



*Safe & Autonomous Internet-based Learning Strategies*

# **Legislative Mapping**

**Deliverable O2 – A1**

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## Executive summary

The current Legislative Mapping Document is the first element leading to the SAILS Safe Resource for Parents. It is aiming at summarising the international legislation around a safe digital childhood and the national implementation of these regulations as well as other national legislative and quasi-legislative elements.

It will be followed by the following:

- Research evidence on safe digital childhood
- Self-assessment tool for parents about their digital practices
- Inspiring practices for parents as educators
- A summary of other outcomes of the SAILS project, especially the mock social network forming the core of the SAILS approach

The work done is explain and pursuing a risk mitigation instead of the more wide-spread risk prevention one, primarily based on General Comment No. 25 (March 2021) tot he UN Convention ont he Rights of the Child that

- - emphasises the importance of balancing ALL rights
- - gives parents a key role related to evolving capacities of the child

The deliverables are built on the most recent research evidence (eg. Sonia Livingstone, recent Cuncil of Europe research done with parents, research in the European Education Policy Network on Teachers and School Leaders (EEN) on digital age and education, etc.)

While designing this resource the WHO recommendations on active and sedentary screen time and related documents are taken into account.

Last, but not least, the authors consider that parents have diverse approaches and methods

The current legislative mapping exercise had found that a safe and healthy digital childhood is provided for in international legislation while some national legislative regulations may be over-restrictive both violating the rights of children and parents.

## About SAILS

The greatest crisis experienced by the world in this century so far, the restrictions introduced over 2020 and 2021 has radically changed the way we relate to each other. Face-to-face interaction has been reduced to a minimum and it is increasingly common to communicate through a screen. The same has happened to millions of students, teachers and families, who have seen that from one day to the next they went from a face-to-face educational to online classes.

This change, unexpected and hardly planned, has caused numerous problems in education:

- 1) students who have lost their learning group and their mentors due to connection problems, lack of appropriate and sufficient devices or technological inability to keep up with the pace of online classes,
- 2) teachers who have had to abandon their face-to-face dynamics and adapt in a few days to huge videoconference rooms full of people who do not know the codes of conduct and communication of remote classes,
- 3) families overwhelmed by a situation that disrupts all their work and home planning, who find many difficulties to support and facilitate the online learning of young people,
- 4) school leaders are under pressure to make centre-level decisions to address the pandemic and are often unaware of best educational practices in these cases and are going in blind.

In this rough sea – while we believe online communication should not replace face-to-face education, and all efforts must be made to make in-person schooling possible while digital provisions should remain available as a complementary means used in some cases -, we aim to provide clear guidelines for sailors to deploy or retract their sails when necessary. The aim of this project is to provide students, teachers, schools leaders and families with tools to make appropriate decisions facing the conflicts that COVID-19 has brought to the surface in the processes of learning, communication and socialization of the school community as part of a digital childhood.

The methodology proposed in this project aims to be radically different from previous attempts to raise awareness among students about good behaviour on the net, the management of their autonomy and appropriate and safe social relations. With this objective, we will develop a fictitious social network in which we will reliably represent the potentially dangerous scenarios that can occur in this context (IO1). This network will be used as a social sandbox where different automated profiles (social bots) will behave inappropriately and interact with the fictitious profiles created by the students. From the interaction with these social bots, students will be able to understand which behaviours are not appropriate or safe in a practical way.

Although the fictional social network can also be used by teachers and families for their digital literacy, we believe that it is necessary to develop specific work materials for these groups. In the case of teachers, a guide to all the new methodological possibilities that online platforms offer can be very useful (IO3). In addition, we believe that it is necessary that they have sufficient keys to analyse and solve common problems that occur in online learning contexts (cyber-bullying,

difficulties in maintaining respect in video conferences, abuse of anonymity on the network, plagiarism and problem-solving apps, etc.).

