

Feedback on

**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)**

Dear EU Commission and EU Parliament,

Please consider my concerns and suggested improvements on the proposal of regulation COM/2022/209, detailed below.

## **Foreword**

This opinion mostly tackles the Proposal from the point of view of potential unintended effects that it may cause to LGBT “older” (15-16-17 y.o.) children, LGBT adults, and to the LGBT community as a whole.

It stems from some considerations:

- 1) Older LGBT children are more likely to use dating and communication apps since:
  - A. their relative dispersion over a given territory is higher than their straight peers, and thus virtual at-a-distance communications/interactions are the only viable ways to know other LGBT people like them; and
  - B. in only a small number of localities in the EU LGBT teenagers are free to come out at a young age and be still respected and supported by their peers; in many more other parts of the EU, and in fact the majority of the EU, LGBT teenagers are forced to be closeted or face bullism and violence, and are not free to be out and date in the real, non-virtual world.
- 2) As such, older LGBT teenagers are as likely to risk being exposed, and become victims of, online sexual abuse exactly as their straight, cis-sex peers, if not more than them;
- 3) However, at the same time, for older LGBT children online chatting/socializing via communication and dating apps also serve them as a way to exchange thoughts, get moral support from LGBT people like themselves, and ultimately exit their isolation; some older LGBT children who already accepted themselves may also use communication and dating apps to actively seek dates, and eventually even sex, with LGBT adults; in this latter case, such communications would be recognized by

the system outlined in the Proposal as a positive match of a sexual communication and a potential sexual abuse;

- 4) It's impossible for a system like the one outlined in the Proposal NOT to directly "give away" the communicating parties' sexual orientation and their gender identity (i.e. just consider the case of a "sexting" session happening on a GBT or LBT dating app; or simply by looking at the genders of the parties). As such, communications between a child and an adult, and a potential sexual abuse cases stemming from the communication, will be implicitly marked as either LGBT-related or not;
- 5) In the EU, perception and acceptance of same-sex and/or non-cis-gender online communications/interactions at the judicial and law enforcement level are very different to opposite-sex and cis-sex ones; and are wildly different between EU member countries and often even between regions of the same country; this being the case even if no EU/COE law or jurisprudence provides for it and even if such discrimination is outlawed de jure; as such, in many localities, LGBT-related positive matches generated by the system in the Proposal will be very likely to be scrutinized and converted to an official inquiry or into a prosecution more than heterosexual, cis-gender online communications/interactions<sup>1</sup>;
- 6) In the EU still today there are media outlets, political, social and religious groups that equates homosexuality, bisexuality and transsexuality to pedophilia, and actively promote this view for political gains; this routinely causes distress, harm, violence, and sometimes even death to LGBT people (including LGBT minors);
- 7) Some member country governments and some political parties (both at national and EU parliament ones) actively weaponize the case for LGBT rights and equality and indulge into SOGI-based hate speech for their own political gains (for example, Hungary, Poland, Italy) too;
- 8) It should also be remembered that many EU member countries still do not ban (or do not explicitly ban in law) sexual orientation, gender identity and gender expression conversion therapy. In fact, only a tiny minority does so.

Considering the points above, the system outlined in the Proposal may cause some unintended consequences.

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<sup>1</sup> I'll add that, in fact, in the case of opposite-sex and cis-sex relationships/online interactions, there are many localities in the EU where still today said relationships or interactions may be scrutinized differently in the case of a female older child and a male adult vs. in the case of a male older child and a female adult.

## **Potential unintended consequences for a LGBT child victims**

- 9) During an investigation or criminal proceedings spurred by the Proposal's system, a child victim's sexual orientation and gender identity will become evident, even if the victim has not yet decided to come out to their family and friends.  
Different EU member states probably have vastly different laws and standards when it comes to informing a victim's parents or legal guardians about sexual abuse incidents involving their child, but in fact most states have provisions for such information to be immediately notified to parents or legal guardians. This makes it very likely that an LGBT child victim would be explicitly "outed" (i.e. they will forcibly come out without their own consent, when they still don't feel comfortable to do so) to their parents or legal guardian or even school or other venues by the investigations or criminal proceedings, which in some cases may end up potentially causing the LGBT child more stress and harm than the stress and harm that effectively originated by the online sexual abuse incident itself, or uselessly add more stress and harm to the one already caused by the online sexual abuse incident.
- 10) Social services and (potentially privatized) victim's support groups in homophobic countries may force SOGIGE conversion therapy practices onto LGBT children, by leveraging on their uneasiness for not being their shame of having fallen victim of a sexual abuse incident, or by leveraging their parent's shame for their child being LGBT;
- 11) Indeed, in homo/transphobically-run Member states, the State may even force parents to have their children undergo such practices by making attending homo/transphobic victim's support care compulsory for a victim and/or by threatening parents to revoke their parental rights if they do not accept sending their child to complicit homo/transphobic victim's support services;
- 12) The EU has almost no competence in health and criminal matters, so it won't be able to guarantee the child's right to privacy about their sexual orientation and gender identity, and member countries employ vastly different standards in this regard; still, an attempt to devise the Proposal's system so that it does not place undue burden on LGBT children should be made.

