



2020/0259(COD)

13.11.2020

*****I**

DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council on a temporary derogation from certain provisions of Directive 2002/58/EC of the European Parliament and of the Council as regards as the use of technologies by number-independent interpersonal communications service providers for the processing of personal and other data for the purpose of combatting child sexual abuse online
(COM(2020)0568 – C9-0288/2020 – 2020/0259(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Birgit Sippel

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council on the temporary derogation from certain provisions of Directive 2002/58/EC of the European Parliament and of the Council as regards as the use of technologies by number-independent interpersonal communications service providers for the processing of personal and other data for the purpose of combatting child sexual abuse online (COM(2020)0568 – C9-0288/2020 – 2020/0259(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2020)0568),
 - having regard to Article 294(2) and Article 16(2) and 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0288/2020),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 12 November 2020¹,
 - having regard to Rules 59 of its Rules of Procedure,
 - having regard to the opinion of the Committee on Women's Rights and Gender Equality,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0000/2020),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ Not yet published in the Official Journal.

Amendment 1

Proposal for a regulation Title 1

Text proposed by the Commission

Proposal for a
REGULATION OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
on a temporary **derogation from** certain
provisions of Directive 2002/58/EC of the
European Parliament and of the Council as
regards the use of technologies by number-
independent interpersonal communications
service providers for the processing of
personal **and other** data for the purpose of
combatting child sexual abuse online

Amendment

Proposal for a
REGULATION OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
on a temporary **restriction of** certain **rights
and obligations under** Directive
2002/58/EC of the European Parliament
and of the Council as regards the use of
specific technologies by number-
independent interpersonal communications
service providers for the processing of
personal data for the purpose of combatting
child sexual abuse online

*(- Replacement of "derogation to" by
"restriction of" applies throughout the text.
Adopting it will necessitate corresponding
changes throughout)*

*(- Deletion of "and other" after 'personal'
and before "data" applies throughout the
text. Adopting it will necessitate
corresponding changes throughout)*

Or. en

Amendment 2

Proposal for a regulation Recital 4

Text proposed by the Commission

(4) Sexual abuse and sexual
exploitation of children constitute serious
violations of human rights, in particular of
the rights of children to be protected from
all forms of violence, abuse and neglect,
maltreatment or exploitation, including
sexual abuse, as provided for by the 1989
United Nations Convention on the Rights

Amendment

(4) Sexual abuse and sexual
exploitation of children constitute serious
violations of human **and fundamental**
rights, in particular of the rights of children
to be protected from all forms of violence,
abuse and neglect, maltreatment or
exploitation, including sexual abuse, as
provided for by the 1989 United Nations

of the Child and by the Charter. Digitisation has brought about many benefits for society and the economy, but also challenges including an increase of child sexual abuse online. The protection of children online is one of the Union's priorities. ***On 24 July 2020, the Commission adopted an EU strategy for a more effective fight against child sexual abuse⁹ (“the Strategy”), which aims to provide an effective response, at Union level, to the crime of child sexual abuse.***

⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU strategy for a more effective fight against child sexual abuse, 24.7.2020 COM(2020) 607 final.

Convention on the Rights of the Child and by the Charter. Digitisation has brought about many benefits for society and the economy, but also challenges including an increase of child sexual abuse online. The protection of children online is one of the Union's priorities.

Or. en

Amendment 3

Proposal for a regulation Recital 5

Text proposed by the Commission

(5) Certain providers of number-independent interpersonal communications services, such as webmail and messaging services, are already using specific technologies to detect and report child sexual abuse online to law enforcement authorities and to organisations acting in the public interest against child sexual abuse, ***or*** to remove child sexual abuse material, on a voluntary basis. Those organisations refer to national hotlines for reporting child sexual abuse material, as well as to organisations whose purpose is to reduce child sexual exploitation, and prevent child victimisation, located both within the Union and in third countries.

Amendment

(5) Certain providers of number-independent interpersonal communications services, such as webmail and messaging services, are already using specific technologies to detect and report child sexual abuse online to law enforcement authorities ***and*** to organisations acting in the public interest against child sexual abuse, and to remove child sexual abuse material, on a voluntary basis, ***by scanning either the content, such as pictures and text, or the meta data of communications using, in some instances, historical data.*** Those organisations refer to national hotlines for reporting child sexual abuse material, as well as to organisations whose

Collectively, *those* voluntary activities play a valuable role in enabling the identification and rescue of victims, and reducing the further dissemination of child sexual abuse material, while also contributing to the identification and investigation of offenders, and the prevention of child sexual abuse offences.

purpose is to reduce child sexual exploitation *and abuse*, and prevent child victimisation, located both within the Union and in third countries, *in particular the United States of America*. Collectively, *these* voluntary activities play a valuable role in enabling the identification and rescue of victims, and reducing the further dissemination of child sexual abuse material, while also contributing to the identification and investigation of offenders, and the prevention of child sexual abuse offences.

Or. en

Amendment 4

Proposal for a regulation Recital 6

Text proposed by the Commission

(6) *Until 20 December 2020*, the processing of personal data by providers of number-independent interpersonal communications services by means of voluntary measures for the purpose of detecting and reporting child sexual abuse online and removing child sexual abuse material is governed by Regulation (EU) 2016/679.