Families also need clear guidance in this new scenario. The potential lack of digital literacy, digital competence or even other soft skills has turned some family members otherwise able to support schooling – together with the majority of teachers - into people unable to help the students they live with or to communicate properly around schooling. For these reasons, this project aims to provide families with practical guidance (IO2) that explain in accessible language how to do most things that are needed in a virtual context that may also include virtual learning and what the use of each tool, social network or platform implies.

Finally, schools as a whole need to adopt strategies to coordinate all this effort and lead education in the post-Covid era to a safe port. With this purpose in mind, SAILS will provide an adaptable and flexible roadmap for schools where the integration of safe and proper use of digital resources will be defined as a strategy engaging all actors (IO4).

In short, the SAILS project intends to serve as a navigation chart in this immense ocean of possibilities that the Internet offers us in the educational context to avoid, above all, the storms that already existed and the new ones that COVID-19 has brought.

The transnational consortium that has been created to carry out this project is the key to ensuring its success. The experience in the coordination of projects and the research that the team of UDEUSTO has been carrying out in the development of games and in the development of key competences is going to suppose a key piece to guarantee the success of SAILS. In addition, the experience of entities like EA and ESHA in their work with leaders in schools is going to allow that the changes and innovations are established at school level and that they transfer the barriers to the society. Besides, the experience of IPA and PPAA and their connection with several networks of families and other agents is going to allow to obtain an impact, not only in school environments, but at a higher impact level.

## SAIL Safe Resource for Parents

With far more families using digital tools, many of them forced by the COVID-19 school closures, it is clear that the resources available for parents often do not help answer their concerns and questions. (When parents are mentioned in this IO descriptions, we mean parents, guardians and other responsible adults having a stake in the parenting of children). Recently published research (Livingstone, S. 2020) shows parents use different strategies and have different approaches to digital childhood. Our approach will mirror that and will support all appropriate parenting practices, by not trying to suggest a single right approach, but help families find their own ways.

COVID-19 school closures also made it necessary for schools and families to work together, parents and teachers often learning to navigate digital realities together. While experiences made more teachers and parents appreciate the potential and benefits of using digital technologies for learning, there are several areas in which parents need support and in which parents often need to negotiate with teachers. Overconfidence is just as problematic as overprotective approaches, and this resource is aiming at addressing both. Research conducted since March 2020 by IPA clearly shows that parents wish digital technology to become an integral part of schooling and education in a broader sense, but there is also a demand for finding a healthy balance between online and offline activities, finding the role of digital technology in traditional educational activities, negotiating passive and active screen time, and understanding and observing privacy and data protection.

There is a lot of confusion about the impact of screen time on children and often a lack of knowledge on its developmental psychology angles. Using the WHO's recommendations on a restriction on passive screen time, we are aiming for introducing innovative approaches to active use. The resource will also take it into consideration that school-age is not a homogenous period, and thus will support parents with children at different stages with age-appropriate approaches.

The SAILS Safe resource for parents will use an innovative risk mitigation approach rather than the usual risk prevention one, and for that it will help increase parents' digital literacy levels and empower them for parenting in the digital age. We will implement an approach that is based on responsible digital citizenship, free, informed choices, and as little restrictions as possible. It will support parents in understanding how technology works, understanding the rights of their children and their rights online (with special focus on balancing the right to safety to other equally important child rights, and implications of the GDPR). It will help develop family strategies in a way that considers cultural and individual differences.

The SAILS Safe resource for parents is aiming to be a guide available online for parents. The guide will provide parents with background information on the following areas:

**- legislation around digital childhood including learning online**

- research evidence related to digital childhood - impact on children, parental mitigation, age-specific information

- inspiring parenting practices, focusing on parents as educators

The SAILS Safe resource for parents will support parents in using technology for family cohesion, maintaining and strengthening relationships with family and friends, for schooling-related activities as well as non-formal and informal self-directed learning of children and of the parents themselves.

