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**Contribution prepared by the Secretariat of the Council of Europe on the subject of the right to privacy of children, in response to the consultation carried out by the UN Special Rapporteur on the right to privacy (UNSRP)**

The Council of Europe Secretariat extends its gratitude to the UN Special Rapporteur on the right to privacy (UNSRP) for the opportunity to submit comments to inform the public of the topic of the Special Rapporteur’s upcoming report to the HRC in March 2021. These comments reflect the views of the Secretariat of the Council of Europe and do not necessarily reflect the official position of its member states.

1. **Introduction:** **The general perspective of the Council of Europe**

The Council of Europe work on the rights of the child in relation to the digital environment is strongly grounded in the UN Convention on the Rights of the Child and its Optional Protocols. The standards developed by the Council of Europe provide further guidance to its member states, thus complementing the efforts at global level. The Council of Europe tools and standards are readily applicable beyond the Pan-European region. It would therefore be relevant and useful to reference its standards as part of a general report, and when especially when referring to the pan-Europan region. It should also be underlined that the Council of Europe forms the world-wide most mature human rights protection system and has long-standing engagement in internet governance and data protection issues. It has accordingly developed particular good practices and standards that could benefit other parts of the world, can inspire states on other continents and may be referred to as a “model” if it is appropriate. To this end the Council of Europe stands ready to support and accompany states.

The European Convention on Human Rights (“ECHR”) applies to children indistinctively even though there is no particular reference to children’s rights under this Convention. Article 8 of the ECHR lays down the right to privacy. This right ensures ‘the development and fulfilment of individuals’ personality’[[1]](#footnote-1) by providing a private sphere for the individuals. Children enjoy this right offline as well as online.[[2]](#footnote-2) Additionally, the Preamble of the modernised Convention 108 (“Convention 108+”)[[3]](#footnote-3) refers to ‘the right to the personal autonomy and the right to control one’s personal data’.

This Convention does not only protect the autonomy of children by entitling them to the necessary safeguards but also enables the enhancement of their autonomy.

Consideration must be given to the fundamental principles related to the rights of children enshrined in the legal instruments[[4]](#footnote-4) when assessing the scope of the right to privacy. One of these principles is to regard the best interests of the child as a primary consideration in all actions concerning him or her.[[5]](#footnote-5) This principle ensures that utmost attention is paid to the interest of children in specific cases. Secondly, it is recognised that children reach different levels of maturity at different ages.[[6]](#footnote-6) Thirdly, the right of the child to be heard is essential to enhance the autonomy and independence of children, and is discussed further below. This right provides that the opinion of the child is heard considering his/her age and maturity, which affect the capacity of forming an opinion. However, consideration of maturity and capability of forming an opinion should not be interpreted as a limitation of the rights children are entitled to.[[7]](#footnote-7)

 In this regard, the “right to privacy is also an important participatory right, particularly in the case of older children, insofar as it is part and parcel of individual autonomy, a necessary precondition of participation. The participatory function of the right to privacy is not something that is often alluded to in legal and policy documents. In the digital environment, especially, privacy is often reduced to data protection. But while data protection is certainly closely related to one’s privacy, privacy itself is a much broader and more complex concept”.[[8]](#footnote-8)

The right to privacy is deeply embedded in the Council of Europe Guidelines to respect, protect and fulfil the rights of the child in the digital environment[[9]](#footnote-9) ( “the Digital Guidelines”). In particular, the Digital Guidelines provide that “states must respect, protect an fulfil the right of the child to privacy” and “ensure that relevant stakeholders, in particular those processing personal data, but also the child’s peers, parents or carers, and educators, are made aware of and respect the child’s rights to privacy and data protection”.

**States must respect, protect and fulfil children’s right to privacy and data protection.** They should ensure that those who process personal data, parents or carers and educators, as well as children themselves, are made aware of children’s right to privacy and data protection, and ensure that children are made aware of how to exercise these rights, bearing in mind their age and maturity (see further the [Council of Europe Guide to Human Rights for Internet Users](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016804d5b31)). Child-friendly and age-appropriate information about privacy tools, settings and remedies, as well as data processing, should be made available to children (see the [Explanatory Report](https://rm.coe.int/cets-223-explanatory-report-to-the-protocol-amending-the-convention-fo/16808ac91a) to Convention 108+).

**States must take measures to ensure that children’s personal data is processed fairly, lawfully, accurately, securely, for a specific purpose and with** free, explicit, informed and unambiguous **consent** of the child and/or their parents, carers or legal representative, or in accordance with another legitimate basis laid down in law. In determining an age at which children are considered capable of consenting to the processing of personal data, states must take into account the best interests and evolving capacities of children. States should also ensure that children and/or their parents, carers or legal representatives have the right to withdraw consent, access their data and have it rectified or erased. The likely impact of data processing on the rights of the child should be assessed and states should ensure that the processing of categories of sensitive data is only allowed where appropriate safeguards are enshrined in law. The principles of data minimisation and the best interests of the child should be respected (see also Article 15 Convention 108+).