Amendment

(6) The processing of personal data by providers of number-independent interpersonal communications services by means of voluntary measures for the purpose of detecting and reporting child sexual abuse online and removing child sexual abuse material is governed by Regulation (EU) 2016/679.

Or. en

Amendment 5

Proposal for a regulation Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) The measures provided for in this Regulation constitute an interference with the fundamental rights to respect for

private life and data protection of all users of popular electronic communications services, such as instant messaging platforms and applications. Even voluntary measures by private companies constitute an interference with those rights when the measures involve monitoring and analysis of content of communications and processing of personal data.

Or. en

Amendment 6

Proposal for a regulation Recital 6 b (new)

Text proposed by the Commission

Amendment

(6b) Any limitation to the fundamental right to the confidentiality of communications cannot be justified merely on the ground that certain technologies were previously deployed when the services concerned did not, from a legal perspective, constitute electronic communications services.

Or. en

Amendment 7

Proposal for a regulation Recital 7

Text proposed by the Commission

Amendment

(7) Directive 2002/58/EC does not contain any specific provisions concerning the processing of personal **and other** data in connection with the provision of electronic communication services for the purpose of detecting and reporting child sexual abuse online and removing child

(7) Directive 2002/58/EC does not contain any specific provisions concerning the processing of personal data in connection with the provision of electronic communication services for the purpose of detecting and reporting child sexual abuse online and removing child sexual abuse

sexual abuse material. However, pursuant to Article 15(1) of Directive 2002/58/EC, Member States may adopt legislative measures to restrict the scope of the rights and obligations provided for in, inter alia, Articles 5 and 6 of that Directive, which concern confidentiality of communications and traffic data, for the purpose of prevention, investigation, detection and prosecution of criminal offences linked to child sexual abuse. ***In the absence of such legislative measures, and*** pending the adoption of a ***new*** longer-term legal framework to tackle child sexual abuse ***effectively*** at Union level ***as announced in the Strategy, there would be no legal basis*** for providers of number-independent interpersonal communications services to continue to detect and report child sexual abuse online and remove child sexual abuse material in their services beyond 21 December 2020.

material. However, pursuant to Article 15(1) of Directive 2002/58/EC, Member States may adopt legislative measures to restrict the scope of the rights and obligations provided for in, inter alia, Articles 5 and 6 of that Directive, which concern ***the*** confidentiality of communications and traffic data, for the purpose of prevention, investigation, detection and prosecution of criminal offences linked to child sexual abuse. Pending the adoption of a longer-term legal framework to tackle child sexual abuse at Union level, providers of number-independent interpersonal communications services ***can no longer rely on Article 6 of Regulation (EU) 2016/679*** to continue to detect and report child sexual abuse online and remove child sexual abuse material in their services beyond 21 December 2020. ***This Regulation does not provide for a legal basis for the processing of personal data by number-independent interpersonal communications services for the sole purpose of detecting and reporting child sexual abuse online and removing child sexual abuse material from their services, but it provides for a restriction of certain rights and obligations laid down in Directive 2002/58/EC. It also lays down additional safeguards to be respected by the providers of number-independent interpersonal communication services if they wish to rely on this Regulation.***

Or. en

Amendment 8

Proposal for a regulation

Recital 8

Text proposed by the Commission

(8) This Regulation therefore provides for a temporary ***derogation from Article***

Amendment

(8) This Regulation therefore provides for a temporary ***restriction of Articles 5(1)***

5(1) and Article 6 of Directive 2002/58/EC, which protect the confidentiality of communications and traffic data. Since Directive 2002/58/EC was adopted on the basis of Article 114 of the Treaty on the Functioning of the European Union, it is appropriate to adopt this Regulation on the same legal basis. **Moreover, not all Member States have adopted** legislative measures at national level to restrict the scope of the rights and obligations provided for in those provisions in accordance with Article 15(1) of Directive 2002/58/EC, **and the adoption of such measures involves a significant risk of fragmentation likely to negatively affect the internal market.**

and Article 6 **(1)** of Directive 2002/58/EC, which protect the confidentiality of communications and traffic data. Since Directive 2002/58/EC was adopted on the basis of Article 114 of the Treaty on the Functioning of the European Union, it is appropriate to adopt this Regulation on the same legal basis. **Where** Member States **adopt** legislative measures at national level to restrict the scope of the rights and obligations provided for in those provisions in accordance with Article 15(1) of Directive 2002/58/EC **they should respect Regulation (EU) 2016/679, and in particular Article 23 thereof.**

Or. en

Amendment 9

Proposal for a regulation

Recital 9

Text proposed by the Commission

(9) Given that electronic communications involving natural persons will **normally** qualify as personal data, this Regulation should also be based on Article 16 of the Treaty, which provides a specific legal basis for the adoption of rules relating to the protection of individuals with regard to the processing of personal data by Union institutions and by the Member States when carrying out activities which fall within the scope of Union law, and rules relating to the free movement of such data.

