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eco's key aspects concerning the proposed CSAM Regulation and the current negotiations at the European Parliament and the European Council level

Berlin/Cologne/Brussels, 21 July 2023

On 11 May 2022, the EU Commission published its proposal for a Regulation laying down rules to prevent and combat child sexual abuse¹ (hereinafter referred to as the CSAM Regulation) calling for a variety of new provisions for providers of online services, the designation of so-called “Coordinating Authorities” in the Member States and the establishment of a European Centre to prevent and combat child sexual abuse (“the EU Centre”). Since then, the European Parliament and the European Council have been working on their positioning and related amendments to the proposed CSAM Regulation.

Combating the sexual abuse of children is a key concern and a task for society as a whole. eco – Association of the Internet Industry (eco) and the member companies we represent are conscious of their socio-political responsibility and support the EU Commission in its endeavour to combat the sexual exploitation of children and the dissemination of depictions of sexual abuse via the Internet. The collaboration and cooperation of the companies with the law enforcement agencies and national hotlines, as well as their integration into the international hotline network (INHOPE), already make a significant contribution to combating the distribution of depictions of child sexual abuse and to the successful investigation and prosecution of the perpetrators.

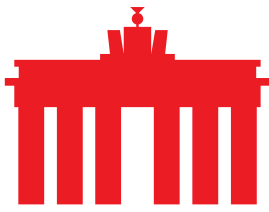
For more than 25 years, eco has operated a hotline entitled the “eco Complaints Office”² – initiated and supported by its member companies – to receive reports on illegal Internet content. One of the main activities of the eco Complaints Office is the effective handling of reports on depictions of sexual abuse and sexual exploitation of children. In addition, eco is a founding member of INHOPE³, the international umbrella organisation of hotlines that combat depictions of abuse on the Internet and cooperate worldwide for this purpose.

Based on the discussions around the proposed CSAM Regulation and proposed amendments that have become public, eco would like to give feedback on this important draft legislation and corresponding legislative debates once again, focusing on main concerns, highlighting positively evaluated proposals for amendments and providing stimuli for the ongoing legislative process.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022PC0209>

² <https://complaints-office.eco.de>

³ <https://www.inhope.org>



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- **Proactive search for child sexual abuse on the Internet / search obligation**

The proposed CSAM Regulation provides for the obligation to proactively search for online child sexual abuse content – on the grounds of so-called “detection orders”. When a corresponding order is issued, the provider concerned is expected to proactively search for known and/or new depictions of abuse of children and/or cases of grooming from then on.

In this regard, eco sees the need for amendments and clarifications, and would like to point out the following:

Due to vaguely formulated material prerequisites for the issuance of a detection order, it is expected that there will be a low-threshold approach when issuing detection orders. Consequently, in practice, this would lead to comprehensive and general search obligations which would be contradictory to the prohibition of general monitoring.

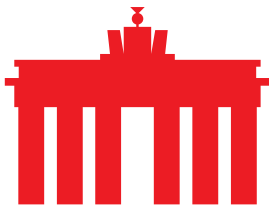
To avoid such a general monitoring, the proposed regulation on detection orders must be amended. eco suggests to explicitly clarify in the text of the regulation that detection orders are a measure of last resort and can only be issued in a targeted, proportionate and narrowly time-limited manner. Several MEPs suggested corresponding amendments for clarification which eco seconds.

In addition, eco supports amendments calling for detection orders to be issued only by judicial authorities and only in relation to known child sexual abuse material, as the error rate for other material (unknown CSAM and grooming) is significant. Otherwise, this would inevitably lead to innocent users becoming suspects as a result of erroneous flagging and reporting to law enforcement. Furthermore, there must be an acknowledgement that the inclusion of grooming in the search obligation would result in mass surveillance of private and specially protected individual communications. The restriction of the measures stipulated in the regulation regarding communication with minors is questionable in terms of technical and practical implementation and would be associated with considerable data protection implications for users of all ages (for example, through identification or age verification).

Finally, we would like to highlight and support amendments by MEPs concerning the protection and safeguarding of (end-to-end) encryption. The inclusion of encrypted communication in the search obligation threatens to lead to a general weakening of encryption technologies and would pose massive security risks. This has considerable implications for the confidentiality and integrity of digital communication, which would go far beyond the problem of online child sexual abuse. In the area of encryption, there is currently no technology that enables a search while maintaining the level of protection for encryption.⁴ This also applies to so-called “encryption backdoors” and “client-side scanning”.

