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European Union

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NOTE

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| From: | Presidency |
| To: | Permanent Representatives Committee |

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| No. Cion doc.: | 10682/20 |

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| Subject: | Proposal for a Regulation of the European Parliament and of the Council on a temporary derogation from certain provisions of Directive 2002/58/EC of the European Parliament and of the Council as regards the use of technologies by number-independent interpersonal communications service providers for the processing of personal and other data for the purpose of combatting child sexual abuse online - Preparation for the trilogue |
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I. INTRODUCTION

1. The Presidency would like to first recall that, since mid-February, it held two political trilogues with the EP (respectively on 23 February and 9 March) and five technical meetings (2, 5, 17, 19, 22 March) on the ePrivacy Derogation (CSAM).

2. The EP, which previously insisted on depicting the instrument as a restriction of fundamental rights and obligations, would now be willing to view it as a temporary derogation from certain ePrivacy Directive provisions. The Presidency positively acknowledges the EP stance, considering that the CSAM Regulation should be viewed, and kept, solely as a temporary derogation from certain ePrivacy Directive provisions as per the Commission's proposal, as this is the only way to ensure the applicability of the GDPR.
3. The EP is however requesting a number of safeguards to compensate for privacy-intrusive technology use. The last trilogue agenda mostly revolved around such safeguards, with the primary focus of the Presidency being on the feasibility of their implementation by Member States and providers.
4. A fourth political trilogue with the EP is scheduled on 25 March. Delegations will be kept informed of the outcome.

II. PROPOSED APPROACH FOR THE TRILOGUE

5. In order to continue negotiations and reach a provisional agreement with the EP, **the Presidency would like to ask delegations to consider possible flexibilities regarding the following issues:**
 - a. Anti-grooming technologies are a fundamental tool in the fight against CSA online. The Presidency considers that a new wording to allow their application may have to be discussed and eventually agreed upon with the EP, in particular in Recital 11.
 - b. Foresee a mandatory redress / complaint mechanism to be put in place by providers.
 - c. Mandatory prior consultation as an additional safeguard with a grace period for all technologies.
 - d. Mandatory human review before reporting new material and solicitation —accept the EP's request in a spirit of compromise, and within the overall package.
 - e. National statistics on CSAM on an annual basis and with a grace period for the adoption of national legislation — make publicly available national statistics on CSAM could be accepted, provided that no excessive burden is placed on Member States in the context of this temporary Regulation.

- f. Data retention for criminal prosecution purposes — accept a storage period for CSAM as close as possible to 12 months.
 - g. End of application of the interim Regulation — as part of the overall package accept to set the limit of application earlier than 2025 (the EP proposed 2022).
 - h. In the event of a CSAM report, the EP proposes that users be provided with additional information by providers — within the overall compromise package, options could be explored without jeopardising possible criminal investigations.
6. On Anti-grooming, the EP is also requiring a mandatory prior authorization, which would potentially block the use of a specific anti-grooming technology. In the context of the overall compromise package, the Presidency proposes to explore possible alternatives.

III. CONCLUSION

7. The Permanent Representatives Committee is invited to renew the Presidency mandate to negotiate with the EP, in view of the forthcoming trilogue, and confirm that it would not oppose to the approach outlined above.
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