults who experience learning difficulties. With regard to Art. 28 of the DSA, it is also conceivable that adults could benefit from a high level of privacy and data protection. The children's rights perspective thus offers **new perspectives for the protection, provision, and participation of people with a wide range of backgrounds and needs**.

2.3 Children's Rights as Best Practice: Positive Platform Governance

Children have internationally guaranteed rights through the UNCRC. These rights also extend to the European level and nationally through simple laws that **include not only children's protection but also their empowerment and participation**. Involving children in all matters that affect them (Art. 12 UNCRC) requires taking into account both contextual and individual factors, in particular, considering the evolving capacities of each child. This is because the course of development varies with regard to different childhoods within a country and is based on many individual or social diversity factors. Thus, purely technical or age-related measures fall short from a children's rights perspective.

Mediating factors (Livingstone & Stoilova 2021), such as skills, previous experiences, and attitudes, play a role in determining whether risks result in actual dangers and harm. These mediating factors contribute to **resilience development.** As resilience is developed in part from coping with challenges, purely preservationist pedagogical approaches are not sufficient because they aim at avoiding experiences rather than empowering children to navigate different experiences. **Approaches to regulation** "**from the child's point of view"** that consider relational factors (e.g., parents and guardians, individual impairments, special abilities, situational contexts of use, but also characteristics of the media offerings themselves) should be encouraged.

From the perspective of children's rights, the goal should be the **(possible) self-determination of children** (Stapf 2019). This must first be enabled through factors such as protective regulation, technical possibilities, but above all, through the empowerment of children. Empowerment always presupposes participation. **Participation is thus a goal,** but also a **process for achieving other children's rights**. Security, safety, and protection are the basis for the realisation of many other rights of children and, later, of adults. The **promotion of digital literacy** is, therefore, central to liberal democracies. Digital maturity as the ability to deal responsibly and self-determinedly with digital services (cf. Bleckmann 2020) requires the training of critical media competence.

Effective platform governance consists of an **intersection of protection and autonomy.** Only a protected (digital) space enables children to develop their autonomy. And only the acceptance of children's claims to self-determination makes the idea of protection meaningful (Stapf 2012, p. 33). Taking the three pillars of children´s rights into account (i.e., protection, provision, and participation), it becomes clear that children should not only have access to and interact with existing online services, but that their interests should be taken into account when developing new designs for their online engagement. Similarly, children should be part of the development of educational measures and preventative toolkits in order to give their perspective due weight. This is ethical design not only because it is the children's right to be included in such considerations, but also because it makes the design measures more suitable for the target group and, thus, more usable.

From the point of view of children's rights, approaches are recommended which are based on avoiding harms or risks. But, moreover, approaches should promote children and offer them environments in which they can develop into responsible and socially competent individuals – and therefore, thrive. This may also be understood as a possible **paradigm shift** to move the focus away from harm prevention towards positive promotion. "**Asset-based" approaches** build on the already existing abilities of children to further empower them (see point 3.5). **Children's rights themselves can also become an asset for providers** if contexts unfold in which positive attention – in the sense of **positive child and youth media protection –** is created. In this vein, offering child-friendly measures in online services can be understood as "**positive platform governance."**

In positive platform governance, approaches that understand **quality as** the intersection of economic, aesthetic, and ethical quality come into view. This implies that high-quality offerings are accessible to children, which children then like and demand, so that they also become profitable and image-effective for providers (Stapf 2012, p. 42). To enable a good interconnection of the responsibilities of educators, guardians, educational institutions, and providers, it should be the task of media policy to create conditions where providers can be financed (Stapf 2012, p. 45).

Since children's rights approaches always centre the child's well-being (Art. 3 UNCRC), aspects of well-being such as "**digital well-being" are essential - and** are already practiced by many providers. Digital well-being approaches should be grounded in children's right so that they do not create the impression that digital well-being shifts responsibility for safe online interaction to under-age users and their guardians. Media-psychological concepts that set out criteria for "**positive media use" or "positive media"** can also be helpful here (see for example Süss 2012, p. 220).

