Written comments submitted by Member States

Proposal for a Regulation laying down rules to prevent and combat child sexual abuse

(9068/22)

Contents

AUSTRIA

In general:

- Concerning specific, especially illegal online content there are already exist two legal acts: DSA (horizontal) and TCO (sectoral). They will be amended by the - sectoral - CSA proposal. All these legal acts determine how to deal with special online content. Therefore the respective systems should be identical or at least compatible. It would be useful if the CSA proposal fits in the existing systems and processes so that MS can fall back on that and are not urged to determine different responsibilities in similar areas of regulation.
- The judicial authority or the independent administrative authority issuing the detection order, the removal order or the blocking order is not described more detailed in the proposal. The proposal does not include what characteristics the authority should have. The EC provides information on that (written or orally) but it would be very useful if the text of the proposal states the essential requirements for the authority.

Chapter III:

Article 25 par. 7 lit. c and d:

Austria suggests to replace "verify" by "provide an opinion on". Reasoning: It should be better reflected that the opinion of the EU Centre has only an advisory function. The opinion of the EU Centre does not replace the decision of the national Coordinating Authority and is not binding for the national Coordinating Authority.

Article 39:

A number of issues arise in connection with the establishment of the information sharing systems:

What kind of information will be shared via the EU wide database?

Will data be stored in it?

Will personal data be processed in it? If yes, which categories of personal data and for what purpose?

Will also personal data in connection with suspect cases be shared with the said authorities in it? Will these data remain available in the database? I yes, how long will these data remain available in the database?

BELGIUM

At this moment we would like to uphold a general scrutiny reservation. We would like to confirm our comments made during the meeting in relation to Chapter III.

Article 25

The designation of the coordinating authority, whether already existing or not, will require legislative work form the Member States. The 2 months deadline in Article 25 is therefore way too short. As an example, digital service coordinators in the DSA (Article 38(3)) should be designated within 15 months from the date of entry into force (or at the earliest on 1 January 2024). This should probably be streamlined.

Another point we want to raise concerns regarding the fact that, based on Article 25(9), the requirements of independence in Article 26(2)(a) and (e) would apply also to all other competent authorities that the Member States assign to fulfill certain tasks instead of the Coordinating Authorities. This seems too demanding, because for example also police or certain public administrations could be performing some of the tasks.

In the DSA (art. 44(a)(1)) it is stated that the Commission is exclusively competent in case of Very Large Online Platforms (VLOPs). From the Commission's response we understand in the event of systemic problems (for which via the DSA the Commission can be asked to assist in relation to VLOPs) the Commission then has a role complimentary to the role of the coordinating authority. In this way, we understand that the national coordination authority is competent also for dealing with VLOPs in relation to CSAM.

Article 26

The wording of Article 26(2)(e), requiring the Coordinating Authorities to not be charged with other tasks related to CSA, seems contradictory to the goal of having these Coordinating Authorities be a national center of expertise. It also creates confusion about the possibility to designate the digital service coordinators of the DSA as coordinating authorities. Those digital service coordinators will have horizontal tasks under the DSA of which some might indirectly be *"related to the prevention or combating of child sexual abuse"* (for example supervision of the obligation of the provider to assess the any systemic risks of dissemination of illegal content (including CSAM) via its services and put in place appropriate measures to mitigate this risk (Articles 26 and 27 of the DSA)). Seeing how designating the digital service coordinators of the DSA as coordinating authorities in this Regulation is the intention of the Commission, this probably should be clarified in the recitals. Also, what would be the relation (if any) between coordinating authorities and the digital service coordinators (if they are not the same)? This should also be clarified in the text. It is obvious that they need to cooperate but details on how and on what information should be exchanged would be advisable.

Article 32

Explicit reference throughout the articles where and how the CSA Regulation would further complement the DSA is advisable. We presume that the Coordinating Authorities are able to use the 'notice and action' mechanism of Article 14 of the DSA, is this correct? We wonder about the added value of this article here, because it also duplicates obligations of Article 14 by stating here that the reasons and the identification of the items should be provided. Those requirements are already listed in Article 14 of the DSA. In any case, we should avoid to duplicate the "notice and action" procedures and the requirements of article 14 of the DSA should clearly apply to the notice (for example, Article 14(4) on confirmation of receipt; Article 14(5) on notifying the entity of its decision; Article 14(6) which indicates an obligation to process).

Recital 46 of the DSA states that 'trusted flaggers' (Article 19 of the DSA) can be public in nature, such as the Internet Referral Units (IRU) of the law enforcement authorities. Could the Commission confirm that the Coordinating Authority can have the status of 'trusted flagger'? This carries a lot of practical relevance, seeing how the reports of those 'trusted flaggers' should be prioritized by the provider.

Article 36

We have a scrutiny reservation on this Article. The Commission spoke about "confirmed illegality" a few times during the LEWP meeting. Of course, official confirmation of illegality is rather linked to a conviction. The word that seems relevant in this regard in Article 36 is "diligent assessment". How should this be interpreted? It seems a lot of diversity may arise here among the Member States? This interpretation of "diligent assessment" becomes quite relevant because of the fact that material assessed as being CSAM will be used during the application of detection technologies, and there already a certain margin of error is present.

Article 37

The drafting will require some more coherence with Article 45 of the DSA, because changes and precisions were made following the trilogues. Also not everything has been copied word for word, while we believe consistency would be best here.

Article 38

Clear rules for these joint investigations are advisable so we recommend to expand this Article. More detailed rules about respective competences, about the initiative for such joint investigation, about the potential partners, about the leading authorities, etc. are missing and necessary. Furthermore, we should probably reflect upon the relation to the Joint Investigation Teams and possible coexistence.

Also in this Article consistency and coherence with namely Article 46 of the DSA should be looked at where necessary.

Article 39

The role in general of hotlines should be stressed still again here. Hotlines are important partners that currently also often help analyze and classify CSAM. Is it foreseen that they will cooperate with the EU center in this regard? Or will they only be expected to cooperate with the authorities at the national level?

BULGARIA

With regard to the discussions form the LEWP's meeting on 6 September 2022 Bulgaria would like to provide the following comments:

Under Section 1 of Chapter III Bulgaria would like to join the other Member states that have expressed concerns regarding the designation of Coordinating Authority for child sexual abuse issues and proposed requirements for this Coordinating Authority. Bulgaria is of the opinion that Member States should have more substantial freedom in designation of the Coordinating Authority. Depending on the national regulations it could be decided whether most appropriate would be the establishment of an entirely new institution or the new functions will be delegated to an already existing authority. In both cases, this would lead to the need for significant financing and human resources with the necessary competencies. In case of delegation of new functions to an already existing authority, it is possible that Member States will encounter difficulties in complying with the requirements for Coordinating Authorities according to Art. 26, par. 2 of the Proposal for a Regulation and in particular points (a) and (e) that regulate the independence of the Coordinating Authority and their functionality, which is limited to the performance of tasks solely under the (discussed) Proposal for a Regulation.

During the meeting on September 6, the European Commission's representative provided information according which the deadline for appointing a Coordinating Authority would be only 2 months after the entry into force of the Regulation. This is due since the Proposal for a Regulation on a Single Market for Digital Services (Digital Services Act) foresees the creation of a new Authority that may take over the functions of the Coordinating Authority regulated with the current proposal. Given this we are of the opinion that more information and clarifications on the possible relationship and functions of the Authority that could exercise the tasks set out in both Regulations should be provided.

ESTONIA

- **According to Estonia, the requirements set for coordinating agencies are not appropriate, and during the negotiation of the regulation, the provisions must be designed in a way that allows the appointment of the Police and Border Guard Board as the coordinating agency of Estonia.**

  Article 26(1) states that Member States must ensure that "coordinating authorities carry out their tasks under this Regulation objectively, impartially, transparently and in a timely manner". At the same time, according to paragraph 2 point a, the coordinating authorities must be legally and administratively independent from any public sector institution; must be free from any direct or indirect influence (point c); may not accept or receive instructions from any other public sector body (point d). Being under the administration of the Ministry of the Interior and included in the process of national resource planning, the Police and Border Guard Board, or indeed other state institutions, cannot be considered "independent" in this context, insofar as national strategies determine the priority of the institutions' activities and capacity development and resolve issues concerning resources.