These standards should apply to **connected or smart devices**,[[10]](#footnote-10) while the **profiling of children** should usually be prohibited, except when it is in the best interest of the child or in the overriding public interest to do so, where appropriate safeguards have been provided for by law.[[11]](#footnote-11) On the other hand**, anonymity, pseudonymity or the use of encryption technologies** by children should *not* be prohibited, in law or practice. In all cases, children shall not be subjected to arbitrary or unlawful interference with their privacy in the digital environment.

1. **Data Protection as a means to protect the autonomy of children**

Article 8 of the ECHR provides individuals, including children, with the necessary means to protect a private sphere in which they can develop their personality.[[12]](#footnote-12)

The right to data protection and related safeguards also enable to protect, notably, the autonomy of children as the right to data protection empowers individuals of means to exercise control on their personal data.

* 1. **General Principles of Data Processing under Convention 108+**

The data processing shall rely on an appropriate legal basis. Convention 108+ stipulates ‘free, specific, informed and unambiguous consent’ as a possible legal basis, together with other legitimate basis laid down by law. The Digital Guidelines, although recognising that personal data can be processed to the benefit of children, recommend states to take measures to ensure that children’s personal data is processed fairly, lawfully, accurately and securely, for specific purposes and with the free, explicit, informed and unambiguous consent of the children and/or their parents, carer or legal representative, or in accordance with another legitimate basis laid down by law.[[13]](#footnote-13) The role of consent in data protection frameworks is an expression of the respect for the autonomy and dignity of individuals as consent enables data subjects to control their personal data. When it comes to children’s consent, an age at which children can be considered capable of consenting to the processing of their personal data must be determined, taking into account their ‘actual understanding’ of the data processing, their best interests, rights and views.[[14]](#footnote-14) Before this age, reasonable efforts should be made to verify that consent is given by the parent or legal representative for any data processing relying on their children’s personal data. Developing and strengthening the educational activities for children[[15]](#footnote-15) regarding the importance of consent would enhance their agency to have control over their data when they reach the age of consent. Besides, as enshrined in the Digital Guidelines, children and/or their parents or legal representative should have the right to withdraw their consent to the processing of their personal data, have access to their personal data and to have it rectified or erased, notably when the processing is unlawful or when it compromises their dignity, safety or privacy[[16]](#footnote-16).

However, it must also be considered that parental controls used to mitigate risks for children in the digital environment should always take into account children’s evolving capacities, and should not hinder children’s autonomy, neither reinforce discriminatory attitudes, infringe children’s right to privacy or deny children the right to information, in accordance with their age and maturity[[17]](#footnote-17).

On the other hand, in some cases, for the protection of the autonomy of children, other legal bases must be used to process personal data lawfully. In the educational setting, as the education is compulsory and refusal or withdrawal of consent could be detrimental to the development of children, children would not be in a position to consent freely, irrespective of the assistance by parents or legal representatives.[[18]](#footnote-18) Secondly, especially in the online context, education technologies have complex data processing behind the e-learning tools, which could hinder the criteria of an informed consent.[[19]](#footnote-19)

 For that reason, the draft “Guidelines on Children’s Data Protection in an Education setting” currently being developed by the Committee of Convention 108 (“The Draft Guidelines”)[[20]](#footnote-20) state that children cannot give valid consent to third-party data processors as long as this processing cannot be refused freely without any detrimental effect. Furthermore, it is recommended, in the Draft Guidelines, that children should not enter into a contract with e-learning providers to access their services. This recommendation would help to protect the autonomy of children by directing education settings to rely on another legal basis than consent, as consent in this context would only give an illusory control over the personal data. In conclusion, while consent is a critical tool to empower children to have control over their information, in situations of power imbalance, implying an invalidity of consent due to the fact that it can neither be free nor informed, it does not enable to protect the autonomy of children.

Respect for the principle of data minimisation can ensure the protection of autonomy while children develop it. This principle means that data processing shall be adequate and relevant and not excessive with regards to the legitimate purposes.[[21]](#footnote-21) In the Draft Guidelines, it is emphasised that all principles including data minimisation and purpose limitation laid down under Convention 108+ can be applied in the education setting.[[22]](#footnote-22) Especially in the education setting, the principle of data minimisation can have a ‘meaningful effect’ to ‘protect their personhood’ as this principle minimises the digital footprint of children in the education setting.[[23]](#footnote-23) The principle of limitation of duration of the length of storage of personal data under Article 5 of Convention 108+ serves the same goal since preventing an excessive data storage provides children with the protection of limited recorded history. In parallel to this provision, in the context of education settings, the Draft Guidelines[[24]](#footnote-24) highlight that only minimum necessary data should be retained to comply with legal obligations or for the best interest of the child.