End-to-end encryption means that data can only be seen and read by the two “endpoints” of a conversation: the sender and the intended recipient. For this

⁴ See, for example, <https://www.internetsociety.org/resources/doc/2022/internet-impact-brief-eu-proposal-to-prevent-and-combat-child-sexual-abuse/>



reason, backdoors that give law enforcement or the provider access to decrypted messages violate the most fundamental principle of end-to-end encryption. At the same time, they create a technical vulnerability that can, for example, be exploited by criminals and other hostile actors and as such endanger all Internet users. Similar applies to client-side scanning technologies, where the scanning has to be done on the device and therefore the search pattern needs to be integrated into the device or application. By that, it can easily be found and analysed by criminals (reverse engineering), as well as removed, circumvented or misused. A weakening of encryption technologies is therefore strongly opposed by eco and we call on the Members of the Parliament and the Council to protect and safeguard (end-to-end) encryption by amending the proposed regulation.

- **Proactive search for child sexual abuse on the Internet / voluntary measures**

The proposed regulation does not include any provisions for proactive searching by providers of online services on a voluntary basis. In addition, the temporary ePrivacy Derogation as a legal basis for corresponding measures – for example, in messengers – will expire on 3 August 2024. Currently, it is unclear to what extent a voluntary search by providers of interpersonal communications will still be desired and possible in the future.

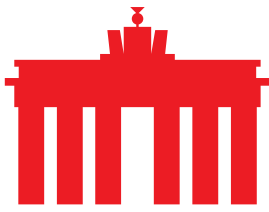
For some providers of online services, depending on the concrete service(s) they offer and their possibilities for action, proactive search on a voluntary basis can contribute to tackling the distribution of CSAM. Therefore, eco would welcome amending the proposed regulation allowing providers of online services to continue proactive search on a voluntary basis. Some MEPs already proposed corresponding amendments (including safeguards when voluntarily searching for CSAM). eco suggests that the proposed amendments are also considered at the Council level and taken over in the general approach.

- **Access blocking / blocking of Internet content**

The proposed obligation for Internet access service providers provides for the blocking of URL-based content containing known depictions of online child sexual abuse not hosted in the EU by means of (temporary) orders, where take-down cannot be obtained from the hosting service provider.

For fundamental reasons, eco takes a very critical view of access blocking. Access blocking is neither effective nor sustainable.

In the opinion of eco, investigations and the prosecution of the perpetrators as well as the effective and sustainable take-down of the content must have top priority. Accordingly, it is essential to apply the focus in the fight against online child sexual abuse on international cooperation and collaboration in prosecution and take-down. With functioning processes and cooperation URL-based content with



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depictions of child sexual abuse can also be reliably and quickly taken down in an international context.⁵

The experience of the eco Complaints Office with cross-border cases of depictions of child sexual abuse shows that take-down can be achieved more quickly internationally if the legal situation in the hosting country with regard to such depictions is identical to that of the reporting country. eco, therefore, considers it essential to expand or strengthen international cooperation in any problematic cases. From eco's point of view, it is essential to become active on the political level and to advocate for further legal harmonisation on depictions of sexual child abuse. This is especially true in view of the fact that depictions of sexual child abuse are, in principle, internationally prohibited and subject to criminal prosecution. There are nevertheless different international standards – even among the EU Member States – in the detailed definition of depictions of abuse as soon as one leaves the area of the so-called “baseline cases” (i.e., depictions of abuse on prepubescent minors).

In contrast to the take-down of CSAM at the host level, access blocking only creates minor barriers to access, which can be circumvented relatively easily – especially by those who deliberately access corresponding content.

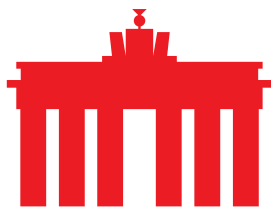
Thus, eco supports amendments by MEPs calling for the objection to blocking orders on the grounds of their ineffectiveness and advocates the fundamental reconsideration of the inclusion of mandatory blocking of Internet content.

- **Implementation of the regulation / inclusion of and cooperation with existing structures and relevant stakeholders**

Regarding the role of the EU Centre and the competent national authorities, eco would like to reiterate that the work of the EU Centre and the new (competent) national authorities should not recreate or take over the existing structures (e.g., the work of individual hotlines in the Member States and the INHOPE network of hotlines) but should rather support them.

