



2020/0259(COD)

23.11.2020

AMENDMENT

Draft report
Birgit Sippel
(PE 660.288v01-00)

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

Proposal for a regulation
(COM(2020)0568 – C9-0288/2020 – 2020/0259(COD))

Amendment

Patrick Breyer

(on behalf of the Greens/EFA Group)

Proposal for a regulation

Proposal for rejection

***The European Parliament rejects the
Commission proposal.***

Or. en

Justification: The proposal does not protect children but exposes law-abiding citizens to major risks (such as AI algorithms falsely flagging legal intimate depictions and conversations of children and adults relating to their health and sexual life) and violates the fundamental rights of millions of children and adults according to relevant jurisprudence. Analysing the content of all private messages is as unacceptable as if the post office opened all letters to check for illegal content. According to EDPS, neither the necessity nor the proportionality of the instrument have been demonstrated.



23/11/2020

AMENDMENTS: 35

Birgit Sippel

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

Proposal for a regulation COM(2020)0568 - C9-0288/2020 – 2020/0259(COD)

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Amendments per language:

EN: 35

Amendments justification with more than 500 chars : 16

Amendments justification number with more than 500 chars :

Amendments justification number with more than 500 characters:

AM 1, 13, 14, 17, 19, 20, 21, 22, 24, 25, 26, 28, 29, 30, 33, 34

Amendment 1

Patrick Breyer

on behalf of the Greens/EFA Group

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** 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 data for the purpose of combatting child sexual abuse **and exploitation material** online

Or. en

Justification

The change of title aligns the proposed regulation with Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography. In line with recital 9 of that Directive, the legal instruments cover both recordings of sexual abuse and other recordings exploited with or without the child's knowledge.

Amendment 2

Patrick Breyer

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 4

(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 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.**

(4) **The protection of children is one of the Union's priorities.** 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 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 **and exploitation material** online. **Child sexual abuse material is based on actual abuse in the offline world, where most abuses are committed by persons belonging to the family or being close to it. The rise in reported numbers is also partially due to the emerging practice of teenagers who, in the development of their sexual identity and experiences, take explicit pictures of videos of themselves and send them to peers, or share such material without a sexual motivation.**

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.

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.

Or. en

Amendment 3

Patrick Breyer

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 5

(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. 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.

(5) Certain providers of number-independent interpersonal communications services, such as webmail and messaging services, **have been** using technologies to detect and report child sexual abuse **and exploitation material** online to law enforcement authorities and to organisations acting in the public interest against child sexual abuse, or to remove child sexual abuse **and exploitation material**, on a voluntary basis, **by scanning either the content, such as pictures and text, or the metadata of communications using, in some instances, historical data**. Those **providers** refer **detected child sexual abuse and exploitation material** to national hotlines **dedicated to this task**, 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, **in particular the National Center for Missing and Exploited Children (NCMEC) in the United States. When they are established in third countries, they do not fall into the scope of the EU data protection acquis**. Collectively, those voluntary activities play a role in enabling the identification and rescue of victims, and reducing the further dissemination of child sexual abuse **and exploitation material**, while also contributing to the identification and investigation of offenders, and the prevention of child sexual abuse **and exploitation** offences.

Or. en

Amendment 4
Patrick Breyer
on behalf of the Greens/EFA Group
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) 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 **and exploitation material** and removing **such** material is **subject to** Regulation (EU) 2016/679, **the General Data Protection Regulation (GDPR). The data protection authorities are investigating a complaint for non-compliance of current voluntary measures with the GDPR, and data subjects have so far not been informed in accordance with Articles 13 and 14 of that Regulation. Directive (EU) 2018/1972 will have no direct effect on providers which apply such voluntary measures.**

Or. en

Amendment 5

Patrick Breyer

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 6 a (new)

Text proposed by the Commission

Amendment

(6 a) The voluntary measures applied by providers so far 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. Where such measures permanently involve a general and indiscriminate monitoring and analysis of content of communications of all users, they violate the right to confidentiality of communications, as the Court of Justice has ruled in the joined Cases C-511/18, C-512/18 and C-520/18 - La Quadrature et al.