  Considering Estonia's small size, consolidated public sector and proportional state administration, the most problematic point for the state is point e of the same article, according to which the coordinating agency may not be given "tasks related to the prevention of sexual abuse of children or combating it other than the tasks arising from this regulation". According to Estonia, procedural capacity is of central importance in terms of prevention and prevention of illegal sexual abuse of children. In other words, although the Police and Border Guard Board does not comply with the principles of independence described in the regulation, it is the only competent institution in Estonia that is able to fulfill the requirements set forth in the regulation and where it has a logical place to fulfill the tasks arising from the regulation, both legally and considering the agency's practical activities (see, among other things, Article 27 of the regulation investigative powers and joint investigations referred to in Article 38). Also, European cross-border police cooperation has already been organized and developed (see the requirements stipulated in Article 37). Its duplication and development between new structural units is an unreasonable expense, but also a very time-consuming and complicated process.

- **The regulation should include a framework to facilitate legal recognition of EU hotlines and to secure legal authority to allow the review, processing, and potentially pro-active searching for CSAM by hotlines.**

  In Estonia these type of cases are handled in cooperation with the police, NGO Estonian Union of Child Welfare (member on INHOPE) and the Estonian Courts. Our NGO who has been a part of this cooperation for several years have proven to be a very good partner in this work. We feel that the role of hotlines should be presented more clearly in this regulation as it is not at all for the moment. The regulation should broaden the criteria to allow organizations with the existing expertise and proven capability to be eligible for designation as competent authorities.

- **In our last LEWP meeting (06.09.2022) the Commission emphasized that the description provided for the "Requirements for Coordinating Authorities" are based and taken over by DSA article 50 (in the latest version reviewed). It was seen that the same authority could continue the same work for this new regulation proposal. This could not be the case in Estonia. We feel that the wording in the new regulation is much more narrower and stricter than it is in DSA.**

  The coordinating authority in Estonia that is working with the DSA is not the one who is responsible for handling (for example starting criminal procedures) in case of child pornography material. This is the role of the police. The organization working under the DSA also does not have the experts and knowledge for handling child sexual abuse material online. Such matters must be assessed by the national organizing authority - only the police has the legal capacity to detect a crime - i.e. here, there is still a difference between illegal content. There is no point in creating a separate competence for "child pornography" in the organization who works under DSA, if there is an idea that it could take over this matter.

FINLAND

Article 25

- According to Article 25(9) of the proposed Regulation, Articles 26-30 of the proposal also apply to the competent authorities designated under the proposal, and not only to the coordinating authorities. Does this mean that competent authorities (such as a judicial authority or an autonomous administrative authority) could not have other tasks related to the prevention and combating of child abuse, e.g. through criminal law regulation?

Article 26

- The effect of the last sentence of recital 46 is left open and, together with Article 26 of the proposal, could become quite problematic in terms of national implementation. Moreover, the proposal does not justify why the national coordinating authority should also be an independent administrative authority like the courts. However, the proposal for a regulation explicitly assigns tasks to judicial authorities or independent administrative authorities, which must confirm some of the most far-reaching decisions of the coordinating authority.
- Furthermore, Article 26 together with the recital 46 would seem to set a really high threshold for the national coordinating authority.
- How to assess Article 26(2)(e) of the proposal, which stipulates that the coordinating authority may not have other tasks relating to preventing and combating child abuse. Is this not partly contradictory, that the most competent authority could not be the authority under this proposed regulation?

Article 37, 38, 39

Joint investigations under Article 38, for example into information systems (SIENA), seem to be problematic if the coordinating authority is not the authority with preliminary investigation powers.

A general comment on the articles discussed.

Safeguarding national flexibility is important. For example, it is not clear from Articles 27-29 and 35 of the proposed Regulation what the threshold is for taking action and whether there is any national flexibility (i.e. whether the powers of investigation and their use are linked to a necessity requirement or to a lower threshold of necessity). For example, in Article 41(6) of the proposed DSA Regulation, a sentence was added stating that Member States shall lay down specific conditions and procedures for the exercise of the powers under [Article 41(1), (2) and (3)]. Could a similar entry be considered in the beginning of Article 30(2) of the CSAM proposal?

GERMANY

Preliminary remarks

- Germany welcomes the opportunity to discuss the articles of the third section.
- Because the Federal Government has not yet completed its examination of the proposed Regulation, we would like to enter a general **scrutiny reservation**.

Section 1:

- The requirements relating to the coordinating authorities and to their organisation need to be examined more closely, especially with regard to the ongoing considerations surrounding the determination of a regulatory authority within the meaning of the DSA. We should seek to utilise synergy effects to the greatest extent possible when it comes to designating or forming the regulatory authority/authorities.
- Article 25 (2): In Germany, we have to respect the division of responsibilities between the Federation and the federal states (*Länder*). The responsibilities of the latter are also affected by the tasks incumbent on the coordinating authority. However, according to the Draft Regulation, a single coordinating authority is to act on behalf of a given Member State (Article 25 (2)). We ask the Commission to explain and confirm whether the possibility envisaged in this rule to designate other authorities (especially paragraph 1 and paragraph 2, second subparagraph ["unless that Member State has assigned certain specific tasks or sectors to other competent authorities"] and paragraph 3 also cover cases where, owing to the federal structure of a Member State, tasks are not discharged centrally, but decentrally, as in Germany's case by the federal states.
- The way we understand it, the Commission's proposal not only provides for a two-tier examination of orders pursuant to Articles 7, 14 and 16, but also for a completely independent two-step examination – firstly by the independent coordinating authority in line with Article 26 (2) and secondly by the competent court or another independent administrative authority. We kindly request the Commission to explain the envisaged two-step procedure requiring independence of both authorities involved, especially with the DSA and the TCO Regulation in mind.
- Article 25 (9): We kindly ask the Commission to provide an explanation. We feel that it is hardly feasible that all "competent authorities" are "independent" and "neither seek nor take instructions" as laid down in Article 26 (2) (a) and (d) and that they are not charged with other tasks relating to the combating of child sexual abuse as stipulated in Article 26 (2) (e). Equally important, this is not necessary to achieve the aims of this Regulation. In Germany, most of the reporting processes are carried out via the law enforcement authorities, which are not independent within the meaning of Article 26. Member States should be allowed to designate other suitable competent authorities for individual tasks laid down in the Commission's proposal. With this in mind, Germany believes that Article 25 (9) should be erased.
- Article 26: With the existing national structures in Germany in mind, a two-step procedure requiring independence of both authorities involved (see above) seems hardly feasible and also unnecessary. National law enforcement authorities play a key role during CSAM assessments, a role also reflected by the Commission's proposal. In line with this proven practice, they should therefore be enabled to act as competent authorities, as under the TCO Regulation.

Taking this into consideration, Article 26 (2) (a) and (e) should be erased. Point (d) should be worded as follows:

d) neither seek nor take instructions from any other public authority or any private party in the discharge of tasks pursuant to Articles 7, 14 and 16.

- From Germany's perspective, law enforcement authorities should not be stripped of existing responsibilities, nor should such responsibilities be duplicated.

Section 2

- The investigatory powers as defined in Article 27 are related to sovereign tasks which should be discharged by the national law enforcement authorities. In this context, too, the requirements stipulated in Article 26 (2) should therefore be adjusted.
- The requirements related to the power to require others to provide information as set out in Article 27 (1) (a) are very unspecific ("*may reasonably be aware of information*"). The group of those who may be required to provide information is very broad (*"any other person…*"). Please explain how it is to be ensured that Article 27 (1) (a) and (c) do not circumvent data protection requirements and other legal requirements related to the right to refuse to provide information or give evidence.
- Article 28 (1) (c) provides the power to request a judicial authority to impose a fine. This is not the case with Article 28 (1) (d). Please explain, because we do not see factual reasons for this distinction. In the absence of factual differences, points (c) and (d) should be aligned in this respect.
- Article 29: Considering the far-reaching legal consequences, we assume that the requirements stipulated in paragraph 1 are to be understood cumulatively. This should be clarified in the wording.
- "*Serious harm*" under Article 29 (1) (c) is a general legal term which Germany believes should be specified.
- We ask that the provision of "necessity" be added to the provisions in Article 30.
- In connection with Article 30 (2), we ask the Commission to clarify/specify whether the powers of coordinating authorities (e.g. under Article 27) still apply even if they are subject to a court order at national level. Does Article 30 (2) also cover national rights to refuse to provide information or give evidence?
- Germany welcomes the powers of the coordinating authorities powers provided for in Article 31. We ask the Commission to clarify which articles of part 3 of the DSA continue to apply, taking into account Articles 31 and 32 of the Commission's proposal.
- We ask for more details/clarification regarding Article 32 (1). In what cases is such a notification preferable as opposed to the removal order under Article 14?
- As Germany understands it, the liability privilege of Article 5 of the DSA does not continue to apply in cases where a provider does not voluntarily meet the removal request in accordance with Article 32.
- We also ask the Commission to clarify which tasks/powers the national coordinating authorities are to take on in order to support victims of sexual violence.

