

Source: <https://netzpolitik.org/2023/bundesregierung-innenministerium-setzt-sich-bei-chatkontrolle-durch/>

Machine translated

Here are the differences between the old and new versions:

- **Date:** 05 April 2023
- **From:** Federal Government

Proposal for a Regulation of the European Parliament and of the Council establishing rules on preventing and combating child sexual abuse (CSA Regulation)

Statement of the German Federal

Government on the Draft CSA Regulation

For the Federal Government, the fight against sexual abuse of children and adolescents is a top priority. Therefore, the Federal Government welcomes the Commission's draft as a joint European approach that creates clear and lasting legal foundations. A uniform European legal framework with effective reporting channels is an essential step in the fight against sexual abuse of children. In this context, it is important to hold the providers of relevant information society services more accountable.

At the same time, it is imperative that the planned regulations of the CSA-VO are in line with the requirements of fundamental rights, in particular the protection of the confidentiality of communications and the protection of privacy in communications. A high level of data protection, a high level of cyber security, including end-to-end and secure encryption in electronic communication are essential for the Federal Government.

From the Federal Government's point of view, essential changes to the draft regulation are necessary so that it can be approved from the German point of view. Concrete demands are noted below. Insofar as the reviews within the Federal Government have not yet been completed, we reserve the right to make further demands at a later date. The Federal Government will continue to play an active and constructive role in the negotiations on the CSA Regulation.

National criminal law as a binding upper limit

The age of sexual consent varies in the Member States. In Germany, adolescents from the age of 14 are considered to be of sufficient age to declare their consent to certain acts and content.

The draft regulation should only cover content and conduct that is prohibited throughout the EU. In this respect, the definition in Art. 2 (in particular lit. l, o, q) needs to be adapted to take into account the member states' national scope of implementation of Directive 2011/93/EU. Content or conduct that is not punishable under national law must be excluded from the scope of application of the draft regulation.

Risk management and tiered processes

- The requirements and standards for risk management as defined in Articles 3 to 6 need to be specified. For the sake of legal certainty and predictability, both providers and users must know which data or parameters are (or can be) used as a basis and to what extent they are weighted.
- The draft regulation states that the obligations of risk management are to be fulfilled without the use of detection technologies within the meaning of Art. 10 VO-E within the temporal and local scope of the CSA-VO.
- Specification of the graduated relationship between risk minimisation measures and disclosure orders in the text of the regulation: Prior to a possible disclosure order, all milder means within the framework of risk management must first be exhausted (mandatory).

Concretisation of the requirements for age verification

- The draft regulation must stipulate that mandatory age verification (according to Art. 4 para. 3, Art. 6 para. 1 lit. c VO-E) must continue to enable anonymous or at least pseudonymous use of services concerned. We advocate a stronger research of various

suitable procedures. The development of a uniform, effective and data-saving procedure for age verification throughout the EU will be promoted. The Federal

Government is contributing concrete proposals on this at EU level.

- It must be ensured that, in addition to pseudonymous age verification, for example by means of voluntary presentation of ID (selective disclosure only of exceeding/falling below a certain age limit by means of the eID procedure without transmission of other information about the user), users are offered alternative age verification procedures by the service providers on an equal footing, provided that these offer the same degree of certainty (ensuring a right of choice).
- Services that have implemented effective age verification procedures must also create appropriate complaint and redress procedures for affected users.

Specifying the requirements for issuing discovery orders and ensuring end-to-end and secure end-to-end encryption

The draft ordinance provides for the possibility of orders to uncover already known as well as new abuse representations and "grooming". In the view of the Federal Government, the design of the draft regulation in this area raises considerable concerns. This concerns in particular the end-to-end protection of encrypted communication. It needs to be clearly specified in order to ensure the greatest possible protection of all fundamental rights concerned - both the fundamental rights of children and young people affected by sexual abuse and the fundamental rights of users of information society services who are the addressees of a disclosure order.

In its actions in Germany and at EU level, the Federal Government will advocate for a stronger focus on research into the development of technologies that protect fundamental rights for the detection of content relevant to criminal law in the sense of the CSA Regulation.

