

Consultation on Electronic communications networks and services

Case Id: 7b3c9dd0-8aa6-4914-bc78-82a0deb09166

Information about the respondent – General Information

2.1. General Information

We answer to this consultation as a European network of non-governmental organisation concerned with children's rights and safety for children online.

2.2 Name and Transparency Register ID

Name of Organisation: The European NGO Alliance for Child Safety Online (eNACSO)

Transparency Register Id No: 68951559498-60 (Registered since 24/9-2012)

We agree that our contribution may be published under the name we have indicated.

2.3 Main country of residence:

eNACSO is a European network, consisting of 23 NGOs from across Europe. Our Secretariat is based in Italy.

Date of Response: 5 December 2015

3. Issues for consultation

Question 4.C To what extent has the regulatory framework **effectively** achieved its objectives of the promotion of the interests of the EU citizens, including citizens with disabilities?

Moderately.

Children's rights *offline*, as set out in the UN Convention on the Rights of the Child, must also be protected *online*. However, the distinctive rights and needs of children as a substantial group of internet users is not fully recognized and is not given adequate attention in EU legislation.

The Digital Single Market strategy provides the Commission with an important opportunity to ensure that all legislation and initiatives protect and provide opportunities for children and young people. So far, much of the regulatory framework has been "age-blind". It is time that children and young people, who constitute one in three internet users, become more visible in the EU regulatory framework, that children's rights are mainstreamed and that the EU takes concrete steps to protect the rights and interests of children and young people.

The regulatory environment that exists has definitely produced some benefits to children's interests e.g. the Directive on child sexual abuse, child sexual exploitation and child pornography. But there are still many gaps that need to be filled before the regulatory framework effectively achieves its objective to promote the rights and interests of children and young people, confirmed in the EU treaty article 3.3.

Question 8.E As regards the **relevance** of the regulatory framework, to what extent is a regulatory framework for electronic communications at EU level still necessary for EU citizens and businesses in the area of network and service security?

Moderately.

The internet in general and communications technologies generally have become the dominant organizing forces of the 21st Century. They cannot be left entirely to the operation of market forces because market forces operate according to different criteria and are not bound always to act in accordance with the need of the public good in general or children in particular.

Question 8.F As regards the **relevance** of the regulatory framework, to what extent is a regulatory framework for electronic communications at EU level still necessary for EU citizens and businesses in other areas?

There are still significant gaps in the regulatory environment affecting children's use of the internet, mobile phones and associated technologies. Reliance on the self-regulatory model has remained the dominant ethos. With the emergence of a Digital Single market it is to be hoped this will change for the better in ways which are demonstrably effective.

Question 10.B As regards the **internal coherence** of the regulatory framework, to what extent have the different elements (legislative and non-legislative) which form part of the regulatory framework contributed coherently to the policy objectives of developing the internal market, promoting competition and promoting the interests of EU citizens in universal services and end-users' protection:

Moderately.

The difference in levels of engagement between telecom and internet companies is very striking. It is also unfair and anachronistic in a world where both types of companies increasingly are providing identical or similar services yet are subject to completely different regulatory regimes.

In order to protect children's and young people's interests and rights, it is crucial to ensure that companies have the same obligations.

Question 11.B To what extent is the regulatory framework for electronic communications **coherent with other EU policies**, in particular data protection and privacy:

Moderately.

It seems to us that while all or most companies try to stay within the existing laws the telecoms must become under obligation to pay much greater attention to children and young people's privacy and data protection.

In general, we welcome the steps that have been taken to protect children's data and privacy, but feel that this must be reinforced across legislation in a more coherent manner, and that rules must be made more coherent with the EU's general obligation to protect children's rights. We in particular question the rule of 13, which we believe is inconsistent with other commitments to protect children's rights, in particular TEU article 3.3.

Question 11.C To what extent is the regulatory framework for electronic communications **coherent with other EU policies**, in particular audiovisual policy:

Little. Efforts need to be taken, not only to ensure coherency, but making children and young people's rights and interests much more visible in the first place.

It is also worth noting that in some cases, there are also serious inconsistencies with national legislation, where EU law undermines important protection mechanisms. For example, the country of origin principle under the AVMS undermines national regulation to protect children against harmful content.

Question 11.E To what extent is the regulatory framework for electronic communications **coherent with other EU policies**:

Little. The disparity between telecoms and other companies operates at many different levels and in many different ways. The gaps should be closed as far as possible.

In general, we see a lack of coherence across the EU regulatory frameworks concerning the protection of children and young people. Whereas TEU art 3.3 and many policy frameworks explicitly recognise the role of the EU in protecting children's rights, there is little evidence that these commitments have been taken into account in relation to the regulatory framework for electronic communication.

We urge the Commission to always verify that new legislation 1) is coherent with other EU policies and law, 2) is not harmful to the implementation of provisions related to child protection. One recent example includes discrepancies in relation to blocking child abuse images between the directive on combating child sexual abuse, child sexual exploitation and child pornography and the Connected Continent directive and net neutrality. The directive also undermined national good practice in the UK in relation to parental controls to protect children from harmful content.

Question 12.E As regards **EU added value** of the regulatory framework, to what extent is there still a need to continue action at EU level by maintaining/establishing sector specific legislation for network and service security?

Significantly. eNACSO sees evidence that a much stronger and uniformly observed set of rules concerning online child protection are needed.

Question 12.F As regards **EU added value** of the regulatory framework, to what extent is there still a need to continue action at EU level by maintaining/establishing sector specific legislation in other areas?

Significantly – see 12.E

Question 14 B. As regards the policy objectives included in Article 8 of the Framework Directive and taking into account the need to reflect adequately and completely the main European policy priorities in the electronic communications field, and more generally in the digital sector: Should any additional policy objective be included?

Yes. See above. We strongly recommend that clear and coherent objectives in relation to children and young people are added.

Question 18: In your view, should there be a prioritisation amongst the current and/or future policy objectives?

Yes. A higher priority needs to be attached to establishing a comprehensive set of policies and associated regulations to improve the online environment for children and young people.

Question 99: To what extent has the current regulatory framework for electronic communications, as last amended in 2009, contributed to effectively achieving the goal of ensuring a high level of consumer protection in the electronic communications sector across the EU?

Little. There are marked differences in the approaches taken by telecoms companies – who operate in a highly regulated environment – and companies offering similar services to them but outside the framework of telecoms regulation.

There is clear evidence that children and young people’s interests and rights as vulnerable consumers are not consistently taken into consideration.

Question 103: The regulatory framework has among its policy objectives and regulatory principles ensuring that users, including disabled users, elderly users, and users with special social needs, derive maximum benefit in terms of choice, price and quality (Article 8 of the Framework Directive). With respect to disabled users, the Universal Service Directive contains specific requirements under the universal service obligation (Article 7) and regarding the equivalence in access and choice (Article 23a). To what extent has the current regulatory framework been effective in achieving the goal of providing equivalent access to persons with disabilities in terms of choice, price and quality?

Moderately. Children are “users with special needs” and these should be recognised as a category.

Question 109: As regards the current definition of electronic communications services (ECS):

a) Do you consider that the current definition of electronic communications services should be reviewed?

Strongly agree – the disparity between telecoms and internet companies needs to be abolished or eroded.

Question 127: Are there any other communications services showing specific features or risks related to their usage which would require or justify specific end-user protection or other rules?

Strongly agree. Social networking sites need to be more transparent and accountable in relation to how they deal with children’s interests and concerns.