

- **Classification:** Classified – for official use only
- **Date:** 4 November 2022
- **From:** Permanent Representation of Germany to the EU, Brussels
- **To:** Federal Foreign Office
- **Copy to:** BKAMT (Federal Chancellery), BMI (Federal Ministry of the Interior and Community), BMWK (Federal Ministry for Economic Affairs and Climate Action), BMDV (Federal Ministry for Digital and Transport), BMJ (Federal Ministry of Justice), BMFSFJ (Federal Ministry for Family Affairs, Senior Citizens, Women and Youth), BMBF (Federal Ministry of Education and Research), BMG (Federal Ministry of Health)
- **Subject:** Meeting of the European Council’s Law Enforcement Working Party (LEWP) (Police) on 3 November 2022

I. Summary and assessment

Focus of the meeting was discussion of Chapters V and VI of the draft Regulation laying down rules to prevent and combat child sexual abuse (CSA Regulation) and the compromise text on Chapter I (14008/22). The Chair announced that the draft Regulation would be discussed further on 24 November 2022. It would subsequently present the dossier to the JHA Council on 8-9 December 2022.

In the non-legislative part of the meeting, various presentations (WK 14933/22) provided information on progress made in the ongoing communication projects in the context of the Council Recommendation on [cross-border] operational law enforcement cooperation.

II. Details

Agenda item 3: Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse

[Article-by-article examination of Chapters V and VI – 9068/22](#)

With regard to Article 83: FR voiced concerns – along with DE, BE, IT, SI, CY, NL, EL, HU and AT – regarding the – at times considerable – additional expenses, particularly in the context of Article 83(2)(a). Administrative expenses were to be kept as low as possible. According to AT, recourse to current statistics would be preferable. PT stated that interests of persons concerned were not reflected in Article 83. Additional uniform indicators would be needed in order to derive added value from the data collected. Furthermore, there was no provision applying to procedures to be adopted in the event of missing information. PT also took the view that recourse to statistics was appropriate in such circumstances. DK stressed the necessity to preclude the use of data for the purpose of tracing the persons concerned. EL – supported by CY – suggested collecting only information which related to the outcome of investigations. HU suggested deleting Article 83(2)(h). PL – like DE – enquired about the timing involved in the collection of information under paragraph 2. SI and BE entered scrutiny reservations.

COM explained that the purpose of Article 83 was to present appropriate statistics on CSAM reports and their progress. The obligation fell to the three most important protagonists in the combatting of CSA, namely service providers, national authorities and the EU Centre. It was

essential that all three protagonists were involved in reporting. Only then could the effectiveness of the providers' obligations be properly assessed. Transparency was also important to be able to tackle misinformation effectively. The reasons that CSAM reporting was necessary for the prosecution of CSA had to be disclosed publicly. Administrative expenses could be reduced through automation. There was no requirement to communicate information on live investigations. The EU Centre could use the data, e.g. for identifying trends. In that way, the technologies used could also be improved.

In response to a query from SE regarding the relevant data protection rules, COM explained that existing data protection provisions continued to apply, namely the GDPR and the LED. It was important to determine the national authority appointed as the coordinating authority.

With regard to Article 84: In response to the query from DE, COM stated that the EU Centre had to take into consideration the information transmitted by the service providers and the coordinating authorities. The data listed in Article 83(3) was likewise to be taken into consideration.

With regard to Articles 85 to 89: PT called for the delegation of powers in Article 86 to be fleshed out and announced a drafting proposal. COM commented that the adoption of delegated acts provided the opportunity for making minor adjustments to guarantee maximum effectiveness also in the future.

With regard to Article 88, LV, EL and BE stated that Regulation 2021/1232 was to remain in force for a transitional period so as to preclude regulatory loopholes. Moreover, such loopholes were not permissible during the period between entry into force of the CSA Regulation and the date that the first detection orders became valid. COM agreed that loopholes were absolutely to be avoided. In the event of any delay in the negotiations, the expiry date for the interim Regulation was to be altered as appropriate.

With regard to Article 89: FR, EE, NL, IE, EL, CY, IT, LV, RO and PL took the view that the period for entry into force of the COM draft Regulation should be extended to at least 12 months. AT and DE preferred a period of 18 months. PL suggested that it could be linked with the entry into force of the DSA. The Chair conveyed thanks on the conclusion of the first reading of the COM draft Regulation.

[Presidency compromise proposals on Chapter I – 14008/22](#)

The Chair explained that Article 2(j) defines a 'child', and thus a 'child user' for the purposes of the draft Regulation, as a natural person below the age of 18 years. That maximum age threshold of 18 years applied to all national limits in relation to grooming offences in the EU. The definition ultimately depended on the revision of the CSA Directive. Article 2(i) could be removed, as appropriate, since the relevant age was specified under Article 2(j).

With regard to Article 1: In the context of Chapter 1, SE referred to the DSA and TCO. Article 1 was to include an additional paragraph to clarify that freedom of speech remained unaffected. The rules of the TCO Regulation could serve as a model.

With regard to Article 2: FR welcomed the age increase in Article 2(j). However, in Article 2(x), a definition was needed for the providers of search engines. BE, EL, HU and IE welcomed the amendments and advocated a fixed age limit. BE supported the DE question on

including audio communication in the scope of the provision. BE took the view that cloud services should come under ‘hosting services’. The Chair and COM confirmed that cloud services were hosting services within the meaning of Article 2(a). COM explained that the draft provision was based on the DSA, which did not define cloud services. However, one recital clearly stated that cloud services were hosting services. It was also possible to detect grooming in audio messages. The metaverse, for example, could be subject to misuse for grooming purposes. The age of criminal responsibility in respect of grooming or the age of sexual consent was determined in national law on the basis of the CSA Directive. It was therefore possible to rely on national provisions – to the detriment of uniformity – or to set an age, which would reinforce uniformity. COM supported the latter option of setting an age.