* 1. **The Limited Use of Automated decision making and artificial intelligence in Children’s Data Processing: Example of the Technologies in the Education Setting**

According to Article 9(1)(a) of Convention 108+, every individual has ‘a right not to be subject to a decision significantly affecting him or her based solely on automated processing of data without having his or her views taken into consideration’. This right seems critical in providing for the development of autonomy by children while reaching adulthood. The Digital Guidelines provide that profiling of children, defined as any form of automated processing of personal data which consists of applying a “profile” to a child, should be prohibitied by law, particularly in order to take decisions concerning the child or to analyse or predict his or her personal preferences, behavior and attitudes[[25]](#footnote-25). These Guidelines and the Draft Guidelines state that states may only lift this restriction in exceptional circumstances, when it is in the best interests of the child or if there is an overriding public interest, on the condition that appropriate safeguards are provided for by law[[26]](#footnote-26).

The Council of Europe Recommendation CM/Rec(2010)13[[27]](#footnote-27) also refers to potentially serious consequences of profiling of children, taking into account their best interest and the development of their personality. Profiling of a child to take decisions related to children or to predict their behaviours, preferences or decisions would limit their potential capacity of self-development even when reaching adulthood as predicting about children would pre-determine their choices. On the other hand, anonymity, pseudonymity or the use of encryption technologies by children should not be prohibited, in law or practice.

There seems to be a tendency to restrict automated decisions concerning children, in order to protect children’s autonomy. Furthermore, the Draft Guidelines recommend broadening the definition of personal data processing to cover predictions about groups or persons with shared characteristics even in the case of ‘no intention for it to result in an intervention with an individual’.[[28]](#footnote-28) Extending the protection of personal data to cover group-based predictions would provide safeguards for these type of predictions and would thus protect the development of children’s autonomy as these types of predictions will fall within the scope of Convention 108+.

The use of nudging technologies and cognitive science in education settings might have an immediate impact on the physical and mental development of children. Persson, in her report, presents a variety of examples in these areas, which show how these technologies can influence children’s behaviour.[[29]](#footnote-29) It means that evolving capacity and autonomy of children are likely to be seriously impeded. Therefore, the Draft Guidelines underline that the protection afforded under Article 6(1) of Convention 108+ in respect of biometric data uniquely identifying a person, should also apply to other personal characteristics of children that would be used for different purposes such as influencing and monitoring behaviours of children[[30]](#footnote-30). Interpreting the definition of biometric data processing to cover these types of processing would protect the privacy, particularly the autonomy of children.

* 1. **The Age Verification: protecting a child while respecting the right to privacy**

Age verification mechanisms would be useful tools to ensure that children have access or are exposed to contents or services that are suitable for their age and a healthy development while approaching adulthood. The Council of Europe, in its Digital Guidelines, underlines that states should employ effective age verification mechanisms to ensure that children are preserved, in the digital environment, from the services and contents that are legally restricted with regards to specific ages, respecting for data minimisation principle.[[31]](#footnote-31)

In the context of education settings, children can be protected from contents legally restricted as appropriate filtering and blocking content would ensure the protection of children while allowing them to flourish in unmonitored spaces.[[32]](#footnote-32) The Information Commissioner’s Office (ICO) in the United Kingdom has recently issued its code of practice on age appropriate design for online services[[33]](#footnote-33) where it states that age verification mechanisms can be used to have age-appropriate applications for children’s use and to meet their development needs.[[34]](#footnote-34) The ICO recognises that there can be ‘a tension between age assurance and compliance with the GDPR’ due to the potential risks of processing personal data for the age assurance. It is noted that these types of potential risks would be alleviated with privacy by design solutions, as recommended also in the Council of Europe Digital Guidelines. It would also be important to note in that context of age verification mechanisms the relevance of the principle of data minimisation, as a key element of the protection of the privacy of children. States should promote and provide incentives to business enterprisesto implement **safety by design, privacy by design and privacy by default** as guiding principles for products and services addressed to or used by children and **take appropriate steps to ensure that children have an effective remedy against businesses,** including: implementing policies and measures to encourage business enterprises to establish their own remedial and grievance mechanisms; encouraging businesses to provide accessible information on how to pursue complaints and redress; requiring that businesses make available easily accessible ways to report any material or activity of potential concern and that reports are received and dealt with efficiently and within reasonable time scales.

1. **Data Protection as a means to enhance the autonomy of children**

Providing all the necessary information regarding the data processing activities would help to develop children agency. The Digital Guidelines provide that states and other stakeholders should ensure that children are made aware of how to exercise their right to privacy and data protection, taking into account their age and maturity and, where appropriate, with the direction and guidance of their parents or other persons legally responsible for the child in a manner consistent with the evolving capacities of the child. Easily accessible, meaningful, child-friendly and age-appropriate information about privacy tools, settings and remedies should be made available to children. This should include information for instance on how data is collected, stored, used and disclosed, on their rights to access their data, to rectify or erase this data or object to its processing, and how to exercise their rights.[[35]](#footnote-35)

Understanding the digital environment and how personal data are being processed for commercial purposes can be challenging for children.[[36]](#footnote-36) Without being duly informed, children cannot be in control of their data in the online world. To enhance their understanding, the data controllers shall provide information in a child-friendly way. Article 8 of Convention 108+ imposes an obligation of transparency of the processing. The Explanatory Report of Convention 108+ furthermore highlights that the information provided has to be tailored to the situation of the relevant data subjects and gives the example of a child-friendly language to make the information understandable. The Council of Europe recommends States and other stakeholders to provide children with information related to their rights in a way they can understand under the title of ‘Right to be heard’.[[37]](#footnote-37) Similarly, the Draft Guidelines underline that the necessary information shall be given in a clear written language in the education setting.[[38]](#footnote-38) Facilitating the understandability of information would equip children with the tools to develop their capacity to learn how to control their personal information.