Amendment

(9) Given that electronic communications involving natural persons will **always** qualify as personal data, this Regulation should also be based on Article 16 of the Treaty **on the Functioning of the European Union**, which provides a specific legal basis for the adoption of rules relating to the protection of individuals with regard to the processing of personal data by Union institutions and by the Member States when carrying out activities which fall within the scope of Union law, and rules relating to the free movement of such data.

Or. en

Amendment 10

Proposal for a regulation Recital 10

Text proposed by the Commission

(10) To the extent that processing of personal data in connection with the provision of electronic communications services by number-independent interpersonal communications services for the sole purpose of detecting and reporting child sexual abuse online and removing child sexual abuse material falls within the scope of the **derogation** provided for by this Regulation, Regulation (EU) 2016/679 applies to such processing, including the requirement to carry out an assessment of the impact of the envisaged processing operations where appropriate pursuant to Article 35 of that Regulation prior to the deployment of **the** technologies concerned.

Amendment

(10) To the extent that processing of personal data in connection with the provision of electronic communications services by number-independent interpersonal communications services for the sole purpose of detecting and reporting child sexual abuse online and removing child sexual abuse material falls within the scope of the **restriction** provided for by this Regulation, Regulation (EU) 2016/679 applies to such processing, including **but not limited to, its provisions on principles relating to the processing of personal data (Article 5), lawfulness of processing (Article 6), processing of special categories of personal data (Article 9), restrictions (Article 23), the security of processing (Article 32), transfers of personal data to third countries or international organisations (Chapter V), independent supervisory authorities (Chapter VI), cooperation and consistency (Chapter VII) and remedies, liability and penalties (Chapter VIII), as well as** the requirement to carry out an assessment of the impact of the envisaged processing operations where appropriate pursuant to Article 35 of that Regulation prior to the deployment of **any** technologies concerned **and the requirement pursuant to Article 36 thereof to consult the supervisory authority concerned prior to processing.**

Or. en

Amendment 11

Proposal for a regulation Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) Since this Regulation provides for a restriction to the right of confidentiality of communications, the consultation of the supervisory authority pursuant to Article 36 of Regulation (EU) 2016/ 679 should be mandatory.

Or. en

Amendment 12

Proposal for a regulation Recital 11

Text proposed by the Commission

Amendment

(11) Since the sole objective of this Regulation is to enable the continuation of certain existing activities aimed at **combating** child sexual abuse online, the **derogation** provided for by this Regulation should be limited to well-established technology that is regularly used by number-independent interpersonal communications services for the purpose of detecting and reporting child sexual abuse online and removing child sexual abuse material **before the entry into force of this Regulation**. The reference to the technology includes **where necessary** any human review directly relating to the use of the technology and overseeing it. The use of the technology in question should therefore be common in the industry, without it necessarily being required that all providers use the technology and without precluding the further evolution of the technology in a privacy-friendly manner. In this respect, it should be **immaterial** whether or not a particular

(11) Since the sole objective of this Regulation is to enable the continuation of certain existing activities aimed at **detecting, reporting and removing** child sexual abuse **material** online, the **restriction** provided for by this Regulation should be limited to well-established technology that **has been subject to prior evaluation by the data protection supervisory authorities**, is regularly used by number-independent interpersonal communications services for the **sole** purpose of detecting and reporting child sexual abuse online and removing child sexual abuse material. The reference to the technology includes any human review directly relating to the use of the technology and overseeing it. The use of the technology in question should therefore be common in the industry, without it necessarily being required that all providers use the technology and without precluding the further evolution of the technology in a privacy-friendly manner.

provider that seeks to rely on **this derogation** itself already uses such technology on the date of entry into force of this Regulation. The types of technologies deployed should be the least privacy-intrusive in accordance with the state of the art in the industry **and should not include systematic filtering and scanning of communications containing text but only look into specific communications in case of concrete elements of suspicion of child sexual abuse.**

In this respect, it should be **irrelevant** whether or not a particular provider that seeks to rely on **the restriction provided for by this Regulation** itself already uses such technology on the date of entry into force of this Regulation. The types of technologies deployed should be the least privacy-intrusive in accordance with the state of the art in the industry.

Or. en

Amendment 13

Proposal for a regulation Recital 13

Text proposed by the Commission

(13) The personal **and other** data used when carrying out the activities covered by the **derogation set out** in this Regulation, as well as the period during which the data is subsequently retained in case of positive results, should be minimised **so as to ensure that the derogation remains limited** to what is strictly necessary.

