

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

DATE: 17 December 2020

The amendments made by the EP and the Council on the text of the proposal compared to the Commission's proposal are marked as follows:

- the new text is marked in ***bold italics***;
- the deleted parts of the text are marked in ~~striketrough~~.
- where full paragraphs of the Commission's proposal were not amended by the EP they are not repeated in the columns reflecting their respective positions, but are marked with a diagonal line. When The Commission's proposal is not amended by the Council, it is repeated in the Council column.
- if the three texts are the same, a diagonal line is marked on the 4th column.

Parts provisionally agreed at the trilogue are **marked in green**.

Parts provisionally agreed at the technical meetings and to be confirmed at the trilogue are **marked in blue**.

Parts to be further discussed are **marked in yellow**.

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1.	<p>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</p>	<p>AM 1</p> <p>Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a temporary derogation from <i>restriction of</i> certain provisions of <i>rights and obligations</i> 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 <i>online</i> child sexual abuse online</p>	<p>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</p>	
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2.	<p>THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,</p> <p>Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16(2), in conjunction with Article 114(1) thereof,</p> <p>Having regard to the proposal from the European Commission,</p> <p>After transmission of the draft legislative act to the national parliaments,</p> <p>Having regard to the opinion of the European Economic and Social Committee¹,</p> <p>Acting in accordance with the ordinary legislative procedure,</p> <p>Whereas:</p>		<p>THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,</p> <p>Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16(2), in conjunction with Article 114(1) thereof,</p> <p>Having regard to the proposal from the European Commission,</p> <p>After transmission of the draft legislative act to the national parliaments,</p> <p>Having regard to the opinion of the European Economic and Social Committee²,</p> <p>Acting in accordance with the ordinary legislative procedure,</p> <p>Whereas:</p>	
3.	<p>(1) Directive 2002/58/EC of the European Parliament and of the Council³ lays down</p>		<p>(1) Directive 2002/58/EC of the European Parliament and of the Council⁵ lays down</p>	

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	rules ensuring the right to privacy and confidentiality with respect to the processing of personal data in exchanges of data in the electronic communication sector. That Directive particularises and complements Regulation (EU) 2016/679 of the European Parliament and of the Council ⁴ .		rules ensuring the right to privacy and confidentiality with respect to the processing of personal data in exchanges of data in the electronic communication sector. That Directive particularises and complements Regulation (EU) 2016/679 of the European Parliament and of the Council ⁶ .	
4	(2) Directive 2002/58/EC applies to the processing of personal data in connection with the provision of publicly available electronic communication services. The definition of electronic	AM 2 (2) Directive 2002/58/EC applies to the processing of personal data in connection with the provision of publicly available electronic communication services. <i>Up until 21</i>	(2) Directive 2002/58/EC applies to the processing of personal data in connection with the provision of publicly available electronic communication services. The definition of electronic	

¹ OJ C , , p .

² OJ C , , p .

³ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

⁵ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

⁴ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

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	<p>communication service is currently to be found in Article 2, point (c), of Directive 2002/21/EC of the European Parliament and of the Council⁷. Directive (EU) 2018/1972 of the European Parliament and of the Council⁸ repeals Directive 2002/21/EC with effect from 21 December 2020. From that date, the definition of electronic communications services will be replaced by a new definition, in Article 2(4) of Directive (EU) 2018/1972, which includes number-independent interpersonal communications services as defined in Article 2(7) of that Directive. Those services, which include, for example,</p>	<p>December 2020, the definition of electronic communication service <i>set out</i> is currently to be found in Article 2, point (c), of Directive 2002/21/EC of the European Parliament and of the Council⁴ applied. On that date, Directive (EU) 2018/1972 of the European Parliament and of the Council⁵ repealed repeals Directive 2002/21/EC with effect from 21 December 2020. The definition of electronic communications services in Article 2(4) of Directive (EU) 2018/1972 includes number-independent interpersonal communications services as defined in Article 2(7) of that Directive. Those services, which include, for example, voice over IP, messaging and web-based e-mail services, have will therefore been fall within the</p>	<p>communication service is currently to be found in Article 2, point (c), of Directive 2002/21/EC of the European Parliament and of the Council⁹. Directive (EU) 2018/1972 of the European Parliament and of the Council¹⁰ repeals Directive 2002/21/EC with effect from 21 December 2020. From that date, the definition of electronic communications services will be replaced by a new definition, in Article 2(4) of Directive (EU) 2018/1972, which includes number-independent interpersonal communications services as defined in Article 2(7) of that Directive. Those services, which include, for example,</p>	
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⁷ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33).

⁸ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36).

⁹ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33).

¹⁰ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36).