The participation of children in the data protection framework would help children to develop their perception of data protection. Firstly, their views must be taken into account before the decisions or policies affecting them are adopted.[[39]](#footnote-39) The Council of Europe recommends member states to engage with all stakeholders, including children or youth-led organisations while drafting or implementing phases of a national action plan.[[40]](#footnote-40) Furthermore, it is acknowledged that in some cases, a child cannot easily enjoy the data subject rights provided under Article 9 of Convention 108+ due to their evolving capacity and maturity level, which could affect their personal development due to a lack of control over the dissemination of personal information that concerns them. Standardised data subject rights forms can in some cases facilitate the exercise of these data subjects’ rights.[[41]](#footnote-41)

The Digital Guidelines provide that children should be informed about the services established to give them support where their rights are violated.[[42]](#footnote-42)

The Draft Guidelines propose that representation of children by third parties shall be accessible and that organisations or associations should have the right to complain regardless of being mandated to exercise rights laid down under Convention 108+.[[43]](#footnote-43) These possibilities would enhance the control of children over their personal data as they invoke their rights with the assistance of third parties.

1. **Reconciling Commercial Interests with the Privacy of Children: The Best Interests of Children in an Education Setting**

Due to children’s capacity and maturity level, they can be exposed to more serious consequences for them in a context of commercial exploitation of their personal data. Where a conflict between a commercial use and the right to privacy of a child exists, the best interest of the child, as a primary consideration, shall override the business interests to provide free space for children to enjoy their rights without being exposed to unfair commercial practices. The Council of Europe warned about risks for children of being exploited through age-inappropriate marketing and advertising.[[44]](#footnote-44)

The Digital Guidelines provide that states should take measures to ensure that children are protected from commercial exploitation in the digital environment, including exposure to age-inappropriate forms of advertising and marketing. This includes ensuring that business enterprises do not engage in unfair commercial practices towards children, requiring that digital advertising and marketing towards children is clearly distinguishable to them as such, and requiring all relevant stakeholders to limit the processing of children’s personal data for commercial purposes[[45]](#footnote-45).

Business enterprises must meet their responsibilities to respect the rights of the child in the digital environment. Some of the responsibilities that should be imposed on online platforms and relevant business enterprises, and which are elaborated by the Digital Environment Guidelines[[46]](#footnote-46) are the following:

* Implementing of safety by design, privacy by design and privacy by default as guiding principles for products and services’ features and functionalities addressed to or used by children;
* Engaging with law-enforcement authorities to support the identification of perpetrators of crimes against children and collect evidence required for criminal proceedings;
* Taking reasonable, proportionate and effective measures to ensure that their networks or online services are not misused for criminal or other unlawful purposes in ways which may harm children, for example in relation to the production, distribution, provision of access to, advertising of or storage of child sexual abuse material or other forms of online child abuse;
* Applying hash lists with a view to ensuring that their networks are not being misused to store or distribute child sexual abuse images;
* Taking promptly all necessary steps to secure the availability of metadata concerning any child sexual exploitation and abuse material found on local servers, making them available to law-enforcement authorities, removing these materials and, pending their removal, restricting access to such materials found on servers outside of their jurisdiction;
* Establishing their own remedial and grievance mechanisms, in line with the effectiveness criteria set out in the UN Guiding Principles on Business and Human Rights, while ensuring that these mechanisms do not impede the child’s access to the State-based judicial or non-judicial mechanisms;
* Providing information which is accessible, age-appropriate and available in the language of the child about how to introduce complaints and seek redress through remedial and grievance mechanisms;
* Making available, on their platform or within their service, easily accessible ways for any person, and in particular children, to report any material or activity which causes them concern; and dealing with reports received efficiently and within reasonable timescales.

Specific standards and recommendations are also provided for by the Council of Europe with regard to, e.g., the roles and responsibilities of [internet intermediaries](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680645b44), [internet service providers](https://www.coe.int/en/web/portal/guidelines-for-providers), [games providers and publishers](https://www.coe.int/en/web/portal/guidelines-for-providers) and [the media](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680790e13). Moreover, when connected or smart devices (including those incorporated in toys and clothes) are directed principally at children or are likely to be regularly used by them, data-protection principles, rules and rights should also be respected[[47]](#footnote-47).

Additionally, in an education setting, Persson underscores that the power imbalance between education technology companies and children will persist if the current trend continues.[[48]](#footnote-48) The Draft Guidelines suggest that education technology providers should minimise the data processing to ‘the remit of a public task carried out by schools’.[[49]](#footnote-49) The Draft Guidelines consider that advertising is not a compatible purpose if data processing is objected under Article 9(1)(d) of Convention 108+ as it would not override the best interest of the child in an education setting.[[50]](#footnote-50) Furthermore, the Draft Guidelines recommend that the data processing for service improvement must be restricted to the delivery of education service.[[51]](#footnote-51) These safeguards show that in an education setting, in case of conflict between commercial interests and the right to privacy of children, the best interest of the child plays a decisive role and overrides the commercial interest.