3. POINTS TO CONSIDER FOR PLATFORM PROVIDERS, PROFESSIONALS, AND DIGITAL POLICY

3.1 Which providers are subject to the obligations under Art. 28 DSA?

The provisions of **Art. 28 DSA** apply to **providers of online platforms**, i.e., hosting services that store and publicly disseminate information on behalf of a user. The central party to which this applies is providers who make third-party content – in particular, the content of other users – accessible online. It is not intended for providers that provide their own content nor does it apply to those who curate or editorially offer third-party content. In the case of providers that offer various features, the question is whether making user-generated content accessible is a secondary purpose only. If this is the case, these online platforms do not fall under Art. 28 DSA. For example, journalistic services that provide their own editorial content as their main purpose and may "incidentally" offer their readers the opportunity to write comments do not fall under this article. This is also the case for online shops with own products that allow their customers to rate purchased products or services.

The restriction of Art. 28 DSA to online platforms also means that providers of information and communication services who exclusively provide their own content or editorially manage content accessible on their platforms do *not* have to implement the obligations under Art. 28 DSA, i.e., operators of private, journalistic, and commercial websites or blogs. Instant messengers such as WhatsApp, Telegram, or Signal are also excluded from the scope of application.

Examples of online platforms following the DSA are:

- Social media / gig economy platforms
- Online forums / discussion forums
- Websites with commenting and rating functions (but not if only a secondary function)
- App marketplaces
- Online marketplaces (i.e., platforms through which third parties can sell their products)

Only those online platforms "which are accessible to minors" have to **comply with the due diligence obligations under Art. 28**. However, it remains **unclear when exactly a service is accessible to minors.** While the wording suggests that theoretical accessibility alone is sufficient, one of the recitals to the DSA explains this differently. This is surprising insofar as the legally non-binding recital sets out further requirements for the applicability of Art. 28 (1) DSA, which are not found in the legal text. In case of such contradictions between the legal text and the explanatory recitals, only the wording of the provision applies. However, the wording of the provision can be read very broadly, as there is no mention of services aimed specifically at children or of a minimum age requirement stipulated in the general terms and conditions. **Thus, due diligence under Art. 28 (1) DSA applies in principle to all online platforms that are theoretically accessible to minors without major obstacles – regardless of their orientation or the actual extent of use by children.** The only exceptions would be online platforms that can plausibly exclude access by minors through age assessment procedures that cannot be easily circumvented.

Micro and small enterprises are excluded from the scope of Art. 28 DSA (cf. Art. 19 DSA). According to European law, whether a digital platform provider qualifies as a micro or small enterprise is determined by the number of employees and the annual turnover (see infobox).

With regard to the level of protection to be achieved by the DSA, it seems regrettable that the exemptions of small and micro enterprises from the scope of application of Art. 28 (1) DSA are based on the EU's small and medium-sized enterprises (SME) definition. This means that exemptions depend exclusively on the number of employees and turnover, and not on the risks posed by an online platform to children and/or the number of active underage users.

Micro-enterprises: Cumulatively less than 10 employees and annual turnover below 2 million euros

Small businesses: Cumulatively less than 50 employees and annual turnover below 10 million euros

Scope of application of Art. 28 DSA (thus primarily medium-sized enterprises): all online platforms of providers that have more than 50 employees and whose annual turnover exceeds 10 million euros.

3.2 What obligations does Art. 28 DSA impose on online platforms?

The new legal framework remains **abstract** in its **description of providers' obligations** in relation to online platforms: There is a target ("**high level of privacy, safety, and security"**) and the DSA stipulates that providers must achieve this target through "measures". In the recitals, this obligation to implement measures is referred to as the providers' "due diligence obligations". **However, the regulation does not specify which measures should be taken nor when this "high level" is achieved.**

When it comes to the question of **how providers of online platforms can comply with their legal due diligence, the children's rights perspective developed here offers orientation**. Furthermore, a rough differentiation of measures along the three target dimensions of privacy, safety, and security facilitates the development of possible measures.

What kind of measures does Art. 28 DSA cover?

If one starts from the wording that children should have a high level of privacy, safety, and security when using online platforms, it becomes clear that the **aim of the measures is primarily to have a preventive effect.** Ideally, a violation of children's rights or a stressful usage situation should not occur in the first place. As such, due diligence should primarily influence the infrastructural level of an online platform. If a risk materialises despite precautionary measures, this circumstance reduces the desired "high level **of privacy, safety, and security.**" **The provider is therefore obliged to remedy respective violations.** Thus, due diligence does not only involve preventative measures. The provider must also **implement measures that reduce harms that have materialised and accompany and support those children affected during and after a stressful situation.**

Art. 28 DSA, therefore, applies in principle to all conceivable risks to the privacy, safety, and security of children. This means that due diligence in Art. 28 must **also** take into account **classic content-related risks** such as violent or pornographic depictions, and that the measures expected of providers of online platforms are not limited to purely precautionary measures.