It will contain a self-assessment tool for families to find out what strategies may suit their beliefs and traditions best in a way that also protects and ensures the rights of children to be connected. It will build on existing tools such as the Easy steps to help your child become a Digital Citizen publication by the Council of Europe, but will have the innovative element of linking digital citizenship to learning and schooling activities.

The expected impact on families using the resource is that they will become empowered to support their children better in their digital learning journeys. Although, it will be developed using country-specific experiences from Spain, Greece, and the Netherlands, it will be transferable to other country contexts as it will use an overarching child-rights approach based on the UN Convention on the Rights of the Child ratified by all EU member states and beyond.

This document is the above-mentioned legislative analysis.

## International legislative framework

As with all human rights, children's rights are subject to an internal hierarchy. The protection of life, similarly to general human rights law, overrides all other rights. It appears, however, that national and regional regulators consider themselves to possess absolute freedom over ranking, and assigning importance to, children's rights in digital environments. A purely risk-prevention focused approach loses sight of the importance of balancing, and indeed respecting, children's rights. A risk-mitigation approach can achieve a balance between competing children's rights while also minimizing risk that children face in digital environments.

Below, a survey of European and international rules concerning children's rights on the internet is presented.

### EUROPEAN UNION

#### General Data Protection Regulation ("GDPR")

The GDPR, adopted in 2016, is an instrument directly applicable and binding in each Member State of the European Union ("EU"). Most relevant for present purposes is Article 8, titled *Conditions applicable to child's consent in relation to information society services*.

The Article, in essence, fixes the default age of consent in online environments at 16, although granting the leeway to Member States to reduce this to as low as 13. As such, Member States of the EU are forbidden from introducing a lower age of consent. This rule effectively removes the ability of parents to decide on the maturity of their own children and the possibility for children to exercise their rights such as free expression.

The Regulation further posits that simplistic, child-friendly language should be used in any communication aimed at children in data processing contexts (Article 12 and Recital 58). All national supervisory authorities must also pay special attention to online activities aimed at children (Article 57). It is considered that children merit such extended protection due to their lack of understanding of the ramifications of sharing one's personal data (Recital 38).

This blanket ban on under-16 use of certain sites (as many sites cannot be used without data processing), is an extreme form of risk-prevention. It assumes that children are not competent to make their own decisions, and must be protected from any and all risk even at the expense of several rights that they are theoretically entitled to.

No discussion of potential harmful effects on other rights are apparent, nor does it appear that the EU legislator was cognizant of the need to respect and protect children's rights. In the name of risk-prevention, rights to free speech and association, among others, have been effectively discarded.

### INTERNATIONAL LAW AND POLICY

#### United Nations Convention on the Rights of the Child ("UNCRC")

The UNCRC is the most important and the single broadest international legal instrument concerning children's rights. As such, it also has major relevance for the digital context. In no particular order of importance, the following rights are, or should be, most impactful in the online environment:

- The right to free expression (Article 13).
- The right to freedom of thought, conscience and religion (Article 14).



- The right to freedom of association and peaceful assembly (Article 15).
- The right to privacy (Article 16).
- The right to access to information (Article 17).
- The right to education (Article 28).
- The right to leisure, play, and culture (Article 31).
- The right to protection from economic, sexual, and other types of exploitation (Articles 32, 34, and 36, respectively).

### **General comment on the UNCRC**

In 2021, the United Nations Committee on the Rights of the Child adopted a General Comment concerning children's rights in digital environments. The Committee devised four principles through which the implementation and balancing of children's rights should be achieved at national level.

Firstly, States must guarantee non-discrimination. Children should have equal and effective access to digital environments. Hateful communication or unfair treatment using technology is also considered discriminatory treatment.

Secondly, the best interests of the child should inform national efforts concerning digital technologies. The regulation, design, use and management of such technologies should have as a principal consideration the best interest of the child. States should consult child right organizations. Importantly, it is highlighted that all children's rights should be given due weight, thus including the right to seek, receive and impart information, not only that to be protected from harm.