Amendment 6**Patrick Breyer**

on behalf of the Greens/EFA Group

Proposal for a regulation**Recital 6 b (new)***Text proposed by the Commission**Amendment*

(6 b) 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**Patrick Breyer**

on behalf of the Greens/EFA Group

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 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

(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 **and exploitation material** online and removing child sexual abuse **and exploitation** 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 **and exploitation**. In 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**.

absence of such legislative measures, and pending the adoption of a new longer-term legal framework to tackle child sexual abuse **and exploitation** effectively at Union level, there **is** no legal basis for providers of number-independent interpersonal communications services to detect, **remove** and report child sexual abuse material **online** in their services.

Or. en

Amendment 8

Patrick Breyer

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 8

Text proposed by the Commission

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

Amendment

(8) This Regulation therefore provides for a temporary **restriction of** Article 5(1) and Article **6(1)** of Directive 2002/58/EC, which protect the confidentiality of communications and traffic data. **This Regulation also creates the legal basis for clearly defined and limited voluntary measures.** 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 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, **they should respect Regulation (EU) 2016/679, and in particular Article 23 thereof.**

Or. en

Amendment 9

Patrick Breyer

on behalf of the Greens/EFA Group

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 **data related to** electronic communications involving natural persons will normally 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

Patrick Breyer

on behalf of the Greens/EFA Group

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 **and exploitation material** and removing child sexual abuse **and exploitation** 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, **and the requirement pursuant to Article**

36 thereof to consult the competent supervisory authority prior to the processing.

Or. en

Amendment 11

Patrick Breyer

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 10 a (new)

Text proposed by the Commission

Amendment

(10 a) Since this Regulation provides for a restriction to the right of confidentiality of communications, which by definition constitutes a high risk to the rights and freedoms of natural persons, the consultation of the supervisory authority pursuant to Article 36 of Regulation (EU) 2016/ 679 should be mandatory.

Or. en

Amendment 12

Patrick Breyer

on behalf of the Greens/EFA Group

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

(11) Since the sole objective of this Regulation is to enable the **limited and targeted, modified** continuation of certain existing activities aimed at combating child sexual abuse **and exploitation** online, the derogation provided for by this Regulation should be limited to well-established technology that is used by number-independent interpersonal communications services for the purpose of detecting, reporting and removing child sexual abuse **and exploitation** material, **which functions by matching images and videos against a database of unique, non-reconvertible digital signatures (“hashes”) of known child sexual abuse and exploitation**

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 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**.

material. This database should be operated by public authorities in the Union, so as to not be dependent on private entities in third countries with unclear legal grounds and obligations.

The reference to the technology includes human review directly relating to the use of the technology and overseeing it, **and human review for each case of reporting detected child sexual abuse and exploitation material to law enforcement authorities**. 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 **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 and should not include filtering and scanning of communications containing text **or audio**.

Or. en

Amendment 13

Patrick Breyer

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) In order to ensure accuracy and reliability as much as possible, the technology used should, in accordance with the state of the art in the industry, be such as to limit the error rate of false positives to **the maximum extent possible** and, where necessary, to rectify without delay any such errors that may nonetheless occur.

Amendment

(12) In order to ensure accuracy and reliability as much as possible, the technology used should, in accordance with the state of the art in the industry, be such as to limit the error rate of false positives to **at most 1 in 50 billion** and, where necessary, to rectify without delay any such errors that may nonetheless occur.

Or. en

Justification

This is the rate of false positives Microsoft claims for PhotoDNA.

Amendment 14

Patrick Breyer

on behalf of the Greens/EFA Group

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 and other data used when carrying out the activities covered by the **restriction provided for** 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 **restriction** remains limited to what is strictly necessary **and proportionate**. **Therefore the providers should be allowed to scan the content of the communications only where this has been ordered by a judicial authority. Such orders should be strictly limited to the communication of persons for whom a prior suspicion based on factual evidence exists that they are involved in the distribution of child sexual abuse and exploitation material. These orders should also be limited in time to the shortest period possible for fulfilling the purpose.**

Justification

Following CJEU case-law on Digital Rights Ireland, La Quadrature du Net, and others.

Amendment 15**Patrick Breyer**

on behalf of the Greens/EFA Group

Proposal for a regulation**Recital 14***Text proposed by the Commission*

(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.

Amendment

(14) In order to ensure transparency and accountability in respect of the activities undertaken pursuant to the **restriction provided for by this Regulation, interpersonal communications service** 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, **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.

Or. en

Amendment 16**Patrick Breyer**

on behalf of the Greens/EFA Group

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

*Amendment***deleted**

publication in the Official Journal of the European Union, in order to ensure that it is applicable as from 21 December 2020.

