

## Committee opinion SuVL 10/2024 vp— U 69/2022 vp

### The Grand Committee

**Letter from the Government on the European Commission's proposal for a Regulation of the European Parliament and of the Council laying down rules for preventing and combating sexual violence against children (COM(2022) 209 final)**

**To the Council of State**

#### INTRODUCTION

##### *Accessed at*

On 11 May 2022, the European Commission adopted a proposal for a Regulation of the European Parliament and of the Council to prevent and combat sexual violence against children (CSAM proposal, COM(2022) 209 final). According to Rule 15(5) of the Rules of Procedure of the Grand Committee, the U case will be re-opened, if necessary, until a decision is taken in the European Union. On 4 October 2024, the Grand Committee decided to ask the Council of State for a supplementary report on the more detailed content of the Hungarian Presidency's compromise proposal on the draft regulation (VP 44/2024 vp, § 11). On 9 October 2024, the Grand Committee acknowledged receipt of the supplementary report and referred the matter to the Constitutional Affairs Committee, the Administration Committee and the Business and Communications Committee for possible action. The Grand Committee stated that it would take a position on the matter after the special committee's deliberations (SuVP 45/2024 vp, § 6).

##### *Statements*

The following opinions have been issued:

- Committee on Transport and Communications LiVL 12/2024 vp
- Committee on Administrative Affairs HaVL 19/2024 vp
- Constitutional Committee PeVL 47/2024 vp

##### *Experts*

The Committee has received a written opinion:

- Office of the Data Protection Ombudsman

The Committee has heard:

- Minister Lulu Ranne
- Pekka Vasara, Special Adviser, Ministry of the Interior
- Hannele Taavila, Director of Police, Ministry of the Interior

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### ***References***

The Grand Committee has issued an opinion on the matter SuVL 7/2023 vp.

### **GOVERNMENT REPORTS**

The Government has informed the Grand Committee on the Hungarian Presidency's proposal for a compromise and the Government's position on the October 2024 EU Presidency. The Grand Committee consulted the Council of State on the state of negotiations on the proposal on 4 October 2024, when it discussed the matter EUN 78/2024 vp European Council meeting on 10-11 October 2024 (Justice and Home Affairs Council). The State Councillor's basic memorandum EU/88/2022-SM-52 and the Ministry of the Interior's statement of 8 October 2024 indicate that the Council of State can support the Presidency's compromise proposal as a partial general approach.

The Presidency compromise proposal covers the whole of the proposed regulation, with the exception of the issue of the location of the EU centre. The main issue at stake in the negotiations concerns the identification requirement under Article 7 of the proposed Regulation, which would oblige a service provider to implement measures in its service to identify online sexual violence against children in accordance with the Regulation. The identification order would target service providers or parts thereof where a high risk of dissemination of CSA material has been identified, and images and videos and URLs that have been found to be unlawful in the past. Communication services using end-to-end encryption would be required to enable the scanning of messages to be transmitted at the communicator's terminal. Users of these services would have to give their consent, in accordance with the terms and conditions of the service provider, for the authentication function to be used in the service. Otherwise, the user would not be able to use the service provider's messaging application to send image-formatted material. The identification of text and voice messages would be excluded from the scope of the Regulation.

### **THE COMMITTEE'S REASONING**

#### ***Overview of the negotiating objectives***

(1) The Grand Committee reiterates its position expressed in its opinion SuVL 7/2023 vp that the proposed regulation has a very strong objective to prevent and combat online sexual violence against children through EU-level action. As the Committee on Constitutional Affairs points out, this objective is linked to a number of fundamental and human rights conventions, guaranteed by the Constitution and international human rights conventions, which oblige effective action to be taken to protect children from violence (PeVL 47/2024 vp, paragraphs 2-3).

(2) Referring to the reasoning of the opinions of the Committee on Constitutional Affairs (PeVL 47/2024 vp), the Committee on Transport and Communications (LiVL 12/2024 vp) and the Committee on Administration (HaVL 19/2024 vp), the Grand Committee considers it very important to establish a clear legal framework at EU level to improve the detection, reporting and elimination of online sexual abuse of children in the EU.

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(3) The Grand Committee notes that it has taken a position on the Council of State's advisory objectives in its opinion SuVL 7/2023 vp. The Grand Committee considered that the admissibility of the proposal is conditional on the measures provided for in the regulation being sufficiently effective and at the same time foreseeable, proportionate and necessary to achieve the objective of the proposal, and that the proposal meets the requirements of protection of the core area of fundamental rights and legal protection. Interference with the protection of confidentiality of communications and other fundamental rights must be limited to what is necessary and proportionate. In addition, the Grand Committee stated that the proposal's relationship with other EU legislation, such as the EU General Data Protection Regulation, must be clear and that the obligations of the proposal must be defined in such a way that it is actually possible to implement the regulatory obligations using modern technology (SuVL 7/2023 vp, recitals 5 and 11).