Thirdly, States should protect children from risks to their life and development. Such threats encompass a wide range of activities, such as violent content and gambling.

Fourthly, States should ensure that children may voice their views through digital technologies and that these views be respected. In regulating in this area, States should pay due attention to the concerns and opinions of children.

The General Comment highlights the need for specialised policies and rules at the national level which address children's rights in the digital environment.

As is clear from the brief summary above, the Committee considers it (rightly) critical that States recognize the relevance of all children's rights in the digital world. Comprehensive and broad risk-prevention approaches are strikingly contrary to this required respect for rights such as that to access information and voice one's opinion.

If, in the name of risk-prevention, a parent or authority may prevent a child from using digital platforms, this is tantamount to a frontal assault on these rights for no discernible reason. As explained by the Committee, proportional protection, non-discriminatory treatment, and the best interests of the child should inform decision-making surrounding children's presence online.

The internet can be an unparalleled tool in fulfilling children's rights. Through the web, the rights of free expression, freedom of thought, freedom of association, access to information, freedom of leisure, play, and culture, and the right to education can also be promoted in a manner not possible in the offline world.

Through public fora, children may voice their views in forms, and to audiences, which they would not be able to offline. Through digital education, the diversity and quality of materials used in teaching, as well as that of methods of teaching, can be greatly enhanced. Games provide new forms of play as well as playful learning, while often also allowing novel ways of association with peers and accessing information.

Other rights may, contrarily, be threatened in digital environments. Particularly the right to privacy and protection from exploitation must be borne in mind. However, the main takeaway should *not* be that these rights must be protected at the expense of all others listed before. The risks thereto should be mitigated to the greatest extent possible, guaranteeing the respect for all other rights unless impossible in the circumstances. No right other than that to life and survival may trump others without careful balancing and, if possible, case-by-case assessment.

### **United Nations Children’s Fund (“UNICEF”) discussion paper**

Recent research by the United Nations Children’s Fund (“UNICEF”) suggests the adoption of principles similar to those proposed by the UNCRC Committee in the context of age assurance tools. These are:

Proportionate and transparent usage: age assurance tools, which are in effect an obstacle to free access, should only be used if necessary and proportionate, and should be employed in a manner transparent to affected children.

Access and inclusion: the exercise of children’s rights in the online sphere should not be inhibited unless there is a risk based on evidence. Outright prohibition of access should not be employed if any less intrusive measure is available. All of the foregoing must apply in an inclusive, non-discriminatory manner.

Governance: age-gating (that is, making access conditional on being of a given age) must be justified by evidence of potential harm and reasoning concerning the chosen age ranges. Internationally, more consistency is necessary in the regulatory framework to protect and fulfil children’s rights.

What is perhaps even more pronounced when considering this research than the General Comment is the untenability of comprehensive prohibitive measures in the name of risk-prevention. Child rights, simply put, do not allow for blanket measures. This should come as no surprise: general human rights are subject to identical balancing efforts. It is high time that States recognize that child rights are human rights, and deserve the same dedicated and careful balancing that “adult rights” receive.

Proportionate, transparent, accessible, and inclusive regulation and policy should be devised in areas surrounding children’s online presence. Blanket age restrictions, for example, on using social media in any form whatsoever is clearly not such a balanced measure. Risk-mitigation, not risk-prevention, should prevail in decision-making so as to respect and uphold children’s rights.

## National legislative framework: Hungary

### *Age of consent for information society services (GDPR, Art. 8)*

Hungary made the decision to increase the age of consent for children for online contexts significantly above the minimum threshold prescribed by the GDPR. While the Regulation foresees that Member States may introduce an age of consent as low as 13, Hungary implemented the Regulation nationally by not providing the age of consent. As such, the country introduced the default rule of 16 years of age contained in the GDPR.

### *Protection of children online and the rights of the parent: law and policy*

No specific law has been introduced in Hungary concerning child protection online, nor concerning parental rights and duties in the aforesaid context. The laws in effect are based on the UNCRC.

