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**LIMITE**

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ENFOPOL 518  
CRIMORG 197  
IXIM 230  
DATAPROTECT 339  
CYBER 307  
COPEN 422  
FREMP 348  
TELECOM 360  
COMPET 1187  
MI 1058  
CONSOM 435  
DIGIT 286  
CODEC 2310

#### **'I' ITEM NOTE**

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From:	Presidency
To:	Permanent Representatives Committee
No. prev. doc.:	12826/23
Subject:	Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse – Progress report

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#### **I. INTRODUCTION**

1. On 11 May 2022, the Commission adopted the above proposal<sup>1</sup> accompanied by an impact assessment and a communication. The proposal is based on Article 114 TFEU and has two main building blocks. First, online service providers, such as providers of hosting services and interpersonal communication services, would be obliged to prevent the dissemination, detect, report and remove child sexual abuse material ('CSAM'), and to prevent, detect and report the solicitation of children ('grooming'). Second, a new decentralised EU agency (the 'EU

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<sup>1</sup> 9068/22

Centre')<sup>2</sup> would be set up to support the implementation of the proposed Regulation, together with a network of national Coordinating Authorities and other competent authorities.

2. In the Council, the proposal has been examined in 24 meetings of the Law Enforcement Working Party - Police (LEWP-P) so far to prepare a mandate for negotiations with the European Parliament.
3. The Council Legal Service issued a written opinion on 26 April 2023<sup>3</sup>.
4. The Permanent Representatives Committee had policy debates on the above proposal on 31 May and 13 October 2023, focussing on the scope of the detection order and aspects related to encrypted communications and cyber security. The Council also discussed the issue in public session on 19 October and 5 December 2023.
5. In the European Parliament, the Committee on Civil Liberties, Justice and Home Affairs (LIBE) is the lead committee 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.

## **II. PROGRESS ACHIEVED DURING THE SPANISH PRESIDENCY**

6. Under the Spanish Presidency, the LEWP-P has devoted considerable time and efforts to draft compromise texts at the meetings on 5 July<sup>4</sup>, 26 July<sup>5</sup>, 5 September<sup>6</sup> and 14 September 2023<sup>7</sup>.
7. The Presidency concentrated its efforts on a number of critical issues:
  - Clarifying that detection orders should only be considered as a measure of last resort when mitigation measures are considered insufficient and that they should be targeted to “specific types of users” where possible. Additional safeguards for the technologies to be used for detection, and requirements to safeguard encryption and the obligation for relevant providers to keep logs of data related to detection orders were considered.

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<sup>2</sup> The selection of the seat of the EU Centre will be subject to an inter-institutional procedure following the example of the selection of the seat of the Anti-Money Laundering Authority.

<sup>3</sup> 8787/23.

<sup>4</sup> 10833/23.

<sup>5</sup> 11518/23.

<sup>6</sup> 12066/23.

<sup>7</sup> 12611/23.

- Reinforcing the risk assessment and the risk mitigation process, including the possibility for the Coordinating Authority to require the relevant providers to carry out adjusted or additional risk assessment or risk mitigation measures and to authorise them to display a “sign of reduced risk”.
  - Defining a procedure for cross-border removal and delisting orders, following largely the model of Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of terrorist content online.
  - Developing the tasks of the EU Centre to assist more strongly in the risk assessment and mitigation process, and to conduct tests in connection with the possible issuance of detection orders. In addition, the terms of cooperation with Europol and the possibility to cooperate with third countries and international organisations were considered.
  - The Presidency also endeavoured to clarify that this Regulation should not apply to interpersonal communication services that are not available to the public including those used for national security, that there are no general monitoring obligations by providers, that safeguards regarding age verification and age assessment measures are applied and that users may be represented by a body in complaint procedures.
8. The Presidency noted at the LEWP-P meeting on 14 September 2023 that there was not sufficient support from delegations around the scope of the detection orders, which raised some concerns about proportionality.
9. The Presidency was committed to reach a compromise and therefore suggested limiting the scope of the detection orders to known CSAM. The relevant provisions related to detection orders for new CSAM and the solicitation of children would only start to apply in the future, once it will have been established that detection technologies are sufficiently reliable and accurate. This approach included using an activation clause regarding new CSAM and a review clause regarding the solicitation of children. However, new CSAM and solicitation of children would remain within the provisions of the Regulation related to preventive measures.

10. This new approach was considered by the Permanent Representatives Committee on 13 October 2023<sup>8</sup> but did not obtain sufficient support from delegations.
11. Following a discussion at the Council on 19 October 2023, the work on identifying new proposals to limit the scope of the detection orders and to introduce safeguards for encryption has continued, with the aim of obtaining a qualified majority of Member States supporting the compromise. However, this has not been possible so far.
12. In the light of this, and pursuant to the request of several delegations, on 30 November 2023 the Commission submitted to the Council and the European Parliament a proposal for a Regulation amending Regulation (EU) 2021/1232 of the European Parliament and of the Council on a temporary derogation from certain provisions of Directive 2002/58/EC for the purpose of combating online child sexual abuse<sup>9</sup>, which aims to extend the period of application of Regulation (EU) 2021/1232 beyond 3 August 2024. This “Interim Regulation” lays down temporary and strictly limited rules derogating from certain obligations laid down in Directive 2002/58/EC (“the ePrivacy Directive”), with the sole objective of enabling providers to voluntarily detect, report and remove child sexual abuse material. The Presidency took swift action to prepare the negotiating mandate in a meeting of the JHA counsellors on 6 December 2023 with a view to invite the Permanent Representatives Committee to agree with the mandate on the “Interim Regulation” on 20 December 2023.

### III. CONCLUSION

13. Although the Presidency was able to gather support on a large part of the proposal, more work is needed to reach an agreement for a mandate for negotiations with the European Parliament.
14. The Permanent Representatives Committee is invited to take note of the progress made during the Spanish Presidency.

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<sup>8</sup> 12826/23.

<sup>9</sup> 16289/23.