The **term "measures"** in Art. 28 DSA is to be understood broadly. It **includes all actions, precautions, designs, functions, and functionalities of the service, as well as underlying or downstream procedures and processes**, **the perceptible and imperceptible user interfaces, and the involvement of or cooperation with external third parties**. In addition, "measures" include forms of documentation, but also accompanying or supporting information-related activities, such as awareness and information campaigns or (regular) evaluations. Measures can also include those that are used outside a service, but which can have an indirect effect on the required "high level" of privacy, safety, and security within the service, e.g., regarding initiatives in media literacy promotion or media education.

Due diligence obligations relate to all phases and aspects of the digital service: they range from the conception and development of the entire service and individual functions; to the technical and contractual design of accessing a service; and even encompass the design of default settings and age-dependent functionalities. Thus, for example, the design of the user interfaces, any technical interfaces offered, and the design and establishment of internal procedures fall under the provision. Electronic and manual transfer points to external third parties also fall under this category. Likewise, the creation and accessibility of instructions and service-related documentations that accompany (the function and use of) the system are covered by the due diligence obligations.

The DSA stipulates that the **measures introduced must be appropriate and proportionate in relation to the respective risks posed by an online platform for privacy, safety, and security of children.** Art. 28 DSA does not contain a requirement for optimisation, but rather is intended to ensure a basic standard ("high level"). For this purpose, it is examined whether this level is achieved by the aggregation of all implemented measures; every individual measure alone must not already guarantee a high level. Providers, thus, have a **wide range of (combinable) options for implementing Art. 28 (1) DSA,** depending on the characteristics, design, and the functionalities offered by their respective online platform.

The supervisory body – the Digital Services Coordinator – in the respective EU member state shall ensure that online platforms comply with these obligations.

3.3 What concrete examples of measures can be implemented to achieve a high level of privacy, safety, and security?

Art. 28 DSA does not specify in detail how due diligence is to be fulfilled. This can be an advantage from the provider's point of view because **online platforms can develop and optimise individual measures** as long as they ensure a high level of privacy, safety, and security.

Privacy

The DSA does not provide a definition of "privacy", nor does the Charter of Fundamental Rights use this term (Art. 7 CFR: "private life"). With regard to Art. 24 CFR, the privacy of children must be understood in such a way that children are not hindered in their development by privacy violations (Stapf et al. 2023). In this respect, children have the right to keep others out of their private lives and to determine what personal information may be viewed by whom.
Privacy protection has three main objectives: (1) third-party intrusions into the privacy of minors should be prevented; (2) sharing of personal information should only be informed and deliberate; and (3) third parties – including guardians – should not share information about minors without their consent.

In principle, the General Data Protection Regulation (GDPR) applies to the processing of children's personal data. **The DSA leaves the GDPR unaffected, i.e., Art. 28 DSA does not change the requirements for lawful processing of children's personal data by the online platform** (an exception is Art. 28 (2), which prohibits the display of advertising based on the profiling of children). However, due diligence under Art. 28 DSA can oblige online platforms **to take precautions against third parties viewing or processing data along with requiring them to prevent unconscious or uninformed forms of self-disclosure by children.** In view of the concept of "evolving capacities" described above, the default settings for younger users should be stricter than for older children. Ideally, children – if necessary, with the help of their guardians – have the possibility to adjust these default settings according to their wishes. In addition, providers can implement measures to protect children's data beyond the requirements of the GDPR. From a children's rights perspective, **privacy-by-design approaches** are particularly suitable for this. Here, providers systematically and proactively integrate aspects of children's data protection during product development. The unimpaired privacy of young people should be used as the guiding standard when developing functions, configurations, user interfaces, internal

procedures, and documentation formats. The aim of these measures is to consider and enable children's "right to an open future" when using online platforms (Stapf et al. 2023).

Examples of privacy- preserving measures can be:

- Enabling the use of the service under a pseudonym,
- Refrain from profiling, biometric procedures and forms of sentiment analysis,
- Age-appropriate privacy defaults with the option of granular settings,
- Age-related function restrictions, e.g., impossibility of viewing a profile by unknown persons,
- Establish ombudspersons for child data protection in the company.