Amendment

(13) The personal data used when carrying out the activities covered by the **restriction provided for by** this Regulation, as well as the period during which the **data and any result of the processing of this** data is subsequently retained in case of positive results, should be minimised to what is strictly necessary **so as to ensure that the interference with the confidentiality of communications remains as limited as possible.**

Or. en

Amendment 14

Proposal for a regulation Recital 14

Text proposed by the Commission

(14) In order to ensure transparency and

Amendment

(14) In order to ensure transparency and

accountability in respect of the activities undertaken pursuant to the *derogation*, *the* providers should publish reports on an annual basis on the processing falling within the scope of this Regulation, including on the type and volumes of data processed, number of cases identified, measures applied to select and improve key indicators, the numbers and ratios of errors (false positives) of the different technologies deployed, measures applied to limit the error rate and the error rate achieved, the retention policy and the data protection safeguards applied.

accountability in respect of the activities undertaken pursuant to the *restriction*, *provided for by this Regulation*, *interpersonal communications service* providers should publish *and submit* reports *within six months after the entry into force of this Regulation*, *and thereafter* on an annual basis, on the processing falling within the scope of this Regulation, including on the type and volumes of data processed, *the legal basis for the processing of data pursuant to Article 6 of Regulation (EU) 2016/679*, *the legal basis for the transfers of personal data outside the Union pursuant to Chapter V of Regulation (EU) 2016/679*, the number of cases identified, *the number of cases in which a user has lodged a complaint with the internal redress mechanism or with a judicial authority and the outcome of those proceedings*, measures applied to select and improve key indicators, the numbers and ratios of errors (false positives) of the different technologies deployed, measures applied to limit the error rate and the error rate achieved, the retention policy and the data protection safeguards applied *pursuant to Regulation (EU) 2016/679*. *Providers should also submit their reports to the supervisory authorities in accordance with Regulation (EU) 2016/679.*

Or. en

Amendment 15

Proposal for a regulation Recital 14 a (new)

Text proposed by the Commission

Amendment

(14a) In order to support the responsible supervisory authorities in their task, the European Data Protection Board should issue guidelines on compliance with

Regulation (EU) 2016/679 of the processing falling within the scope of the restriction laid down in this Regulation. Those guidelines should in particular assist the supervisory authorities in providing advice in the framework of the prior consultation procedure set out in Article 36 of Regulation (EU) 2016/679, that should be carried out when assessing whether an established or new technology to be used is state-of-the-art, the least privacy-intrusive and operating on an adequate legal basis under Regulation (EU) 2016/679.

Or. en

Amendment 16

Proposal for a regulation Recital 15

Text proposed by the Commission

(15) This Regulation should enter into force on the third day following that of its publication in the Official Journal of the European Union, in order to ensure that it is applicable as from 21 December 2020.

Amendment

deleted

Or. en

Amendment 17

Proposal for a regulation Recital 16

Text proposed by the Commission

(16) This Regulation restricts the right to protection of the confidentiality *of communications and derogates from the decision taken in Directive (EU) 2018/1972 to subject* number-independent

Amendment

(16) This Regulation restricts the right to protection of the confidentiality *carried out by* number-independent interpersonal communications services *for the sole purpose of removing child sexual abuse*

interpersonal communications services *to the same rules as all other electronic communications services as regards privacy*. The period of application of this Regulation should, therefore, be limited until 31 December **2025, that is to say for a time period reasonably required for the adoption of a new long-term legal framework, with more elaborate safeguards**. In case the long-term legislation is adopted and will enter into force before that date, that legislation should repeal this Regulation.

material and detecting or reporting child sexual abuse material online to law enforcement authorities and to organisations acting in the public interest against child sexual abuse. The period of application of this Regulation should, therefore, be limited until 31 December **2022**. In case the long-term legislation is adopted and will enter into force before that date, that legislation should repeal this Regulation.

Or. en

Amendment 18

Proposal for a regulation Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) The supervisory authorities responsible for monitoring the application of this Regulation should be the same as the independent supervisory authorities designated pursuant to Chapter VI of Regulation (EU) 2016/679.

Or. en

Amendment 19

Proposal for a regulation Recital 17 b (new)

Text proposed by the Commission

Amendment

(17b) End-to-end encryption is an important tool to guarantee secure and confidential communications of users, including that of children. Any weakening of encryption can potentially be abused by malicious third parties. Nothing in this

Regulation should therefore be interpreted as prohibiting or weakening end-to-end encryption.

Or. en

Amendment 20

Proposal for a regulation Recital 17 c (new)

Text proposed by the Commission

Amendment

(17c) The confidentiality of communications is a fundamental right guaranteed under Article 7 of the Charter. It is thus also a prerequisite for secure communications between victims of child sexual abuse and a trusted adult or organisations active in the fight against child sexual abuse as well as in communications between victims and their lawyers.

Or. en

Amendment 21

Proposal for a regulation Recital 17 d (new)

Text proposed by the Commission

Amendment

(17d) All communications between an accused or convicted person and their lawyer should be protected, in order to guarantee the fundamental rights to an effective remedy and to a fair trial pursuant to Article 47 of the Charter as well as the right to the presumption of innocence and the right of defence pursuant to Article 48 thereof.

Or. en

Amendment 22

Proposal for a regulation Recital 17 e (new)

Text proposed by the Commission

Amendment

(17 e) This Regulation should apply only to videos or images exchanged over messaging or email services. It should not apply to the scanning of text or audio communication.