In 2014 the National Media and Infocommunications Authority (“Nemzeti Média- és Hírközlési Hatóság” (NMHH)) formed an initiative dubbed Internet Roundtable on Child Protection (“Gyermekvédelmi Kerekasztal”). The role of this advisory board to the NMHH is to promote and support the protection of children on the internet, assisting the president of the NMHH. While it does not have the power to adopt legally binding instruments, it focuses on the production of recommendations and research promoting safe and child-friendly internet use best practices, focusing on filtering software and digital literacy of both parents and children. Additionally, concerned parties may contact the board if they consider a content provider to lack in its child protection efforts. For instance, if a video-sharing service provides unconstrained access to violent content for minors, this may be reported to the board who may then examine it.

The board consists of an array of experts, including educators, internet providers’ association representatives, and child safety professionals. Internet market professionals and child protection experts may together recommend members for eight of the twenty-one seats on the board to the chairperson.

The Hungarian online child protection efforts are influenced by the outcome of a national consultation held in 2015, the results of which showed that the majority of respondents want no threats towards children to be posed by the internet. As a result, the government initiated the Digital Welfare Programme (“Digitális Jólét Program”). Relevant for present purposes is a subcomponent of the Programme, namely the Digital Child Protection Strategy of Hungary (“Magyarország Digitális Gyermekvédelmi Stratégiája”). The Strategy emphatically refers to protecting children from any and all threat, and preventing risks that may exist online. Additionally, it aims to also equip children, parents and educators with the knowledge and skills necessary for value-creating and culture-fostering internet use. Three main pillars are taken as the basis of addressing child protection online. Firstly, raising awareness and providing knowledge of media realities. Secondly, protection and security through tools such as filtering software and content limitation. Thirdly, sanctions against threatening content through data collection and activity monitoring concerning threats to children online.

Overall, in Hungary, a number of separate policies, actors and rules govern child protection online. Large portions of child protection efforts remain at the level of non-binding policies or advice.

A number of education and awareness raising centres are also established in Hungary, aimed at promoting digital media literacy as well as conscious and safe media use.

## National legislative framework: The Netherlands

### *Age of consent for information society services (GDPR, Art. 8)*

The Netherlands made the decision to increase the age of consent for children for online contexts significantly above the minimum threshold prescribed by the GDPR. While the Regulation foresees that Member States may introduce an age of consent as low as 13, the Netherlands implemented the Regulation nationally by not providing the age of consent. As such, the country introduced the default rule of 16 years of age contained in the GDPR.

### *Protection of children online and the rights of the parent: law and policy*

No specific law has been introduced in the Netherlands concerning child protection online, nor concerning parental rights and duties in the aforesaid context. The laws in effect are based on the UNCRC.

There is, however, an authoritative Code for Children's Rights developed by Leiden University and endorsed by the Dutch Consumers and Markets Authority. As a result, the Code is likely to have effect in the market, even in absence of legal codification. Its main focus is, among other digital products, on apps and games, recognizing the growing importance of these products to the everyday life of children.

The Code is based on a set of ten principles intended to guarantee the protection and fundamental rights of children online. The principles, aimed at developers and designers of digital products and based on the UNCRC and the GDPR, are the following:

- Put the child's interest first in digital design.
- Involve children in the design process.
- Limit the processing of personal data related to children.
- Ensure transparency in a manner understandable to children.
- Conduct impact assessments concerning the privacy of the child.
- Introduce child-friendly privacy design (i.e., generally recommending opt-in approaches).
- Avoid profiling children based on the data provided and their actions online.
- Avoid economic exploitation of children.
- Avoid design that can be harmful to children.
- Develop industry guidelines focused on child protection.

The Netherlands has also revised its Youth Act which deals primarily with services for children and families, from preventive to specialised care. Such services are now decentralized, mainly falling into the responsibility of municipalities.

