

The German Youth Protection Act, Amendment 2020:

A child's rights based approach

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Jutta Croll, Stiftung Digitale Chancen
jcroll@digitale-chancen.de



References for a Child's Rights based Approach to Youth Protection



1. UN Convention on the Rights of the Child
2. Council of Europe Guidelines to respect, protect and fulfil the rights of the child in the digital environment

UN Convention on the Rights of the Child



Best interest of the child

☐ UN-CRC Art. 3 (1)

"In all actions concerning children, whether taken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

☐ EU Charter of Fundamental Rights Article 24 (2)

"The best interests of the child must be a primary consideration in all actions relating to children, whether taken by public or private bodies".

UN Convention on the Rights of the Child

Participation

- ☐ Respect for the views of the child (Art. 12)
- ☐ Freedom of association (Art. 15)
- ☐ Leisure, play and culture] (Art. 31)



Protection

- ☐ Access to information, mass media (Art. 17)
- ☐ Child labour (Art. 32)
- ☐ Sexual exploitation (Art. 34)
- ☐ Protection from all forms of violence (Art. 19)
- ☐ Right to Privacy (Art. 16)



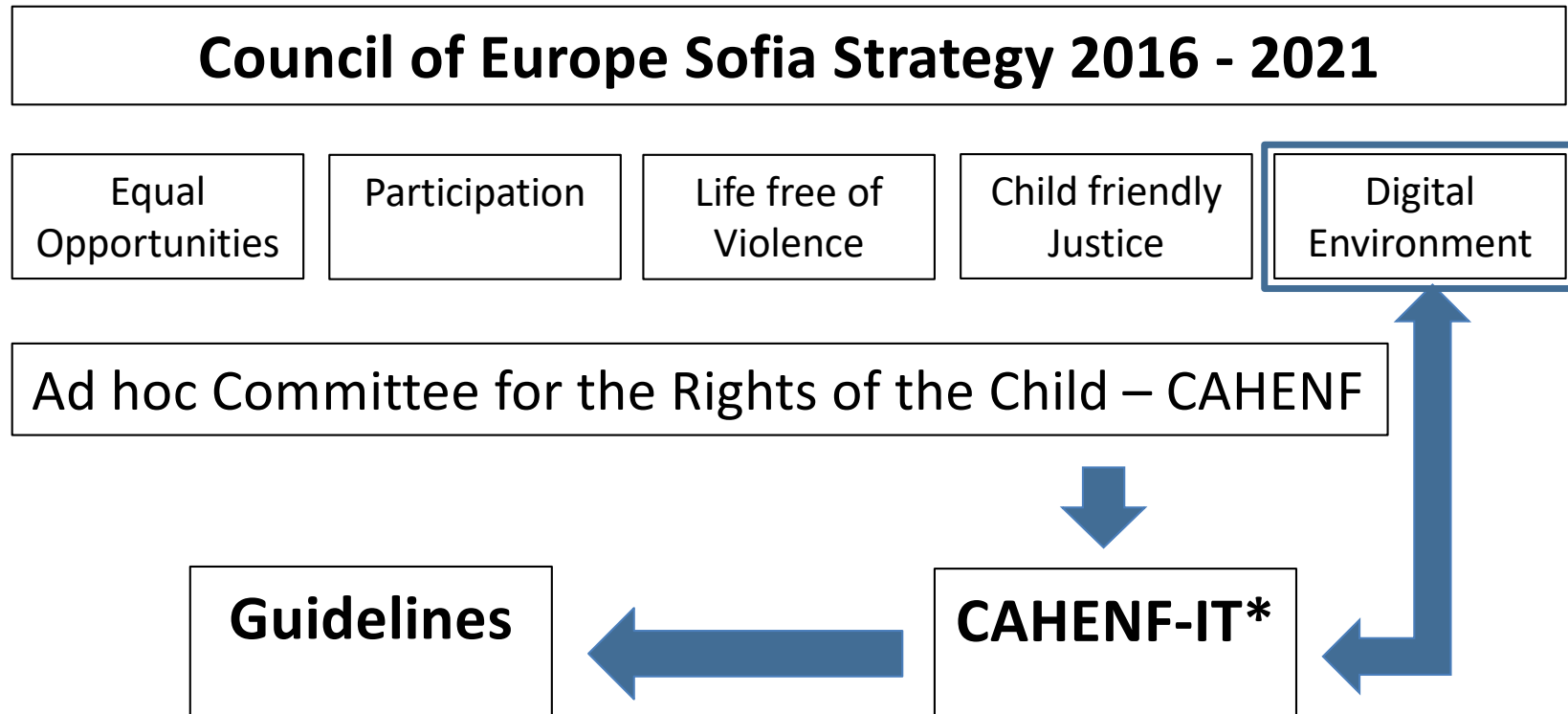
Best interest of the child

Provision

- ☐ Right to education (Art. 28)
- ☐ Freedom of expression (Art. 13)
- ☐ Access to information, mass media (Art. 17)

