



EUROPEAN COMMISSION

*Brussels, 6.12.2022  
C(2022) 9203 final*

*Dear Chair,*

*The Commission would like to thank the Poslanecká sněmovna for its Opinion on the proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse {COM(2022) 209 final}.*

*The Commission appreciates that the Poslanecká sněmovna decided to analyse the proposal and agrees on the fundamental importance of fair balance of protecting fundamental rights and the security of communications.*

*The Commission welcomes the Poslanecká sněmovna's conclusion that the proposed risk assessment and risk mitigation obligations in relation to grooming are targeted, proportionate and justified. The Commission considers that grooming detection obligations are equally crucial to combat child sexual abuse, as they are particularly important to prevent imminent child sexual abuse. The Commission welcomes the importance attached by the Poslanecká sněmovna to the proposed EU Centre on Child Sexual Abuse.*

*In response to the more technical comments in the Opinion, the Commission would like to refer to the attached annex. The Poslanecká sněmovna's Opinion has been made available to the Commission's representatives in the ongoing negotiations of the co-legislators, the European Parliament and the Council, and will inform these discussions.*

*The Commission hopes that the clarifications provided in this reply address the issues raised by the Poslanecká sněmovna and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*

*Ylva Johansson  
Member of the Commission*

*Mr Ondřej BENEŠÍK  
Chair of the Committee on European Affairs  
of the Poslanecká sněmovna  
Sněmovní 4  
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*Cc Ms Markéta PEKAROVÁ ADAMOVÁ  
President of the Poslanecká sněmovna  
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## Annex

*The Commission has carefully considered each of the issues raised by the Poslanecká sněmovna in its Opinion and is pleased to offer the following clarifications.*

*1) The Commission is aware of the need to ensure the necessity and proportionality of any interference with the privacy of electronic communications that might result from the implementation of detection orders, especially in relation to grooming. The proposal contains a series of safeguards that ensure the proportionality of detection orders, in general, and of detection orders concerning grooming, in particular.*

*First, the proposal frames detection as a last resort measure. All providers within its scope have to comply with risk assessment and risk mitigation measures. Providers would be ordered to detect online child sexual abuse only when, notwithstanding the mitigation measures taken, a significant risk of use of the service in question for the purpose of child sexual abuse remains. If considered appropriate, the Commission is available to support the co-legislators in clarifying how the expression ‘significant risk’ should be interpreted.*

*Secondly, once the need for a detection order arises, the proposal takes into account the necessity to ensure a fair balancing of all fundamental rights at stake and, in particular, to minimise the interference with the right to privacy and to the protection of personal data of users of online services. For this reason, the procedure to issue a detection order would involve several steps and authorities. In particular:*

- Before requesting a detection order, the Coordinating Authority of establishment must prepare a draft request and notify it to the provider concerned and the EU Centre.*
- The EU Centre can offer its opinion, based, among other things, on its expertise on technologies.*
- The provider drafts an implementation plan and requests the opinion of the competent data protection authority.*
- Taking into account the draft implementation plan, the opinion of the data protection authority and the opinion of the EU Centre, the Coordinating Authority has to decide whether to request the issuance of the order. When doing so, it has to consider (i) whether the order is as targeted as possible, (ii) whether it is necessary and proportionate, (iii) whether available technologies exist that enable effective detection on the specific type of service concerned without entailing a disproportionate interference with the privacy of electronic communications.*
- The final decision on whether to issue a detection order belongs to a judicial or independent administrative authority. Because of their independent nature, the issuing authorities are expected to ensure a correct and unbiased balancing of all the fundamental rights involved.*

*Thirdly, the proposal seeks to ensure that grooming detection orders are as targeted as possible. A grooming detection order can only concern communications between (at least) an adult and a child below the age of 17 (the highest age of sexual consent in the EU). In addition, the proposal goes beyond what is required by Article 36 of the General Data Protection Regulation (GDPR) by requiring providers (i) to request the opinion of the data protection authorities on any draft implementation plan concerning the detection of grooming and (ii) to do so before a grooming detection order is even requested by a Coordinating Authority to the issuing authorities.*

*- The proposal is technology-neutral. It does not exempt end-to-end-encrypted (E2EE) services from detection obligations, as this would create an increasingly significant space of impunity in the digital environment and greatly hamper the possibility to prevent imminent child sexual abuse through grooming detection. The proposal does not regulate E2EE or discourage its use. E2EE is essential for the security of online communications. Technologies that allow for secure detection of illegal content in E2EE environments exist and the proposal constitutes a significant incentive for their further development and dissemination. Only technologies deployed in compliance with the GDPR and further requirements set out in the proposal could be used to detect child sexual abuse online.*

*2) The Commission welcomes the importance attached by the Poslanecká sněmovna to the proposed EU Centre on Child Sexual Abuse. The EU Centre would act as a facilitator of the work of all stakeholders involved in the application of the regulation. It would facilitate the work of law enforcement, by filtering out obvious false positives and only forwarding to law enforcement relevant and actionable reports, as well as by giving feedback to providers on the quality of their reports, so that they can improve the level of accuracy of the detection process.*

*Furthermore, it would facilitate the work of Coordinating Authorities, by ensuring coordination amongst them, acting as a central knowledge hub on child sexual abuse issues, and supporting their work in relation to victims' assistance. Through national Coordinating Authorities, victims would be able to obtain from the EU Centre (i) information on the circulation of child sexual abuse material concerning them and (ii) support in seeking the removal of such material.*

*Finally, the EU Centre would facilitate compliance by providers with their obligations under the regulation by helping them with the risk assessment process, providing them with the database of indicators to be used to implement detection orders, and keeping a list of technologies that providers can choose to use to implement detection orders.*

*3) The Commission also agrees with the Poslanecká sněmovna on the importance of the technical expertise of the EU Centre for the purpose of ensuring effective and proportionate detection:*

*- The Technology Committee of the Centre, composed of independent experts, would support all the work of the EU Centre related to the use of technologies, by contributing*

*to the EU Centre's opinion on draft detection orders and advising all relevant stakeholders on matters within its expertise.*

*- The EU Centre would keep the database of indicators of online child sexual abuse, to be used mandatorily for the purpose of implementing detection orders. The database would have crucial importance as its use would ensure that the detection process can only detect online child sexual abuse material and grooming, while disregarding any other information related to the data processed. For grooming, the indicators contained in the database would be produced using confirmed grooming conversations. These would only be able to pick up suspicious patterns of communications related to grooming, not to understand the communication's content.*

*- The EU Centre would also keep and make available to providers a list of detection technologies. The inclusion of a technology in such a list would follow consultation of the European Data Protection Board. Providers would be able to choose to make use of these technologies. Providers would be required to use the least intrusive state-of-the-art technology enabling detection on the service concerned.*

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