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- **Subject:** Meeting of the RAG Law Enforcement on 16 March 2023
- **Here:** Draft of the CSA-VO
- **Purpose:** To inform
- **Reference:** 350.80/4

Meeting of the Working Party Law Enforcement on 16 March 2023

I. Summary and evaluation

The LEWP meeting on 16 March 2023 dealt exclusively with the negotiations of the draft CSA-VO. It first dealt with Articles 19-39 and then Articles 12-18c of the CSA-VO.

II. In detail

Item 1: Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse

Examination of Presidency compromise proposal 7038/23 Article 19:

Chair opened the article-by-article discussion based on compromise text 7038/23 starting with Art.n 19-39.

Article 21:

The Chair and the COM explained that paragraph 2 required the naming of a specific provider. Against this background, the second sentence of paragraph 3, "The request does not have to indicate a specific provider", should be questioned.

COM referred to Art. 49, which provides for the power to seek CSAMs from other providers.

CZE explained that the aim of the addition [which was made under CZE chairmanship] was to support those affected. Some of those affected knew on which pages CSAM was located, but not with which provider it was hosted.

IRL expressed concern that in the interest of affected persons, the power to search for further representations by the EU Centre should be provided for.

COM suggested including the aspects presented by CZE and IRL in an EC.

Article 22:

Chair explained that the amendments in Art. 22 aimed at harmonisation with the DSA. With regard to storage and access rights to data, consistency with ECJ case law must be ensured.

In the view of the JD Council, Art. 22 is very comprehensively worded. In order to guarantee admissible legal remedies against a discovery order, Art. 22 provides that content data and other data can be kept for up to 12 months. Coherence with ECJ case law should be ensured.

DEU submitted as instructed that a high level of data protection was essential - supported by AUT.

IRL expressed concern about accessibility of electronic evidence. A direct link to the users concerned is necessary.

POL and ESP put in PV.

KOM explained that a regulation on the handling of data was necessary in the CSA-VO. It was important to note that it was not a matter of storing data without a reason, but rather a limited storage based on a specific reason. The storage also served to guarantee the necessary legal remedies. Paragraph 2 stipulates that the storage must be limited to what is absolutely necessary. COM was open to adapting the provision and restricting it in individual aspects. However, deleting this article (without replacement) would raise considerable concerns.

COM pointed out lack of coherence between paragraphs 4 (new) and 1.

JD-Council added that Art. 6 TCO was formulated in a very limited and concrete way. Art. 6 TCO could serve as a basis for further negotiations.

Article 23:

BEL repeated request for clarification of the relationship between contact point and legal representative.

COM explained that the main function of the contact point is to facilitate communication. The legal representative was the addressee of orders in the EU. Both functions could in principle be performed by the same body.

Article 25:

Chair pointed out the complexity of the requirements for and tasks of the various national authorities.

FRA noted that compromise text 7038/23 does not always allow changes to be tracked compared to the previous compromise version, which complicates the examination.

FRA, MLT, HUN, BEL, DEU, ROU and ITA supported deletion of paragraph 9.

From FRA's point of view, there is a need for complete independence of the coordinating authority - i.e. independence that goes further than the TCO Regulation. Independence is necessary, among other things, to control the other competent authorities - BEL and DEU supported this view.

When asked, FRA explained that the designation and design of the competent authorities should be left to the MS.

From NLD's point of view, the extension of the deadline in para. 1 is a step in the right direction, but 18 months are required - support by IRL.

HUN, ROU, DEU welcomed extension of the deadline in para. 1.

From the CZE and ITA perspective, it was necessary to establish how "independence" was meant: independent decision-making or organisational independence?

Article 26:

The Chair explained that the addition in para. 1 - at the request of some MS - originated from Art. 13 para. 2 TCO.

EST welcomed chosen wording.
POL and MLT demanded deletion of the amendment.
PRT suggested its own definition of "independence" for the purposes of this regulation.

COM expressed concerns about legal risks that would arise if para. 9 were to be deleted without replacement; PRT proposal to create a separate definition for the purposes of this Regulation was appropriate.

Articles 27-30:

Chair explained that Art. 27-30 were based on Art. 50 para. 2 DSA. At the time of publication of the draft CSA Regulation, the final version of the DSA had not yet been unified. Amendments by the Chair served to align both regulations.

BEL filed a PV and requested that the regulations be merged into one Art.

CZE emphasised that if these regulations were to be aligned with the DSA, special features of the CSA Regulation would have to be preserved.

DEU submitted, as instructed, that a return to the COM draft was preferable with regard to the extension of competences to other competent authorities.

From the COM's point of view, the envisaged powers are aimed at simplifying the work of the MS. Enforcement powers would only be necessary if providers were not compliant. The DSA provides for further powers that have not been included in the CSA Regulation.

From FRA's point of view, Art. 27 should be aligned with Art. 5 para. 3 TCO.

Article 32:

For FRA, Article 32 is a red line. The regulation contradicts ongoing investigations. Article 16 of the DSA is also sufficient for the purposes of the CSA Regulation.

