



Andrea Jelinek,
Chair, European Data Protection Board
Wojciech Wiewiórowski,
European Data Protection Supervisor

5th August 2022

Dear Mr Wiewiórowski and Dr Jelinek,

EDPB-EDPS Joint Opinion 04/2022 on the Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse

We are writing to clarify assertions made about age verification in the above Joint Opinion which we do not believe reflect the state of the art of the technology now widely available to facilitate privacy-preserving online age assurance.

The relevant paragraphs are 92 and 93:

4.8.4 Age verification

92. The Proposal encourages providers to use age verification and age assessment measures to identify child users on their services. In this respect, the EDPB and EDPS note that there is currently no technological solution that is capable of assessing with certainty the age of a user in an online context, without relying on an official digital identity, which is not available to every European citizen at this stage. Therefore, the Proposal's envisaged use of age verification measures could possibly lead to the exclusion of, e.g., young-looking adults from accessing online services, or to the deployment of very intrusive age verification tools, which might inhibit or discourage the legitimate use of the affected services.

93. In this regard, and even though Recital 16 of the Proposal refers to parental control tools as possible mitigation measures, the EDPB and EDPS recommend that the proposed Regulation be amended to expressly allow providers to rely on parental control mechanisms in addition or as an alternative to age verification.

If we may, we will address some specific elements of this statement in turn below:

“There is currently no technological solution that is capable of assessing with certainty the age of a user in an online context, without relying on an official identity, which is not available to every European citizen at this stage”

We argue strongly that this is not true and can demonstrate that existing technology is already in widespread use which already allows for the assessment of the age of an online

user with an extremely high degree of certainty without the use of official digital identity. The German [KJM Raster](#) cites over 90 mechanisms which have been reviewed and approved in terms of age verification. AVPA has over 26 members which have signed up to a code of conduct.

Users can use a range of age verification options. One option is that their physical government-issued identity documents (national ID card, passport or driving licence) which can be uploaded either as an image, or electronically where there is a chip included in the document, and then compared to a selfie image supplied by the user, which is checked for liveness at the time the verification is made. This can be in the form of a one-off upload of a document for a single age check or from a reusable digital ID wallet. This electronic Identification Validation Technology (eIDVT) is in widespread use and provides results which have been tested and certified to be accurate in >99.9% of cases – a pass rate that is significantly above the measured rate for human checks.

“The Proposal’s envisaged use of age verification measures could possibly lead to the exclusion of, e.g., young-looking adults from accessing online services”

We infer from this statement that it is made in relation to age estimation technologies that use artificial intelligence to assess the likely age of a user based on a facial image, voiceprint or other features or behaviours.

Estimation is useful to provide a method for assuring the age of what may be a large majority of users who are well above the legal age being confirmed. So, if that is 18, using estimation methods to assess if a user is likely to be over, say, 23, will give an accurate conclusion in >99.5% of cases, based on rigorous testing of such solutions to prove the level of accuracy each offers. But estimation will never be so good that it can deliver accurate results for those whose real age is close to a legally required age where there is a strict legal bar and does not claim to do so. However, whilst some instances there is a legal bar and it is illegal for a minor to access a service; in other instances, a service ‘should not normally be accessible’ by a minor or a person underage - for instance, a social media site.

All adults, whether or not they are “young-looking” who are near to a legal age will need to rely on verification methods that determine their actual real age if this is the legal requirement. But, as we have explained above, age verification is a widely available solution so will not exclude a significant number of adults. Those who do not have government-issued physical identity documents may need to use an alternative mechanism to prove their age, perhaps through reference to authoritative public or private-sector databases, and in a small number of cases, through manual processes based on vouching. But it is not accurate to suggest in general that young-looking adults would be excluded by the application of age verification.

“the deployment of very intrusive age verification tools”

The essence of age verification is proving your age online WITHOUT disclosing your identity. By using highly regulated (by GDPR) third-party age verification providers, which themselves apply privacy-by-design and data minimisation principles rigorously, the process of age verification is not inherently ‘very intrusive’. There is no need, and therefore no legal basis, for AV providers to store centrally any personally identifiable information beyond a unique user identifier and an age attribute. AV providers in turn, only supply a positive or negative response (‘yes’ or ‘no’) to the online services a user wishes to access when asked if that user meets the age criteria set for the site. Technology already exists to complete age estimation on device, with no personal data being transmitted for processing

elsewhere. Zero data solutions, such as the use of open banking data feeds, can also confirm a user's age without the AV provider or the website being accessed having any personal data whatsoever. So this wide range of options for achieving age verification include entirely non-intrusive methods.

“inhibit or discourage the legitimate use of the affected services”

We share the concern that misinformation about age assurance processes and technology could discourage vulnerable users or those in minority groups from accessing age-restricted services. We would wish to work with the EDPB to build confidence in the privacy-preserving technologies that are widely available, and mitigate the risk of bad actors seeking to exploit online age checks for phishing data – something our efforts to deploy audit, certification and interoperability (such as that which has been developed through the European Commission funded, European Parliament initiated www.euCONSENT.eu pilot project). We are concerned that the current EDPB above referenced opinion may itself have an erroneous and negative impact on the perceptions these groups have of age verification.

“EDPB and EDPS recommend that the proposed Regulation be amended to expressly allow providers to rely on parental control mechanisms in addition or as an alternative to age verification”

Such an amendment would significantly undermine the policy objective “to prevent and combat child sexual abuse” because parental control mechanisms rely on parents to be aware of such controls, to be capable of using them, and to choose to do so. Ofcom research consistently finds that only 6 in 10 parents are aware of such tools and only 3 in 10 make use of them. If mirrored across the EU, this would leave 7 in 10 children unprotected from exploitation.

We hope these clarifications are helpful, and would be pleased to meet with the EDPB, or staff of the EDPS to explore these issues in more depth. In summary, the latest technology is capable of delivering online age assurance without a disproportionate risk to privacy or data security. This is supported through international standards, audit, certification and enforcement under GDPR.

Best wishes,

Iain M. Corby

Iain Corby
Executive Director
The Age Verification Providers Association

cc: John Carr OBE and the euCONSENT [Project Advisory Board](#)
European Parliament Intergroup on Children's Rights
DG Connect, European Commission
Information Commission's Office, UK