(4) The Grand Committee still considers the above negotiating objectives to be justified and believes that the Hungarian Presidency's compromise proposal must be assessed on the basis of the above criteria.

### *Evaluation of the compromise proposal*

(5) The Grand Committee notes that the Hungarian Presidency's compromise proposal contains a number of welcome measures which, if implemented, will improve the protection of children from cyber-mediated sexual violence. Referring to the reasons given in the opinion of the Committee on Administrative Affairs, the Grand Committee considers the proposal to be largely acceptable (HaVL 19/2024 vp).

(6) The Grand Committee notes that the problems with the proposal concern the regulation of the identification order, which would oblige online service providers to identify and combat Child Sexual Abuse (CSA) material. The Grand Committee considers that the identification order provision should be considered as a key part of the proposed regulation. It follows that the solutions concerning it are central to assessing the acceptability of the compromise proposal on the basis of the overall assessment.

(7) According to the information received by the Grand Committee, the scope of the identification provision has been limited during the negotiations in order to increase the acceptability of the regulation and the possibility of reaching a qualified majority among the Member States on the outcome of the negotiations. In particular, according to the Committee, the targeting of the identification order on material already found to be illegal and on those ISPs or parts of ISPs where a high risk of dissemination of CSA material has mitigated the problems that the proposed regulation has raised. However, in the view of the Constitutional Committee, the mere risk assessment and the generality of the targeting of the identification order still represents a very clear departure from the requirement of Article 10(4) of the Constitution that criminal interference with the secrecy of confidential communications requires concrete and identified suspicion of a criminal offence. The identification rule still applies to service providers and, for their part, to the communications of all users of services, and its application may therefore be very broad and unspecific. The Constitutional Committee notes that the proposed regulation of the identification order is not without constitutional problems, especially in view of the secrecy of confidential communications, which is protected by Article 10(2) and (4) of the Constitution (PeVL 47/2024 vp, paragraphs 7-8) The Grand Committee draws the serious attention of the Government to the constitutional observations of the Constitutional Committee.

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(8) The Grand Committee agrees with the assessment of the Committee on Transport and Communications (LiVL 12/2024 vp) and the Committee on Administrative Affairs (HaVL 19/2024 vp) that a model such as the one proposed would in fact lead to mass surveillance of communications and would weaken the protection of confidentiality of communications at EU level. The Grand Committee considers that the proposed model would effectively circumvent the purpose of using end-to-end encryption for communications, as the control of CSA material would be technically implemented by requiring communication services using end-to-end encryption to technically identify the messages to be transmitted at the communicator's terminal before the content of the message is encrypted. Such a strong encryption work-around could also serve as a precedent for new measures to identify non-CSA material in the content of communications.

(9) The Grand Committee shares the view of the Committee on Transport and Communications (A6-012/2024 vp) and the Committee on Administrative Affairs (A6-019/2024 vp) that the model entails a significant risk of abuse and that its introduction would undermine the security of communication and information systems and cybersecurity by creating a channel for third parties to exploit the model for hostile purposes. It would also be technically challenging to implement reliably and could lead to the withdrawal from the European market of service providers offering secure communications services and services. In addition, the model could give rise to a high level of unjustified suspicion of the dissemination of illegal material and could be easily circumvented, for example by modifying the content of the image or video or by encrypting the image or video content separately on the user's terminal device. The benefits of the proposal for criminal investigations would therefore be very limited.

(10) Finally, the Grand Committee draws the Government's attention to the reflection of the Administrative Committee (HaVL 19/2024 vp) on whether the relationship of the proposal to the EU General Data Protection Regulation has been sufficiently explained. According to the explanations received by the Grand Committee, users of a communication service would be required to give their prior consent to the identification of image and video messages in accordance with the terms and conditions of the service provider in order to use the service provider's communication application to send images and videos. As reflected in the opinion of the Administrative Committee, the large Committee questions whether consent in such a case can be an individualised and genuinely voluntary and unambiguous expression of will as required by the General Data Protection Regulation.

(11) In view of the serious problems and shortcomings of the above proposal, the Grand National Assembly shares the view of the Constitutional Committee that the compromise proposal does not meet the conditions for an acceptable negotiated outcome as set out in the Grand Committee's opinion SuVL 7/2023 vp and does not take into account the Constitutional Committee's previous positions on the matter (PeVL 47/2024 vp, paragraph 9). The Grand Committee, referring to the explanatory statements of the specialised committees, states that Finland should not accept the Presidency's compromise proposal on the identification provision.