1. **Children’s rights and privacy in the digital environment and access to information**

Children shall not be subjected to arbitrary or unlawful interference with their privacy in the digital environment. Measures which may restrict children’s right to privacy must be carried out in accordance with the law, pursue a legitimate aim, be necessary in a democratic society and be proportionate to the legitimate aim pursued. Surveillance or interception measures in particular must comply with these conditions and should be subject to effective, independent and impartial oversight. The Digital Guidelines provide that the likely impact of intended data processing on the rights of the child must always be assessed and that data processing must be designed to prevent or minimise the risk of interference with children’s rights.[[52]](#footnote-52)

The processing of special categories of data which are considered sensitive, such as genetic data, biometric data uniquely identifying a child, personal data relating to criminal convictions, and personal data that reveal racial or ethnic origins, political opinions, religious or other beliefs, mental and physical health, or sexual life, should in all instances only be allowed where appropriate safeguards are enshrined in law.

The Council of Europe Digital Guidelines also recalled that states should provide the largest possible amount of high-quality online content that is specifically made for children, easy for them to find and understand, provided in their language and which is adapted to their age and maturity. Information on the rights of the child, including in the digital environment; on news; on health; and on sexuality, among other resources of benefit to them, is particularly important.[[53]](#footnote-53)

1. **Privacy of children in vulnerable situations, including children with disabilities**

Some groups of children may face particular difficulties when participating in the digital environment. The Council of Europe recent report - “[Two clicks forward and one click back: Report on children with disabilities in the digital environment](https://rm.coe.int/two-clicks-forward-and-one-click-back-report-on-children-with-disabili/168098bd0fhttps%3A/rm.coe.int/two-clicks-forward-and-one-click-back-report-on-children-with-disabili/168098bd0f)” suggests that some children with disabilities, particularly those with intellectual impairments, are more likely to be subjected to adult restrictions and to enjoy less autonomy than other children. The findings, which are based on participatory consultations with children with disabilities in several Council of Europe member states, show that some children with disabilities may experience a triple barrier in the enjoyment of their rights: first, the fact that they are children poses a barrier to being heard and taken seriously; secondly, the fact that they have a disability is often accompanied by negative assumptions about their capacities and competence in decision-making in the online environment; and finally, parents and other adults are often more protective of children with disabilities than other children. In this regard, governments are encouraged to consider actively the particular risks faced by children with disabilities, with particular regard to issues of concern for children with intellectual impairments.[[54]](#footnote-54)

1. **The sexual development of the child and the importance of private spaces for the child, both on-line and off-line**

Children should be made aware of their rights, including in the digital environment, and they should be provided with information on sexuality. In this context, information on the rights of the child, including in the digital environment; on news; on health; and on sexuality, among other resources of benefit to them, is particularly important. The Digital Guidelines provide that States should ensure that children are able to locate and explore public service media and high-quality content likely to be of benefit to them.

Specific measures should be taken with regard to child sexual abuse material[[55]](#footnote-55), to ensure that policing is victim-focused; that states constantly monitor whether and how child sexual abuse materials are hosted within their jurisdiction; and that states engage with business enterprises on the matter.

States should ensure that business enterprises and stakeholders are required to promptly take all necessary steps to secure the availability of metadata concerning any child sexual exploitation and abuse material found on local servers, make them available to law-enforcement authorities and remove these materials.

The Lanzarote Committee adopted an “[Opinion on child sexually suggestive or explicit images and/or videos generated, shared and received by children](https://rm.coe.int/opinion-of-the-lanzarote-committee-on-child-sexually-suggestive-or-exp/168094e72c)”[[56]](#footnote-56) clarifying that generating or possessing self-generated images or videos do not amount to production nor prossession of child pornography if they are intended for private use. The Committee also considered that children should only be criminally prosecuted for conduct related to “child pornography” as a last resort and priority should be given to more appropriate methods of dealing with their harmful behaviour (e.g. educational measures, therapeutic assistance).

The Lanzarote Committee has also adopted an [interpretative opinion](https://rm.coe.int/t-es-2017-03-en-final-interpretative-opinion/168071cb4f)[[57]](#footnote-57) calling for due regard to reputational issues arising from the fact that child sexual abuse material, such as images and videos, often remain and continue to circulate online long after the physical sexual abuse has been committed. In those cases, in addition to the actual damage caused to the victim, particular attention should be paid to the specific long-term impact that sexual offences against children facilitated through the use of ICTs can have on the victims given the continued existence of child sexual abuse and exploitation material online long after the act has been committed.