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	voice over IP, messaging and web-based e-mail services, will therefore fall within the scope of Directive 2002/58/EC, as of 21 December 2020.	scope of Directive 2002/58/EC, as of 21 December 2020.	voice over IP, messaging and web-based e-mail services, will therefore fall within the scope of Directive 2002/58/EC, as of 21 December 2020.	
5	(3) In accordance with Article 6(1) of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union. Article 7 of the Charter of Fundamental Rights of the European Union (“the Charter”) protects the fundamental right of everyone to the respect for his or her private and family life, home and communications, which includes the confidentiality of communications. Article 8 of the Charter contains the right to protection of personal data. Article 24(2) of the Charter provides that, in all actions relating to children, whether taken by public authorities or	AM 3 (3) In accordance with Article 6(1) of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union. Article 7 of the Charter of Fundamental Rights of the European Union (“the Charter”) protects the fundamental right of everyone to the respect for his or her private and family life, home and communications, which includes the confidentiality of communications. Article 8 of the Charter contains the right to protection of personal data. Article 3(1) of the 1989 United Nations Convention on the Rights of the Child ("UNCRC") and Article 24(2) of the Charter provide that, in all actions relating to children, whether taken by public	(3) In accordance with Article 6(1) of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union. Article 7 of the Charter of Fundamental Rights of the European Union (“the Charter”) protects the fundamental right of everyone to the respect for his or her private and family life, home and communications, which includes the confidentiality of communications. Article 8 of the Charter contains the right to protection of personal data. Article 24(2) of the Charter provides that, in all actions relating to children, whether taken by public authorities or	

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	private institutions, the child's best interests must be a primary consideration.	authorities or private institutions, the child's best interests must be a primary consideration. Articles 3(3) of the UNCRC and 24(1) of the Charter furthermore evoke the right of children to protection and care as is necessary for their well-being.	private institutions, the child's best interests must be a primary consideration.	
6	(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	AM 4 (4) <i>The protection of children is one of the Union's priorities.</i> Sexual abuse and sexual exploitation of children constitute serious violations of human <i>and fundamental</i> 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 <i>online</i> child sexual abuse online <i>resulting from broader access to potential victims and a sharp rise in the exchange of online child</i>	(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	

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	effective fight against child sexual abuse ⁶ (“the Strategy”), which aims to provide an effective response, at Union level, to the crime of child sexual abuse.	<i>sexual abuse 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.</i> 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 abuse ⁶ (“the Strategy”), which aims to provide an effective response, at Union level, to the crime of child sexual abuse.	effective fight against child sexual abuse ¹¹ (“the Strategy”), which aims to provide an effective response, at Union level, to the crime of child sexual abuse.	
7		AM 5 <i>(4a) Teenagers have the right to discover their sexual identity in a safe and private environment. The rise in reported numbers of online child sexual abuse material 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</i>		

¹¹ 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.

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		<p><i>send them to peers, or share such material without a sexual motivation. In addition, the age of sexual consent differs across Member States. If users have reached the age of sexual consent under national law, no reporting on solicitation of children should be reported to law enforcement authorities.</i></p>		
8	<p>(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</p>	<p>AM 6</p> <p>(5) Certain providers of number-independent interpersonal communications services, such as webmail and messaging services, are already using specific technologies, to detect online child sexual abuse online on their services and report it to law enforcement authorities and to organisations acting in the public interest against child sexual abuse on a voluntary basis by scanning either the content, such as images and text, or the traffic data of communications using, in some instances, historical data. The technology used for these activities could be hashing technology for</p>	<p>(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</p>	

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	<p>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.</p>	<p><i>images and videos and classifiers and artificial intelligence for analysing text or traffic data.</i> These organisation The <i>providers</i> refer to national hotlines for reporting online child sexual abuse material, as well as to organisations whose purpose is to <i>identify children and reduce child sexual exploitation and sexual abuse</i>, and prevent child victimisation, located both within the Union and in third countries, <i>in particular the National Center for Missing and Exploited Children (NCMEC) in the United States. Such organisations usually do not fall within the scope of Regulation (EU) 2016/679.</i> Collectively, those <i>such</i> voluntary activities play a valuable role in enabling the identification and rescue of victims, <i>whose fundamental rights to human dignity and to physical and mental integrity are severely violated</i>, and reducing the further dissemination of online child sexual abuse material, while also contributing to the identification and investigation of offenders, and the prevention,</p>	<p>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.</p>	
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		<i>detection, investigation and prosecution</i> of child sexual abuse offences.		
9		<p>AM 7</p> <p><i>(5a) Notwithstanding their legitimate objective, these activities constitute an interference with the fundamental rights to respect for private and family life and protection of personal data of the individuals concerned, namely all users, potential offenders and victims. Any limitation to the fundamental right to respect for private and family life, including 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. Such interference is only possible under certain conditions. It needs to be provided for by law, respect the essence of the rights to private and family life and to the protection of</i></p>		

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		<p><i>personal data and, in compliance with the principle of proportionality, be necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others as enshrined in Article 52 (1) of the Charter. Where such measures permanently involve a general and indiscriminate monitoring and analysis 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.^{1a} and in joined cases C-293/12 – Digital Rights Ireland and C-594/12 – Seitlinger^{1b}.</i></p>		
10	<p>(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</p>	<p>AM 8</p> <p>(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 online child</p>	<p>(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</p>	