A number of separate policies and actors partake in online child protection efforts. The Dutch Safer Internet Centre exists to promote safer and better internet use of children. They include youth in their policymaking through the Youth Panel ("Digiraad"). They also provide a hotline and a helpline to assist in safer internet efforts. Its central element is its Awareness Centre, responsible for national coordination between ministries, NGOs and private partners (such as ISPs).

The Netherlands has also seen several good practice initiatives aimed at helping parents, children and educators. For instance, the Safe Internet website ([veilinginternetten.nl](http://veilinginternetten.nl)) provides resources and

advice concerning safe internet use, funded jointly by the government and private actors, relying on the expertise of the national cybersecurity agency.

## National legislative framework: Spain

### *Age of consent for information society services (GDPR, Art. 8)*

Spain made the decision to lower the age of consent for children for online contexts below the default threshold prescribed by the GDPR. While the Regulation foresees that Member States may introduce an age of consent as low as 13, Spain implemented the Regulation nationally by setting the age of consent at 14.

### *Protection of children online and the rights of the parent: law and policy*

Spain introduced a new child protection law in 2021. After receiving approval from the Lower House, it was confirmed by the Senate. Among others, it reinforces the right to be heard and allows the government to create courts specialized in violence against children. Parental rights and duties are defined in this law. It is focused on protecting children from any kind of violence (physical, mental, moral, and psychological) in whatever manner it may occur (thus both online and offline).

Spain also specifically defines the duties of minors, such as the duty to avoid bullying. In the context of internet safety, the latter duty is of critical importance, as cyberbullying presents a significant threat to children on the internet.

The laws in effect are based on the UNCRC.

Schools are allowed to introduce digital learning if the school board so approves. It is completely at the school board's discretion whether they involve stakeholders (teachers, teacher representatives, students, parents, and non-teaching staff) in decision-making concerning digital education.

While in terms of curricula teachers have little autonomy, they possess significant leeway in choosing the method of education. Teachers' attitudes towards technology in education is mostly positive. The greater access to diverse sources is conceived as particularly beneficial. It is widely recognized that technology is a tool, thus its ultimate benefit or harm depends on conscious efforts to maximize beneficial uses and minimize undesirable applications thereof. The wide availability of sources of dubious reliability is considered a point of concern among teachers in Spain.

## National legislative framework: Greece

### *Age of consent for information society services (GDPR, Art. 8)*

Greece made the decision to lower the age of consent for children for online contexts below the default threshold prescribed by the GDPR. While the Regulation foresees that Member States may introduce an age of consent as low as 13, Greece implemented the Regulation nationally by setting the age of consent at 15.

### *Protection of children online and the rights of the parent: law and policy*

No specific law has been introduced in Greece concerning child protection online, nor concerning parental rights and duties in the aforesaid context. The interest of the child as a concept is not defined in any binding instrument. The laws in effect are based on the UNCRC.

Parental responsibility, generally, is defined by the Civil Code and encompasses care, protection, and education. These concepts, in turn, may be applied to digital contexts. The parent (or guardian) must promote the moral and material interests of the child. The former, relevantly to the present discussion, includes psychological and mental health, as well as the protection of fundamental rights, all of which are highly relevant in online environments.

Interestingly, despite the relatively high age of consent in digital environments, the Greek legal system applies a flexible approach to evaluating the child's maturity in legal proceedings. It is recognized that each child and thus each case is different, and high levels of flexibility consequently apply when assessing the maturity of the child. Such flexibility is clearly absent from the approach taken towards online presence for minors.

A number of separate policies and actors partake in online child protection efforts, for instance, the Greek School Network of public school in the country and abroad Safe access of students to the Internet and their protection against inappropriate content are their fundamental principles. Since 1999, it operates a content control service on the internet applying a secure content policy, in line with international practices and legal requirements, but without parental engagement and with no visible activity supporting parents.

Overall, while some good practice-based efforts exist, there are fewer initiatives compared to other countries.

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