



Council of the
European Union

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NOTE

From:	Presidency
To:	Permanent Representatives Committee
No. Cion doc.:	16289/23
Subject:	Proposal for a Regulation of the European Parliament and of the Council 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 - Mandate for negotiations with the European Parliament

I. BACKGROUND/INTRODUCTION

1. 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 abuse¹, which aims to extend the period of application of Regulation (EU) 2021/1232 beyond 3 August 2024.

¹ 16289/23.

2. The draft Regulation is based on Articles 16 and 114 of the Treaty on the Functioning of the European Union (TFEU) (ordinary legislative procedure).
3. The opinion of the European Economic and Social Committee was requested on 30 November 2023 and is pending.
4. Following the presentation of the proposal by the Commission to the Law Enforcement Working Party - Police (LEWP-P) on 1 December 2023, the JHA counsellors (LEWP-P) discussed the proposal at their meeting on 6 December 2023 and have agreed on the text in the annex to this note.
5. Considering the comments made by delegations, the Presidency compromise text amends the Commission's proposal to increase the period of application of the Regulation (EU) 2021/1232 by 3 years instead of 2 years, i.e. until 3 August 2027. This extension is intended to avoid a legal gap that would occur if the proposed Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse² did not enter into force and apply before Regulation (EU) 2021/1232 expires.
6. In the European Parliament, the Committee on Civil Liberties, Justice and Home Affairs (LIBE) has the lead responsibility. Birgit Sippel (S&D, DE) was appointed rapporteur. The report has not been adopted yet.

II. CONCLUSION

7. The Permanent Representatives Committee is therefore invited to confirm agreement on the text of the mandate for negotiations with the European Parliament, as set out in the annex to this note³, to enable the Presidency to conduct those negotiations.
8. In accordance with the approach to legislative transparency endorsed by Coreper on 14 July 2020⁴, and in full consistency with Regulation (EC) 1049/2001 and the Council's Rules of Procedure, the text of the mandate thus agreed will be made public unless the Permanent Representatives Committee objects.

² 9068/22.

³ Changes to the Commission proposal are marked in **bold** and ~~strikethrough~~.

⁴ 9493/20.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
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**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16(2), in conjunction with Article 114(1), thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁵,

Acting in accordance with the ordinary legislative procedure,

⁵ OJ C , , p. .

Whereas:

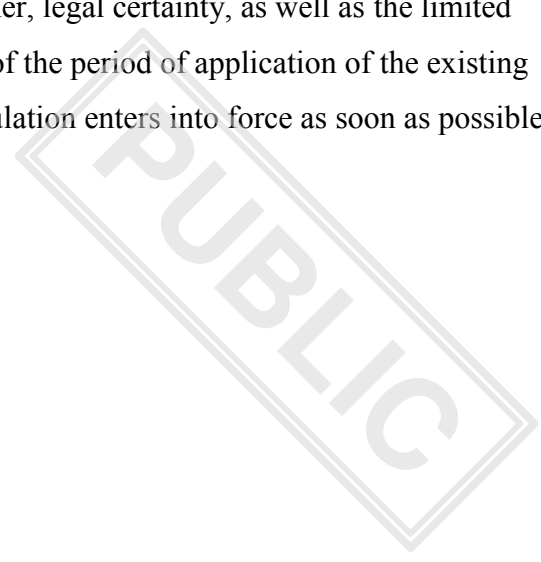
- (1) Regulation (EU) 2021/1232 of the European Parliament and of the Council⁶ provides for a temporary regime in respect of the use of technologies by certain providers of publicly available interpersonal communications services for the purpose of combating online child sexual abuse, pending the preparation and adoption of a long-term legal framework. That Regulation applies until 3 August 2024.
- (2) The proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse⁷ aims to provide that long-term legal framework. However, the inter-institutional negotiations on that proposal have not yet been concluded and it is uncertain whether they will be concluded on time for the long-term legal framework, including any amendments to Regulation (EU) 2021/1232 that it may contain, to be adopted, to enter into force and to apply before 3 August 2024.
- (3) It is important that child sexual abuse online can be effectively combated, in accordance with the applicable rules of Union law, including the conditions set out in Regulation (EU) 2021/1232, without interruptions pending the conclusion of those inter-institutional negotiations and the adoption entry into force and application of the long-term legal framework.
- (4) Therefore, Regulation (EU) 2021/1232 should be amended to extend its period of application for an additional period of time strictly necessary to adopt the long-term legislation.

⁶ 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 (OJ L 274, 30.7.2021, p. 41, ELI: <http://data.europa.eu/eli/reg/2021/1232/oj>).

⁷ Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse, COM/2022/209 final (**2022/0155(COD)**).

- (5) Considering the need to ensure, in a timely manner, legal certainty, as well as the limited nature of the amendment, namely the extension of the period of application of the existing regime, it is appropriate to provide that this Regulation enters into force as soon as possible,

HAVE ADOPTED THIS REGULATION:



Article 1

In Article 10 of Regulation (EU) 2021/1232, the second subparagraph is replaced by the following:

“It shall apply until 3 August ~~2027~~ 2026”.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

The President

For the Council

The President