COM stated that Art. 31 and 32 were written coherently. The possibilities provided for pointing out material and encouraging voluntary removal were appropriate. Providers were often not aware of the presence of CSAM content in their services. The difference to Art. 16 DSA is that content is reported by users.

Article 34:

From IRL's point of view, paragraph 3 needs further concretisation.

COM welcomed alignment with the DSA in relation to Art. 34 and Art. 34b.

Article 34b:

From the CZE's point of view, an addition to this regulation is unnecessary.

DEU submitted, as instructed, that the possibility of representation by non-profit organisations is welcomed. POL, PRT and IRL also supported the addition.

Article 35:

POL spoke in favour of absolute maximum amounts instead of percentages. This would allow the authorities greater flexibility in dealing with fines.

Chair explained that according to the understanding there, percentages also allowed a certain flexibility. This understanding was confirmed by COM.

Article 36:

FRA demanded (red line) that the competent authorities also be involved - DEU supported this demand as instructed.

Article 38:

COM explained that "investigations" in the sense of Article 38 are not of a criminal nature. This could be clarified, for example, in an EC. The COM would be happy to propose a wording. It was about investigations in relation to infringements of the CSA Regulation. "Joint investigations" could only be of a criminal nature if the MS decided to do so (Art. 38 in conjunction with Art. 35).

HUN supported the changes made in the compromise text.

Article 39:

The Chair explained that the addition to para. 1a was taken from the TCO Regulation and aimed at deconflicting (especially in connection with the PERCI communication system).

FRA requested (analogous to the requirement in Art. 36) that other competent authorities also be included in the information system.

AUT asked about the design of the information system. There was no legal basis for an EU-wide data collection.

POL suggested adding hotlines to para. 3.

COM explained that an appropriate information exchange system was necessary to ensure the implementation of the Regulation. Personal data would also be transmitted via the information system in connection with CSAM reports. The work of the hotlines would be recognised in an EC. Hotlines currently had their own information exchange system. To include them in the system provided for in Art. 39 would not be desirable and also hardly feasible. They are organisations with different legal forms and backgrounds.

Discussion of Art. 12 ff.

Article 12:

FRA and DEU questioned adaptation of para 1. The previous version harmonised with the DSA.

Chair explained that the wording had been adapted at the request of some MS to avoid (premature) associations with law enforcement with the word "suspicion".

DEU submitted in accordance with instructions that para. 3 should be supplemented by a clarification on the relationship to the DSA. Guidelines as provided for in para. 5 are supported by DEU and HUN.

FRA and IRL - supported by COM - expressed concerns about paragraph 3a. The burden of justification was likely to be a hurdle for users, especially children. However, the burden should lie with providers, not users.

Article 13:

FRA explicitly supported amendments, in particular the inclusion of metadata in para. 1 (d).
AUT and DEU supported the addition of a recital on the relationship with the DSA.
DEU and AUT spoke in favour of the concretisation of "metadata".
IRL suggested changing "metadata" to "unique identifier metadata".

ITA advocated a technology-neutral formulation of paragraph 2 lit. d. BUL welcomed the changes made.

In response to a question from DEU, the COM explained that Annex III, Section 2, point (8) described the different ways of taking note. It was not intended to specify the provider (source) of the notification, only the information channel.

Article 14:

FRA supported shortening the time limit in para 2 to one hour. ROM encouraged graduated deadlines.

NLD, CZE, AUT, FIN, LVA, DEU, BGR, ITA and POL objected to the cut and requested a return to the original 24-hour deadline.

AUT pointed out that deadlines for removal, blocking and blocking were very different under the current compromise.

PRT repeated questions about cross-border distances. It should be clarified whether orders under Art. 14 could also have cross-border effect.

DEN again pointed to constitutional limits for cross-border orders, and the wording needed to be adjusted.

Chair explained that Art 14a should be understood as lex specialis for cross-border orders compared to Art 14.

Article 16:

Chair stated that Art. 16 should be read in conjunction with Art. 36 para. Art. 36(1)(b) should be read in conjunction. Art. 36 stipulated as a requirement that blocked content was content hosted by providers who did not offer services in the EU. The question therefore arises as to whether this requirement should be retained.

COM explained that the logic behind blocking orders is the same as that behind removal orders. Material hosted in the EU could be addressed via removal orders.

FRA expressed concerns about the one-week deadline in para 1a "within a reasonable time period" is appropriate and allows flexibility. FRA believes that paragraph 6 should be deleted. Illegal material should be able to be blocked permanently, the other safeguards are sufficient.

When asked, COM explained that para. 5 lit. a had been designed as a further safeguard for the issuing of blocking orders.

Article 18a:

FRA demanded - analogous to Art. 16 - to delete Art. 18a para. 5.

Chair concluded by announcing that the next meeting on the CSA Regulation would take place on 29 March. The Chair would inform in good time which species would be dealt with.

TOP 2: AOB

No contributions from delegations.