Within the federal government, critical examination continues with regard to the following points:

- Admissibility and possible scope of server-side detection measures in unencrypted telecommunications and (cloud) storage services. The state's duty to protect the rights of children is enshrined in Article 24 of the Charter and includes, in particular, the right to physical integrity, which is enshrined in Article 3 of the Charter. At the same time, disclosure measures in private communications and private cloud storage constitute a significant interference with the protection of private life and private communications enshrined in Article 7 of the EU Charter of Fundamental Rights (CFR) and with the protection of personal data enshrined in Article 8 of the CFR.
- Admissibility of disclosure orders of previously unknown abuse depictions and grooming. Depictions of previously unknown abuse and grooming regularly indicate ongoing acts of abuse. The first contact to initiate abuse (grooming) regularly takes place in digital services for the public dissemination of information. However, the detection of hitherto unknown abuse representations and grooming is not possible without errors. The case-by-case examination ties up resources at national authorities.

At this point in time, the following demands in particular should be noted, without which Germany will not be able to agree to the draft regulation:

- Exclusion of measures leading to scanning of private encrypted communications, in particular by deleting the applicability of Art. 7 of the Draft Regulation to encrypted interpersonal communication services as defined in Art. 2 b) of the Draft Regulation.
- The use of measures that lead to a breach, weakening, modification or circumvention of end-to-end encryption shall be excluded by concrete technical requirements in the draft regulation.
- The draft regulation excludes technologies that are used as so-called client-side scanning on the user's terminal device to detect sexual child abuse on the internet and grooming.
- Audio communication is to be excluded from the scope of Art. 7 of the Draft Regulation.
- Clarification of the indeterminate legal terms in the text of the Regulation, in particular "significant risk" as defined in Art. 7(3) of the Draft Regulation "to a considerable extent" as defined in Art. 7(5), (6) and (7).
- Specification of the requirements for a weighing decision within the meaning of Art. 7 para. 4 lit. b).
- Concretisation of the requirements for limited, preferably targeted orders only to an "identifiable part or aspect" of an affected service within the meaning of Art. 7 para. 8 subpara. 3 lit. a).
- Specifying and ensuring that all service users who are the addressees of a disclosure order are informed in an appropriate, abstract manner within the meaning of Article 10(5) about the disclosures to be made in the service concerned and reports of potential sexual abuse of children.

- It must be ensured that data are deleted as soon as they are no longer necessary for the performance of the tasks of the EU centre, the law enforcement authorities and other competent authorities under the CSA Regulation.

Other arrangements:

- When removing depictions of sexual abuse of children, the priority should be to permanently remove the content (principle of "deletion instead of blocking").
- Blocking orders directed at internet access providers should only be permissible as a last resort if measures against the responsible party are not feasible or promising, the blockings are technically possible and reasonable, no monitoring obligations are associated with them and any HTTPS encryption is preserved.

Accelerated reporting channels

- Clarification in the text of the regulation that CSAM notifications are forwarded to the competent authorities of the member states without delay after examination by the EU centre.

More room for manoeuvre in the authority structure to be set up in the member states and promotion of civil society and stakeholder networking

- Making the requirements for the design of the coordination authorities more flexible, especially with regard to the required independence, in order to make effective use of existing structures.
- Political and structural involvement of victims of sexual abuse in the work of the national coordinating authorities. Strengthening the networking of victims at national level through the coordinating authorities.
- Close cooperation between the hotlines and experienced civil society actors is being established.
- Ensure that the envisaged independence of the national coordinating authority does not prevent effective data protection supervision.

Tasks and governance Structure of the EU Centre for Preventing and Combating Child Sexual Abuse

- Concretisation of the tasks of the EU centre in the area of prevention, support, research and processing with greater consideration of the offline dimension of sexual abuse of children and adolescents in the text of the regulation.
- Structural participation of victims of sexual abuse in the activities of the EU Centre through the establishment of a victims' advisory board - cf. the enclosed wording proposal. Before publishing a list of members of the advisory board on its website, the consent of the persons concerned must be obtained.
- Clarification of the delimitation of tasks between the EU Centre and Europol in the text of the Regulation in order to create synergies for effective law enforcement and to avoid duplication of work. This includes an examination of the extent to which the processes already established at Europol can be used.