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	removing child sexual abuse material is governed by Regulation (EU) 2016/679.	sexual abuse online and removing online child sexual abuse material is governed by Regulation (EU) 2016/679. Directive (EU) 2018/1972 does not have a direct effect on providers of number-independent interpersonal communications services.	removing child sexual abuse material is governed by Regulation (EU) 2016/679.	
11	(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	AM 9 (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 online 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 the confidentiality of communications and traffic data, for the purpose of prevention,	(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	

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	<p>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.</p>	<p>investigation, detection and prosecution of criminal offences linked to child sexual abuse. In the absence of such <i>national</i> legislative measures and pending the adoption of a 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 <i>those voluntary measures of 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 online child sexual abuse online and remove online child sexual abuse material from in their services beyond 21 December 2020. This Regulation does not provide for the processing of personal data by number-independent interpersonal communications services for the sole purpose of detecting and reporting online child sexual abuse and removing online child sexual abuse material from their services, but it provides for a restriction of certain rights and</i></p>	<p>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.</p>	
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		<i>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.</i>		
12		<p>AM 10</p> <p><i>(7a) The processing of images and videos for the purposes of this Regulation should always be considered to constitute processing of special categories of personal data, under Article 9 of Regulation (EU) 2016/679 because images and videos are biometric data that are processed through a specific technical means allowing the unique identification or authentication of a natural person.</i></p>		
13	(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	<p>AM 11</p> <p>(8) This Regulation therefore provides for a temporary derogation <i>restriction of Articles 5(1) and Article 6 (1)</i> of Directive 2002/58/EC, which protect the confidentiality of communications</p>	(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	

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	<p>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.</p>	<p>and traffic data. <i>Voluntary measures applied by providers offering number-independent interpersonal communications services in the Union for the sole purpose of detecting and reporting online child sexual abuse and detecting, removing and reporting online child sexual abuse material therefore become subject to the safeguards and conditions set out in this Regulation as well as in Regulation (EU) 2016/679.</i> 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 <i>Where</i> Member States have adopted <i>adopt</i> 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 <i>they</i></p>	<p>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.</p>	
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		<i>should respect Regulation (EU) 2016/679, in particular Article 23 thereof.</i>		
14	(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.	AM 12 (9) Given that <i>data related to</i> electronic communications involving natural persons will normally <i>always</i> qualify as personal data, this Regulation should also be based on Article 16 of the Treaty <i>on the Functioning of the European Union</i> , 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.	(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.	
15	(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	AM 13 (10) To the extent that processing of personal data in connection with the provision of electronic communications services by number-independent interpersonal	(10) To the extent that processing of personal data in connection with the provision of electronic communications services by number-independent interpersonal	

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	<p>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.</p>	<p>communications services for the sole purpose of detecting and reporting online child sexual abuse online and removing online child sexual abuse material falls within the scope of the derogation 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 pursuant to Article 35 of that Regulation prior to the deployment</p>	<p>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, but not limited to, its provisions on principles relating to processing of personal data (Article 5), lawfulness of processing (Article 6), processing of special categories of personal data (Article 9), restrictions (Article 23), 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</p>	
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		<p>of the <i>any</i> technologies concerned and the requirement pursuant to Article 36 thereof to consult the supervisory authority concerned prior to processing, or in the case of technologies analysing traffic or content data for the purpose of identifying possible instances of solicitation of children, a prior authorisation from the supervisory authorities.</p>	<p>Regulation prior to the deployment of the technologies concerned.</p>	
16	<p>(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</p>	<p>AM 14</p> <p>(11) Since the sole objective of this Regulation is <i>aims</i> to enable the continuation of certain existing activities aimed at combating <i>detecting, reporting and removing online</i> child sexual abuse online <i>material and detecting and reporting online child sexual abuse that comply with Regulation (EU) 2016/679</i>, the derogation <i>restriction</i> 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</p>	<p>(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</p>	

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	<p>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 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</p>	<p>child sexual abuse online and removing child sexual abuse material before the entry into force of this <i>has been subject to prior consultation in accordance with Article 36 of Regulation (EU) 2016/679 or, where required by this Regulation, prior authorisation by a national supervisory authority, technology that is regularly used by number-independent interpersonal communications services for the sole purpose of detecting and reporting online child sexual abuse and removing online child sexual abuse material</i> . The reference to the technology includes where necessary any human review directly relating to the use of the technology and overseeing its <i>functioning with a view to avoid unnecessary and disproportionate interference with fundamental rights</i>. 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</p>	<p>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 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</p>	
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	text but only look into specific communications in case of concrete elements of suspicion of child sexual abuse.	privacy-friendly manner. In this respect, it should be immaterial irrelevant whether or not a particular provider that seeks to rely on this derogation 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. 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 be used for systematic filtering and scanning of communications containing text but only to look into specific communications in case of concrete elements of suspicion of child sexual abuse. To the extent that they are used to scan communications containing text, technologies should not be able to understand the substance of the content but should solely detect patterns, which point to possible online child sexual abuse.	text but only look into specific communications in case of concrete elements of suspicion of child sexual abuse.	
17	(12) In order to ensure accuracy and reliability as		(12) In order to ensure accuracy and reliability as	