Or. en

Amendment 17

Patrick Breyer

on behalf of the Greens/EFA Group

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 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.

Amendment

(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 interpersonal communications services to the same rules as all other electronic communications services as regards privacy, **for the sole purpose of removing child sexual abuse and exploitation material and detecting or reporting child sexual abuse and exploitation material online to law enforcement authorities.** 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

Justification

Following the EDPS opinion.

Amendment 18

Patrick Breyer

on behalf of the Greens/EFA Group

Proposal for a regulation

Recital 19

Text proposed by the Commission

(19) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council¹⁰ and delivered its opinion on [...],

¹⁰ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ C 20, 21.1.2019, p. 1).

Amendment

(19) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council¹⁰ and delivered its opinion on **10 November 2020**,

¹⁰ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ C 20, 21.1.2019, p. 1).

Or. en

Amendment 19

Patrick Breyer

on behalf of the Greens/EFA Group

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 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 **use specific** technologies **in limited cases** for the processing of personal and other data to the extent **strictly** necessary to detect, report and remove child sexual abuse **and exploitation** material **consisting of images or videos** on their services. **This regulation therefore creates a legal basis for the processing of that data pursuant to Article 6(1)(e) of Regulation (EU) 2016/679, and is without prejudice to that**

Regulation.

This Regulation shall not apply to text or audio communications.

Or. en

Justification

Clarification on legal basis following the EDPS opinion.

Amendment 20

Patrick Breyer

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 2 – paragraph 1 – point 2 – introductory part

Text proposed by the Commission

Amendment

(2) ‘child sexual abuse **online**’ means:

(2) ‘child sexual abuse **and exploitation material**’ means:

Or. en

Justification

Aligned with Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography. In line with recital 9 of that Directive, the legal instruments cover both recordings of sexual abuse and other recordings exploited with or without the child’s knowledge

Amendment 21

Patrick Breyer

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 2 – paragraph 1 – point 2 – point b

Text proposed by the Commission

Amendment

(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:

deleted

(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;

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

Or. en

Justification

The automated analysis of private communications content in search of possible solicitation is error-prone and would also expose legal intimate conversations of both children and adults to disclosure and risks of abuse.

Amendment 22

Patrick Breyer

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 2 – paragraph 1 – point 2 – point c

Text proposed by the Commission

Amendment

(c) ‘pornographic performance’ as defined in Article 2(e) of Directive 2011/93/EU. **deleted**

Or. en

Justification

Live performances cannot be detected by comparing with a hash database of known material.

Amendment 23

Patrick Breyer

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 3 – title

Text proposed by the Commission

Amendment

Scope of the **derogation**

Scope of the **restriction**

Or. en

Amendment 24

Patrick Breyer

on behalf of the Greens/EFA Group

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 and other 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 technology for the sole purpose of **detecting, reporting to the judicial authority that ordered the processing, and** removing child sexual abuse **and exploitation** material.

Or. en

Justification

Disclosing the content of private communications to non-governmental organizations, often in countries that lack an adequate level of data protection, is not strictly necessary for the purpose of law enforcement and does not comply with the GDPR.

Amendment 25

Patrick Breyer

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 3 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(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;

deleted

Or. en

Justification

Moved to paragraph 1a(new) and amended.

Amendment 26

Patrick Breyer

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 3 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) the technology used is in itself sufficiently reliable in that it limits to the maximum extent possible the rate of errors regarding the detection of content representing child sexual abuse, and where such occasional errors occur, their consequences are rectified without delay;

deleted

Or. en

Justification

Moved to paragraph 1a(new) and amended.

Amendment 27

Patrick Breyer

on behalf of the Greens/EFA Group

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 28

Patrick Breyer

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 3 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(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; **deleted**

Or. en

Justification

Moved to paragraph 1a(new) and amended.

Amendment 29

Patrick Breyer

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 3 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(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. **deleted**

Or. en

Justification

Turned into paragraph 1b(new) and amended.

