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Closing the Discrimination Blind Spot in EU Minor-Safety Regulation

Operationalising the Non-Discrimination / Rights-of-the-Child Intersection in Article 34(1)(b) of the Digital Services Act

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July 2026

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Abstract

Article 34(1)(b) of the Digital Services Act (DSA) names non-discrimination (Article 21, EU Charter of Fundamental Rights) and the rights of the child (Article 24, EU Charter) within the same statutory clause, as co-equal fundamental rights against which platform systemic risk must be assessed. Yet the Commission's implementing guidelines on the protection of minors under Article 28 DSA, adopted 14 July 2025, operationalise "harm to minors" through generic categories — grooming, self-harm content, cyberbullying, addictive design — with no requirement that platforms disaggregate this data by protected characteristic. The result is a structural blind spot: a platform can report full compliance with its minor-safety obligations while remaining statistically unable to detect whether Muslim, Jewish, Roma, disabled, or other minority children are disproportionately targeted. This briefing sets out the legal basis for that finding, proposes two concrete, non-legislative remedies grounded in existing DSA mechanisms (Articles 22, 28(4), and 34–35), and sets out a realistic institutional pathway — coalition, national precedent, Commission engagement, and parliamentary pressure — by which EqualFaith Europe can compel the European Commission to close the gap.

Part I — The Legal Architecture

1.1 The DSA's child-protection mandate

Article 28(1) DSA requires "providers of online platforms accessible to minors" to put in place appropriate and proportionate measures to ensure "a high level of privacy, safety, and security of minors, on their service". This obligation has applied since 17 February 2024 and binds every platform accessible to minors other than micro and small enterprises [1].

On 14 July 2025, following a public consultation, a call for evidence, and focus groups with more than 150 young people, the European Commission published its Guidelines on the Protection of Minors under Article 28(1) DSA [2]. The guidelines are formally non-binding, but the Commission has stated it will use them as its own benchmark for assessing Article 28(1) compliance, and that national Digital Services Coordinators (DSCs) are expected to treat them as a reference point in enforcement [2][3]. In substance, they require platforms to: conduct documented, annually-updated risk reviews of harms to minors; embed "safety-by-design" and privacy-by-default settings; deploy proportionate age-assurance; provide accessible child-friendly complaint mechanisms; and appoint a dedicated child-safety governance lead [3][4].

1.2 The systemic risk framework and its built-in intersection

For Very Large Online Platforms and Search Engines (VLOPs/VLOSEs), Article 28 does not operate in isolation. The Article 28 guidelines expressly state that minor-safety risk review "may be incorporated into the broader systemic risk assessments required under Article 34" [4]. Article 34(1) requires designated platforms to assess systemic risks under four headings, the second of which is decisive for this briefing:

> *"(b) any actual or foreseeable negative effects for the exercise of fundamental rights, in particular the fundamental rights to human dignity enshrined in Article 1 of the Charter, to respect for private and family life enshrined in Article 7 of the Charter, to the protection of personal data enshrined in Article 8 of the Charter, to freedom of expression and information […] to non-discrimination enshrined in Article 21 of the Charter, to respect for the rights of the child enshrined in Article 24 of the Charter and to a high level of consumer protection enshrined in Article 38 of the Charter." — Article 34(1)(b) DSA [5][6]*

This is the central legal fact on which this briefing is built: the DSA's own risk-assessment provision names non-discrimination (Charter Art. 21) and the rights of the child (Charter Art. 24) inside the identical statutory sub-clause. The co-location is not incidental — Recital 81 DSA specifically identifies the exploitation of minors as an example of the fundamental-rights harms Article 34(1)(b) is meant to capture [7]. The legislative text therefore already treats discriminatory harm to children as a single, intersectional category of systemic risk. What is missing is not a legal basis — it already exists — but operational content: a working method by which platforms, DSCs, and the Commission actually measure it.

Article 35 DSA then requires platforms to mitigate the risks identified under Article 34 through measures that are "reasonable, proportionate and effective," with particular consideration of their impact on fundamental rights [8], and Article 37 requires independent annual audits of this entire process. Articles 34–37 together form a closed loop — assess, mitigate, audit — that already legally contemplates the discrimination/child-safety intersection this briefing addresses.