Or. en

Amendment 23

Proposal for a regulation Recital 18

Text proposed by the Commission

Amendment

(18) The objective of this Regulation is to create a temporary ***derogation from certain*** provisions of Directive 2002/58/EC without creating fragmentation in the Internal Market. In addition, national legislation would most probably not be adopted in time in all Member States. As this objective cannot be sufficiently achieved by the Member States, but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives. It introduces a temporary and strictly limited ***derogation from*** the applicability of Articles 5 (1) and 6 of Directive 2002/58/EC, with a series of safeguards to ensure that it does not go beyond what is necessary for the

(18) The objective of this Regulation is to create a temporary ***restriction of specific*** provisions of Directive 2002/58/EC without creating fragmentation in the Internal Market. In addition, national legislation would most probably not be adopted in time in all Member States. As this objective cannot be sufficiently achieved by the Member States, but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives. It introduces a temporary and strictly limited ***restriction of*** the applicability of Articles 5 (1) and 6 (***1***) of Directive 2002/58/EC, with a series of safeguards to ensure that it does not go beyond what is necessary for the

achievement of the set objectives.

achievement of the set objectives.

Or. en

Amendment 24

Proposal for a regulation Article 1 – paragraph 1

Text proposed by the Commission

This Regulation lays down temporary and strictly limited rules ***derogating from*** certain obligations laid down in Directive 2002/58/EC, with the sole objective of enabling providers of number-independent interpersonal communications services to continue the use of technologies for the processing of personal ***and other*** data to the extent necessary to detect and report child sexual abuse online and remove child sexual abuse material on their services.

Amendment

This Regulation lays down temporary and strictly limited rules ***restricting*** certain ***rights and*** obligations laid down in Directive 2002/58/EC, with the sole objective of enabling providers of number-independent interpersonal communications services to continue, ***without prejudice to Regulation (EU)2016/679***, the use of ***specific*** technologies for the processing of personal data to the extent ***strictly*** necessary to detect and report child sexual abuse online and remove child sexual abuse material on their services.

Or. en

Amendment 25

Proposal for a regulation Article 2 – paragraph 1 – point 2 – point b

Text proposed by the Commission

(b) solicitation of children for the purpose of engaging in sexual activities with a child or of producing child pornography by any of the following:

(i) luring the child by means of offering gifts or other advantages;

(ii) threatening the child with a negative consequence likely to have a significant impact on the child;

Amendment

deleted

(iii) presenting the child with pornographic materials or making them available to the child.

Or. en

Amendment 26

Proposal for a regulation Article 3 – title

Text proposed by the Commission

Amendment

Scope of the *derogation*

Scope of the *restriction*

Or. en

Amendment 27

Proposal for a regulation Article 3 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

The specific obligations set out in Article 5(1) and Article 6 of Directive 2002/58/EC shall **not apply to** the processing of personal **and other** data in connection with the **provision of** number-independent interpersonal communications services strictly necessary for the use of technology for the sole purpose of removing child sexual abuse material and detecting or reporting child sexual abuse online to law enforcement authorities and to organisations acting in the public interest against child sexual abuse, provided that:

The **scope of the** specific **rights and** obligations set out in Article 5(1) and Article **6(1)** of Directive 2002/58/EC shall **be restricted with regard to the confidentiality of communications involving** the processing of personal data in connection with the **exchange of videos or images through messaging or web-based email services by** number-independent interpersonal communications services **provided that such restriction is** strictly necessary for the use of **specific** technology for the sole purpose of removing child sexual abuse material and detecting or reporting child sexual abuse **material** online to law enforcement authorities and to organisations acting in the public interest against child sexual abuse, provided that:

Or. en

Amendment 28

Proposal for a regulation

Article 3 – paragraph 1 – point a

Text proposed by the Commission

(a) the processing is proportionate and limited to well-established technologies regularly used by providers of number-independent interpersonal communications services for that purpose ***before the entry into force of this Regulation, and that are in accordance with the state of the art used in the industry and are the least privacy-intrusive;***

Amendment

(a) the processing is proportionate and limited to well-established technologies regularly used by providers of number-independent interpersonal communications services for that ***sole*** purpose and ***provided that they fulfil all of the following conditions:***

Or. en

Amendment 29

Proposal for a regulation

Article 3 – paragraph 1 – point a – point i (new)

Text proposed by the Commission

(i) ***they are in accordance with state of the art used in the industry and are the least privacy-intrusive;***

Amendment

Or. en

Amendment 30

Proposal for a regulation

Article 3 – paragraph 1 – point a – point ii (new)

Text proposed by the Commission

(ii) ***a data protection impact assessment pursuant to Article 35 of Regulation (EU) 2016/679 and a prior consultation procedure pursuant to Article 36 of Regulation (EU) 2016/679***

Amendment

*have been conducted in accordance with
Article 3 a of this Regulation;*

Or. en

Amendment 31

Proposal for a regulation

Article 3 – paragraph 1 – point a – point iii (new)

Text proposed by the Commission

Amendment

*(iii) the processing is based on point
(d) or (e) of Article 6(1) of Regulation
(EU) 2016/679;*

Or. en

Amendment 32

Proposal for a regulation

Article 3 – paragraph 1 – point a – point iv (new)

Text proposed by the Commission

Amendment

*(iv) the categories of personal data to
be processed are clearly defined for each
processing operation;*