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	<p>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.</p>	/	<p>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.</p>	/
18	<p>(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.</p>	<p>AM 15</p> <p>(13) The personal and other data used when carrying out the activities covered by the derogation set out restriction provided for by this Regulation, as well as the period during which the data and any result of the processing of this data are is subsequently retained in case of positive results, should be minimised to what is strictly necessary so as to ensure that the derogation the interference with the confidentiality of communications remains as limited as possible to what is strictly necessary.</p>	<p>(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. This regulation does not prevent providers from requesting a proof of receipt by law enforcement authorities after reporting child sexual abuse online to them.</p>	

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19	<p>(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.</p>	<p>AM 16</p> <p>(14) In order to ensure transparency and accountability in respect of the activities undertaken pursuant to the derogation restriction, provided for by this Regulation, interpersonal communications service the providers should publish and submit reports by ... [six months after the entry into force of this Regulation], and on an annual basis thereafter, on the processing falling within the scope of this Regulation, including on the type and volumes of data processed, the ground relied on for transfers of personal data pursuant to Article 6 of Regulation (EU) 2016/679, the ground relied on for transfers of personal data outside the Union pursuant to Chapter V of Regulation (EU) 2016/ 679, where applicable, 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</p>	<p>(14) In order to ensure transparency and accountability in respect of the activities undertaken pursuant to the derogation, the providers should make publicly available 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. In order to ensure efficient supervision, providers should also submit their reports to the supervisory authorities responsible in</p>	
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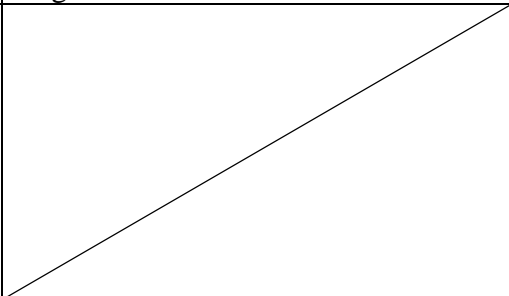
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		<p><i>proceedings</i>, measures applied to select and improve key indicators, the numbers and ratios of errors (false positives) of the different technologies deployed, measures applied to limit the error rate and the error rate achieved, the retention policy and the data protection safeguards applied <i>pursuant to Regulation (EU) 2016/679</i>. <i>Providers should also submit their reports to the supervisory authorities in accordance with Regulation (EU) 2016/679.</i></p>	<p>accordance with Regulation (EU) 2016/679.</p>	
20		<p>AM 17</p> <p><i>(14a) In order to support the responsible supervisory authorities in their task, the Commission should request the European Data Protection Board to issue guidelines on compliance with Regulation (EU) 2016/679 of 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</i></p>	<p>(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 derogation laid down in this Regulation. Those guidelines will in particular assist the supervisory authorities in providing advice in the framework of</p>	

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		<i>set out in Article 36 of Regulation (EU) 2016/679, which is to 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.</i>	the prior consultation procedure set out in Article 36 of Regulation (EU) 2016/679, that should be carried out when assessing if a new technology to be used is state-of-the-art and the least privacy-intrusive.	
21	(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.	AM 18 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.	(15) This Regulation should enter into force on the third day following that of its publication in the <i>Official Journal of the European Union</i> , in order to ensure that it is applicable as from 21 December 2020.	
22	(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	AM 19 (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 carried out by number-independent interpersonal	(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	

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	<p>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.</p>	<p>communications services <i>for the sole purpose of detecting and removing online child sexual abuse material and reporting it to law enforcement authorities and to organisations acting in the public interest against child sexual abuse and of detecting or reporting online child sexual abuse to law enforcement authorities</i>. The period of application of this Regulation should, therefore, be limited until 31 December 2025 2022. 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.</p>	<p>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.</p>	
23	<p>(17) Providers of number-independent interpersonal communications services should be subject to the specific obligations set out in Directive 2002/58/EC with regard to any other activities that fall within its scope.</p>		<p>(17) Providers of number-independent interpersonal communications services should be subject to the specific obligations set out in Directive 2002/58/EC, and consequently to the monitoring and investigative</p>	

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			powers of the competent authorities designated pursuant to that Directive, with regard to any other activities that fall within its scope.	
24		AM 20 <i>(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.</i>		
25		AM 21 <i>(17b) End-to-end encryption is an important tool to guarantee secure and confidential communications of users, including those of children. Any weakening of encryption could potentially be abused by malicious third parties. Nothing in this Regulation should therefore be interpreted as prohibiting or weakening end-to-end encryption.</i>		
26		AM 22		

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		<i>(17c) The right to respect for private and family life, including 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.</i>		
27		<p>AM 23</p> <p><i>(17d) All communications between an accused or convicted person and his or her 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.</i></p>		
28	(18) The objective of this Regulation is to create a temporary derogation from	<p>AM 24</p> <p>(18) The objective of this</p>	(18) The objective of this Regulation is to create a temporary derogation from	

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	<p>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</p>	<p>Regulation is to create a temporary derogation from certain <i>restriction of specific</i> 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 <i>restriction of</i> the applicability of Articles 5 (1) and 6 (<i>1</i>) 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.</p>	<p>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</p>	
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	necessary for the achievement of the set objectives.		necessary for the achievement of the set objectives.	
29	(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 Council ¹² and delivered its opinion on [...],	AM 25 (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 Council ⁷ and delivered its opinion on 10 November 2020 ,	(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 Council ¹³ and delivered its opinion on [...],	
30	HAVE ADOPTED THIS REGULATION:		HAVE ADOPTED THIS REGULATION:	
31	<i>Article 1</i> <i>Subject matter</i>		<i>Article 1</i> <i>Subject matter</i>	
32	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	AM 26 This Regulation lays down temporary and strictly limited rules derogating from restricting certain rights and obligations laid down in	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	

¹² 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).