1.3 The constitutional and international-law backbone

Article 21 of the EU Charter of Fundamental Rights prohibits discrimination on grounds including religion or belief, racial or ethnic origin, and disability. Article 24 of the Charter establishes that children's best interests must be a primary consideration in all actions relating to them. Both are directly incorporated into DSA Article 34(1)(b), giving them binding operational force inside a piece of directly-applicable EU regulation — not merely aspirational status.

This is reinforced by UN Committee on the Rights of the Child General Comment No. 25 (2021) on children's rights in relation to the digital environment, which requires States Parties to ensure non-discrimination in children's digital access and protection is assessed on an intersectional basis. Although General Comment No. 25 is soft law, it is consistently cited by the Commission and by EU civil-society actors (Eurochild, 5Rights, CDT Europe) as the interpretive frame for Article 28 DSA, giving the argument in this briefing a second, independent international-law anchor beyond the Charter.

Part II — The Enforcement Gap: Diagnosis

2.1 Structural blindness in the guidelines

Despite the statutory intersection identified in Part I, the July 2025 Article 28 guidelines operationalise "harm to minors" exclusively through generic, identity-neutral categories: grooming, harmful or illegal content, problematic and addictive behaviours, cyberbullying, and manipulative commercial practices [3][4]. Nowhere do the guidelines require platforms to record whether a given instance of cyberbullying, harassment, or content-driven harm was motivated by or directed at a child's religion, ethnicity, disability, or other protected characteristic. A platform can therefore report full Article 28 compliance — "cyberbullying risk: medium, mitigated" — while remaining structurally incapable of knowing

whether Muslim, Jewish, Roma, or disabled children are disproportionately its victims.

2.2 Independent confirmation of the gap

This is not merely EqualFaith's reading. The Centre for Democracy & Technology (CDT) Europe's formal response to the draft Article 28 guidelines warned that the current ambiguities pose significant challenges for enforcement, and that without clear benchmarks, different DSCs may interpret requirements differently, producing fragmented enforcement and unequal protection of fundamental rights across the EU [9]. The first report of the European Board for Digital Services on systemic risk similarly documents that platforms' own risk taxonomies remain inconsistent and self-defined, with civil-society organisations flagging repeatedly that named categories under Article 34(1)(b) are being addressed unevenly [10]. Academic commentary on Article 34 has separately noted that the fundamental-rights risk category was "hugely beneficial" in principle for aligning DSA risk assessment with human-rights practice, but that its implementation in practice has lagged its textual ambition [11].

2.3 Why this is the same enforcement gap, in a new register

This finding replicates, inside a different legal provision, the exact structural failure EqualFaith Europe's formal DSA complaint against X Corp. already documents under Articles 34–35: EU anti-discrimination law exists on paper, but the practical enforcement architecture — the data platforms actually collect and report — cannot see the harm it is legally required to prevent. The child-protection register makes this argument more, not less, powerful: it engages a universally sympathetic subject (children), a live and politically prioritised regulatory process (the Commission's ongoing minors' safety agenda, including President von der Leyen's public commitments on unfettered minor access to social media [12]), and a legal hook — Article 34(1)(b) — that is not Muslim-specific, broadening the coalition available to support it.

2.4 Why this is an implementation failure, not a legislative gap

This distinction is the single most important fact for feasibility. Nothing in this briefing requires the European Parliament and Council to reopen the DSA. The obligation already exists in binding, directly-applicable EU law (Article 34(1)(b)); what is missing is the Commission's operational guidance on how to measure and report it — a guideline-level fix, achievable through powers the Commission already holds and has already exercised twice in the past thirteen months (Article 28 guidelines, July 2025; Article 22 trusted-flagger guidelines, draft cycle 2026) [2][13].

Part III — The Proposed Solution

This briefing proposes two mechanisms. Both are non-legislative, both are grounded in DSA provisions already in force, and both can proceed in parallel.

3.1 Mechanism A — Discrimination-Disaggregated Risk & Transparency Reporting

Legal basis. Article 28(4) DSA gives the Commission standing authority to issue and revise guidelines assisting providers in the application of Article 28(1), following consultation with the European Board for Digital Services [1]. For VLOPs/VLOSEs, Article 34(2) additionally allows the Commission to specify the elements platforms must include in their systemic risk assessments. Neither route requires new legislation.