## **Potential unintended consequences for the LGBT community at large**

- 13) This information obtained with the Proposal's system about the sexual orientation and gender identity of adult and child users could be retained

fro a long time, and could be retained even in case of a false positives, and could be used to blackmail LGBT citizens or even just build huge files of LGBT citizens (including LGBT politicians and activists); LGBT child users would be affected too, as children or as adults after they so become.

- 14) Information about investigations and legal proceedings spurring from the Proposal's system, if leaked out publicly could likely be used by homo/transphobic media outlets to further spread LGBT hate, under the pretense of press freedom. Note that this may happen also in case of false positives being leaked out, not just for real, confirmed cases<sup>2</sup>.
- 15) The Proposal's transnational nature considered, trans-homophobic (ab)uses of the outlined system by trans/homophobic-derailed law enforcement agencies and/or governments of a Member States may "leak to" other countries too, or be used as a political weapon against other EU member countries as a whole too.

### **Potential unintended consequences for LGBT adults**

- 16) Similarly to the points in the previous section, trans/homophobic-derailed law enforcement agencies and/or governments of a Member States may use the system outlined in the Proposal to target specific LGBT persons or groups of persons (adults, but also older LGBT children who are politically active) for political intents. This may be done by deliberately fabricating false positive child abuse events on LGBT people's online accounts so as to trigger a surveillance order on their account, and then leak the information that these people are being investigated under child abuse law. While in most EU member country it can be assumed that such a scheme would ultimately come to light during the criminal proceedings brought forward to the targeted adult, resulting in a full acquittal, the targeted individual's reputation may be forever ruined<sup>3</sup>.
- 17) Similarly, data collected via surveillance orders on GBT or LBT dating apps and websites (i.e. targeting all the accounts of an app or website)

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<sup>2</sup> In fact, homo/transphobic media outlets may actually prefer to fabricate or use false positives for their hateful propaganda, as if their intents would later be exposed as hate-based, they may successfully argue that they are not at fault because they were misled but the news being ill-formed at the source, and therefore argue that no harm was ultimately done to the involved parties and/or the LGBT community at large ("it has been a mistake").

<sup>3</sup> In fact, I have a suspicion that I'm being targeted right now by homophobic activists in what looks like a potential extortion or blackmailing attempt. Deliberate misuse of the system outlined in the proposal by use of fabricated false positive matches will subject LGBT activists and community to such attempts more broadly and more frequently.

may be used to create huge files of LGBT adults to attack them for their political activism and advocacy, to prevent them from accessing services and the job market, or even just to monitor the size and distribution of LGBT adults on a given territory for electoral reasons or for electoral engineering (such as redesigning electoral districts to split LGBT voting and prevent LGBT-friendly candidates from being elected in city or regional councils by the LGBT community).

## Improvements to the Proposal

Most of the concerns listed above could be addressed as follow:

- A. Add an article that explicitly states that the mechanism implemented by the Regulation cannot be applied in a way to discriminate LGBT-related covered online activities versus non-LGBT -related covered online activities. (Identifying LGBT-related vs. non-LGBT-related covered online activities, as written above, will be quite easy by analyzing whether the monitored activity involve same-sex parties or opposite sex parties, or if happens on GBT- or LBT-oriented online services, and the EU has a positive obligation to make sure that data collected under the system is not used in an abusive, LGBT-discriminatory way).
- B. Add a similar explicit disposition so that the EU Center, and Coordinating Authorities and the way they interacts with law enforcement, are bound not to treat LGBT-related covered activities differently from non-LGBT covered activities. As it stands now, for example, neither Article 25 nor 26 of the Proposal quote “LGBT non-discrimination” among the rules to guarantee fairness in how the EU Center and Coordinating Authority operate.
- C. (Articles 83-84) Implement statistics and metrics on the use of detection orders and other devices implemented in the proposed regulation that monitor, for the EU Center itself, and for each Coordinating Authority/ Member State, the number of LGBT-related vs. non-LGBT-related detection orders (and other devices), disaggregated by member state/ coordinating authority. This will allow monitoring foul play by (and possibly act as a deterrent for) homo- and trans-phobic member states , law enforcement agencies, organizations fighting against child sexual abuse, and relevant information society services providers which are trying to turn the system outlined in the Proposal into a LGBT-discriminatory political weapon. Data collection in the Proposal right now only collects by age and gender of the victim, and Member State-disaggregated data only include URLs and number of submissions and

reports of submission of CSAM and SOC events/cases; this is insufficient to prevent the devices specified by the Proposal to be abused in a LGBT discriminatory way.