Section 3

- We ask the Commission to please explain how, in accordance with Article 33 (2) second subparagraph, the obligations of the CSA Regulation are to be enforced for providers who do not designate a legal representative.
- Article 34: In the Commission's view, to what extent are hotlines to be incorporated into the possibilities for users to report complaints?
- We ask the Commission to provide practical examples of what child-friendly mechanisms should look like in accordance with Article 34 (2).
- We also ask the Commission to specify the penalties provided for in Article 35. In accordance with Article 35 (2), the penalties are not to exceed 6% of the annual income or global turnover. In this respect, the Commission's proposal deviates from other regulations, such as the TCO Regulation, which only provides for 4%.

Section 4

- Article 36: In Germany, CSAM is currently analysed and evaluated by national law enforcement authorities with expertise and skills in this area. Germany believes that synergy effects should be utilised and a doubling up of resources avoided to the greatest extent possible. If law enforcement authorities may not conduct the assessment set out in Article 36 themselves, the coordinating authorities should at least be able to refer to their assessment. The law enforcement authorities are responsible for carrying out the assessment pursuant to Article 36, and the coordinating authorities should at least be able to refer to the law enforcement authorities' assessment.
- In regard to Article 36 (3), Germany considers the assessment of criminal liability an important factor. We ask the Commission to please explain why the requirement set out in paragraph 3 now refers to new CSAM.
- We also ask the Commission to clarify the conditions that make an assessment "complex" according to Article 36 (3).
- Article 39 (2) in conjunction with Recital 58: Germany believes that existing structures should be used, especially ones resulting from the Europol cooperation. As an established communication channel, SIENA (Secure Information Exchange Network Application) offers extensive possibilities for securely exchanging information between Europol, the Member States, EU institutions and external partners, including private parties (secure VPN connection to accredited confidential connection; the Europol National Units and other bodies at state level, etc., are already involved. Closed user groups and bilateral information-sharing are possible).
- According to the Commission, the Draft Regulation forms the legal basis for the processing of personal data. We would appreciate clarification of which rules in section 4 would form the basis for data protection for cross-border data transfers as part of cooperation among Coordinating Authorities (primarily Article 37).
- We also ask for clarification on whether the system for sharing information under Article 39 is to include personal data, and if so, whether the Commission is also of the opinion that, in accordance with Article 6 (3) of the GDPR, a specific legal basis in Union law is required for the data processing.

GREECE

Following our oral interventions in the LEWP meeting on 06.09.2022, we would like to provide to you our written comments on the Chapter III of the proposal of the Regulation for CSA:

General remark

We would like to point out, once again, that the procedures to be provided for in the Regulation under preparation should be as simple and effective as possible, so as to provide the necessary margin of manoeuvre, taking into consideration that online sexual abuse is a dynamic phenomenon that follows the rapid development of technological means and applications.

Moreover, adequate due diligence is essential for ensuring that the procedures to be provided in the said Regulation: a) do not compromise the work and the role of law enforcement authorities, which cannot be replaced by an independent administrative authority and b) do not generate an excessive administrative workload for police authorities.

Moreover, the national coordination authorities should contribute to and assist the work of law enforcement and prosecution authorities.

If an obligation is laid down for the creation of new entities within the Member States, it must be accompanied by adequate financial aid to the Member States for the acquisition of technical means and the staffing of the new entities with highly qualified personnel.

Article 25 Coordinating Authorities for child sexual abuse issues and other competent authorities)

Greece considers that the time limit for the designation of competent authorities responsible for the application and enforcement of the Regulation (two months) is too short and proposes a larger time limit for Member States.

Article 26 (Requirements for Coordinating Authorities)

Greece expresses its concerns about the content of Article 26 (2), which cannot be accepted as presently formulated.

As mentioned by other national delegations during the meeting, this Article places excessive restrictions on the designation of the national coordinating authority, thus making it impossible to give this role to an already existing national authority and creating the obligation to establish a new entity at national level. The Article also entails additional administrative and financial burden for smaller Member States, which will face a major difficulty in implementing the Regulation.

We take the view that the criterion of independence is met with the designation of a judicial or independent administrative authority responsible for the issuance of orders for the detection, removal and banning of child sexual abuse content.

The proposals expressed by some Member States during the meeting as regards the modification of certain provisions along the lines of the TCO Regulation could be considered with a view to reaching a compromise solution.

Finally, we consider that is appropriate to give more flexibility to Member States, by adopting a simpler wording, so as to allow transposition into national laws.

Article 36 (Identification and submission of online child sexual abuse)

We express our reservations about this Article.

With regard to the obligation to submit online child sexual abuse to the EU Centre, we understand that the objective is to include already known child sexual abuse material in the Centre's database, in order to enrich the relevant database and generate indicators.

However, it should be taken into consideration that child sexual abuse material compiled in the file of an ongoing investigation conducted by law enforcement and judicial authorities in the context of the preliminary examination or police investigation measures, such as investigative infiltration, aiming at identifying the perpetrators (as provided for in the Code of Criminal Procedure) may not be revealed to third parties, including these authorities, in line with the principle of confidentiality.

We therefore believe that the provisions of item a) cannot be implemented (from the point of view of the Code of Criminal Procedure) or are of limited application (which must be specified in the said provisions).

We would also like the European Commission to provide concrete information about the use of the information to be provided by the EU Centre, given that the time limit for keeping electronic traces varies among Member States.

Article 39 (General cooperation and information-sharing system)

We support M-S proposals relating to the use of SIENA (a formal channel of communication) in general cooperation and information sharing.

HUNGARY

Hungary fully supports the objectives of the draft regulation; however, we have some general and specific comments regarding its approach on certain important elements.

Chapter III

Our view is that the coordinating authority's remit should be reviewed. Hungary can cover these competences, but not in one organisation. It would also be unwise to codify such a complex organisation at the level of EU regulation, as this approach would generate conflicts of competence and duplication. The tasks of the authorities and the police are mixed up and do not build on each other in a logical way. We want to build on our existing capacities, with appropriate coordination. (Article 25)

Article 26-30 of the draft expects an independent authority as coordinating authority, on the initiative of which another independent authority will have to take a decision, which seems to be an unnecessary duplication. The competences of the coordinating authority include investigative, analytical and evaluative elements. This cannot be done by an independent administrative authority, and the police service should not be burdened with unnecessary coordination and administrative tasks. The possibility of designating other supporting competent authorities is only mentioned in the draft, and then there are no further references to them, so it is not possible to define their role. The system of complex cooperation at national level should not be interfered with in such a deep way, it is proposed to follow the methodology of the TCO.

The title of Articles 31 and 38 should be modified, their substantive consequences should be clarified, and the draft should not touch on criminal procedure issues. These monitoring activities in Article 31 are normally channelled also to the law enforcement task. Article 38 cannot be defined as investigation from criminal procedure point of view.

Article 37 par 1 rules that where the Commission has reasons to suspect that a provider of relevant information society services infringed this Regulation in a manner involving at least three Member States, it may recommend that the Coordinating Authority of establishment assess the matter and take the necessary investigatory and enforcement measures to ensure compliance with this Regulation. We would like to know what is the legal basis and information that allows the Commission to come to such a conclusion, and where is the background to this in this draft.

We try to be as constructive as possible during the negotiations and we will provide our more detailed position within the framework of the discussions within the LEWP-P.

IRELAND

Chapter II

Obligations of providers of relevant information society services to prevent and combat online child sexual abuse

Section 2 Detection obligations

Article 7 Issuance of detection Orders

In general, Ireland has concerns about the complexity of the processes around Detection Orders. Ireland also has concerns that responsibility is being placed on national authorities to take decisions with EU wide consequences without sufficient scope for EU wide consideration.

