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- **Here:** Draft of the CSA-VO
- **Purpose:** To inform
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Meeting of the Working Group Law Enforcement on 29 March 2023

I. Summary and evaluation

The WG meeting on 29 March 2023 dealt exclusively with the negotiations of the draft CSA-Reg. Articles 83 et seq., Articles 12 et seq. and Articles 25 et seq. as well as Articles 1 and 2 were dealt with section by section.

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 7595/23

Chair announced to deal with Articles 83 et seq. first.

BEL stressed the importance of the dossier and that it should be concluded during this legislative period. BEL would actively contribute to this.

EST and AUT welcomed speedy negotiations, but said sufficient time was needed for adequate national coordination.

Presidency aims to make the greatest possible progress on the dossier in the first half of the year.

Article 83:

BEL, AUT and DNK welcomed deletion of para. 2 lit. a.

FRA expressed concerns that the deletion of para. 2 lit. a goes too far and that an appropriate regulation is necessary.

SVK spoke in favour of a "more flexible" para. 2 lit a, conceivable would be voluntary data collection.

DEU - supported by DNK and MLT - submitted as instructed that appropriate transparency obligations of national authorities should be ensured.

From the Presidency's point of view, automated data collection and transmission could be ensured.

When asked by FRA, DEU, PRT, the Presidency explained that paragraph 5 had been deleted as Article 83 also covered personal data. A coherent approach to personal data was necessary.

For PRT, deletion of para. 5 is questionable.

ESP submitted PV on Article 83.

HUN spoke in favour of deleting paragraph 2 lit. i.

From ITA's and MLT's point of view, it is necessary to exclusively use data from completed procedures. Only these data are sufficiently meaningful.

COM explained that appropriate transparency obligations have a legal dimension. Therefore, the deletion of para. 2 lit. a met with reservations. The COM was open to more flexibility, longer deadlines and, if necessary, support for the MS by the COM. It is important to have IT systems that record data automatically and reduce the workload for the national authorities. The Interim Regulation already contained transparency obligations for qualitative data. Unfortunately, data collection by many MS had not been taken seriously. However, much of the data was available only to the MS.

COM questioned the deletion of para. 5. Article 83 does not only refer to personal data, this is clear from Article 4.

Article 88:

From HUN's point of view, the Interim Regulation should be extended independently of the CSA Regulation.

FRA advocated for the continuation of voluntary measures - either by extending the Interim Regulation or under the CSA Regulation. Under the CSA Regulation, FRA advocated for a legal basis for voluntary disclosures by providers as part of risk management.

DEU, ROU, MLT, SVK, CZE, EST, SVN and LVA stressed that a regulatory gap between the expiry of the Interim Regulation and the entry into force of the CSA Regulation should be avoided. From DEU's point of view, voluntary measures should be further examined; they require a permanent legal basis.

CZE stressed that the negotiations were under time pressure due to the expiry of the Interim Regulation, Articles 88 and 89 should therefore be considered together.

ITA was in favour of an extension of the Interim Regulation.

MLT was in favour of a continuation of voluntary measures, but, like LAT, saw legal risks.

EST - supported by SVN - stated that voluntary measures had proven their worth. It was therefore necessary to allow these also for an extended transition period - to prevent a practice vacuum.

PRT asked for clarification on what is meant by "voluntary measures". A possible parallel system should be carefully examined.

CZE expressed doubts as to whether voluntary detection measures were an advantage over mandatory ones. Voluntary measures take place when a risk has been identified. If such a risk exists, it is necessary to oblige providers to disclose.

Chair explained that many MS had expressed support for a continuation of voluntary measures.

COM explained that a distinction had to be made between two situations: firstly, a possible extension of the Interim Regulation in order to prevent a regulatory gap until the CSA Regulation came into force. If necessary, this should be ensured. For this purpose, either a new COM draft could be introduced or a temporary extension of the Interim Regulation could be included in the framework of the CSA Regulation. For the latter procedure, the CSA Regulation would have to be adopted before the interim regulation expires.

