



Brussels, 12 October 2023
(OR. en)

14095/23

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

LIMITE

JAI 1299
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IXIM 187
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CODEC 1842

NOTE

From:	German delegation
To:	Delegations
No. prev. doc.:	12611/23
Subject:	Concept for splitting up the Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse – German position paper

1. What is the current situation?

The present compromise text (12611/23) does not yet implement the requirements which are necessary from the point of view of the Council Legal Service. Further taking note of the COM's non-paper of 16 May 2023, an in-depth legal discussion of the design of the detection order still appears to be necessary to establish conformity with the EU charter of fundamental rights. On the other hand, we have a strong interest in promptly adopting other (generally acceptable) provisions in the compromise text in order to achieve important improvements in the joint fight against child sexual abuse.

2. What is our proposal? – Splitting up the draft regulation!

Progress in the discussion can be achieved in the following way:

- All **generally acceptable** provisions remain in the compromise text.
- **Controversial** provisions are being removed from the compromise text.

This is not a proposal for a Partial General Approach. The removed provisions shall be included in a new draft regulation.

3. How do we do it?

The following provisions seem generally acceptable and should remain in the compromise text:

Provisions on **Risk assessment** and **Risk mitigation** (article 3-6); **Reporting obligations** (article 12-13); **Removal obligations** (article 14-15); **Blocking orders** (article 16-18); **Delisting obligations** (article 18a-18c); **Additional provisions** (article 19-24); **Supervision, Enforcement and Cooperation** (article 25-39); Provisions on the establishment of an **EU Centre**, except the question of the seat (article 40-82); **Data collection and Transparency reporting** (article 83-84); **Final provisions** (article 85-89).

The **provisions on the detection obligations (article 7-11) appear controversial and should be addressed in a new draft regulation.** In the provisions on subject matter/scope/definitions (articles 1-2), references to detection obligations should be removed. In addition, it should be ensured that content which does not fall under national criminal law with regard to the age of the affected person is excluded from the scope of the regulation.

4. What will be the effects?

The remaining parts constitute a **significant added value** to the current legal status quo. With an agreement on these legal bases created for the first time at EU level, the joint fight against child sexual abuse will advance significantly and speedily. We will decisively strengthen the possibilities of law enforcement and judicial authorities to take action against child sexual abuse and the dissemination of corresponding material, as well as strengthen international cooperation.

The **controversial provisions** can be discussed without time pressure, and solutions can be developed that protect children and respect the right to protection of private life and private communications.

An **extension of the temporary ePrivacy derogation** (2021/1232) for the time necessary to discuss the controversial provisions is of utmost importance because it will allow providers to continue their valuable voluntary detection measures and therefore avoid regulatory gaps.