It would be useful to stress-test different scenarios that may arise in respect of the processes set out in Article 7 to gather the views of MS and other stakeholders. For example, what if a situation arises where different service providers, based in different jurisdictions but offering near-identical services and having available to them identical detection technologies (as provided for/approved by the EU Centre), are subject to different decisions by their host jurisdiction's Coordinating Authorities? I.e. One SP is subject to a Detection Order, and one is not? In other words, how can we ensure consistency across the internal market?

The EU Centre is structured in such a way as to enable the views of all Member States to be represented, through the composition of the Executive Board. This is one way of providing such consistency. The view of the EU Centre as set out in the proposal is only advisory; should there be consideration of some form of resolution mechanism for scenarios where the Coordinating Authority does not agree with the opinion of the EU Centre about whether a Detection Order should be issued?

On a more specific aspect of Article 7, Ireland's understanding is that the Coordinating Authority (CA) will base its "preliminary view" that the conditions of paragraph 4 have been met, as referred to in 7(3), on the risk reporting under Article 5. It is our further understanding that this preliminary view must include an assessment of the factors set out in 7(4) first sub-paragraph (b) – the question of the balance of fundamental rights. The CA cannot make an assessment on this matter without having a clear idea of the detection technologies available to Service Providers. But on matters of technology the CA will depend greatly on the views of the EU Centre, in line with 66(6)(a) and 57(1)(g). And the views of the EU Centre will not be available until the CA has already decided on its preliminary view. So we have a circular process. Perhaps the CA is intended to seek information on 7(4) first sub-paragraph (b) from the Centre under 7(2)? In which case the CA will be seeking information from the Centre in order to allow it to formulate a preliminary view in order to allow it to seek information from the Centre on which it will partially base its final view.

This is one example of the complexity of the processes set out. Ireland will continue to seek ways to improve and simplify these processes.

General comments on judicial authority or independent administrative authority

The Commission has stated that the judicial authority or independent administrative authority – the second competent authority – should be a court, or court-like body, and we acknowledge the Commission explanation that the second competent authority would provide an extra safeguard, and the references to CJEU case-law.

From an implementation point of view, we have concerns about having to create two separate new bodies to undertake the same decision-making exercise for every Detection Order, Removal Order and Blocking Order that is issued. And we are concerned that the expertise in relation to online child sexual abuse and especially in terms of the technical knowledge to assess the measures that the service providers have taken and the technology that the Centre has developed will have to be developed in relation to both the Coordinating Authority and the second competent authority.

And we note that the Coordinating Authority is already required to be independent, to be impartial, to be objective, to be free from influence – these are all laid out in Article 26. And it is already required to take into account the views of the Data Protection Authority and the service provider and the EU Centre, under Article 7.

We continue to have misgivings about the lack of detail in the draft Regulation about the major role of the second competent authority in the procedures set out. By contrast, the Coordinating Authority gets a 14 Article Chapter.

For example, in 7(8) the draft Regulation states:

The Coordinating Authority of establishment when requesting the issuance of detection orders, and the competent judicial or independent administrative authority when issuing the detection order, shall target and specify it in such a manner that the negative consequences referred to in paragraph 4, first subparagraph, point (b), remain limited to what is strictly necessary to effectively address the significant risk referred to in point (a) thereof.

How is it intended to give the second competent authority the capacity to "target and specify it"? While we can understand the concept of giving judicial approval to the CA's decision to issue a Detection Order, we cannot envisage a circumstance where an Irish court could take the responsibility for amending the substance of a Detection Order which has been based on a level of expertise that it is not reasonable to expect a court to have. The alternative is to create a new, quasi-judicial independent administrative authority which does have the expertise to amend a Detection Order as part of its consideration – the concerns set out above in relation to creating and resourcing two new bodies to carry out the same process would arise here.

At a minimum therefore we would ask for the deletion of the words "and the competent judicial or independent administrative authority when issuing the detection order" in the extract above. But if judicial/quasi-judicial approval is to be required for the issuance of Detection Orders, a better solution would be to define the role of the second competent authority.

For example, the role of the second competent authority could be to establish that the Coordinating Authority has fulfilled its responsibilities correctly, i.e. the CA has acted in accordance with the Regulation and national law, has taken into account all factors, especially the balance of fundamental rights, etc. But the role of the second competent authority would not be to consider all the same factors as the CA. Given that service providers can challenge the issuance of a DO in front of the courts as soon as it is issued anyway, this seems like a more proportionate system of judicial oversight.

We continue to scrutinise all references to national authorities.

Article 8 Additional rules regarding detection orders

We are concerned that possibility for providers of interpersonal messaging services to implement voluntary detection measures will no longer exist. The Commission has stated that it is not legally possible to provide a legal basis in this Regulation for those measures. We would like further information on this and the opportunity to explore whether there are any other options.

Section 3 Reporting obligations

Article 12 Reporting obligations

Ireland supports the provision in Article 12(3). We know that making reporting easier can make a real difference. And that it can benefit from co-design with stakeholders, including children. So can we be more prescriptive here, perhaps by including a process to ensure there is an industry standard for service providers?

Article 14 Removal Orders

SE asked about whether removal orders have a cross-border effect? Commission reply was that these are not cross-border Removal Orders, they are removal at national level with application for whole of EU. We understand this to mean that, under this Regulation, a MS's authorities can only seek the removal of material that is hosted by service providers under their own jurisdiction. What if a MS wishes to have material removed that is hosted by a SP in a different jurisdiction? Is there no facility under the Regulation for this to happen? It is likely that there would be agreement between MS on the need for removal of such material. Could the EU Centre play a role in facilitating this?

We support comments from other MS that question why it is necessary to have the second competent authority issue Removal Orders, in contrast with other legal instruments (e.g. TCO removal order). We do not think a desire for consistency between the procedures that apply to Detection, Removal and Blocking Orders is sufficient justification. The Regulation proposes very intensive procedures for Detection Orders because of the particular concerns around fundamental rights – these very intensive procedures will complicate implementation and have major implications for Member States when it comes to resources. We should not then simply replicate them elsewhere if it is not necessary to do so.

NL asked about the extension of the period during which the service provider may not disclose information in relation to removal. The Commission stated that only the second competent authority can decide to extend the period, but it must do so on the basis of an application by other national authorities. (This should be set out more clearly in the text.) We question the necessity of requiring the second competent authority to make this decision – it should be possible for the investigating authorities to do so. If the request has to be made to the second competent authority, there should be scope to request a longer extension, or repeat extensions.

Section 6 Additional Provisions

Article 20 Victims' right to information

Ireland supports the request by other Member States to include parents/carers to list of those who can make a request for information.

Article 22 Preservation of information

Ireland continues to express the concern of our national police service that we preserve a clear chain of evidence in order to enable successful prosecutions.

We have two main proposals to make in this regard:

1. Where this is possible, service providers should be required as part of the reporting process to identify the content moderator who has viewed the CSAM being reported and to make this person available to law enforcement agencies for the purposes of providing a statement.
2. Service providers shall, in respect of all CSAM reported, use only the specific hashing procedures directed by the EU Centre and shall retain all hashes on record for a period to be determined by the Centre.

As discussed at the LEWP 6 September, we have asked our police colleagues to provide a case study to demonstrate the evidentiary requirements of the Irish justice system and as requested, we will forward this case study, as requested by the Presidency, as soon as we receive it.

We propose the following additional paragraphs in article 22, or in a separate article, which would address the concerns of our police force:

3. Providers of hosting services and providers of interpersonal communications services shall:

(a) where possible, identify the content moderator who has viewed the child sexual abuse material being reported, or any other such person moderating content on behalf of the provider as part of the reporting process.

(b) make any such person available to Law Enforcement Authorities for the purpose of obtaining a statement regarding this involvement in the case for so long as that person is in their employment, or the employment of the entity contracted to moderate content on their behalf.

4. Providers of hosting services and providers of interpersonal communications services shall, in respect of all child abuse material reported, use only the specific hashing program and hashing process directed by the EU centre and shall retain all hashes generated on record for a period to be determined by the EU centre.

As previously stated, detailed process flow maps would be beneficial to clarify the steps in this process.