Or. en

Amendment 33

Proposal for a regulation

Article 3 – paragraph 1 – point a – point v (new)

Text proposed by the Commission

Amendment

*(v) the scope of the restriction to the
rights to confidentiality and protection of
personal data is clearly defined;*

Or. en

Amendment 34

Proposal for a regulation

Article 3 – paragraph 1 – point a – point vi (new)

Text proposed by the Commission

Amendment

(vi) there are internal procedures within the number-independent interpersonal communications service to prevent abuse, unauthorised access or transfers;

Or. en

Amendment 35

Proposal for a regulation

Article 3 – paragraph 1 – point a – point vii (new)

Text proposed by the Commission

Amendment

(vii) the identity and categories of the controller or controllers are clearly specified;

Or. en

Amendment 36

Proposal for a regulation

Article 3 – paragraph 1 – point a – point viii (new)

Text proposed by the Commission

Amendment

(viii) the storage periods and the applicable safeguards are clearly specified;

Or. en

Amendment 37

Proposal for a regulation

Article 3 – paragraph 1 – point a – point ix (new)

Text proposed by the Commission

Amendment

(ix) human oversight and intervention is ensured for any processing of personal data, and no ‘positive hit’ is sent to law enforcement authorities or organisations acting in the public interest without prior human review;

Or. en

Amendment 38

Proposal for a regulation

Article 3 – paragraph 1 – point a – point x (new)

Text proposed by the Commission

Amendment

(x) appropriate procedures and redress mechanisms are in place to ensure that individuals can lodge complaints with the provider of a number-independent interpersonal communications service within a reasonable timeframe for the user to present their views in accordance with Article 3c;

Or. en

Amendment 39

Proposal for a regulation

Article 3 – paragraph 1 – point a – point xi (new)

Text proposed by the Commission

Amendment

(xi) unless prejudicial to an ongoing investigation, in which case information may be delayed to the extent strictly necessary and the data subjects are

informed without delay after the investigation is closed and without prejudice to the information provided for in Article 13 of Regulation (EU) 2016/679, the data subjects are informed about the following:

- (a) the restriction of the confidentiality of their communications for the sole purpose of removing child sexual abuse material and detecting or reporting child sexual abuse material, including the possibility that personal data is shared with law enforcement authorities and organisations acting in the public interest against child sexual abuse;*
- (b) in the event of a ‘positive hit’, the following information is given to the data subjects:*
- (c) the competent law enforcement authorities and organisations acting in the public interest against child sexual abuse with whom their personal data have been shared;*
- (d) the avenues for redress with the provider of number-independent interpersonal communications services; and*
- (e) the possibility of lodging a complaint with the competent supervisory authority and of a judicial remedy, and the identity of those authorities in the case;*

Or. en

Amendment 40

Proposal for a regulation

Article 3 – paragraph 1 – point a – point xii (new)

Text proposed by the Commission

Amendment

- (xii) there is no interference with any communication protected by professional*

secrecy, such as between doctors and their patients, journalists and their sources or lawyers and their clients;

Or. en

Amendment 41

Proposal for a regulation

Article 3 – paragraph 1 – point a – point xiii (new)

Text proposed by the Commission

Amendment

(xiii) any transfer of personal data to third countries or international organisations complies with Chapter V of Regulation (EU) 2016/679;

Or. en

Amendment 42

Proposal for a regulation

Article 3 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the technology used to detect solicitation of children is limited to the use of relevant key indicators, such as keywords and objectively identified risk factors such as age difference, without prejudice to the right to human review;

deleted

Or. en

Amendment 43

Proposal for a regulation

Article 3 – paragraph 1 – point d

Text proposed by the Commission

(d) the processing is limited to what is strictly necessary for the purpose of detection and reporting of child sexual abuse online and removal of child sexual abuse material and, unless child sexual abuse online has been detected and confirmed as such, is erased immediately;

Amendment

(d) the processing ***allowed by the restriction provided for in this Regulation*** is limited to what is strictly necessary for the ***sole*** purpose of detection and reporting of child sexual abuse online and removal of child sexual abuse material and, unless child sexual abuse online has been detected and confirmed as such, ***data generated through such processing*** is erased immediately;

Or. en

Amendment 44

Proposal for a regulation

Article 3 – paragraph 1 – point e

Text proposed by the Commission

(e) the provider ***annually*** publishes a report ***on its related*** processing, including ***on*** the type and volumes of data processed, number of cases identified, measures applied to select and improve key indicators, numbers and ratios of errors (false positives) of the different technologies deployed, measures applied to limit the error rate and the error rate achieved, the retention policy and the data protection safeguards applied.

Amendment

(e) the provider publishes ***and submits*** a report ***to the supervisory authority in accordance with Regulation (EU) 2016/679 by ... [six months after the date of entry into force of this Regulation], and annually thereafter, of the processing of personal data allowed by the restriction provided for in this Regulation,*** including the type and volumes of data processed, ***the legal basis for the processing pursuant to Article 6 of Regulation (EU) 2016/679, the legal basis for the transfers of personal data outside the Union pursuant to Chapter V of Regulation (EU) 2016/679,*** the number of cases identified, ***the number of cases in which a user has lodged a complaint with the internal redress mechanism or with a judicial authority and the outcome of those proceedings,*** measures applied to select

and improve key indicators, numbers and ratios of errors (false positives) of the different technologies deployed, measures applied to limit the error rate and the error rate achieved, the retention policy and the data protection safeguards applied *pursuant to Regulation (EU) 2016/679*.