Secondly, a distinction should be made between the creation of a permanent legal basis for voluntary detection measures and mandatory measures. From COM's point of view, this meets with considerable legal concerns. Only in hosting services could voluntary measures theoretically be continued in parallel with mandatory measures. For interpersonal telecommunications services, the ePrivacy Regulation would prevent voluntary measures after the expiry of the Interim Regulation. A parallel legal basis for voluntary measures alongside mandatory measures is not conceivable, as voluntary measures undermine a mandatory regime. In this area, which is sensitive to fundamental rights, measures could not be left to the voluntariness of companies.

COM therefore warns against creating a legal basis for voluntary disclosure in interpersonal telecommunications services in parallel to mandatory disclosure measures.

Article 89:

CZE, FRA, ROU, SVK, EST, SVN and DEU were in favour of extending the deadline to at least 12 months - from DEU's and SVK's point of view 18 months would be preferable.

NLD argued for a time limit of 24 months. PRT suggested a staggered entry into force.

Chair continued the discussion from Article 12 onwards.

Article 12:

DEU made a presentation on Article 12 as instructed and asked for deletions in para. 3. DEU's presentation was supported by NLD.

FRA and BEL welcomed amendments to paragraph 3 lit a and b. A user-friendly approach should be ensured overall.

ITA, IRL, HUN, MLT and POL welcomed the changes made in principle.

MLT pointed out a possible contradiction with Article 16 para. 2 c DSA.

Chair explained that the DSA provides for anonymous reporting of CSAMs. Many MS also advocate anonymous reporting. However, this would limit the possibilities for follow-up of reports.

SVN referred to a national portal that allows anonymous reports. Reports received there are regularly not "actionable".

From COM's point of view, the relationship between Article 12 of the CSA Regulation and Article 16 of the DSA should be explained in an EC. Only hosting service providers were covered by both the CSA-Reg and Article 16 DSA. Providers of interpersonal telecommunications services were not covered by Article 16 DSA. In cases where users make an incomplete declaration under the CSA, Article 13 requires providers to complete incomplete declarations before forwarding them to the EU centre.

Article 13:

In view of Article 1 of the CSA Regulation, FRA opposed an EC on the relationship with the DSA. From FRA's point of view, para. 1 lit. h should also state whether a notification has already been made or will be made, e.g. to NCMEC.

DEU carried forward as instructed.

When asked by DEU and POL, Presidency explained that "unique identifiers of the user" in para. 1 lit. d had been taken from other EU legal acts.

MLT welcomed amendments in principle and the Chair's proposal in footnote 8 was also welcomed.

POL pointed out that there are different categories of metadata. Further concretisation was needed here.

Chair suggested adding concretisations on metadata in an EC.

EST asked in connection with para. 1 lit. j what should be done in cases where a report has been made but there is no concrete evidence of the victim. This concerned in particular cases of mass dissemination of CSAMs via online platforms. To what extent does the CSA Regulation also address the growing phenomenon of "deep-fake porn"?

COM explained that Article 2c (3) and (4) of the CSA Directive addressed the phenomena described by EST. From the COM's point of view, it was preferable to give priority to urgent cases within the already provided reporting channels; a parallel "fast track" should be avoided.

Article 13a:

FRA, MLT and PRT welcomed paragraph 2, adding that it was based on the TCO Regulation and DSA.

When asked by DEU, the chair explained that "imminent threat to the safety of a child" had been taken from other legal acts. These are offences that require immediate action by the authorities.

Article 14:

The Chair stated that "in accordance with relevant national requirements", the FRA and NLD take up special features that are now being taken into account.

FRA, ITA and NLD welcomed addition.
DEU made submissions on Articles 14 and 14a as instructed.

Chair explained the relationship between Article 14 and Article 14a: Article 14a applies conclusively to cross-border removal orders (e.g. DEU authority notifies a provider in another MS). In contrast, Article 14 applies conclusively to purely domestic situations (e.g. DEU authority notifies provider based in DEU). As is usual in other areas, it is removed with effect in all MS.

DEU, POL, EST, PRT and ITA welcomed return to the 24-hour time limit in paragraph 2.

From an EST and PRT perspective, the earliest possible removal should be ensured "within" 24 hours.

HUN and ROU repeated demand for one-hour deadline, saying there were no factual reasons for different removal deadlines for terrorist content and CSAM.

COM explained that coordinating authorities do not only coordinate nationally, but also at European level. This also includes cases in which several MS have an "interest" in a certain CSAM content. Cooperation was addressed in Article 30 and could be further specified in an EC if necessary.