Finally, we propose deletion of the last part of sub-paragraph 22(1)(e) that is, the words "insofar as the content data and other data relate to a report that the provider has submitted to the EU Centre pursuant to Article 12".

Chapter III Supervision, enforcement and cooperation

Section 1 Coordinating Authorities for child sexual abuse issues

Article 25 Coordinating Authorities for child sexual abuse issues and other competent authorities

With reference to the timeframe of two months from entry into force of the regulation (para 1), for designation of one or more competent authorities, we believe that this is an unrealistic period of time to meet this requirement

Article 26 Requirements for Coordinating Authorities

With regards to para 2, we agree with the provisions contained in 2(a), (b). However we question the necessity of 2 (d) as the essence is already captures in 2(a) and 2(b).

We have concerns about 2(c) as we believe "free from external influences, whether direct or indirect", is too open to interpretation.

With regard to Article 26(2)(e), we believe that the activities of the Coordinating Authorities should not be restricted in this manner and that Member States should be free to assign additional related responsibilities, as they see fit.

Section 2 Powers of coordinating Authorities

Article 28 Enforcement powers & Article 29 Additional enforcement powers

In article 28, para 1 (e) and in article 29, para 1 (c), what is considered as the definition of "serious harm"?

In what type of scenario does the CION envisage applying the provision set out in article 29, para 3?

Section 3 Other provisions on enforcement

Article 34 Right of users of the service to lodge a complaint

Ireland continues to have a scrutiny reservation on para 3. We seek further clarification on the meaning of "where appropriate", in the context of onward transmission of a complaint to the Coordinating Authority of Establishment

What checklist/template/EU Centre guidance will be provided to ensure that assessments conducted by Coordinating Authorities, will be completed in a consistent manner in all Member States? We believe that a clear, documented structure for such assessments and associated report generation is crucial.

Is there a provision for the investigating Coordinating Authority to make a recommendation on the assessment report that will be transmitted?

The challenge of language for the transmission of complaints is a matter that requires clarification. This is of particular importance where a complaint is transmitted to a Member State that conducts business in another language.

There is a need for consistent and rigorous application of the regulation to ensure only valid complaints are transmitted to the Coordinating Authority of Establishment.

Perhaps further detail on these matters could be provided for in an annex?

We also seek further clarification on role the Commission will play in dealing with complaints made in respect of VLOPs, in the context of the provisions of the DSA.

Section 4 Cooperation

Article 38 Joint Investigations

We seek further clarification on this article. Which Coordinating Authority takes the lead in the investigation? For example, if three Coordinating Authorities decide to investigate a service provider that is established in another (fourth) Member State, which Member State takes the lead? One of the original three or the Member state of establishment?

In any instance of joint investigations, what role is envisaged for the Coordinating Authority of establishment?

How would other agencies support the investigation process?

When is the EU Centre considered the "coordinator" (para 1)?

What channel of communication will be utilized by the investigating authorities?

We suggest that this article would benefit from detailed process flow diagrams.

LATVIA

LV maintains **general scrutiny reservation**.

PRELIMINARY COMMENTS

Article 14 "Removal orders" and Article 16 "Blocking orders"

LV takes note of additional clarifications provided by the COM at the last LEWP-P meeting regarding the impact of detection orders, removal orders and blocking orders on the interests and fundamental rights of all users. Bearing in mind that detection orders have the greatest impact on privacy and fundamental rights, LV suggests to **further explore the feasibility of a simplified approach** regarding the issuance of removal orders and blocking orders **by deleting the second step** (role of judicial authorities or independent administrative authorities).

Article 25 "Coordinating Authorities for child sexual abuse issues and other competent authorities"

LV **takes note** of the clarifications provided by the COM regarding the deadline laid down in paragraph 1 of this Article for Member States to designate competent authorities and Coordinating Authorities (two months from the date of entry into force of the CSA Regulation) provided at the last LEWP-P meeting. Nevertheless, LV **still considers** that the relevant deadline is **too short**. In this regard, LV **shares the views** of the BE delegation that the designation of the relevant national authorities will require **amendments to the national legislation** that is a time-consuming process. In view of this, LV **suggests** to follow **the rationale of the agreed DSA**[1], where Member States shall designate the Digital Services Coordinators within 15 months from the date of entry into force of the DSA (Article 38(3)) that corresponds to the deadline for the DSA application, and determine that the relevant national authorities shall be designated **till the application of the CSA Regulation**.

Article 27 "Investigatory powers"

As a part of the alignment of the CSA Regulation with the agreed DSA, LV **suggests** adding a reference to "***or request a judicial authority in their Member State to order"*** after *"the power to carry out"* in point (b) of paragraph 1 of this Article (identical reference is included in point (b) of paragraph (1) of Article 41 of the agreed DSA).

Article 34 "Right of users of the service to lodge a complaint"

LV **would like to clarify**, whether in accordance with paragraph 2 of this Article complaints can be submitted by children themselves or Member States can determine that they are submitted by **children's legal representatives** (in LV, children do not have legal capacity). LV suggests to further clarify this Article in recitals.

[1]Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC (COM (2020) 825 final).

Article 35 "Penalties"

LV **would like to clarify:**

- (1) the interpretation of paragraphs 2-4 of this Article in cases where providers of relevant information society services did not have annual income or global turnover in the preceding business year (for instance, they commenced their activities in the year, when the infringements of the obligations pursuant to the CSA Regulation happened);
- (2) for which specific infringements of obligations pursuant to the CSA Regulation should be laid down penalties in accordance with paragraphs 2 and 4 of this Article;
- (3) whether the periodic penalty payment specified in paragraph 4 of this Article should be read together with the amount of penalty provided for in paragraph 2 of this Article.

Article 36 "Identification and submission of online child sexual abuse"

LV **considers** that a reference to ***"the first subparagraph"*** in paragraph 4 of this Article should be replaced by a reference to ***"paragraph 3"***. LV **understands** that the EU Centre shall be informed on the cases referred to in paragraph 4 of this Article within one month from the date of reception of the report of the dissemination of new child sexual abuse material or of the solicitation of children forwarded to Member States by the EU Centre or, where the assessment is particularly complex, two months from that date.

LITHUANIA

Following the LEWP meeting on 6 September 2022, regarding the COM proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse, document No. 9068/22, Lithuania would like to pay attention on Joint EDPS-EDPB opinion 04/2022 on the Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse, adopted on 28 July 2022, to the issues discussed in points 103 and 105, which proposes to clearly establish/separate the relationship between the Coordination Authority and the Competent Judicial Authorities or Independent Administrative Authority, competences, etc.. In addition, talking about the cooperation mechanism, it is also offered to discuss such situations when the Coordinating Authority receives a complaint related to the processing of personal data (for example, it is forwarded by the Personal Data Protection Supervisory Authority).

MALTA

Chapter 3:

As a general comment, Malta supports other Member States' concerns on the difficulties which may arise for existing State entities if a newly independent Coordinating Authority is established. More specifically, in regard to the INHOPE hotlines, the Maltese entity in charge of the local hotline has expressed concern that it may not be able to continue administering it, should it be designated as responsible for the application and enforcement of this proposed Regulation and should the limiting requirements in article 26 remain.

Although Member States are free to designate whichever authority they see fit, the requirements will indirectly exacerbate the already limited financial and human resources which are allocated towards addressing child sexual abuse in small States. Restricting Member States from combining entities according to their existing and functioning systems, can subsequently cancel out the INHOPE hotlines in view that Member States would react to avoid duplication of work and to shift enough human resources to the needs of the Coordinating Authority.

- **Section 1 – Coordinating Authorities for child sexual abuse issues:**

Article 25 (1) - Coordinating Authorities for child sexual abuse issues and other competent authorities

Without prejudice to the previous comment, Malta considers that the timeframe of two months to designate one or more competent authorities is too short given that, in comparison, the Digital Services Act as a horizontal instrument provides for a longer timeframe to designate Digital Services Coordinators. While we note the explanation provided by the Commission in the last LEWP meeting, this short time frame still remains a concern for the Maltese authorities.

Article 25 (4)

Malta considers that the timeframe of one week to notify is too short and recommends that this is increased to one month.

Article 25 (7) and (8)

Malta welcomes the assistance to be provided by the EU Centre to coordinating authorities. Malta would like further clarification on what the assistance will constitute and how this will be proportionately given to all Member States.