¹³ 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).

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	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.	Directive 2002/58/EC, with the sole objective of enabling providers of certain number-independent interpersonal communications services, to continue the use of, while fully respecting the rights and obligations laid down in Regulation (EU)2016/679, using specific technologies for the, namely the use of a unique non-reconvertible digital signature ('hash') and the use of technologies analysing traffic or content data for the sole purpose of processing of personal and other data to the extent strictly necessary to detect and report online child sexual abuse online and remove online child sexual abuse material on their services.	providers of number-independent interpersonal communications services to continue, without prejudice to Regulation (EU) 2016/679, 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.	
33	<i>Article 2 Definitions</i>		<i>Article 2 Definitions</i>	
34	For the purpose of this Regulation, the following definitions apply:		For the purpose of this Regulation, the following definitions apply:	
35	(1) 'number-independent interpersonal communications service' means a service as	AM 27 (1) 'number-independent	(1) 'number-independent interpersonal communications service' means a service as	

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	defined in Article 2(7) of Directive (EU) 2018/1972;	interpersonal communications service' means a service number-independent interpersonal communications service as defined in Article 2(7) of Directive (EU) 2018/1972;	defined in Article 2(7) of Directive (EU) 2018/1972;	
36	(2) 'child sexual abuse online' means:	(2) ' online child sexual abuse online material ' means:	(2) 'child sexual abuse online' means:	
37	(a) material constituting child pornography as defined in Article 2, point (c), of Directive 2011/93/EU of the European Parliament and of the Council;	(a) material constituting 'child pornography' as defined in Article 2, point (c), of Directive 2011/93/EU of the European Parliament and of the Council;	(a) material constituting child pornography as defined in Article 2, point (c), of Directive 2011/93/EU of the European Parliament and of the Council;	
38	(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:	(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:	(b) ' solicitation ' as:	
39	(i) luring the child by means of offering gifts or other advantages;	(i) luring the child by means of offering gifts or other advantages;	(i) the proposal by an adult to meet a child who has not reached the age of sexual consent, for the purpose of committing any of the offences referred to in Article 3(4) and Article 5(6) of Directive 2011/93/EU, where that proposal was	

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			followed by material acts leading to such a meeting;	
40	(ii) threatening the child with a negative consequence likely to have a significant impact on the child;	(ii) threatening the child with a negative consequence likely to have a significant impact on the child;	(ii) an attempt to commit the offences provided for in Article 5(2) and (3) by an adult soliciting a child who has not reached the age of sexual consent to provide child pornography depicting that child.	
41	(iii) presenting the child with pornographic materials or making them available to the child.	(iii) presenting the child with pornographic materials or making them available to the child.	solicitation of children for the purpose of engaging in sexual activities with a child or of producing child pornography by any of the following:	
42			(i) luring the child by means of offering gifts or other advantages;	
43			(ii) threatening the child with a negative consequence likely to have a significant impact on the child;	
44			(iii) presenting the child with pornographic materials or making them available to the child.	
45	(c) 'pornographic performance' as defined in Article 2(e) of Directive 2011/93/EU.	(c) 'pornographic performance' as defined in Article 2, <i>point (e)</i> , of Directive 2011/93/EU;	(c) 'pornographic performance' as defined in Article 2(e) of Directive 2011/93/EU.	

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46		<i>(2a) ‘solicitation of children’ means any intentional conduct constituting a criminal offense under Article 6 of Directive 2011/93/EC;</i>		
47		<i>(2b) ‘online child sexual abuse’ means ‘online child sexual abuse material’ and ‘solicitation of children’;</i>		
48		<i>(2c) ‘positive hit of online child sexual abuse material’ means a match resulting from a comparison between an image or a video and a ‘hash’ from a data base containing verified online child sexual abuse material and maintained by an organisation recognised by the Commission pursuant to Article 3f of this Regulation.</i>		
49	<i>Article 3 Scope of the derogation</i>	<i>Article 3 Scope of the derogation restriction</i>	<i>Article 3 Scope of the derogation</i>	
50	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	AM 28 1. The specific <i>rights and</i> obligations set out in Article 5(1) and Article 6 (<i>I</i>) of Directive	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	