1. **National legal and policy frameworks to protect children’s privacy in the digital environment**

The Council of Europe, in its Digital Environment Guidelines, recommends that law and policies related to the digital environment be assessed, reviewed and updated to support the full realisation of the rights of the child in the digital environment. The Organisation has also called states to establish a comprehensive strategic national approach on the rights of the child in the digital environment, and ensure that policies and measures are consistent and mutually reinforcing. This strategic approach should identify competent bodies to implement the relevant actions, contain time-specific targets and be supported by adequate human and financial resources. All relevant stakeholders, including children, should be engaged in the design, implementation and evaluation of the national strategy or action plan.[[58]](#footnote-58)

Institutions or mechanisms should be in place to receive, investigate and address complaints from children and their parents or legal representatives about human rights violations or abuses in relation to the digital environment, employing child-sensitive procedures that ensure the child’s right to privacy. Access to adequate and gender-sensitive support services and assistance for children whose rights and privacy have been violated should also be ensured within the child-protection system, including services to ensure the child’s physical and psychological recovery and social reintegration, and prevent their re-victimisation.[[59]](#footnote-59)

1. **Other Council of Europe relevant tools on privacy rights and children**

The Council of Europe has developed additional resources which are relevant in this context, such as those on digital parenting strategies, including video tutorials, and on positive parenting as such.[[60]](#footnote-60)

The Digital Environment Guidelines have been complemented with a child-friendly version “[Learn about your rights in the digital environment](https://rm.coe.int/coe-child-friendly-in-digital-environment-en-leaflet/16809e8041)” published in May 2020 and with “The rights of the child in the digital environment: Handbook for policy-makers” (currently under preparation). This Handbook is intended to help decision-makers from a variety of backgrounds (public bodies, civil society and private stakeholders) to support children becoming “digitally wise”. The Handbook will remind policy makers to regularly address newly emerging conditions and challenges, such as Artificial Intelligence, and propose numerous resources and hands-on tools to check whether national legislation and policies are comprehensive and up-to-date. The [Internet Literacy Handbook](https://rm.coe.int/internet-literacy-handbook/1680766c85) can also be a relevant tool to consult as it includes a FactSheet concerning Privacy and Privacy Settings.

1. **Conclusion**

Article 8 of the ECHR and Convention 108+, which safeguard the rights to privacy and data protection, both apply to children indistinctively. These instruments aim at improving the right to personality and enhancing one’s control over the personal data processing in the digital environment. Safeguards under Convention 108+ ensure the protection of the autonomy and privacy of children by aiming at giving real control to individuals over their personal data. The additional guidance provided by the Council of Europe soft law instruments can also support states’ understanding of the issues surrounding the implementation of the right to privacy of children and include inspiring guidance on concrete measures and actions that are required to be put in place in this context.

Added by me:

**Article 8 of the European Convention** on Human Rights provides a right to respect for one's "private and family life, his home and his correspondence", subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society".