Article 26 – Requirements for Coordinating Authorities

At this stage, Malta reiterates that the requirements are overly restrictive, disallowing for established national structures to be designated as competent authorities. This will result in new structures having to be created with ensuing duplication of work requiring finite financial and human resources. Points (a) and (e) of sub article 2 in particular effectively stop any existing structure (such as entities tasked with the INHOPE hotlines) which may be already functioning in this area and providing an important role from being considered. Furthermore, the requirements, if maintained, may disbar entities in the field to continue their operations effectively (such as entities conducting activities via affiliation with law enforcement), by requiring the restructuring of these entities to be established according to such requirements.

- **Section 2 – Powers of Coordinating Authorities:**

Article 27 and 28 – Investigatory & enforcement powers

The investigatory and enforcement powers are a welcome addition in view that the tasks under the proposed Regulation can be effectively extended to civil personnel, supporting law enforcement. It remains unclear however, how the investigatory and enforcement powers of the Coordinating Authority will interact with law enforcement. Malta would like clarification (and if possible, with concrete examples), whether it is envisaged by the Commission that these powers may be delegated also to other competent authorities

Article 32 - Notification of known child sexual abuse material

Malta would like to request clarification on the rationale behind hosting service providers voluntarily removing or disabling access to known child sexual abuse material. If, the provider does not do so, what may the unintended consequences to this be?

- **Section 3 - Other Provisions on enforcement:**

Article 34 - Right of users of the service to lodge a complaint

Malta would like to ask and understand under which cases does the Commission envisage that the Coordinating Authority transmits a complaint which would not fall under its purview? Malta would appreciate concrete information in this regard.

- **Section 4 – Cooperation:**

Article 36 (1) (a) – Identification and submission of online child sexual abuse

Malta considers that the diligence assessment needs to be largely carried out by the Coordinating Authority and/or by other competent authorities delegated with specific tasks. The role of the judicial competent authority/court or independent administrative authority would involve in ascertaining at face value whether the correct procedure was followed. Therefore, Malta suggests that the inclusion of the court/competent judicial authority or other independent authorities is either removed from being associated with the diligence assessment or made more specific. This will effectively reduce the possible burden of having to redo the work done by the Coordinating Authority and/or other competent authorities.

Article 36 (3) and (4)

It is understood that in this case the diligence assessment is not being done by the Coordinating Authority. In view that specific tasks may be delegated to other competent authorities, can the Commission clarify which such authorities might be, as paragraph 3, as is, would indicate that such an assessment would have to be carried out by law enforcement authorities. What is then, the difference with the diligence assessment in para 1 point a?

Article 38 – Joint investigations

Malta would like to ask whether Coordinating Authorities in receipt of the results of joint investigations will be able to share such findings with other competent authorities and law enforcement authorities.

THE NETHERLANDS

The Netherlands acknowledges the problem of Child Sexual Abuse Material (CSAM) and the urgency to prevent and fight child sexual abuse. In recent years, the Netherlands has made great efforts to reduce the amount of CSAM on Dutch networks. The Netherlands is a major proponent of a joint European approach to combat child sexual abuse material, particularly given the fact that the Internet so easily crosses national boundaries. We are therefore pleased that the European Commission has published a proposal that should enable the Member States to fight child sexual abuse more effectively and jointly, all across Europe. We applaud the efforts of the Commission and we welcome the proposal, although we also have various questions and concerns. The Netherlands appreciates the possibility to ask questions about the proposal and looks forward to the Commission's responses.

General remarks

The Netherlands supports the proposal to designate a national Coordinating Authority responsible for the implementation and enforcement of the CSAM Regulation in each Member State. The Netherlands endorses the importance of a national authority that is not hierarchically subordinated to any political office holder, so that independent judgement is guaranteed and the possibility of government censorship is prevented. The Netherlands proposes that Member States should have the ability to assign the Coordinating Authority to the same authority that monitors compliance with the TCO Regulation. This would increase efficiency.

The structure chosen in the CSAM Regulation differs from the TCO Regulation. According to the TCO Regulation, the authority may issue a removal order, whereas in the CSAM Regulation, a Coordinating Authority submits a request to a judicial or independent administrative authority to issue a detection or removal order.

The Netherlands would like to propose considerations of both the power of the Coordinating Authority as well as cooperation with the judicial authority or independent administrative authority for a removal order. It might be worth examining whether a distinction could be made in the procedure with the judicial authority or independent administrative authority on the grounds of secrecy of telecommunications. Perhaps a distinction could be made between cases in which secrecy of telecommunications does or does not apply. If secrecy of telecommunications is not applicable, the procedure under the TCO Regulation could be followed. This means that a Coordinating Authority itself can issue a removal order without the intervention of a judicial authority or independent administrative authority. This allows for swift and efficient action. If secrecy of telecommunications does apply, a judicial authority or independent administrative authority would have to issue a removal order. In this way, sufficient guarantees with an extra assessment by a judicial authority or independent administrative authority can be made.

Questions art. 25 – art. 39

The Netherlands would appreciate it, if the Commission can clarify on some matters regarding the following articles.

Article 26

(2)
The Netherlands suggests that Member States should have the ability to assign the Coordinating Authority to the same authority that monitors compliance with the TCO Regulation. This would increase efficiency.

- Can the Committee please clarify if paragraph 2 allows Member States to assign the tasks and powers of the Coordinating Authority(ies) to the same authority that monitors compliance with the TCO Regulation?
- Can the Committee please clarify if paragraph 2 still allows for some form of accountability to Parliament, specifically financially?
- The Netherlands would like to learn more about why the formulation on the independence of the Coordinating Authority in the CSAM Regulation differs from that of the TCO Regulations. Article 26 of the CSA Regulation reiterates that the Coordinating Authority must be independent and impartial, which makes the Netherlands wonder why a distinction from the TCO Regulation is present. Should the Coordinating Authority be more independent than the authority under the TCO Regulation? And is this really necessary?

Article 27

- In the TCO Regulation, the removal order is cross-border, but in the CSAM Regulation, the removal order only applies to providers established in Member States. Why did the Commission choose this difference between the TCO Regulation and the CSAM Regulation?

- **(1)(b)**
  Can the Commission explain what is meant by 'on-site inspection'? Does this mean that the Coordinating Authority will visit datacenters for an investigation? Or is it meant to be an investigation on the Internet?

- **(1)(c)**
  These are extensive special investigative powers which are subject to strong safeguards. Can the Commission please clarify on how the Coordinating Authority will be able to meet these safeguards? As far as the Netherlands is concerned, this is a task for the enforcement authorities.

- **(2)**
  This is a broad provision. The word 'investigative' also indicates that only criminal investigative powers can be used. Can the Commission please clarify if this means that only criminal investigative powers can be used?

Article 28

- **(1)(b)**
  This article states that the Coordinating Authority has the power to require the termination of infringements of this Regulation and, where appropriate, to impose corrective measures which are proportionate to the infringement and necessary to bring it to an end.

- Does this mean that the Coordinating Authority itself has the power to request providers to stop an infringement or that it can request the judicial authority or independent administrative authority to do so? If the former is true, how does this relate to the system in which the Coordinating Authority requests the judicial or independent administrative authority to issue a removal order?
- Could the Commission please provide some examples of proportionate remedies, as referred to in paragraph 1(b)?

- **(1)(c)(d)**
- Can the Commission explain when a fine or periodic penalty payment may be imposed? What are the considerations?
- Does the CSAM regulation contain sanction for repeated offences?
- Article 28(1)(c) requires that Coordinating Authorities have the power to impose fines or to request a judicial authority or independent administrative authority in their Member State to impose fines. According to the formulation in Article 28(1)(d), it seems that the power to impose a penalty payment belongs to the Coordinating Authority itself and not to a judicial or independent administrative authority. Can the Commission please clarify this difference?

- **(1)(e)**
- Could the Commission please provide some examples of 'interim measures'?
- Can the Commission please clarify on what is meant by 'serious harm'?

- **(2)**
- Could the Commission please specify what is meant by 'grant additional enforcement powers'?

- **(3)**
- Could the Commission please specify the scope of these enforcement powers?