Triangle of Protection, Provision, and Participation, UN-CRC

Council of Europe Guidelines



Guidelines to respect, protect and fulfil the rights of the child in the digital environment

- ❑ Council of Europe: Recommendation CM/Rec(2018)7 of the Committee of Ministers
- ❑ Adopted by the Committee of Ministers on 4 July 2018 at the 1321st meeting of the Ministers' Deputies
- ❑ <https://rm.coe.int/guidelines-to-respect-protect-and-fulfil-the-rights-of-the-child-in-th/16808d881a>

Purpose of the Council of Europe Guidelines

- a) **guide States in formulating legislation**, policies and other measures to promote the realisation of the full array of the rights of the child in the digital environment and address the full range of ways in which the digital environment affects children's well-being and enjoyment of human rights;
- b) promote the devising, implementation and monitoring by States of a comprehensive strategic and co-ordinated approach, reflecting the principles contained in the present guidelines;
- c) ensure that States require business enterprises and other relevant stakeholders to meet their responsibility to respect the rights of the child in the digital environment and encourage them to support and promote these rights;
- d) ensure concerted action and co-operation at national and international level to respect, protect and fulfil the rights of the child in the digital environment.

Children are growing up with digital media today



German Youth Protection Act Amendment 2020 *(draft as of May 2020)*



Art. 10a Objectives of the protection of children and young people

Protection in the field of media includes

1. the protection against media which are capable of impairing the development of children or adolescents or their upbringing to a self-responsible and socially acceptable personality (development-impairing media)
2. the protection against media which are suitable for endangering the development of children or young people or their upbringing to a self-responsible and socially acceptable personality (media harmful to young people)
3. the protection of the **personal integrity** of children and young people in their use of media and in the media
4. the promotion of orientation for children, young people, persons in charge of their care as well as educational specialists in media use and media education.

German Youth Protection Act Amendment 2020 *(draft as of May 2020)*



Art 24a Precautionary Measures – Duty of Care

- (1) Service providers who store or make available third-party information for users with the intention of making a profit shall ensure that the protection objectives of Art. 10a (paras 1 to 3) are maintained by means of appropriate and effective structural precautionary measures.
- (2) Precautionary measures can be in particular:
 1. provision of a notification and redress procedure by which users can register complaints in regard of impairment and or endangerment of the development of children or adolescents
 2. provision of a reporting and redress procedure with a user guidance system suitable for children and young people, in the context of which underage users in particular can report impairments of their personal integrity caused by user-generated information;
 3. provision of a rating system for user-generated audiovisual content
 4. the provision of technical means for age verification for user-generated audiovisual content;
 5. easily found reference to provider-independent advice, assistance and reporting facilities;
 6. provision of technical means for controlling and accompanying the use of the services by persons in charge of care of children and youth;
 7. the establishment of default settings which limit the risks of use for children and young people, taking into account their age;
 8. the use of provisions in the General Terms and Conditions that represent the essential provisions of the General Terms and Conditions for use in a child-friendly manner.

German Youth Protection Act

Amendment 2020 *(draft as of May 2020)*



Art. 17/17a Federal Agency for Youth Protection in the Media

(2) The Federal Agency promotes the further development of the protection of children and young people in the media by taking appropriate measures. This includes in particular

1. the promotion of a joint assumption of responsibility by the state, the economy and civil society for the coordination of an overall strategy for the realisation of the objectives of protection of Art. 10a,
2. the utilisation and further development of the findings derived from the entirety of the Enforcement Panel's practice with regard to the social-ethical disorientation of children and adolescents condemned by the media, in particular by providing guidance for children and adolescents, persons in charge of their care, specialists and by promoting public discourse, and
3. regular exchange of information with institutions active in the field of the protection of children and youth with regard to the respective practice.

German Youth Protection Act Amendment 2020 *(draft as of May 2020)*



Art. 17/17a Federal Agency for Youth Protection in the Media

(3) The Federal Agency shall review the precautionary measures to be maintained by service providers pursuant to Art. 24a.