Examples of safety measures on online platforms include:

- Provision of reporting systems and low-threshold complaints facilities,
- Contextual consultation or low-threshold referrals to external counselling and reporting services as well as systematic cooperation with investigative authorities, complaints offices and counselling services,
- Provide age verification procedures in case of suspicion of (too) young users and offer parental control functions,
- Offer a "safe mode" (e.g., for offer-wide search, recommendation systems, interaction and communication functions),
- Age-based content filters and restrictions on functions such as addressing or sharing options.

Examples of security-promoting measures can be:

- Approaches to user-centred design, i.e., safety of minors as a guiding principle in product development (user friendliness, accessibility, comprehensibility),
- context-based advice on security features and their use (e.g. advice on 2-factor authentication, low-threshold support services in case of hacking or identity theft),
- Incentive systems for the use of relevant educational offers for users (e.g., "badges" or "trophies"),
- Possibilities of time limitation by users themselves or by their legal guardians,
- Use of monitoring tools and procedures and the use of "red teams" to quickly address emerging risks.

Safety

While "security" refers to the general security of using a service, "**safety"** is about **reducing risks that may arise from the actions of third parties**. One challenge for platform providers is that minors may have unwanted contact with harmful content posted by other users. "Safety", therefore, considers risks that arise through exchanges with third parties (interaction and communication risks). **A children's rights perspective on a high level of safety leads to due diligence that is to be understood comprehensively – ideally, in the sense of a platform's own child safety concept. Moreover, it is desired that the provider does not impair the participation rights of children through excessive safety measures.**

Security

The **term "security" in Art. 28 (1) DSA** refers to **how safe an online service is when used.** This is in relation to the online platform itself (for protection against risks from third parties, see "safety" above). The main objective of a high level of security is to **ensure that the use of the platform does not pose any developmental risks to minors.** In addition to securing the platform in terms of information technology from a children's rights perspective, this concept also includes ensuring that children, their guardians, and professionals are aware of possible security risks and know what measures they can take to help make a platform safer to use.

3.4 What best practices exist for the development and implementation of due diligence?

The **vagueness** as to which specific measures online platforms must provide can be challenging for providers and create **legal uncertainty. Providers do not know conclusively whether they have designed their platform in compliance with the law or not.** Often it is not until a supervisory body determines a violation of Art. 28 (1) DSA that providers realise they did something wrong. However, this vagueness of the DSA is also an advantage in view of the diversity of each individual online platform. Platforms have different functionalities, human and financial resources, thematic contexts, communities as well as diversity in technical possibilities. They can thus **decide flexibly and relatively autonomously** how they want to mitigate particular risks their service might have for minors. After all, providers have the best overview of emerging social norms and phenomena in their online communities, and they have the factual technical access to content published on their platforms; plus, they know the usage patterns of their users.

If one considers the vague legal norm, and the exclusive knowledge and flexible possibilities for implementing different measures on the provider side, it becomes clear that **two aspects** are **central to the choice and design of due diligence** pursuant to Art. 28 (1) DSA: Firstly, the regulatory approach of the DSA enables the providers to back their own choices and design of measures with procedures. This form of "provider-side proceduralisation" is an ideal space for considering the three different children's rights dimensions – protection, provision, and participation. The better a provider engages with the children's rights perspective, the more likely it is to achieve a high level of privacy, safety, and security for children using their online platform. Thus, Art. 28 (1) DSA clearly opens up the governance approach to the children's rights perspective. However, this also means that the inclusion of the child's perspective and the expertise of professionals is an integral part of designing the measures. Secondly, it becomes clear that the better the provider can document the risk potential of their platform and (participatorily) develop and optimise preventive measures, the less likely they are to receive interference from supervisory bodies.

3.5 Which procedures are particularly suitable for including children's perspectives in the development of measures?

To pursue the question of how platforms can develop measures to implement due diligence in compliance with Art. 28 DSA, it is worth taking a look at the **tradition of participatory technology development** (also known as participatory design). Participatory design is a method that emerged in **Scandinavia in the 1970s.** It represents a paradigm shift in technology development because it enables the **direct participation of the intended users of a technology.** This means that all users, or – in a broader sense – stakeholders or individuals affected by a computer system can potentially be involved in the development of various aspects of that system (Muller & Kuhn 1993; Schuler & Namioka 1993).