Article 15:

FRA welcomed the proposed changes.
AUT asked why Art. 20 DSA was not sufficient instead of the newly provided para. 3a. DEU carried forward as instructed.

In response to a DEU question, the Chair explained that the definition of "related criminal offence" would be dealt with again in the context of further definitions. The Chair was open to suggestions for wording.

PRT was also in favour of specifying "related criminal offences".

Article 16:

FRA reiterated criticism of the one-week period in para. 1a, stating that a reasonable period of time is required. Paragraph 6 should also be deleted; the maximum duration of blocking

for 5 years is not comprehensible. For what reasons should illegal content be available again after 5 years?

DEU made submissions on blocking orders as instructed.
FRA was in favour of maintaining MS autonomy in issuing blocking orders.

COM pointed out that assessments by MS would be used in the issuing of blocking orders. MS would feed content into the database according to Article 36.

Chair led the discussion from Article 25 onwards. Fort.

Article 25:

COM explained that the draft COM was based on the logic that coordination authorities usually issue orders. This corresponds to the regulations in the DSA. In the Council draft, an attempt had been made to meet the needs of the MS. In the process, competences were extended to other national authorities. MS should agree on which tasks should be assigned to the coordinating authority. Ultimately, all authorities are "competent authorities", the unique selling point of the coordinating authority is national/European coordination. Since competent authorities and coordinating authorities essentially perform the same tasks - with the exception of coordination - they must be subject to the same requirements. These were at least the independence provided for in the TCO Regulation. COM announced that it would send a written presentation.

FRA submitted PV to COM lecture.

From the CZE's point of view, KOM's remarks are not far removed from current formulations.

DEU and POL welcomed extension of the deadline in para. 1.

Article 26:

POL doubted the feasibility of the requirements of para. 1 sentence 2.
HUN demanded deletion of "integrity", authorities are fundamentally integer.
DEU made a presentation on Article 26 as instructed.

Article 27:

FRA - supported by DEU - objected to extension of powers to further competent authorities.
HUN and FRA preferred the term "inspection" instead of "investigation".
Chair argued for simplification of enforcement powers.

Chair continued the discussion on Articles 1 and 2:

JD-Council explained that the definition of the CSA Regulation referred to the CSA Directive. According to the CSA-RL, there was a certain discrepancy between child pornographic depictions and the offence of sexual abuse of children. In the CSA-RL, punishability depended decisively on the respective "age of sexual consent". As long as the respective national law diverges (minimum harmonisation), the question arises as to which national regulations should be decisive. In view of the sensitivity of disclosure orders to fundamental rights, definitions must be unambiguous. Therefore, separate definitions of what should be subject to disclosure orders should be included in the CSA Regulation.

The COM expressly contradicted the JD Council's statements. Article 2 lit. l of the COM draft explained which material already defined as illegal was covered by the scope of application of the CSA Regulation. The procedure chosen corresponded to the procedure in the TCO Regulation. COM pointed out that possession of CSAM was illegal per se. The context was irrelevant for the assessment. The criminalisation of grooming is indeed based on the "age of sexual consent". For this reason, the COM draft contains a fixed age limit for the punishability of grooming.

FRA objected to the exclusion of number-independent telecommunications services in Article 2, arguing that the CSA Regulation was intended to close existing regulatory gaps.

Definitions should be adapted in the CSA-RL, FRA - supported by BEL - explicitly disagreed with own definitions in the CSA-VO.

DEU made submissions on Articles 1 and 2 as instructed and supported - as did FIN - the restriction to number-independent TC services.

COM stressed that the inclusion of number-independent TC services was necessary to make the draft future-proof.

AUT asked to what extent interpersonal communications could fall within the scope of the CSA Regulation at all.

AUT was very interested in the written opinion of JD-Rat. JD-Rat explained that there was no date yet for the submission of JD-Rat's expert opinion.

CZE questioned the necessity of Article 1 para. 3a, if necessary a shift to EC would be appropriate.

BEL supported all amendments in Articles 1 and 2.

MLT objected to the deletion of Article 2 lit. j.

Chair announced to continue the discussion on disclosure orders at the next meeting on 13 April. The aim is to discuss them in principle. In addition, the discussion on the EU Centre (Articles 40-82) should be continued.

TOP 2: AOB

No contributions from delegations.