Art. 24b Review of Precautionary Measures – Duty of Care

- (1) The Federal Agency shall review the implementation, the concrete form and the adequacy of the precautionary measures to be taken by service providers pursuant to Art 24a paras. 1 and 2. Within the framework of the review pursuant to sentence 1, the Federal Agency shall give the central supervisory body of the States for the protection of minors in the media the opportunity to comment.
- (2) The obligation under Paragraph 24a(1) and (2) is fulfilled if measures specified in a directive have been implemented and the directive
 1. has been jointly agreed within the framework of membership of an institution of voluntary self-regulation recognised under the provisions of the Interstate Treaty on the Protection of Minors in the Media,
 2. has been submitted to the Federal Central Office and has been assessed by the latter as appropriate pursuant to Art. 24a paras 1 and 2, and
 3. has been published pursuant to Art. 24c paragraph 2.

German Youth Protection Act Amendment 2020 *(draft as of May 2020)*



Art. 24c Directive of Voluntary Self-Regulation Organisations

- (1) When drafting a guideline pursuant to § 24b para. 2 sentence 1, the views of children and adolescents and their concerns shall be taken into account in an appropriate manner.

Child's Rights based Approach



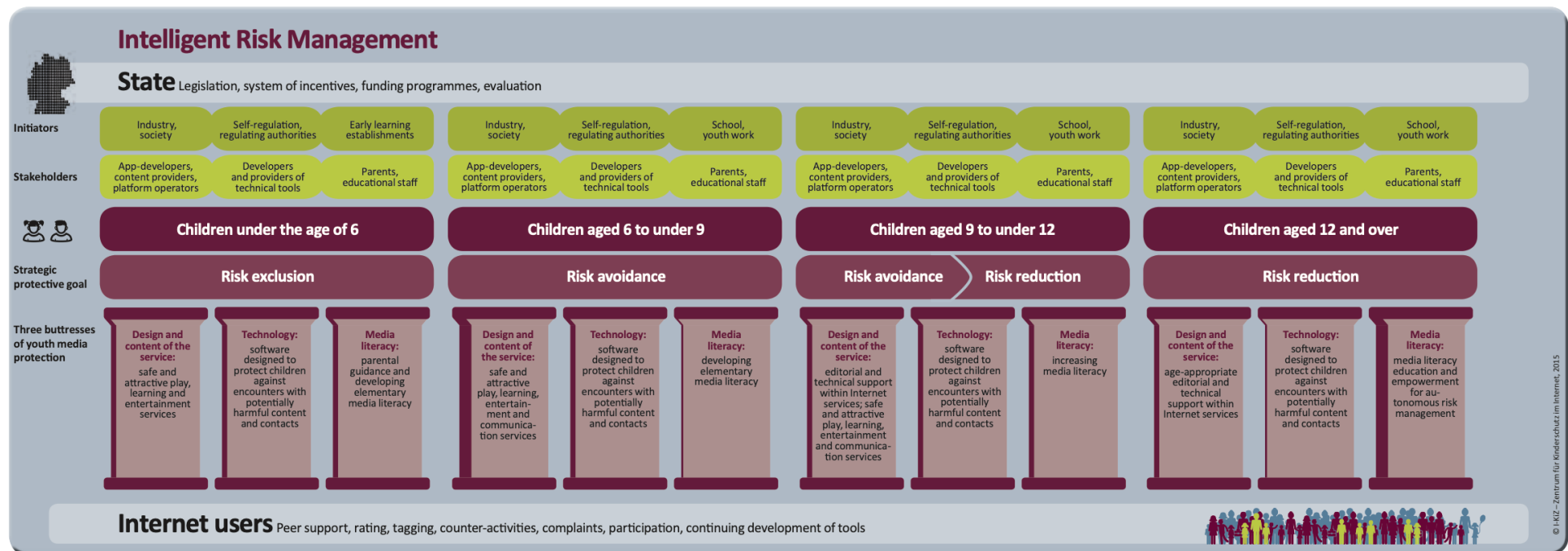
The Child's Rights based approach especially unfolds in the

- ☐ Protection of personal integrity (Art. 10 a, para 3)
- ☐ Precautionary Measures / Principle of Duty of Care (Art. 24 a)
- ☐ Dialogic Regulation (Art. 17/17a/24b)
- ☐ Participation of Children (Art. 24c)

Intelligent Risk Management



Intelligent Risk Management



Perspectives



- ❑ Guidance of children in the triangle of protection, provision, and participation of the child can be based directly on the UN Convention on the Rights of the Child in the digital environment.
- ❑ Contemporary child protection must account for the fact that the digital world is inseparably linked to the world of children and young people.
- ❑ It is not necessary to define "new" rights for children that are aligned with digitisation. Rather, it is necessary to examine the articles of the UN-CRC in order to gain a more comprehensive understanding of the rights granted to children by the UN-CRC.
- ❑ A General Comment to the UN-CRC on children's Rights in the Digital environment to be adopted in 2021 will support the approach of the German Youth Protection Act Amendment.

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Thank you for your attention

In case of questions and comments please contact me at

jcroll@digitale-chancen.de