### ***Follow-up***

(12) The Grand Committee believes that the Government should actively promote at EU level the kind of legal regulation that can achieve the objectives of the current proposal. The Grand Committee considers the fight against child abuse and sexual violence to be a priority and believes that reliable and effective measures must be found to prevent and combat this phenomenon, in line with the protection of the confidentiality of communications and other fundamental rights.

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proportionate means. The objectives pursued by the proposal must also be effectively promoted through national measures and international cooperation.

(13) Like the specialised committees, the Grand Committee considers it very important for the realisation of children's rights that the objectives of the proposal can be achieved before the current EU regulation expires. Like the Administrative Committee (HaVL 19/2024 vp), the Grand Committee believes that the possibility for service providers to continue to voluntarily identify and report on CSA must be safeguarded.

(14) The Grand Committee notes that it has consulted the Council of State on the state of negotiations of the October 2024 proposal when it discussed the case EUN 78/2024 vp (Justice and Home Affairs Council of 10-11 October 2024). The Grand Committee expects Parliament to be kept well informed of the progress of the negotiations on the CSAM proposal in the future, not only through reports on the Council of Ministers meetings, but also through follow-up letters. The Grand Committee stresses that its role is to contribute to the preparation of EU legislation to which Finland commits itself at the end of the negotiations. As the Constitutional Committee states, the position of the Grand Committee should be taken as a guideline for the positions of Finland's representatives at EU level. Although the provision in Article 96 of the Constitution does not involve any formal mandate or mandate thinking, the Constitutional Committee has considered the primacy of the position expressed in the parliamentary debate in the formulation of Finland's position to be uncontested. According to the Constitutional Committee, the primacy of the Parliament's position as the starting point for national positions to be adopted for the Union's deliberations is based on the Parliament's position as the supreme organ of state and therefore does not require specific provisions to be laid down in the Constitution. (PeVL 47/2024 vp, paragraph 12. See also PeVM 10/1998 vp pp. 28-29 and EV 27.12.1994 - HE 318/1994 vp) It follows from the above that the Grand Committee stresses the importance of follow-up letters in situations where the Grand Committee has imposed conditions on the admissibility of a proposal at an earlier stage of the negotiations or where, as a result of the negotiations, substantial changes have been made to the content of the legislative proposal.

(15) In its opinion SuVL 3/2024 vp, the Grand Committee has stated that the procedures used in the Council of State's lobbying work must ensure that Parliament's opportunities for influence are properly and regularly safeguarded (paragraph 107). The Grand Committee believes that similar principles should also be applied to other forms of cooperation between the Council of State and Parliament in the preparation of EU legislation. The Grand Committee stresses that the information provided to Parliament must be comprehensive and timely, so that Parliament has real opportunities to influence the national negotiating objectives and thus the outcome of the negotiations (see SuVM 1/2021 vp, paragraphs 150 and SuVEK 78/2024 vp).

(16) Finally, the Grand Committee draws the attention of the Government to § 15(5) and § 16(2) of the Grand Committee's Rules of Procedure, according to which the proceedings of a special committee are, as a rule, an integral part of the proceedings of the U and E case in Parliament. The Grand Committee considers it essential that not only the U and E reports but also the follow-up reports are submitted to Parliament in good time and without delay, so that the special committees have an effective opportunity to make a statement to the Grand Committee and thus to participate in the proceedings.

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### COMMITTEE OPINION

The Grand Committee requires,

*that the Council of State take note of the above, and*

*that the Council of State does not accept the proposal for an identification order as proposed.*

Helsinki, 29.11.2024

The following took part in the committee's deliberations

chairman Heikki Autto kok  
1st Vice-Chair Laura Huhtasaari ps Member Juho  
Eerola ps  
member Ritva Elomaa ps  
member Elisa Gebhard sd  
member Timo Harakka sd  
member Ville Kaunisto kok  
member Teemu Keskisarja ps  
member Mai Kivelä vas  
member Terhi Koulumies  
member Mika Lintilä member  
Helena Marttila member Matias  
Mäkynen member Susanne  
Päivärinta member Onni  
Rostila member Onni Rostila ps  
member Sinuhe Wallinheimo CoR  
member Eerikki Viljanen Centre  
member Sofia Virta Greens  
alternate Pauli Aalto-Setälä co co  
alternate Aleks Jäntti co co alternate  
Pia Lohikoski left alternate Jani  
Mäkelä ps alternate Anders Norrback  
r alternate Mika Poutala kd alternate  
Mika Riipi kesk

The Committee's secretary has been Anna Sorto,

Counsellor of the Committee.