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'I' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	16289/23
No. prev. doc.:	16950/23
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 – Confirmation of the final compromise text with a view to agreement

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 European Economic and Social Committee delivered its opinion on 17 January 2024.²
4. At its meeting on 20 December 2023, the Permanent Representatives Committee granted the Presidency a mandate to enter into negotiations with the European Parliament.³
5. On 15 February 2024, a provisional agreement was reached between co-legislators, resulting in the final compromise text as set out in the annex to this note.

II. CONCLUSION

6. The Permanent Representatives Committee is therefore invited to:
 - (a) confirm agreement on the final compromise text as set out in the annex to this note with a view to reaching an agreement at first reading with the European Parliament;
 - (b) authorise the Chair of the Permanent Representatives Committee to send a letter to inform the Chair of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs that, should the European Parliament adopt its position at first reading on the text of the proposal in the exact form as set out in the annex to this note, and subject to revision of that text by the lawyer-linguists of both institutions, the Council will approve the European Parliament's position and the act will be adopted in the wording which corresponds to the European Parliament's position.

² 5959/24.

³ 16950/23.

2023/0452 (COD)

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 Committee¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , , p. .

- (1) Regulation (EU) 2021/1232 of the European Parliament and of the Council² 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 abuse³, ***which the Commission adopted on 11 May 2022***, aims to provide that long-term legal framework. However, the inter-institutional negotiations on that proposal have not yet ~~been concluded~~ ***started*** and it is ~~uncertain whether~~ ***certain that*** they will ***not*** 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. ***The co-legislators express their commitment to reaching an agreement on the long-term legal framework as soon as possible, also with a view to avoiding any further extension of Regulation (EU) 2021/1232 in the future.***

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

³ 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)***)).

- (4) Therefore, ***given the particular circumstances***, Regulation (EU) 2021/1232 should be amended to extend its period of application for ~~an additional~~ ***a limited*** period of time strictly necessary to adopt the long-term legislation. ***It is crucial to note that this extension is exceptional and should not establish a precedent for future extensions. Regulation (EU) 2021/1232 was initially designed as a transitional, temporary instrument serving as a link between the implementation of Directive (EU) 2018/1972 of the European Parliament and the Council⁴, which brought number-independent interpersonal communications services within the scope of Directive 2002/58/EC of the European Parliament and the Council⁵ starting on 21 December 2020, and the establishment of a long-term legal framework addressing the prevention and combatting of child sexual abuse online. Contrary to the co-legislators' expectation, the absence of an agreed long-term legal framework requires the extension of the application of Regulation (EU) 2021/1232.***
- (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.
- (5a) ***Pursuant to Regulation (EU) 2021/1232, in order for the temporary derogation from certain provisions of Directive 2002/58/EC to apply, the providers of number-independent interpersonal communications services have to publish and submit, to the competent supervisory authority and to the Commission, a report on the processing of personal data under Regulation (EU) 2021/1232.***

⁴ ***Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36).***

⁵ ***Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).***

- (5b) *In view of the Report from the Commission on the implementation of Regulation (EU) 2021/1232⁶, it is necessary to improve the reporting to the Commission from both the Member States and the providers of number-independent interpersonal communication services. It is also important to stress that the Commission should report on the implementation of the Regulation (EU) 2021/1232 in due time.*
- (5c) *In order to facilitate the providers' reporting, in particular to ensure the machine-readability and easy accessibility of their reports, a common publication format for those reports should be established.*
- (5d) *In order to ensure uniform conditions for the implementation of Regulation (EU) 2021/1232, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.⁷*
- (5e) *The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council and delivered its opinion on 24 January 2024.*
- (5f) *Regulation (EU) 2021/1232 should therefore be amended accordingly,*

⁶ **REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the implementation of 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, 19.12.2023,(COM(2023) 797 final)**

⁷ **Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13, [ELI: http://data.europa.eu/eli/reg/2011/182/oj](http://data.europa.eu/eli/reg/2011/182/oj)).**

HAVE ADOPTED THIS REGULATION:

Article -1b

In Article 3(1)(g) of Regulation (EU) 2021/1232, a new subparagraph (viii) is inserted as follows:

The data referred to in paragraph (1)(g)(vii) of this Article shall be provided in writing by means of a standard form. By 3 December 2024 at the latest, the Commission shall determine the content and presentation of that form by means of implementing acts. The Commission may decide to divide the data categories referred to in paragraph (1)(g)(vii) of this Article into subcategories. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 9a.

Article -1c

In Article 9 of Regulation (EU) 2021/1232, the first paragraph is replaced by the following:

On the basis of the reports submitted pursuant to Article 3(1), point (g)(vii), and the statistics provided pursuant to Article 8, the Commission shall, by 4 September 2025, prepare a report on the implementation of this Regulation and submit and present it to the European Parliament and to the Council.

Article -1d

After Article 9 of Regulation (EU) 2021/1232, a new Article is inserted as follows:

Article 9a Committee Procedure

- 1. The Commission shall be assisted by a committee. That Committee shall be a Committee within the meaning of Regulation (EU) 182/2011.*
- 2. Where reference is made to this paragraph, Article 4 of Regulation (EU) 182/2011 shall apply.*

Article 1

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

“It shall apply until 3 ~~August~~ **April** 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