What it requires in practice:

- Amend the Article 28 minors' guidelines (or issue a targeted addendum) to require that risk-review data on cyberbullying, harassment, and content-driven harm to minors be disaggregated by protected characteristic — religion, ethnicity or racial origin, disability, sexual orientation — mirroring the disaggregation already expected elsewhere in Article 34(1)(b) reporting (e.g., gender-based violence).
- Require that VLOP/VLOSE annual transparency reports under Article 42 cross-reference this disaggregated minor-safety data against the platform's existing Article 34(1)(b) non-discrimination risk category, rather than treating the two as separate silos.
- Direct DSCs to request this disaggregation specifically when assessing Article 28(1) compliance during supervision, using the Commission guidelines as their reference benchmark [3].

Why it is realistically achievable. This is a reporting-schema change layered onto an assessment platforms are already required to conduct — not a new substantive obligation. It imposes materially lower compliance cost than, for example, new age-verification infrastructure, which the guidelines already require in higher-risk cases [14]. The Commission has direct, recent precedent for issuing exactly this kind of technical, evidence-driven guideline revision: the Article 22 trusted-flagger guidelines opened for targeted stakeholder consultation on 29 May 2026, closed 26 June 2026, with formal adoption expected in the second half of 2026 [13][15] — demonstrating an active, functioning guideline-revision channel EqualFaith can feed into for the next available cycle.

3.2 Mechanism B — Discrimination-Specific Trusted Flagger Status for Minor Safety

Legal basis. Article 22 DSA allows any entity to apply to the Digital Services Coordinator of its Member State of establishment for 'trusted flagger' status in a designated area of expertise. Once awarded, that status is valid vis-à-vis every online platform in the EU, and platforms must give notices from trusted flaggers priority processing without undue delay [16][17]. To qualify, an applicant must demonstrate (a) particular expertise and competence in detecting, identifying and notifying the relevant content; (b) independence from any platform provider; and (c) diligence, accuracy and objectivity in its notice practice [16].

What it requires in practice:

- EqualFaith Europe, upon completion of its Dutch stichting registration, applies to the Dutch DSC (Autoriteit Consument & Markt) for trusted flagger status in a specifically defined niche: discriminatory and identity-based hate content targeting minors.
- This niche is currently unoccupied. Existing designees are either CSAM-focused specialists (e.g., the Internet Watch Foundation, designated on the strength of decades of CSAM identification expertise [18]) or generalist child-welfare bodies (Italy's S.O.S. Il Telefono Azzurro; Austria's AIT; Germany's Baden-Württemberg youth foundation) [19][20] — none combine child-safety expertise with anti-discrimination/hate-content specialisation.
- A dedicated, EDRi-documented guide on trusted-flagger designation specifically recommends that DSCs guard against excluding smaller NGOs "working with marginalised groups" from trusted-flagger status due to resourcing gaps — EqualFaith should cite this directly in its application to pre-empt a capacity objection [21].

Why it is realistically achievable. National trusted-flagger applications are open on a rolling basis — they are not tied to the Commission's guideline consultation calendar. DSC practice across Ireland, Italy, Austria and Germany over the past two years shows a consistent willingness to designate specialised, sector-specific applicants rather than only large generalist bodies [19][20]. A successful Dutch designation would create the first live, working precedent for a discrimination-and-minors trusted flagger anywhere in the EU — a concrete deliverable EqualFaith can present to funders, coalition partners, and the Commission alike.

Part IV — Theory of Change: Forcing the Institutional Shift

Guideline text does not change itself. The following sequence sets out, step by step, how EqualFaith Europe converts the legal argument in Parts I–III into actual Commission and DSC action.

Step 1. Build the coalition before making the ask. A single-issue advocacy organisation requesting a guideline revision is noise; a coalition is signal. EqualFaith should formally approach Eurochild (which already holds standing as a stakeholder voice in Article 28 implementation [4][9]), EDRi (author of the existing trusted-flagger designation guide this briefing cites [21]), ENAR, and HateAid — organisations already inside EqualFaith's existing outreach network — to co-sign a joint position paper built on this briefing's Article 34(1)(b) argument.