Or. en

Amendment 45

Proposal for a regulation

Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. This Regulation shall not apply to the scanning of text or audio communications.

Or. en

Amendment 46

Proposal for a regulation

Article 3 – paragraph 1 – subparagraph 2 – introductory part

Text proposed by the Commission

Amendment

As regards point (d), where child sexual abuse online has been detected and confirmed as such, the relevant data may be retained solely for the following purposes and only for the time period necessary:

With regard to* point (d) *of the first subparagraph*, where child sexual abuse online has been detected and confirmed as such, the ***strictly relevant ***personal*** data may be retained solely for the following purposes and only for the time period ***strictly*** necessary, ***after which they shall be deleted immediately***:**

Or. en

Amendment 47

Proposal for a regulation

Article 3 – paragraph 1 – subparagraph 2 – indent 1

Text proposed by the Commission

— for its reporting and ***to respond to proportionate requests by law enforcement and other relevant public*** authorities;

Amendment

— for its reporting and ***transfer, pursuant to Directive (EU)2016/680, to the competent*** law enforcement authorities ***without undue delay***;

Or. en

Amendment 48

Proposal for a regulation

Article 3 – paragraph 1 – subparagraph 2 – indent 2

Text proposed by the Commission

— for the blocking of the concerned user's account;

Amendment

— for the blocking of the concerned user's account ***or suspension of a service offered to them***;

Or. en

Amendment 49

Proposal for a regulation

Article 3 – paragraph 1 – subparagraph 2 – indent 3

Text proposed by the Commission

— ***in relation to*** data reliably identified as child ***pornography***, for the creation of a unique, non-reconvertible digital signature ('hash').

Amendment

— ***regarding personal*** data reliably identified as child ***sexual abuse material***, for the creation of a unique, non-reconvertible digital signature ('hash');

Or. en

Amendment 50

Proposal for a regulation

Article 3 – paragraph 1 – subparagraph 2 – indent 3 a (new)

Text proposed by the Commission

Amendment

- *for the purpose of seeking redress from the provider or pursuing administrative review or judicial proceedings.*

Or. en

Amendment 51

Proposal for a regulation

Article 3 a (new)

Text proposed by the Commission

Amendment

Article 3a

Obligation for a data protection impact assessment and a prior consultation of the supervisory authorities

By [three months after the date of entry into force of this Regulation], providers of number-independent interpersonal communications services shall, in order to rely on the restriction provided for by this Regulation, conduct a data protection impact assessment pursuant to Article 35 of Regulation (EU) 2016/679 and a prior consultation procedure pursuant to Article 36 thereof by ... [three months after the date of entry into force of this Regulation].

Or. en

Amendment 52

Proposal for a regulation Article 3 b (new)

Text proposed by the Commission

Amendment

Article 3b

European Data Protection Board guidelines

By ... [two months after the date of entry into force of this Regulation], the European Data Protection Board shall publish guidelines for the purpose of assisting the supervisory authorities responsible in accordance with Regulation (EU) 2016/679 to assess whether the processing falling within the scope of this Regulation, for existing as well as future technologies used for the sole purpose of combatting child sexual abuse online complies with Regulation (EU) 2016/679.

Or. en

Amendment 53

Proposal for a regulation Article 3 c (new)

Text proposed by the Commission

Amendment

Article 3c

Complaint mechanism

Providers of number-independent interpersonal communications services shall establish an effective and accessible mechanism allowing users whose content has been reported to an organisation acting in the public interest against child sexual abuse or to law enforcement authorities or which has been removed to submit a complaint against the action of the provider where the material reported

or removed does not constitute child sexual abuse online in accordance with this Regulation.

Or. en

Amendment 54

Proposal for a regulation Article 3 d (new)

Text proposed by the Commission

Amendment

Article 3d

Effective remedies

Users who have been adversely affected by the use of specific technologies for the processing of personal data to detect and report child sexual abuse online and remove child sexual abuse material from number-independent interpersonal communications services on their services, shall have the right to an effective remedy. Member States shall put in place effective procedures for the exercise of that right.

Or. en

Amendment 55

Proposal for a regulation Article 3 e (new)

Text proposed by the Commission

Amendment

Article 3e

Supervisory authorities

The supervisory authorities responsible for monitoring the application of this Regulation shall be the same as the independent supervisory authorities designated pursuant to Chapter VI of

Amendment 56

Proposal for a regulation
Article 3 f (new)

Text proposed by the Commission

Amendment

Article 3f

Public register of organisations acting in the public interest against child sexual abuse

By ... [one month of the date of entry into force of this Regulation], the Commission shall establish a public register of organisations acting in the public interest against child sexual abuse with which providers of number-independent interpersonal communications services can share personal data under this Regulation and without prejudice to Chapter V of Regulation (EU) 2016/679. That public register shall be updated by the Commission, based on transparent and objective criteria.