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	<p>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:</p>	<p>2002/58/EC shall not apply to be <i>restricted with regard to the confidentiality of communications involving</i> the processing of personal and other data in connection with the provision of number-independent interpersonal communications services <i>provided that such restriction is</i> strictly necessary for the use of <i>specific</i> technology for the sole purpose of <i>detecting and removing online</i> child sexual abuse material and detecting or reporting child sexual abuse online and detecting or reporting it to law enforcement authorities and to organisations acting in the public interest against child sexual abuse <i>and for detecting online child sexual abuse and reporting it to law enforcement authorities</i> provided that:</p>	<p>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:</p>	
51	<p>(a) the processing is proportionate and limited to well-established technologies regularly used by providers of number-independent interpersonal communications services for that purpose</p>	<p>(a) the processing is proportionate and limited to well-established technologies regularly used by providers of number-independent interpersonal communications services for that <i>sole</i> purpose before the entry into</p>	<p>(a) the processing is proportionate and limited to well-established technologies regularly used by providers of number-independent interpersonal communications services for that purpose</p>	

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	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;	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; <i>and provided that the technologies fulfil all of the following conditions:</i>	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;	
52		<i>(i) they are in accordance with the state- of- the art used in the industry and are the least privacy-intrusive, including with regard to the principle of data protection by design and by default as laid down in Article 25 of Regulation (EU) 2016/679, and, to the extent that they are used to scan communications containing text, they are not able to understand the substance of the content but solely detect patterns, which point to possible online child sexual abuse;</i>		
53		<i>(ii) a prior 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 3a of this Regulation and</i>		

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		<i>have indicated that the processing would not result in a high risk to the rights and freedoms of natural persons or that measures have been taken by the controller to mitigate the risk;</i>		
54		<i>(iii) in the case of technologies analysing traffic or content data for the purpose of identifying possible instances of solicitation of children, a prior authorisation has been given from the supervisory authorities, following the prior data protection impact assessment and the consultation of the supervisory authority;</i>		
55		<i>(iv) the processing is based on Article 6(1) of Regulation (EU)2016/679, provided that, without prejudice to Regulation (EU) 2016/ 679, all the conditions laid down in this Regulation have been complied with;</i>		
56		<i>(v) the categories of personal data to be processed for each processing operation are the content data, related traffic data as well as other personal data generated</i>		

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		<i>through such processing;</i>		
57		<i>(vi) there are internal procedures within the number-independent interpersonal communications service to prevent abuse, unauthorised access or transfers;</i>		
58		<i>(vii) the identity and categories of the controller or controllers are clearly specified;</i>		
59		<i>(viii) the provider of the number-independent interpersonal communications services ensures human oversight and intervention for the processing of personal data, and no ‘positive hit of online child sexual abuse material’ is sent to law enforcement authorities or organisations as referred to in Article 3f of this Regulation without prior human confirmation;</i>		
60		<i>(ix) the provider of the number-independent interpersonal communications services ensures human oversight and intervention for the processing of personal data, and no reasoned suspicion, based</i>		

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		<i>on concrete elements, of online child sexual abuse, is sent to law enforcement authorities without prior human confirmation;</i>		
61		<i>(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;</i>		
62		<i>(xi) without prejudice to the information provided for in Articles 13 and 14 of Regulation (EU) 2016/679, the data subjects are informed about 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;</i>		

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63		<p><i>(xii) in the event of a 'positive hit of online child sexual abuse material' or a reasoned suspicion, based on concrete elements, of online child sexual abuse, the data subjects are given the following information, without prejudice to the information provided for in Articles 13 and 14 of Regulation (EU) 2016/679, unless to do so would be prejudicial to an ongoing investigation, in which case the provision of that information may be delayed to the extent strictly necessary and the data subjects shall be informed without delay after the investigation is closed:</i></p>		
64		<p><i>(a) the competent law enforcement authorities and organisations acting in the public interest against child sexual abuse with whom their personal data have been shared;</i></p>		
65		<p><i>(b) the avenues for redress with the provider of number-independent interpersonal communications services; and</i></p>		
66		<p><i>(c) the possibility of lodging a</i></p>		

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		<i>complaint with the competent supervisory authority and of a judicial remedy, and the identity of those authorities;</i>		
67		<i>(xiii) 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;</i>		
68		<i>(xiv) any transfer of personal data to third countries or international organisations complies with Chapter V of Regulation (EU) 2016/679;</i>		
69			(aa) technology which has not been used before the entry into force of this regulation, the prior consultation procedure set out in Article 36 of Regulation (EU) 2016/679 shall apply;	
70	(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	(b) the technology used <i>to identify online child sexual abuse material</i> is in itself sufficiently reliable in that it limits to the maximum extent possible the rate of errors regarding <i>the rate of</i>	(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	

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	of content representing child sexual abuse, and where such occasional errors occur, their consequences are rectified without delay;	<i>errors where content is wrongly identified as content representing online child sexual online abuse (“false positives”) to at most 1 in 50 billion regarding</i> the detection of content representing child sexual abuse, and where such occasional errors occur, their consequences are rectified without delay;	of content representing child sexual abuse, and where such occasional errors occur, their consequences are rectified without delay;	
71		<i>(ba) the technology used to identify solicitation of children 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;</i>		
72	(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;	(c) the technology used to detect <i>patterns of possible</i> solicitation of children is limited to the use of relevant key indicators and objectively identified risk factors such as age difference , without prejudice to the right to human review;	(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;	