- D. When it comes to blocking orders, the Regulation should clearly state that only child porn must be subjected to it, not same-sex and/or trans amorous or “lightly erotic” media (eg. 2 men or 2 women, possibly shirtless, showing affection or kissing or hugging each other) so as to avoid that homophobic and transphobic groups use blocking orders to block legitimate online advertisement by LGBT advocacy associations or to implement LGBT censorship in media.
- E. Article 34.2 in its current form states: “*Coordinating Authorities shall provide child-friendly mechanisms to submit a complaint under this Article and adopt a child-sensitive approach when handling complaints submitted by children, taking due account of the child's age, maturity, views, needs and concerns.*”. This MUST be amended to add privacy as an element that Coordinating Authorities must consider when communicating with a victim. It also MUST be amended to explicitly state that in communicating with a victim, authorities MUST make sure that a victim’s sexual orientation and gender identity is not revealed to third parties, including their parents or legal guardians, unless a) the victim first consents to it and b) there is absolutely no other way to communicate the abuse case and c) a LGBT child victim is made aware that not being straight and cis is perfectly fine and lawful and that they being a victim of online sexual abuse is not their fault or due to them having a minority sexual orientation and/or gender identity, and d) actual, honest, understanding and professional support is available to them to handle their coming out with their parents or legal guardians in case they wish to do so or are forced to do so by the circumstances.
- F. Add provisions to have the EU Center, Coordinating Authority and law enforcement agencies use gender-neutral, sexual orientation-neutral and gender identity-neutral language in notifications to and interactions with the victim and their parents and legal guardians.
- G. Add provisions to have the EU Center, Coordinating Authority and law enforcement agencies use gender-neutral, sexual orientation-neutral and gender identity-neutral language in communications about their activities with the media.
- H. *Ca va sans dire*, the Proposal MUST be amended to clearly state that in no way the resulting Regulation, and information obtained thru detection orders, blockage orders and as part of victim’s support can be used to suggest or impose SOGIGE conversion therapy techniques onto LGBT child victims. In any case, something MUST also be done in the Regulation to outright avoid that a LGBT child ends up being forcibly outed or (worse even) subjected to SOGIGE conversion therapy by

careless or abusive use of the Proposal's provisions, INCLUDING the provisions for victim's support.

- I. Section 7 (Staff) should be amended to ban employment or other collaboration with individuals who have been convicted of LGBT-related hate crimes or hate speech or gender-based hate crimes. Staff that has been convicted for LGBT hate speech or LGBT hate crimes or gender-based hate crimes MUST have their job terminated immediately. Individuals who have expressed LGBT-discriminatory thoughts, or are under investigation or trial for LGBT hate speech or hate crimes or gender-based hate crimes, including instances justified on the ground of religious faith, should be assigned to activities that do not put them in contact with information about the sexual abuse incidents and parties involved, and have their job immediately terminated if convicted.
- J. Penalties should be defined for the EU Center, Coordinating Authorities or Member States for trying to abuse the devices established in the Regulation for political reasons or to disseminate LGBT-based hate speech.
- K. No penalties are defined for hosting services, interpersonal communication services, software applications and software application stores, providers of relevant information society services, recommender system and deranged/deviated organizations fighting against child sexual abuse which fabricate false positives targeted toward LGBT people, LGBT activists, LGBT-rights advocacy associations, LGBT and LGBT-friendly politicians, or try to use the devices established in the Proposal for political reasons or disseminate LGBT discrimination and hate speech.
- L. In general, the Regulation SHOULD NOT enter in force before hate crimes and hate speech based on sexual orientation and gender identity become official EU crimes under Article 83 TFEU as announced in December 2021 and both the EU and all Member States are bound to consider them actual crimes.

## **Conclusions.**

The EU Commission is trying to do something good for EU children and protect them from upsetting, distressing, harmful and criminal use of communication technologies.

Unfortunately the EU Commission does not seem to have assessed some of the way in which the Proposal may turn upside-down exactly with regards to one group of children who most need protection: LGBT children.

The EU Commission also failed to assess potential harm to LGBT adults and the LGBT community at large that may come with hateful LGBT-discriminatory

abuse of the provisions in the Proposal by political parties, member state governments, law enforcement agencies and other actors involved.

Can we hope that the EU Parliament will make at least some of the concerns detailed above their own and improve on the Proposal accordingly?

**End.**

Saturday, September 3, 2022