Article 31

Article 31 refers to the power of the Coordinating Authority to conduct searches of publicly accessible material on hosting services. Can the Commission confirm that the Coordinating Authority's power to conduct searches to detect the dissemination of known or new CSAM extends only to the public Internet and not to restricted groups or private communications?

Article 32

The Netherlands would like to suggest the idea to expand this paragraph with a description of the follow-up procedure concerning the removal order if the receiving service provider decides not to use voluntary removal or voluntary inaccessibility?

Article 33

- **(2)**

- Article 33, paragraph 2 states that if a provider did not appoint a legal representative, all Member States have jurisdiction. Does this apply only to providers of relevant information society services who have an establishment outside the European Union?
- Article 33(2) states that when a Member State decides to execute jurisdiction under this subparagraph it shall inform all other Member States. Can or should the EU Centre play a coordinating role in this kind of situation? Should the EU Centre be added here as an institution to be informed?

Article 35

- **(1)**

  Article 35 is relatively similar to Article 18 of the TCO Regulation.

  However, a difference is that the TCO Regulation does not specify a maximum amount for financial penalties, except for repeated infringements (in case of a systematic or persistent infringement, a financial penalty of up to 4% of the global turnover of the hosting service provider in the preceding financial year may be imposed).

- The CSAM Regulation does specify maximum amounts for the financial penalties. These amounts are higher than in the TCO Regulation. Can the Commission please clarify this difference?
- Article 35 contains no provision for persistent systematic non-compliance with the CSAM Regulation; can the Commission please explain this decision?

Article 36

- **(1)(b)**

- Does a Coordinating Authority have jurisdiction if a provider does not offer services in the Union?

- **(3)**

- If new CSAM is involved, it will become part of a criminal investigation (to get children out of acute abusive situations or to track down perpetrators). This will take time. It is of utmost importance that reports to the EU Centre do not interfere with an ongoing investigations.

Article 37

- **(1)**

- Article 37, paragraph 1 states that when a Coordinating Authority other than the Coordinating Authority of establishment has reason to suspect a provider of relevant services infringe the CSAM Regulation, it may request the Coordinating Authority of establishment assessing the case. Why does this request does not go through the EU centre?

- **(4)**

- If a requesting Coordinating Authority has the opinion that insufficient action has been taken by the receiving Coordinating Authority, what would be the follow-up procedure?

Article 38

- **(2)**

  The participating Coordinating Authorities shall make the results of the joint investigations available to other Coordinating Authorities, the Commission and the EU Centre, through the system established in accordance with Article 39(2), for the fulfillment of their respective tasks under this Regulation. Can the Commission please clarify on why 'the Commission' is included in this list?

Article 39

- **(2)**

- Why is the Commission included in this list? Could the sharing of information with the Commission be more efficient (e.g. the obligation to report to the Commission once a year on certain relevant aspects) instead of including it in all information management and information sharing?

POLAND

1. Poland would like to thank the Presidency for the opportunity to submit written comments. However, we would like to maintain the scrutiny reservation and underline that we will submit further detailed comments in the course of the upcoming negotiations, especially when discussing the individual articles.
2. Poland supports actions taken to ensure the safety of children, also in cyberspace.
3. We stand for common harmonized principles to prevent and combat child sexual abuse in cyberspace. However, the proposal presented by the European Commission raises doubts as to the solutions which, in Poland's opinion, may violate the right to privacy of citizens and propose tools that may turn out to be ineffective in relation to the intended goals.
4. As regards Chapter III, we are of the opinion that the proposed regulation need to be carefully reviewed, as the proposal of Coordinating Authorities for child sexual abuse issues is a complex one.
5. Looking at the current wording of the provisions of the draft regulation proposed by the European Commission in this regard, i.e. the creation of a coordinating authority, it seems that this would result in the need to establish a completely new independent institution on the national level, and not simply to designate an existing one. In order to ensure that the Coordinating Authority shall act with complete independence (Art. 26 para. 2 a – e), in principle, a completely new structure would have to be established with a number of powers vested in, for example, law enforcement authorities (such as the Police, the Public Prosecutor's Office), courts or other institutions. These obligations and competences result also from the subsequent articles of Chapter III, where the tasks and powers of the coordinating body are specified. From a strictly organizational point of view, in our opinion, this would be the creation of a new bureaucratic institution.
6. In this regard, we propose that these articles should be carefully revised and should be appropriately modified, e.g. by considering establishing a coordinating body of an already existing institution.
7. In addition, the establishment of a new independent institution would involve not only organizational and technical issues (premises, staff, financial resources, etc.), but with significant changes in national regulations, which would include a number of laws and lower level acts.
8. As regards Art. 27 (Investigatory powers) from our perspective, the proposed investigatory powers enter the scope of competences of law enforcement authorities, i.e. proposals of conducting investigations by the coordinating authority. E.g. para. 1 a) - information obtained by the coordinating body can and will often be telecommunications data, i.e. sensitive data, such as personal data of users, for which they can be obtained by law enforcement agencies which are authorized and act in compliance with the proper procedures, or as part of operational activities or pre-trial proceedings. As regards para. 1 b) - concerning on-the-spot checks of suppliers: this proposal seems to be similar to searching premises and securing evidence in an ongoing criminal procedure. In turn, para. 1 c) that gives power to ask any member of staff or representative of the providers seems to be a competence similar to questioning a person as a witness in connection with the case.

9. It should also be emphasized that the rules of cooperation between the Coordinating Authority and the local INHOPE hotline, such as Dyżurnet.pl, should be agreed upon. This thread is treated marginally throughout the regulation. Reports on the existence of known child sexual abuse material on their hosting provider's services may also come from your local hotline. The role of the hotline is to receive reports from cyberspace users (public reporting), which is a key element of the environment in which the Coordinating Authority is also to function. It is not proper to divide into "public" and "private reporting", since both processes relate to the same dimension, i.e. cyberspace.

10. According to Article 36, Member States will be required to transmit to the Centre elements of materials and transcripts of interviews which the coordinating authorities or the competent judicial or other independent administrative authorities of the Member State have recognised as CSAM. It should be noted that such material may contain personal data and that this situation is not addressed by Article 36. It is necessary to regulate this situation either by specifying that such data should be removed from these materials or by regulating the protection of such data.

PORTUGAL

Following PT's request to ask for the European Agency for Fundamental Rights understanding on the proposal in accordance with its statement during the JHA of 11 July, PT would like to thank the PCY for its commitment in this regard and for the Commission's support.

Article 25

Concerning paragraph (1) PT considers the deadline for appointing the authorities too short.

It draws attention to the understanding of the EDPD - EDPS of 28th of July, which advocates better coordination between the coordinating authorities and the national data protection authorities.

In our opinion, children should be involved in this process, especially since they are the main users of the means used by the perpetrators to commit the crime. They are the ones who create and suppress trends, they are the ones who are the target of protection and education measures. They cannot and must not fail to be heard throughout this process, in accordance with the Child Rights European Strategy and with Article 24 of the Charter of Fundamental Rights of the European Union stating that: "Children (...) may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity."

Article 26

PT would like to highlight the costs that will impend for small countries of the proposed coordinating authorities. Therefore, we would welcome a different solution.

Concerning paragraph (e) PT considers that it would be difficult to articulate paragraph (e) of this article with the nomination of previous existent entities, for example regarding the possibility of accumulation with DSA functions.

PT delegation does not consider that paragraphs (4) and (5) are sufficient.

We propose that all people involved in this process, from providers to coordinating authorities should be expressly required to have appropriate staffing, duly prepared and that it should be ensured that the workers have not been convicted of acts of sexual exploitation or sexual abuse of children.

Article 30

We would welcome the introduction of parameters that could help national institutions to densify the concept of "*serious harm*".

Articles 30 and 31

PT wishes to note that the proposal on violence against women and domestic violence, currently under negotiation, contains provisions allowing for interim court orders for the removal of content harmful to children. It is considered that all means aimed at protecting the victim are welcome, but that their dispersion can sometimes underuse them and above all cause synergies to be missed. Shouldn't the national coordination authority be aware of these decisions in order to exercise its powers? For example, could the existence of final decisions issued under that instrument be used as an indicator for risk assessment purposes?

PT does not foresee the reason of article 31 as it stands now. We consider that it would be more appropriate to insert the text in a recital.