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73	(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;	(d) the processing <i>allowed by the restriction provided for in this Regulation</i> is limited to what is strictly necessary for the <i>sole</i> purpose of detection and reporting of <i>online</i> child sexual abuse online and removal of online child sexual abuse material and, unless child sexual abuse online has been detected and confirmed as such, is erased immediately;	(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, data generated through such processing is erased immediately;	
74		<i>(da) where no online child sexual abuse has been detected and confirmed as such, all content data, related traffic data and any result of processing of these data is erased immediately after the processing;</i>		
75		<i>(db) where child sexual abuse has been detected and confirmed as such, the strictly relevant content data, the related traffic data and personal data generated through such processing, are retained solely for the following purposes and only for the time period strictly necessary, but in any case no longer than three months, after which they are deleted immediately and</i>		

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		<i>permanently:</i>		
76		- <i>in order to report and transfer them, pursuant to Regulation (EU) 2016/679, to the competent law enforcement authorities without undue delay;</i>		
77		- <i>in order to report and transfer them, pursuant to Regulation (EU) 2016/679, to organisations acting in the public interest against child sexual abuse operating a database pursuant to Article 3f of this Regulation;</i>		
78		- <i>in order to block the account of the user concerned or suspend a service offered to him or her</i>		
79		- <i>regarding personal data reliably identified as online child sexual abuse material online, in order to create a 'hash';</i>		
80		- <i>for the purpose of seeking redress from the provider or pursuing administrative review or judicial remedies;</i>		
81	(e) the provider annually publishes a report on its related processing, including	(e) the provider annually publishes <i>and submits</i> a report on its related <i>to the supervisory authority</i>	(e) the provider annually publishes and submits a report to the supervisory	

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	<p>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.</p>	<p><i>in accordance with Regulation (EU) 2016/679 and to the Commission, 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 ground relied on for the processing pursuant to Article 6 of Regulation (EU) 2016/679, the legal ground relied on for transfers of personal data outside the Union pursuant to Chapter V of Regulation (EU) 2016/679 where applicable, 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</i></p>	<p>authority responsible in accordance with Regulation (EU) 2016/679 six months after the entry into force of this Regulation, and thereafter annually, 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.</p>	
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		protection safeguards applied <i>pursuant to Regulation (EU) 2016/679;</i>		
82	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:	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:	As regards point (d), where child sexual abuse online has been detected and confirmed as such, the relevant data may be retained processed solely for the following purposes and only for the time period necessary:	
83	- for its reporting and to respond to proportionate requests by law enforcement and other relevant public authorities;	- for its reporting and to respond to proportionate requests by law enforcement and other relevant public authorities;	- for its reporting to one or several law enforcement authorities and to organisations acting in the public interest against child sexual abuse and to respond to proportionate requests by law enforcement and other relevant public authorities;	
84	- for the blocking of the concerned user's account;	- for the blocking of the concerned user's account;	- for the blocking of the concerned user's account;	
85	- in relation to data reliably identified as child pornography, for the creation of a unique, non-reconvertible digital signature ('hash').	- in relation to data reliably identified as child pornography, for the creation of a unique, non-reconvertible digital signature ('hash').	- in relation to data reliably identified as child pornography, for the creation of a unique, non-reconvertible digital signature ('hash').	

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86		<i>(ea) every case of a reasoned and verified suspicion of online child sexual abuse is immediately reported to the competent national law enforcement authorities.</i>		
87		<i>1a. This Regulation shall not apply to the scanning of audio communications.</i>		
88		<p>AM 29</p> <p><i>Article 3a Obligation for a prior data protection impact assessment and a prior consultation of the supervisory authorities</i></p>		
89		<i>1. Providers of number-independent interpersonal communications services shall, in order to rely on the restriction provided for by this Regulation, conduct a prior data protection impact assessment pursuant to Article 35 of Regulation (EU) 2016/679 and a prior consultation procedure pursuant to Article 36 thereof.</i>		

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90		<p><i>2. The Member States shall ensure that the supervisory authorities have sufficient resources for prior data protection impact assessments and prior consultation procedures, in line with the requirements laid down in Regulation (EU) 2016/679.</i></p> <p><i>This Article shall not apply where a data protection impact assessment and a prior consultation of the supervisory authorities have been conducted prior to ... [the entry into force of this Regulation] and have indicated that the processing would not result in a high risk to the rights and freedoms of natural persons or that measures have been taken by the controller to mitigate the risk.</i></p>		
91		<p>AM 30</p> <p><i>Article 3b European Data Protection Board guidelines</i></p>	<p><i>Article 3a European Data Protection Board guidelines</i></p>	
92		<p><i>By ... [one month after the date of entry into force of this Regulation],</i></p>	<p>The European Data Protection Board shall</p>	