1. European Court of Human Rights (Chamber), judgment of 23 March 2017 September 1994, *A.-M.V. v. Finland,* No. 53251/13, paragraph 76, available at <https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-172134%22]}> [↑](#footnote-ref-1)
2. Council of Europe Guidelines to respect, protect and fulfil the rights of the child in the digital environment Recommendation CM/Rec(2018)7, available at <https://rm.coe.int/guidelines-to-%20respect-protect-and-fulfil-the-rights-of-the-child-in-th/16808d881a> [↑](#footnote-ref-2)
3. Convention 108+: Convention for the protection of individuals with regard to the processing of personal data as modernised by the Amending Protocol CETS 223, available at: <https://rm.coe.int/convention-108-convention-for-the-protection-of-individuals-with-regar/16808b36f1> [↑](#footnote-ref-3)
4. Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice adopted by the Committee of Ministers of the Council of Europe on 17 November 2010, available at <https://rm.coe.int/16804b2cf3> ; See also Parliamentary Assembly Resolution 2010(2014) “Child-friendly juvenile justice: from rhetoric to reality”, and the orientations on promoting and supporting the implementing of the Guidelines on child-friendly justice by the European Committee on Legal Co-operation (CDCJ(2014)15). [↑](#footnote-ref-4)
5. Ibid.; Council of Europe Guidelines to respect, protect and fulfil the rights of the child in the digital environment Recommendation CM/Rec(2018)7, available at <https://rm.coe.int/guidelines-to-%20respect-protect-and-fulfil-the-rights-of-the-child-in-th/16808d881a> [↑](#footnote-ref-5)
6. Ibid. [↑](#footnote-ref-6)
7. Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice adopted by the Committee of Ministers of the Council of Europe on 17 November 2010, available at <https://rm.coe.int/16804b2cf3> [↑](#footnote-ref-7)
8. Council of Europe, S. Livingstone and others, “Policy guidance on empowering, protecting and supporting children in the digital environment” Report (November 2018), available at <https://rm.coe.int/it-guidelines-background-document-policy-guidance-on-empowering-protec/168093b644> [↑](#footnote-ref-8)
9. Council of Europe Guidelines to respect, protect and fulfil the rights of the child in the digital environment Recommendation CM/Rec(2018)7, available at <https://rm.coe.int/guidelines-to-%20respect-protect-and-fulfil-the-rights-of-the-child-in-th/16808d881a> [↑](#footnote-ref-9)
10. See further [T-PD(2019)01 Guidelines on Artificial Intelligence and Data Protection](https://rm.coe.int/guidelines-on-artificial-intelligence-and-data-protection/168091f9d8). [↑](#footnote-ref-10)
11. See further [Recommendation CM/Rec(2010)13 of the Committee of Ministers to member states on the protection of individuals with regard to automatic processing of personal data in the context of profiling](https://wcd.coe.int/ViewDoc.jsp?id=1710949&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383) [↑](#footnote-ref-11)
12. Guide on Article 8 of the ECHR: <https://rm.coe.int/guide-on-article-8-of-the-european-convention-on-human-rights/16808e67cb> [↑](#footnote-ref-12)
13. Council of Europe Guidelines to respect, protect and fulfil the rights of the child in the digital environment Recommendation CM/Rec(2018)7, available at <https://rm.coe.int/guidelines-to-%20respect-protect-and-fulfil-the-rights-of-the-child-in-th/16808d881a> [↑](#footnote-ref-13)
14. Ibid. [↑](#footnote-ref-14)
15. Ibid. [↑](#footnote-ref-15)
16. Ibid. [↑](#footnote-ref-16)
17. Ibid. [↑](#footnote-ref-17)
18. Report on “Children’s Data Protection in Education Systems: Challenges and Possible Remedies” drafted by Jen Persson, Director of defenddigitalme, available at <https://rm.coe.int/t-pd-2019-06rev-eng-report-children-data-protection-in-educational-sys/168098d309> [↑](#footnote-ref-18)
19. Ibid. [↑](#footnote-ref-19)
20. Committee of Convention 108 - Draft Guidelines on Children’s Data Protection in an Education setting (T-PD(2019)06BISrev3) (12 June 2020), available at <https://rm.coe.int/educational-settings/16809f3ba3> **It must be borne in mind that the Guidelines are in drafting procedure and do not at this drafting stage reflect the agreed position of the Committee of Convention 108**. The Guidelines follow and build on the report “Children’s Data Protection in Education Systems: Challenges and Possible Remedies”, available at <https://rm.coe.int/t-pd-2019-06rev-eng-report-children-data-protection-in-educational-sys/168098d309> drafted by Jen Persson, Director of defenddigitalme, available at https://rm.coe.int/t-pd-2019-06rev-eng-report-children-data-protection-in-educational-sys/168098d309 [↑](#footnote-ref-20)
21. Council of Europe Guidelines to respect, protect and fulfil the rights of the child in the digital environment Recommendation CM/Rec(2018)7, available at <https://rm.coe.int/guidelines-to-%20respect-protect-and-fulfil-the-rights-of-the-child-in-th/16808d881a> [↑](#footnote-ref-21)
22. Committee of Convention 108 - Draft Guidelines on Children’s Data Protection in an Education setting (T-PD(2019)06BISrev3) (12 June 2020), available at <https://rm.coe.int/educational-settings/16809f3ba3> [↑](#footnote-ref-22)
23. Report on “Children’s Data Protection in Education Systems: Challenges and Possible Remedies” drafted by Jen Persson, Director of defenddigitalme, available at <https://rm.coe.int/t-pd-2019-06rev-eng-report-children-data-protection-in-educational-sys/168098d309> [↑](#footnote-ref-23)
24. Committee of Convention 108 - Draft Guidelines on Children’s Data Protection in an Education setting (T-PD(2019)06BISrev3) (12 June 2020), available at <https://rm.coe.int/educational-settings/16809f3ba3> [↑](#footnote-ref-24)
25. Council of Europe Guidelines to respect, protect and fulfil the rights of the child in the digital environment Recommendation CM/Rec(2018)7, available at <https://rm.coe.int/guidelines-to-%20respect-protect-and-fulfil-the-rights-of-the-child-in-th/16808d881a> [↑](#footnote-ref-25)
26. Committee of Convention 108 - Draft Guidelines on Children’s Data Protection in an Education setting (T-PD(2019)06BISrev3) (12 June 2020), available at <https://rm.coe.int/educational-settings/16809f3ba3> [↑](#footnote-ref-26)