SLOVAKIA

General remarks

The Slovak Republic recalls its **general scrutiny reservation** on the proposal as the national processes of examining the proposal have not yet been finalised. The following comments are to be regarded as preliminary.

In general, we support the aim of the proposal and agree that clear and uniform rules to address the misuse of relevant information society services for online child sexual abuse in the internal market are necessary. In the course of future negotiations, Slovakia will seek clarifications and amendments of the proposal with the goal of ensuring that the proposed institutional framework is logical, efficient, effective in terms of achieving a real progress in tackling the increasing levels of dissemination of CSAM while streamlining the it with existing mechanisms at national and international level, avoiding the creation of unnecessary administrative burden and duplication of tasks.

Article 25

- Para 1: We agree with the view expressed by several MS that the **timeframe for designation of one or more competent authorities** as responsible for the application and enforcement of this Regulation being **two months** from the date of entry into force of this Regulation **is insufficient**. As it is clarified in Recital 43, the Coordinating Authority may be an existing or newly established authority, subject to the rather onerous requirements regarding the independence of these Coordinating Authorities as laid down in Article 26. It is clear that the establishment of a new authority, endowing an existing authority with the powers necessary to implement this Regulation or the setting up of a network of cooperating national authorities requires significant legislative work on the part of the MS, even given the overlap between the tasks and powers of the proposed Coordinating Authority and the Digital Services Coordinator to be established under the Digital Services Act (being a horizontal instrument only). We recall that in the case of designation of the Digital Services Coordinator, the timeframe was agreed at 15 months from the date of entry of the DSA.

Article 26

- Paras 1, 4: In relation to obligation to ensure adequate **human resources**, could the COM provide further guidance on the envisaged number and qualification of the staff and whether such positions require **security clearance**? Given the nature of the tasks, i.e. coming into contact with CSAM and the corresponding level of risk, would it not be appropriate to also regulate the matter of security clearance in this Regulation?

- Para 2: While Slovakia heard the explanation of COM for the need of **complete independence of the CAs** given the fundamental rights considerations related to detection orders, we nevertheless believe there is room for a **higher level of flexibility** and further discussions are needed (as it is the case that a few other MS share similar concerns), particularly with respect to letters a), d) and e). As the proposal stands, these bodies are to have a primarily coordinating role and their requests for issuance of the requests in question are to be decided upon by judicial authorities/independent administrative authorities. We consider it necessary to clarify what kind of instructions the CAs should not take from public authorities, especially with respect to instructions related to individual criminal proceedings. The envisaged tasks of the CAs seem to be closely intertwined with those of other public authorities/EU agencies. There is a need for careful case-by-case examination of where the requirement of full independent status is justified with the view of limiting the scope of this requirement proposal accordingly, making it more targeted.
- In relation to Art 25: It seems to us that the intention of the proposal as a whole is that whenever a reference to Coordinating Authority is made, this is to be by analogy understood as to also include the other competent authorities that may be designated under Art 25 (except for the CA's contact point function). Upon literal reading of Art 26, however, it seems that the requirements of independence relate to the CAs only and not to other competent authorities. Could the COM please clarify, **whether in case MS designate several competent authorities, will all of them be subject to the requirements of Art 26** (i.e. none of them could be another public authority)?

Article 31

Slovakia has concerns about the possibility to implement this provision in practice, given the high level of technical knowledge necessary.

Article 36

- Para 1: Could the COM provide further guidance on **how the envisaged reporting system is meant to work in practice**, i.e. how the CAs are to receive CSAM at national level? It seems that the matter is left to national regulation, yet could the COM elaborate on its intention – will the reporting be done by the courts, the prosecutor's office, the police? Does it include material that was seized during house searches? We also point out that the CA will need to be given powers to receive and store data for this purpose, which also raises concerns.

SLOVENIA

Article 20 - Victims' right to be informed - As it concerns children (some of them are very young), in most cases they will not ask for the information themselves, but their legal representatives. In our opinion, it is necessary to determine this already in paragraph 1 of Article 20.

Article 21. – The same as in Article 20.

CHAPTER III - From Article 25 onwards - Coordinating bodies for the fight against sexual abuse of children

A Member State may appoint several competent authorities in addition to the coordinating authority. The Regulation clearly states the conditions for the establishment of such an independent body, as well as the powers of this body, but it is not entirely clear who such a body will be. Since it is difficult to imagine who such an authority could be, it is also not possible to fully comment on the conditions and powers or tasks of this authority.

Article 26 states that coordinating bodies perform tasks and exercise powers completely independently. In paragraph 2, independence is specifically defined, and it is specifically defined that the coordinating body is not in charge of tasks related to the prevention of sexual abuse of children or the fight against it... This raises the question of what knowledge and experience such a coordinating body will have and how it will functioned.

Article 31. - The coordination body is authorized to search publicly available data in the context of hosting services in order to detect CSAM when necessary to check if the providers comply with the obligations. The question here is whether such a coordinating body has the right to make such an assessment and to search for such material, which is the work of law enforcement agencies?

Article 32 - The coordination body informs the provider about already known CSAM and requests them to remove this material at their own discretion or disable access. We do not understand the sentence to require them to remove or enable at their own discretion. This must be mandatory, otherwise there is no requirement.

Article 35. – this article defines penalties. In this regard, we have a concern about "Ne bis in idem", not twice in the same matter. Namely, a certain violation by the provider when it comes to child sexual abuse material can be a criminal offense (e.g. assisting in the commission of a crime, participating in a crime, helping the perpetrator after the commission of a crime...). To what extent will the person responsible for this act receive a punishment according to the regulation, then we will not be able to prosecute him criminally, if of course he is the perpetrator of the crime. We propose to add that when a violation is suspected of committing a crime, national authorities take action in accordance with national criminal law.

Article 38. - as law enforcement authorities, it is difficult for us to comment on which powers the coordinating authorities should have. In this article and elsewhere, there are some tasks that may already be within the competence of law enforcement authorities and only within their competence. Especially regarding CSAM detection.

CHAPTER IV

Article 42 - in our opinion, the EU Center's headquarters must be decided by the member states.

Article 48. - Notification - The EU Center shall notify Europol and the law enforcement authorities of the Member State responsible for the investigation. In Article 48, it should be possible for the Member State or the law enforcement authorities of the Member State that received such a report to inform the EU Center about a possible false hit. Mainly due to different legislation in the member states, it can happen that something is illegal in one country and legal in another.

Paragraph 6 of Article 48 states that, at the request of the competent law enforcement authority of the member state, the EU Center informs the provider who has reported sexual abuse that he may not inform the concerned

SPAIN

Art. 26.4.

The following wording is proposed at the end of this item: "to perform their duties by complying with the corresponding requirements of item 2 of this Article 26".

Art. 34.1.

Scrutiny reservation.

Art. 34.2.

It is considered of interest that the complaint made by a minor be referred to a legal department under the coordinating authority as a prior step to a possible referral to police bodies if the facts constitute a crime; in the case, the minor's complaint should be supervised by an adult.

Art. 36.1.

The following is of interest for clarification: Until now the material was forwarded to EUROPOL, once the operation had been exploited. There could be a conflict of competence if it now has to be forwarded to the EU Center.

As for the deadline (without undue delay), it should be made clear that it is always after the operation has been closed, except in cases where it is desired to cross-check this information with the information available from the Center or from EUROPOL, as the case may be. the period of undue delay should take into account the need to comply with deadlines set by national regulations or those imposed by circumstances affecting possible investigations and judicial authorities.

Art. 38.

For clarification, it is important to detail the role of the Center in research where coordination was previously carried out through EMPACT or AP TWINS.

Council of the European Union
General Secretariat

Interinstitutional files:
2022/0155 (COD)

Brussels, 21 September 2022

WK 10235/2022 ADD 3

LIMITE

JAI	**FREMP**
ENFOPOL	**TELECOM**
CRIMORG	**COMPET**
IXIM	**MI**
DATAPROTECT	**CONSOM**
CYBER	**DIGIT**
COPEN	**CODEC**

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

MEETING DOCUMENT

From: To:	General Secretariat of the Council Law Enforcement Working Party (Police)
N° prev. doc.:	9068/22
Subject:	Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse - comments from delegations on Articles 25 to 39

Delegations will find attached the compilation of comments received from Members States on the above-mentioned proposal following the meeting of the LEWP (Police) on 6 September 2022.