Amendment 30

Patrick Breyer

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 3 – paragraph 1 a (new)

Providers of number-independent interpersonal communications services shall be permitted to process electronic communication data for the sole purpose of detecting, deleting and reporting to the judicial authority that ordered the processing child sexual abuse and exploitation material if

(a) they have been ordered to do so by a judicial authority of the Member State in which the provider is established; such orders and the processing of electronic communications data shall be strictly limited to the communications of persons for whom a prior suspicion based on factual evidence exists that they have communicated or are communicating child sexual abuse and exploitation material, and shall be limited in time to the shortest period possible for fulfilling the purpose;

(b) 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 fulfill all of the following conditions:

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

(ii) the technology used is in itself sufficiently reliable in that it limits the rate of errors where content is wrongly identified as content representing child sexual abuse and exploitation material (“false positives”) to at most 1 in 50 billion, and where such occasional errors occur, their consequences are rectified without delay;

(iii) the technology creates immediately a unique, non-reconvertible digital

signature (“hash”) of electronically communicated pictures or videos for the sole purpose of immediately comparing that hash with a database containing hashes of material previously reliably identified as child sexual abuse and exploitation material, pursuant to Article 3a;

(iv) 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 have been conducted in accordance with Article 3 a of this Regulation. The prior consultation shall include access of the supervisory authority to the algorithm and the databases the content is matched against; and

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

(d) the processing does not interfere with or weaken the security of encrypted communications, and only applies to unencrypted communications; and

(e) the data subjects are informed by the provider about the following:

(i) the restriction of the confidentiality of their communications for the sole purpose of removing, detecting or reporting child sexual abuse and exploitation material, including the possibility that personal data is shared with law enforcement authorities;

(ii) in the event personal data has been reported to the competent law enforcement authority, the following information is given to the data subjects;

(iii) the fact that their data have been reported to the competent law enforcement authority as well as the name of that authority;

(iv) the avenues for redress with the provider of number-independent interpersonal communications services; and

(v) the possibility of seeking redress, and the identity of the competent authority;

Or. en

Justification

Clearer criteria as called for in the EDPS opinion. It is necessary to create a legal basis for the processing because it is not covered by the GDPR. According to the European Court of Justice the permanent automated analysis of communications is proportionate only if limited to suspects and subject to a prior independent review (case La Quadrature et al). The language on hashes and their error rate was already proposed by the Council Presidency in document 12293/19. Secure encryption is imperative to protect personal secrets, business secrets and state secrets from interception.

Amendment 31

Patrick Breyer

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 3 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

Providers using such technology shall annually publish a report on their related processing, including on the type and volumes of data processed, number of cases identified, 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.

Amendment 32
Patrick Breyer
on behalf of the Greens/EFA Group
Proposal for a regulation
Article 3 – paragraph 1 c (new)

Text proposed by the Commission

Amendment

As regards point (c) of paragraph 1a, where child sexual abuse or exploitation material has been detected and confirmed as such, the traffic data related to these communications may be preserved solely for the following purposes and for a period of no more than three months:

- for its reporting to law enforcement authorities in the Member State where the provider is established, and to the authority or authorities operating the database pursuant to Article 3a, after human review in each case;***
- for the blocking of the concerned user's account;***

Or. en

Amendment 33
Patrick Breyer
on behalf of the Greens/EFA Group
Proposal for a regulation
Article 3 – paragraph 2

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:

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

deleted

- **for the blocking of the concerned user's account;**
- **in relation to data reliably identified as child pornography, for the creation of a unique, non-reconvertible digital signature ('hash').**

Or. en

Justification

Turned into paragraph 1c(new) and amended.

Amendment 34

Patrick Breyer

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 3 a (new)

Text proposed by the Commission

Amendment

Article 3 a

Databases of known child sexual abuse and exploitation material

- 1. Member States may designate a public authority that operates a database of known sexual abuse and exploitation material. The database shall contain no actual images or videos, but only the unique, non-reconvertible digital signatures ('hashes') of known child sexual abuse and exploitation material.***
- 2. Before entering new data into the database, there shall be human review. For this purpose, the providers shall report the original material and the hashes pursuant to Article 3(4) to the authority. The authority shall review the content, and where it constitutes child sexual abuse or exploitation material, add the respective hash to the database, and store the original content separately, in a hardened secure environment, and offline.***

Or. en

Justification

To ensure democratic control and judicial oversight, and to prevent abuse, only public authorities in the EU should take decisions about illegal child abuse and exploitation material, and provide this information to providers for matching the hashes.

Amendment 35

Patrick Breyer

on behalf of the Greens/EFA Group

Proposal for a regulation

Article 4 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Or. en