27. Council of Europe recommendation CM/Rec(2010)13 on The protection of individuals with regard to automatic processing of personal data in the context of profiling and explanatory memorandum <https://rm.coe.int/16807096c3> [↑](#footnote-ref-27)
28. Committee of Convention 108 - Draft Guidelines on Children’s Data Protection in an Education setting (T-PD(2019)06BISrev3) (12 June 2020), available at <https://rm.coe.int/educational-settings/16809f3ba3> [↑](#footnote-ref-28)
29. Report on “Children’s Data Protection in Education Systems: Challenges and Possible Remedies” drafted by Jen Persson, Director of defenddigitalme, available at <https://rm.coe.int/t-pd-2019-06rev-eng-report-children-data-protection-in-educational-sys/168098d309> [↑](#footnote-ref-29)
30. Committee of Convention 108 - Draft Guidelines on Children’s Data Protection in an Education setting (T-PD(2019)06BISrev3) (12 June 2020), available at <https://rm.coe.int/educational-settings/16809f3ba3> [↑](#footnote-ref-30)
31. Council of Europe Guidelines to respect, protect and fulfil the rights of the child in the digital environment Recommendation CM/Rec(2018)7, available at <https://rm.coe.int/guidelines-to-%20respect-protect-and-fulfil-the-rights-of-the-child-in-th/16808d881a> [↑](#footnote-ref-31)
32. Report on “Children’s Data Protection in Education Systems: Challenges and Possible Remedies” drafted by Jen Persson, Director of defenddigitalme, available at <https://rm.coe.int/t-pd-2019-06rev-eng-report-children-data-protection-in-educational-sys/168098d309> [↑](#footnote-ref-32)
33. Information Commissioner’s Office, ‘Age Appropriate Design: Age-appropriate design: a code of practice for online services’, 2020, available at [https://ico.org.uk/for-organisations/guide-to-data-protection/key-data-protection-themes/age-appropriate-design-a-code-of-practice-for-online-services/#](https://ico.org.uk/for-organisations/guide-to-data-protection/key-data-protection-themes/age-appropriate-design-a-code-of-practice-for-online-services/) [↑](#footnote-ref-33)
34. Ibid. [↑](#footnote-ref-34)
35. Council of Europe Guidelines to respect, protect and fulfil the rights of the child in the digital environment Recommendation CM/Rec(2018)7, available at <https://rm.coe.int/guidelines-to-%20respect-protect-and-fulfil-the-rights-of-the-child-in-th/16808d881a> [↑](#footnote-ref-35)
36. Report on “Children’s Data Protection in Education Systems: Challenges and Possible Remedies” drafted by Jen Persson, Director of defenddigitalme, available at <https://rm.coe.int/t-pd-2019-06rev-eng-report-children-data-protection-in-educational-sys/168098d309> [↑](#footnote-ref-36)
37. Council of Europe Guidelines to respect, protect and fulfil the rights of the child in the digital environment Recommendation CM/Rec(2018)7, available at <https://rm.coe.int/guidelines-to-%20respect-protect-and-fulfil-the-rights-of-the-child-in-th/16808d881a> [↑](#footnote-ref-37)
38. Committee of Convention 108 - Draft Guidelines on Children’s Data Protection in an Education setting (T-PD(2019)06BISrev3) (12 June 2020), available at <https://rm.coe.int/educational-settings/16809f3ba3> [↑](#footnote-ref-38)
39. Council of Europe recommendation CM/Rec(2014)6 on a Guide to human rights for Internet users and explanatory memorandum, available at <https://wcd.coe.int/ViewDoc.jsp?id=2184807&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383> [↑](#footnote-ref-39)
40. Council of Europe Guidelines to respect, protect and fulfil the rights of the child in the digital environment Recommendation CM/Rec(2018)7, available at <https://rm.coe.int/guidelines-to-%20respect-protect-and-fulfil-the-rights-of-the-child-in-th/16808d881a> [↑](#footnote-ref-40)
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45. Ibid. [↑](#footnote-ref-45)
46. Ibid. [↑](#footnote-ref-46)
47. Ibid. [↑](#footnote-ref-47)
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49. Consultative Committee of The Convention For The Protection of Individuals With Regard To Automatic Processing Of Personal Data(Convention 108) Draft Guidelines on Children’s Data Protection in an Education setting (T-PD(2019)06BISrev3) (12 June 2020), available at <https://rm.coe.int/educational-settings/16809f3ba3> [↑](#footnote-ref-49)
50. Ibid. [↑](#footnote-ref-50)
51. Ibid. [↑](#footnote-ref-51)
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53. Ibid. [↑](#footnote-ref-53)
54. L. Landy and others, “Two clicks forward and one click back: Report on children with disabilities in the digital environment” (October 2019), available at https://rm.coe.int/two-clicks-forward-and-one-click-back-report-on-children-with-disabili/168098bd0f [↑](#footnote-ref-54)
55. See further the [Lanzarote Convention](https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680084822); [the Lanzarote Committee Interpretative Opinion on the applicability of the Lanzarote Convention to sexual offences against children facilitated through the use of information and communication technologies (ICTs)](https://rm.coe.int/t-es-2017-03-en-final-interpretative-opinion/168071cb4f). [↑](#footnote-ref-55)
56. Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, Opinion on child sexually suggestive or explicit images and/or videos generated, shared and received by children, adopted by the Lanzarote Committee on 6 June 2019, available at https://rm.coe.int/opinion-of-the-lanzarote-committee-on-child-sexually-suggestive-or-exp/168094e72c [↑](#footnote-ref-56)
57. Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, Interpretative Opinion on the applicability of the Lanzarote Convention to sexual offences against children facilitated through the use of information and communication technologies (ICTs), adopted by the Lanzarote Committee on 12 May 2017, available at https://rm.coe.int/t-es-2017-03-en-final-interpretative-opinion/168071cb4f [↑](#footnote-ref-57)
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59. Ibid. [↑](#footnote-ref-59)
60. See under “audiovisual material” and under “publications” on the website [www.coe.int/children](http://www.coe.int/children) [↑](#footnote-ref-60)