Amendment 57

Proposal for a regulation
Article 4 – paragraph 2

Text proposed by the Commission

Amendment

It shall apply from 21 December 2020 until 31 December **2025**.

It shall apply from 21 December 2020 until 31 December **2022**.

EXPLANATORY STATEMENT

Sexual abuse of children (CSA) constitutes a serious violation of human and fundamental rights. It can thus justify the restriction of the fundamental rights to confidentiality of communications and protection of personal data, provided that such a restriction constitutes a necessary and proportionate measure in a democratic society and that it respects the essence of the fundamental rights and freedoms.

To detect, report and remove child sexual abuse material (CSAM), certain providers of number-independent interpersonal communications services are currently scanning communication such as messages (content and/or meta data, in some instances, historical data) on a voluntary basis.

The proposed Regulation seeks to restrict the right to protection of the confidentiality to allow for these voluntary activities to continue after 21 December 2020, date of entry into force of the European Electronic Communications Code which would bring these providers into the scope of Directive 2002/58/EC (ePrivacy) and thus oblige them to ask users for consent before scanning their communication.

The rapporteur's and the European Parliament's work on this proposed Regulation has been complicated to a great deal by the time pressure resulting from the fact that this proposal was only presented on 10 September 2020 by the Commission (although the European Electronic Communication Code was already adopted in December 2018). Furthermore, the Commission did not respect its obligation under the Better Law Making agreement to accompany this proposal by an Impact Assessment and does not wish to take a stance on whether current voluntary practices to detect and report CSAM are in fact legal under EU law. Crucial information regarding the level of interference with the fundamental rights to the protection of confidentiality of communications and the protection of personal data is therefore missing at the time of preparing this draft report.

Main elements of this draft report include:

a) General considerations

- End-to-end encryption is an important tool to guarantee secure and confidential communications of users, including that of children and victims. Nothing in this Regulation should be interpreted as prohibiting or weakening end-to-end encryption.
- The proposed Regulation does not provide in itself for a legal basis for the scanning of communication by providers. Instead, it provides for a restriction of certain rights and obligations laid down in Directive 2002/58/EC, and lays down additional safeguards to be respected by the providers if they wish to rely on this Regulation.

b) Clarifications on the scope of the measure

- This Regulation should only apply to videos or images exchanged over messaging or email services. It should not apply to the scanning of text or audio communication, which remains fully subject to the provisions of the e Privacy Directive.
- In view of its temporary nature, the material scope of the Regulation should be limited to the

established definition of so called ‘child pornography’ as defined in Directive 2011/93/EU and ‘pornographic performance’ as defined in the same directive.

- The technology does not have to be in use before the entry into force of this Regulation, as long as it fulfils all the conditions spelled out in this Regulation, in order for the legislation to be future-prove.

c) Additional safeguards

- Providers of number-independent interpersonal communications services that wish to reply on this Regulation have to fulfil certain conditions. These include:

- a mandatory prior data protection impact assessment pursuant and a mandatory consultation procedure, prior to the use of the technology as required by Articles 35 and 36 of the GDPR;

- using Article 6 (1) d) or e) of Regulation (EU) 2016/679 as a legal basis;

- human overview and intervention is ensured for any processing of personal data, and no positive result is sent to law enforcement authorities or organisations acting in the public interest without prior human review;

- appropriate procedures and redress mechanisms are in place:

- no interference with any communication protected by professional secrecy;

- adequate legal basis for transfers outside the EU, in line with Chapter V of the GDPR.

- effective remedies provided by the Member States at national level.

All these conditions need to be met in order to ensure the proportionality of the restriction to the fundamental rights that this activity implies.

d) Public register of organisations acting in the public interest against child sexual abuse

The Commission should establish a public register of organisations acting in the public interest against child sexual abuse with which providers can share personal data.

e) Enhanced transparency

The providers should publish a first report six months after the entry into force of this Regulation, and thereafter on an annual basis.

f) Time limitation of the proposed Regulation

The period of application of this Regulation should be limited until 31 December 2022. In case the future long-term legislation is adopted and will enter into force before that date, that legislation should repeal this Regulation.

**ANNEX: LIST OF ENTITIES OR PERSONS
FROM WHOM THE RAPPOORTEUR HAS RECEIVED INPUT**

- Access Now
- Australian eSafety Commissioner
- Bundesrechtsanwaltskammer (BRAK)
- Canadian Centre for Child Protection
- cdt - Center for Democracy & Technology
- eco - Association of the Internet Industry
- EDPS
- EDRI
- Facebook
- Fundamental Rights Agency
- Improving the digital environment for children (regrouping several child protection NGOs across the EU and beyond, including Missing Children Europe, Child Focus)
- INHOPE – the International Association of Internet Hotlines
- International Justice Mission Deutschland e.V./ We Protect
- Internet Watch Foundation
- Internet Society
- Match Group
- Microsoft
- Thorn (Ashton Kutcher)
- UNICEF
- UN Special Rapporteur on the right to privacy
- World Childhood Foundation Deutschland