For the implementation or enforcement of the Regulation “competent authorities” or “Coordinating Authorities” are to be designated at a Member State level. To this end, the proposed Regulation provides criteria for the Coordinating Authority and the other competent authorities, which are to establish new structures as a consequence (for example, legal and functional independence from other authorities or the prohibition to be entrusted with other tasks connected to the prevention or combating of sexual abuse of children beyond the tasks of this Regulation). On the other hand, strong cooperation with existing stakeholders such as hotlines is not required or otherwise foreseen. Consequently, the proposal implies that existing structures and established actors cannot be drawn upon and that existing cooperation and synergies are not to be used, expanded and

⁵ For instance, in 2022, 98.5 % of the URLs with depictions of sexual abuse of children (up to and including 13 years of age) that were reported by the eco Complaints Office were taken down within an average of 7.9 days (including weekends and public holidays). Source: https://www.eco.de/wp-content/uploads/2023/03/eco_complaints_office_annual_report_2022.pdf



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intensified. For example, the current legislative proposal does not involve existing actors such as hotlines and law enforcement agencies as relevant players or authorities at the national level when it comes to the detection and removal of CSAM.

At the EU level, according to the proposed regulation, an EU Centre is to function as a separate, independent agency of the European Union. Its task should be, in particular, to support the various actors in the implementation of the regulation and the fulfilment of the new obligations (for example, in the area of carrying out risk assessments, detection obligations and blocking obligations). The EU Centre is to provide so-called “indicators” for the implementation of detection and blocking obligations (hash and URL lists) and is also to receive and evaluate reports from providers on potential online child sexual abuse.

The establishment of a separate EU Centre will lead to a coexistence of the EU’s own institution and the established hotline network INHOPE (as an umbrella organisation and the individual hotlines as respective INHOPE members), with the EU Centre and the INHOPE network having the common goal of combating online child sexual abuse. Therefore, eco suggests the explicit involvement of existing structures and cooperations and building on their activities and experiences – both, at the national and the European level.

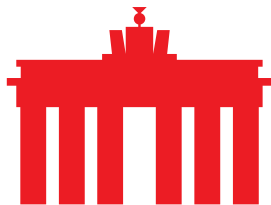
The INHOPE network with its hotlines has been active for more than 20 years in many fields, which, according to the draft regulation, the EU Centre will in the future also be responsible for (including the assessment of reported content, and cooperation with law enforcement agencies and host providers).

The same would apply if the EU Centre or the competent authorities were to take on awareness-raising responsibilities – as envisaged in some suggested amendments. The awareness nodes/centres in the Member States or their Insafe network have been active for years, including across borders, and their work is supported and complemented by hotlines. Both, hotlines and awareness centres, together with the national helplines, build the well-known Safer Internet Centres in the Member States. Thus, in this area, the role of the EU Centre should rather be a supporting one.

From eco’s point of view, it is important to ensure that previous effective measures to combat online child sexual abuse continue to be maintained and, consequently, that the existing European networks (e.g., INHOPE) continue to be included as an integral part of the fight against CSAM in the future. For this purpose, a corresponding clarification in the proposed text of the regulation, outside of the recitals, is urgently required.

On another note, but linked to this context, eco wants to highlight amendments 274 and 275 and recital 70 of the IMCO Opinion, which underline the importance of hotlines and helplines and support their work by integrating them better into the future structure.

With regards to competent authorities in the Member States, one could also think of adapting the stipulations and enabling a strong sustainable involvement of the



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established structures as well as the cooperation of the different actors and their expertise at the level of the Member States.

In this context, we have recognised an interest of MEPs in adding definitions for hotlines, helplines, etc. eco would support such an amendment and suggests the following definition:

"Hotline" means an organisation that, inter alia, provides a mechanism, other than the reporting channels provided by law enforcement authorities, for receiving and assessing anonymous complaints from victims and the public about alleged child sexual abuse online;

III. Conclusion

eco supports the fight against child sexual abuse on the Internet but has serious concerns about the provisions proposed in the draft CSAM Regulation and sees a considerable need for amendments.

The regulations on proactive search measures and access blocking should be completely reconsidered.

eco advocates for a fundamental revision of the provisions on proactive search to track down online child sexual abuse. It must be clarified that detection orders are related to known CSAM only and as a measure of last resort, and can only be issued in a targeted, proportionate and narrowly time-limited manner. In addition, eco advocates for protecting and safeguarding (end-to-end) encryption by amending the proposed regulation.

On the other hand, rulings should be added allowing providers of specific online services to continue proactive search on a voluntary basis.

Mandatory access blocking should be abolished.

Finally, eco calls for a stronger and explicit inclusion of and cooperation with existing stakeholders, in particular the INHOPE network and its member hotlines in the Member States.

About eco: With more than 1,100 member companies, eco is the largest Internet industry association in Europe. Since 1995, eco has been instrumental in shaping the Internet, fostering new technologies, forming framework conditions, and representing the interests of members in politics and international committees. The focal points of the association are the reliability and strengthening of digital infrastructure, IT security, trust, and ethically-oriented digitalisation. That is why eco advocates for a free, technology-neutral, and high-performance Internet.