Participatory technology development is characterised by a strongly **democratic objective.** Different groups are included in the design so that their needs and wishes are considered in the technology. Bardzell (2018, p. 4) speaks of participatory design as "democratic design experiments." It is thus also about the **social aspects of interacting and co-creating** the digital realm. In the literature on human-computer interaction or child-computer interaction, there are countless examples of participatory development of technology. In the following, some cases will be presented that can serve as inspiration for measures to implement due diligence in the sense of Art. 28 DSA. Participatory design is essential from a children's rights perspective, as children must be involved in all decisions that affect them.

In their study "InfoMe", Fisher et al. (2013) conduct **Teen Design Days (TDDs).** This is a method of engaging children in discussions around their information practices.[2] The study was conducted with

[2] Information practices are the ways in which children (or all people for that matter) gather information from news sources, from neighbours, whether they use oral news travel or written information, and more. Information

young people with immigrant backgrounds and describes how they serve as information mediators for their families and community. Of particular interest are **the activities used in the TDDs**: "Basic components of the TDDs include 'light and lively' activities (short games involving physical activity and getting to know each other), as well as sessions devoted to instruction, discussion, hands-on creation of artifacts, group design work, and youth presentations" (Fisher et al. 2013, p. 26). Such activities are adapted to the needs of children and allow them to participate in research and technology development in a playful way.

In another study with adolescents in the Za'atari refugee camp in Jordan, Fisher et al. (2016) investigated which **information practices Syrian refugee children** use. Fisher et al. (2016, p. 27) offer suggestions for methods of participatory design with refugee children: "The workshops are short and guided by participants' interests and developmental needs; (2) working in teams helps ease participation barriers and fuels creativity; and (3) the researcher is fully immersed in the workshops, soliciting insights from aid workers."

In order to develop measures to comply with Art. 28 DSA, **concrete ideas** are needed **for design elements** that can be incorporated into a forum, a website, or an app. Technology developers should not be discouraged by abstract ideas, which tend to arise in the context of participatory design with children. Even **design ideas that are far from reality and practice harbour children's values and hopes.** These ideas can be analysed and subsequently translated into concrete design measures (Derboven et al. 2015). Children's values need to be captured and made fruitful in activities with young people.

To ensure that children are protected, empowered, and involved in collaborative design activities according to their age and abilities, **ethical guidelines for research and design with children** should be considered. A point of reference is offered by the **research ethics concept "Ethical Guidelines for doing research with children in sensitive subject areas"**, which was developed within the framework of the BMBF project SIKID. It uses a children's rights perspective and recommends, for example, that **children's participation should be transparent**. This means that expectations are defined and, if necessary, also curtailed (Stapf et al. 2022, p. 52). One such example is in technology development projects where it may well be the case that the **children's** ideas and **wishes** cannot be **implemented or can only be implemented in part.** Any false hopes that arise among the participants in a participatory design process should be addressed.
Finally, it is important to note that participatory design is always methodologically challenging. Participation in technology development, for example, has been criticised for the fact that participants enter an already predefined setting, which is usually defined by the (adult) designers (Harrington et al. 2019). Another criticism concerns the occasional treatment of participants as 'in need of saving,' and thus being belittled by the study instructors who offer a technical solution (Liang et al. 2021, p. 24). This critique primarily pertains to contexts in which power asymmetries exist, such as in a design study with migrants or refugees.

It is also important to move away from thinking exclusively about the needs of children in design without building on their already existing **capabilities (or assets).** Wong-Villacres et al. (2020, p. 2) argue: "Advocates of this [asset-based] approach argue that the reason most interventions fail to ensure sustainability is a focus on addressing people's needs and deficits rather than on identifying and leveraging their existing assets or capacities". For example, when developing measures to implement the duty of care following Art. 28 DSA, **children's existing capacities for self-protection and self-empowerment** should be **centred,** and the measures should be built upon children's already present assets.

practices could also encompass considerations on how a child is using information and what effects it has on the child's particular circumstances.

3.6 What are further developments that will enable greater consideration of children's rights in the DSA?

Currently, several **developments and considerations** are being advanced that deal with the **inclusion of a children's rights perspective in the design of online environments.**

Within the framework of Art. 28 (1) DSA, the EU Commission has commissioned a group of experts to develop a proposal for an "EU age-appropriate design code." The panel is expected to present its first findings in Spring 2024. Before this, experts must first clarify the role and scope of the code as well as its relationship to the DSA, the revised Audiovisual Media Services Directive (AVMSD), and the GDPR. Additionally, they must identify possible concrete requirements. In view of the sheer number and diversity of services covered by Art. 28 (1) DSA, one of the challenges will be to find the right balance between abstractness (providing more flexibility for the individual provider given their different functions and target groups) and concreteness (which would allow tangible performance indicators and easily implementable measures to be developed).