Step 2. Establish the national precedent first. Complete EqualFaith's Dutch stichting registration and file the Article 22 trusted-flagger application with the Dutch DSC for the discrimination-and-minors niche described in Mechanism B. A single successful national designation is concrete proof of concept — far more persuasive to the Commission than an abstract legal argument alone, and independently valuable for CERV funding eligibility and institutional credibility.

Step 3. Feed the argument directly into the Commission's own process. Submit a formal written position to DG CONNECT and to the European Board for Digital Services' Working Group 6 (Protection of Minors), which is the body reportedly developing "common instruments" for consistent EU-wide Article 28 enforcement through 2026 [22]. Because Article 28(4) authority is standing (not confined to a single consultation window), this submission can be made at any time — it does not depend on catching a live public consultation, though it should also be timed to align with the Article 22 trusted-flagger guidelines' formal adoption expected in the second half of 2026 [13][15], when Commission attention to related implementation questions will be highest.

Step 4. Create a political paper trail. Petition the European Parliament's Committee on Petitions under Article 227 TFEU / Article 44 of the Charter, and brief a sympathetic Member of the European Parliament on the Committee on Civil Liberties, Justice and Home Affairs (LIBE) or the Committee on the Internal Market (IMCO) to table a written question to the Commission citing Article 34(1)(b)'s existing textual intersection. Written parliamentary questions carry statutory response deadlines, forcing an on-the-record Commission position that can be cited in all subsequent advocacy.

Step 5. Produce independent evidence. Publish a CSO-authored "shadow risk assessment" applying discrimination-disaggregated methodology to one VLOP's publicly available Article 42 transparency report, demonstrating in practice what the platform's own reporting cannot currently show. This mirrors precisely how the Commission built its July 2025 Article 28 guidelines — through a call for evidence and direct stakeholder input [2] — meaning independently produced evidence has a demonstrated, recent history of directly shaping this exact guideline.

Step 6. Align the ask with funding, to sustain it. CERV (Citizens, Equality, Rights and Values) funding treats child protection and non-discrimination as parallel, independently fundable priorities. A project that evidences both simultaneously — as this briefing's thesis does by design — is unusually well positioned within CERV's own funding logic, creating the resourcing base needed to sustain Steps 1–5 over a multi-year advocacy cycle rather than a single publication.

Part V — Why This Is Distinctive and Why It Will Land

- **Legally load-bearing, not rhetorical:** the argument rests on the co-location of Charter Articles 21 and 24 inside the actual text of Article 34(1)(b) DSA — a textual fact, not an inference.
- **No legislative reopening required:** both mechanisms proceed through guideline and designation powers the Commission and DSCs already hold and have recently exercised, making the proposal realistically achievable within a single EU policy cycle.
- **Occupies an unoccupied niche:** no existing trusted flagger or CSO campaign currently targets the specific intersection of discrimination and minor safety, in contrast to the crowded fields of CSAM detection or generic child-welfare flagging.
- **Universal, coalition-ready framing:** grounded in "access to rights / closing the enforcement gap" rather than any single community, broadening funder and partner appeal while remaining fully consistent with EqualFaith Europe's founding thesis.
- **Concrete and falsifiable deliverables:** a successful national trusted-flagger designation and a published shadow risk assessment are verifiable outputs a funder, journalist, or institutional partner can independently check — not merely a position paper.

Conclusion

The Digital Services Act already tells regulators, in a single statutory sentence, that a child's right to protection and a child's right to non-discrimination are not separate concerns — they are the same fundamental-rights assessment under Article 34(1)(b). The Commission's own implementing guidelines have not yet caught up to what its own regulation already says. That gap is real, evidenced by independent civil-society and academic critique, and — critically — closable without new legislation, through mechanisms the Commission and national Digital Services Coordinators already operate. EqualFaith Europe is positioned to be the organisation that makes this argument first, evidences it with a working national precedent, and carries it through the Commission's own guideline-revision channel to a concrete regulatory outcome.

