



Brussels, 29 August 2024
(OR. en)

12319/24

**Interinstitutional File:
2022/0155(COD)**

LIMITE

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CODEC 1676**

NOTE

From: Presidency
To: Permanent Representatives Committee

Subject: Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse
– Policy debate

I. BACKGROUND/INTRODUCTION

1. On 11 May 2022, the Commission submitted to the Council and the European Parliament a proposal for a Regulation laying down rules to prevent and combat child sexual abuse¹, which aims to oblige online service providers, such as providers of hosting services and interpersonal communication services, to prevent the dissemination, and, if needed, detect, report and remove child sexual abuse material ('CSAM'), to prevent, and, if needed, detect and report the solicitation of children ('grooming'), and to set up a new decentralised EU agency (the 'EU Centre') to support the implementation of the proposed Regulation, together with a network of national Coordinating Authorities and other competent authorities.

¹ 9068/22.

2. In the Council, the proposal has been examined so far in 31 meetings of the Law Enforcement Working Party - Police (LEWP-P) to prepare a mandate for negotiations with the European Parliament.
3. The Permanent Representatives Committee had policy debates on the above proposal on 31 May and 13 October 2023 to consider aspects related to proportionality, cyber security and the scope of detection orders.
4. In the European Parliament, the Committee on Civil Liberties, Justice and Home Affairs (LIBE) has the lead responsibility for the negotiations on the proposal. It appointed MEP Javier Zarzalejos (EPP, ES) as rapporteur in October 2022. The LIBE Committee adopted its report on 14 November 2023, and the position of the European Parliament was deemed adopted on 22 November 2023.
5. The period of application of Regulation (EU) 2021/1232 providing a temporary derogation from certain provisions of Directive 2002/58/EC as regards the use of technologies by providers for the purpose of combating online child sexual abuse was extended until 3 April 2026.² An agreement on the proposed Regulation providing a long-term legal framework needs to be reached swiftly to ensure that it can enter into force before the extended temporary legal framework expires.

II. PRESIDENCY COMPROMISE PROPOSAL

6. The Presidency notes that the work done by the previous Presidencies provides a solid basis for further developing a compromise proposal with a view to reach a partial negotiation mandate with the European Parliament.

² Regulation (EU) 2021/1232 of the European Parliament and of the Council of 14 July 2021 on a temporary derogation from certain provisions of Directive 2002/58/EC as regards the use of technologies by providers of number-independent interpersonal communications services for the processing of personal and other data for the purpose of combating online child sexual abuse was amended by Regulation (EU) 2024/1307 of the European Parliament and of the Council of 29 April 2024.

7. The Presidency also notes that the long-term legal framework to be established with this proposed Regulation should not be less effective in terms of achieving the objective of preventing and fighting child sexual abuse compared to the temporary legal framework under Regulation (EU) 2021/1232.
8. The purpose of this note is to allow the Permanent Representatives Committee to provide political guidance so that the Presidency can verify whether there is sufficient support for the envisaged building blocks outlined below before it prepares the details of a new compromise proposal.
9. The Presidency suggests pursuing the proposal for a partial mandate for negotiations with the European Parliament as outlined in document 11277/24 with the following amendments:
 - a) Detection orders should be limited to known child sexual abuse material (CSAM). New CSAM and grooming would be outside the scope of detection orders but should remain in the scope of the risk assessment and risk mitigation obligations.
 - b) The temporary derogation from certain provisions of Directive 2002/58/EC for the purpose of combating online child sexual abuse should be continued through an extension of Regulation (EU) 2021/1232 limited to new CSAM and grooming, to allow sufficient time for the further development of technologies, and the possible future revision of the Regulation under the review clause outlined below.
 - c) Under a review clause, the Commission would be invited to assess the necessity and feasibility of including new CSAM and/or grooming in the scope of detection orders in the future, taking into account in particular the reliability and accuracy of the detection technologies available on the market. This might lead to a new legislative proposal by the Commission, and it would then be up to the co-legislators to decide whether to expand the scope of detection orders.
 - d) The specific safeguards for the detection of new CSAM such as delayed reporting based on hits and pseudonymisation are redundant and should therefore be deleted.
 - e) Service providers, in cooperation with the EU Centre, should be required to do their utmost to contribute to the development of reliable and accurate technologies to detect new CSAM and grooming.

III. WAY FORWARD

10. The Presidency aims at reaching a partial general approach at the meeting of the Council on 10 October 2024, excluding Article 42 about the selection of the seat of the EU Centre, which should be the subject of an inter-institutional procedure following the example of the selection of the seat of the future Anti-Money Laundering Authority (AMLA).
11. In the light of the above, the Permanent Representatives Committee is invited to indicate whether it can support the Presidency's suggestion to pursue the proposal for a partial negotiation mandate with the European Parliament as outlined in document 11277/24 with the amendments described in point 9 above, e.g. with the scope of the detection orders limited to known CSAM as well as on the understanding that the future inclusion of the relevant provisions related to detection orders for new CSAM and grooming would be subject to a review clause and possible only further to a new legislative proposal.