In addition, **initiatives** have emerged in recent years that **help providers to systematically consider children's rights and children's perspectives.** These initiatives also extend to **involving children primarily** with **procedural or methodological approaches**. These approaches are mostly based on the UN's "Designing for Children's Rights Guide". The D4CR Association's "designing for children's rights" or "children's rights by design" by the British Digital Futures Commission are examples in the realm of non-commercial initiatives.

Checklist

1. Does my service fall under the new legal framework and in particular under Art. 28 (1) DSA?

- Online platform, i.e. making user-generated content accessible not only as a secondary function?
- Accessibility for children?
- More than 50 employees?
- More than 10 million euros turnover per year?

2. Is there content or functionality accessible on my online platform that may affect the privacy, safety or security of children? E.g.:

- Content that is not age-appropriate
- Visible profiles
- Like functions
- Follow functions
- Comment functions
- Forums or chats
- Direct messages
- Geolocation
- Purchase functions
- Live streaming
- Other

3. How do I initiate a process to develop measures within the framework of my due diligence?

- Comparison or discussion with children, educators and professionals (possibly also in the context of design jams)
- Develop concrete measures along the target dimensions of privacy, security and protection in terms of functions, design, internal procedures and handover points to external bodies
- Discussion / evaluation with children, educators, professionals, academia
- Documentation of the procedure for developing measures
- Documentation of the measures
- Offer general media education information

4 SUMMARY AND WAYS FORWARD

With the DSA, a new legal framework for intermediary services applies. This paper has shown that the DSA framework has the potential to take children's rights into account in the design of online services. With Art. 28 (1) DSA, a provision directly applicable in all European Member States will become valid as of 17 February 2024. The provision makes it mandatory for online platform providers to implement due diligence measures to ensure a high level of privacy, safety, and security for children on their platforms. **Children's rights are not only mandatory to be included in the implementation of this due diligence, but they also provide a promising approach to go beyond mere compliance and open up new opportunities (user involvement in design, user satisfaction, positive platform governance).** From this perspective, providers must adequately consider the three dimensions of protection, provision, and participation. They must also be guided by the principle of the child's best interest when designing measures.

Open questions remain regarding the exemption of small and micro enterprises from the scope of application of Art. 28 (1) DSA. This section results in due diligence arising exclusively from employee numbers and turnover, with no regard for the concrete risks arising for children through their use of an online platform.

Furthermore, the introduction of due diligence on the part of the service providers is not enough for reaching the desired legislative goal. Rather, successful implementation of the DSA's provisions depends on the actions of a multitude of different stakeholders (providers, supervisors, professionals, guardians, and the children themselves). Even though the DSA puts the onus primarily on service providers, the regulatory approach implicitly assumes that all relevant stakeholder groups support children and their parents in the development, awareness, actual use, and acceptance of providers' measures. This is complex, time-consuming and – as experience with such indirect regulatory approaches shows – protracted. This points to the necessity of accompanying the implementation of the legislative approach with research in order to generate urgently needed regulatory knowledge in this area.

The **systematic inclusion of children's rights and children's perspectives through participatory procedures** in product development can lead to **improved uptake of measures, higher acceptance, and better viability.** In the future, it will be interesting to observe to what extent the currently chosen approaches of age-appropriate design will evolve into concepts of contextual design and individualised asset-based design.

Adopting a children's rights perspective and the partly differentiated approaches to age-appropriate design (or preferably: ability-based design) is a challenge, especially for providers who do not traditionally come from the field of children-specific online platforms. For example, a systemic reorganization is required for online platforms that must now consider children's rights requirements for the first time. Maximizing viewership is no longer what takes priority in the design of online platforms, but rather the **interest in the child's well-being**. At the same time, competition regarding children's rights can arise when particularly good protection, provision, and participation approaches appear as an economic and socio-technical competitive advantage. Good approaches to implementing due diligence thus also become strategically relevant for companies. Ideally an entire network of interoperable children's rights approaches emerge for online platforms. In this way, the DSA enables the positive platform governance described in this paper, which can be ground-breaking for both children's rights advancements and international digital competitive advantages if it is lived in practice.

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