Respectfully submitted,

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References

[1] Article 28, Digital Services Act (Regulation (EU) 2022/2065). https://www.eu-digital-services-act.com/Digital_Services_Act_Article_28.html

[2] European Commission, ‘Commission publishes guidelines on the protection of minors,’ Shaping Europe’s Digital Future, 14 July 2025. https://digital-strategy.ec.europa.eu/en/library/commission-publishes-guidelines-protection-minors

[3] Winston Taylor, ‘Implementing Article 28 DSA – EC guidelines on protection of minors under the Digital Services Act.’ https://www.winstontaylor.com/insights/implementing-article-28-dsa-ec-guidelines-on-protection-of-minors-under-the-digital-services-act

[4] ‘The long-awaited EU Guidelines on Article 28(1) DSA: What online platforms must know,’ 5 August 2025. https://www.hlc.com/en/publications/the-longawaited-eu-guidelines-on-article-281-dsa-what-online-platforms-must-know

[5] Article 34, Digital Services Act. https://www.eu-digital-services-act.com/Digital_Services_Act_Article_34.html

[6] DSA Article 34, full text reproduction. https://streamlex.eu/articles/dsa-en-art-34/

[7] ‘AI, Digital Platforms, and the New Systemic Risk,’ arXiv, on Article 34(1)(b) and Recital 81. https://arxiv.org/pdf/2509.17878

[8] Oversight Board, ‘Reasonable, proportionate and effective?,’ 14 October 2025, on Articles 34–35 DSA. https://www.oversightboard.com/news/reasonable-proportionate-and-effective/

[9] Center for Democracy & Technology Europe, ‘CDT Europe Responds to the Draft Guidelines on the Online Protection of Minors,’ 19 December 2025. https://cdt.org/insights/cdt-europe-responds-to-the-draft-guidelines-on-the-online-protection-of-minors/

[10] European Board for Digital Services, First Report on Systemic Risks and Mitigations under Article 35(2) DSA, 18 November 2025. https://table.media/assets/europe/first_article_352_dsa_report_on_systemic_risks_and_mitigations_final_ddxkzxhwga8vftj3unr0mgkwqvk_121707.pdf

[11] Dunstan Allison-Hope, ‘What Article 34 of the DSA Could Have Said,’ 22 April 2025. https://dunstanhope.com/blogs-and-reports/what-article-34-of-the-dsa-could-have-said

[12] TechPolicy.Press, ‘What Europe’s Digital Services Act Says About Age Assurance,’ 26 September 2025, on President von der Leyen’s State of the Union remarks. https://www.techpolicy.press/what-europes-digital-services-act-says-about-age-assurance/

[13] European Commission, ‘Targeted consultation: draft guidelines on trusted flaggers under the Digital Services Act (DSA),’ opened 29 May 2026, closed 26 June 2026. https://digital-strategy.ec.europa.eu/en/consultations/targeted-consultation-draft-guidelines-trusted-flaggers-under-digital-services-act-dsa

[14] Eurochild, ‘What does Article 28 mean in practice for protecting children online?,’ 15 January 2026. https://eurochild.org/news/what-does-article-28-mean-in-practice-for-protecting-children-online/

[15] European Commission, ‘Draft Commission guidelines on trusted flaggers.’ https://digital-strategy.ec.europa.eu/en/library/draft-commission-guidelines-trusted-flaggers

[16] Article 22, Digital Services Act. https://www.eu-digital-services-act.com/Digital_Services_Act_Article_22.html

[17] European Commission, ‘Trusted flaggers under the Digital Services Act (DSA).’ https://digital-strategy.ec.europa.eu/en/policies/trusted-flaggers-under-dsa

[18] DSA Library, ‘Article 22: Trusted flaggers’ (Internet Watch Foundation designation example). https://dsa-library.com/article/22/

[19] BDK Advokati, ‘What can we learn from “trusted flaggers” decisions?,’ 19 June 2025. https://bdkadvokati.com/what-can-we-learn-from-trusted-flaggers-decisions

[20] William Fry, ‘Trusted Flaggers under the DSA – what you need to know,’ 30 April 2024. https://www.williamfry.com/knowledge/trusted-flaggers-under-the-dsa-what-you-need-to-know/

[21] European Digital Rights (EDRi), ‘How to protect fundamental rights when appointing Trusted Flaggers.’ https://edri.org/wp-content/uploads/2023/12/Trusted-Flaggers-guide-for-designation.pdf

[22] Taylor Wessing, ‘Beyond the Tech Giants: Why the DSA’s Rules on the Protection of Minors May Now Affect All Online Platforms,’ 20 November 2025, on European Board for Digital Services Working Group 6. https://www.taylorwessing.com/en/insights-and-events/insights/2025/10/beyond-the-tech-giants