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		<p><i>and pursuant to Article 70 of Regulation (EU) 2016/679, the Commission shall request the European Data Protection Board to issue 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 online child sexual abuse complies with Regulation (EU) 2016/679.</i></p>	<p>publish guidelines for the purpose of assisting the supervisory authorities responsible in accordance with Regulation (EU) 2016/679 in assessing compliance with Regulation (EU) 2016/679 of the processing falling within the scope of this regulation.</p>	
93		<p>AM 31</p> <p><i>Article 3c Complaint mechanism</i></p>		
94		<p><i>Providers of number-independent interpersonal communications services using technologies for the processing of personal data to detect and report online child sexual abuse and detect and report and remove online child sexual abuse material shall establish an effective and accessible mechanism allowing</i></p>		

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		<p><i>users whose content has been removed or reported to law enforcement authorities or an organisation acting in the public interest against online child sexual abuse to submit a complaint against the action of the provider concerned, where the material reported or removed does not constitute online child sexual abuse in accordance with this Regulation.</i></p>		
95		<p>AM 32</p> <p><i>Article 3d</i> <i>Effective remedies</i></p>		
96		<p><i>Users who have been adversely affected by the use of specific technologies for the processing of personal data to detect and report online child sexual abuse and remove online child sexual abuse material from the services of number-independent interpersonal communications services shall have the right to an effective remedy where the material reported or removed does not constitute online child sexual abuse in accordance</i></p>		

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		<i>with this Regulation. Member States shall put in place effective procedures for the exercise of that right, including for the following cases:</i>		
97		<i>(i) the users' content or identity have been reported to an organisation acting in the public interest against child sexual abuse or to law enforcement authorities;</i>		
98		<i>(ii) the users' content has been removed or their account has been blocked or a service offered to them has been suspended.</i>		
99		AM 33 <i>Article 3e Supervisory authorities</i>		
100		<i>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 Regulation (EU) 2016/679.</i>		

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101		<p>AM 34</p> <p><i>Article 3f</i> <i>Public register of organisations acting in the public interest against child sexual abuse</i></p>		
102		<p><i>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 established based on transparent and objective criteria and kept up to date.</i></p>		
103		<p>AM 35</p> <p><i>Article 3g</i> <i>Statistics</i></p>		

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104		<p><i>1. By [six months after entry into force of Regulation], and on annual basis thereafter, the Member States shall make publicly available and submit reports to the Commission with statistics on all of the following elements:</i></p>		
105		<p><i>(a) the total number of reports of detected online child sexual abuse that have been provided by number-independent interpersonal communications services and organisations acting in the public interest against child sexual abuse to the competent national law enforcement authorities, differentiating between the absolute number of cases and those cases reported several times and the type of provider of number-independent interpersonal communications services where the online child sexual abuse was detected;</i></p>		
106		<p><i>(b) the number of children identified through actions pursuant to Article 3 of this Regulation, differentiated according to gender;</i></p>		

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107		<i>(c) the number of perpetrators prosecuted, following identification through technology;</i>		
108		<i>(d) the number of perpetrators convicted;</i>		
109		<i>(e) the number of false positives reported;</i>		
110		<i>(f) the technologies used to detect online child sexual abuse and their percentage in contributing to the detection of online child sexual abuse; and</i>		
111		<i>(g) the providers of number-independent interpersonal communications services offering services in their territory using technology to detect, remove or report online child sexual abuse.</i>		
112		<i>2. The Commission shall aggregate the statistics referred to in paragraph 1 of this Article and shall take them into account when reviewing this Regulation, pursuant to Article 3h of this Regulation.</i>		
113		AM 36 <i>Article 3h</i>		

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		<i>Review</i>		
114		<i>1. On the basis of the reports provided pursuant to Article 3(1), point(e), and the statistics provided pursuant to Article 3g, the Commission shall, by ...[two years after entry into force of Regulation], and annually thereafter, conduct a review of this Regulation and submit and present a report to the European Parliament and to Council.</i>		
115		<i>2. In conducting its review, the Commission shall pay special attention to:</i>		
116		<i>(a) all conditions for the processing of personal data enumerated under Article 3 3, point (a);</i>		
117		<i>(b) the proportionality of the restriction provided for by this Regulation, including an assessment of the statistics submitted by the Member States under Article 3g;</i>		

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118		<i>(c) developments in technological progress regarding such activities, and the extent to which such developments improve accuracy and reduce false positives.</i>		
119		AM 37 Article 3i <i>Terms and conditions</i>		
120		<i>Without prejudice to Article 3(a), points (xi) and (xii), providers of number-independent interpersonal communications services that use technologies falling within the scope of this Regulation shall include in their terms and conditions clear and comprehensive information on the functioning of such measures and the impact on users' confidentiality of communications.</i>		
121	<i>Article 4</i> <i>Entry into force and application</i>		<i>Article 4</i> <i>Entry into force and application</i>	

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122	This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Union.		This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Union.	
123	It shall apply from 21 December 2020 until 31 December 2025 .	AM 38 It shall apply from 21 December 2020 until 31 December 2022 .	It shall apply from 21 December 2020 until 31 December 2025.	
124	This Regulation shall be binding in its entirety and directly applicable in all Member States.		This Regulation shall be binding in its entirety and directly applicable in all Member States.	
125	Done at Brussels,		Done at Brussels,	