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WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Law Enforcement Working Party (Police)
N° prev. doc.:	9068/22
Subject:	Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse - comments from delegations on Articles 40 to 82

Delegations will find attached the compilation of comments received from Member States on the abovementioned proposal following the meeting of the LEWP (Police) on 5 October 2022.

**Proposal for a Regulation laying down rules to prevent and combat
child sexual abuse**

(9068/22)

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AUSTRIA

In general:

Concerning the establishment of the EU Centre Austria has the following remarks and questions:

The draft states that the Centre is not a law enforcement authority and it has no law enforcement tasks. At the same time the Centre will be established physically and administratively “near” Europol and the Centre shall share information with Europol. We ask the EC to explain why the tasks of the Centre are not classified as law enforcement tasks.

It is not clear how the tasks of the Centre should be separated from the tasks of Europol.

If fundamental rights-friendly considerations between the interests of law enforcement and private sphere are the reason for the independence of the authority the establishment of the EU Centre “near” Europol is not useful. It would therefore be preferable to have a real independent authority with no local, functional and legal common personnel and resource management with Europol.

The explanatory memorandum says: „This staff will also have more career opportunities without the need to change location” (p. 19). It can be concluded from this that it is intended to deploy mostly (ex-)Europol staff in the EU-Centre. How can a from Europol different handling of cases be guaranteed?

Concerning data protection issues Austria refers to the Joint Opinion of the EDPB-EDPS of 28.7.2022 to Chapter IV, especially RN 114 ff.

Regarding Article 46:

If it can be assumed that neither the content of the Regulation nor the tasks of the EU Centre are to be assigned to law enforcement the establishment of the EU Centre near/at Europol has to be fundamentally questioned. Especially, it is not clear in what way the Eu Centre shall be established de facto as administrative organisational unit of Europol respectively in what way Europol will make available its technical infrastructure to the EU Centre but at the same time has no automatic/full access to the data which are transferred to the EU Centre. It can be assumed that the technical staff of Europol is competent for the establishment of the technical and organisational data security measures according to Article 46 para 8. Thereby Europol directly takes part in the tasks of the EU Centre.

Regarding Article 48 in conjunction with Article 45:

The following questions arise:

- How will the reports be structured/organised?
- Do the reports contain personal data? If yes, what categories of personal data?
- Is intended that the reports will be anonymized according to Article 45 before storing them in the database?
- How long should the reports be stored in the database according to Article 45?

Regarding Article 50:

What technical means shall be made available by the EU Centre according to Article 50 para 1 in conjunction with Article 10? How shall providers integrate these technologies in their diverging infrastructures during upright operation? Are there examples for such technologies, which the EU Centre could use to meet the obligation according to Article 50?

Regarding Article 51:

The provision does not specify the maximum storage period. This has to be amended.

There has to be made a differentiation between

- (1) personal data in connection with suspicious cases, which have not substantiated themselves and
- (2) suspicious cases, which led to the opening of criminal proceedings.

Concerning suspicious cases, which led to the opening of criminal proceedings, it is unclear for what purpose the EU-Centre should continue to store the personal data because the data are anyway in the databases of the law enforcement authorities which have the competence to lead the investigative process. The continued storage of personal data in connection with suspicious cases, which led to the opening of criminal proceedings should therefore be explained and legally justified or omitted.

Regarding Article 53:

In what relationship stands Article 53 para 2 to Article 46 concerning the access of Europol to data of the EU Centre? Article 46 restricts the access of Europol to reports to requests due to certain events or reasoned requests, which the EU Centre has to check before access is granted. At the same time Europol shall according to Article 53 para 2 get the widest possible access to all relevant or for the work of Europol useful information. These provisions seem to contradict one another.

Regarding Section 5:

Why will an Executive Board be set up? The Executive Director could perform these tasks. This would be a simpler structure. Europol does not have such an administrative and management structure. Austria asks the EC to give examples for such a structure.

Concerning Article 56 Austria wonders why two representatives of the EC are foreseen and not only one as it is the case in the Europol Management Board. Concerning Article 56 par. 4 Austria wonders who the representative of the Coordinating Authority should be; will this be the contact officer laid down in Article 52?

Regarding Article 67:

Austria has a scrutiny reservation.

BELGIUM

We have a general scrutiny reservation for Chapter IV.

Articles 40-42

- We welcome the announcement of a document by the Commission on the cooperation between Europol and the EU center, including an overview of the different roles of both entities. Belgium thinks the EU center should focus on prevention, support for victims and research. The EU center should also focus more on the prevention of offline CSA, including based on a perpetrator-oriented approach. Europol on the other hand has important, well-functioning and even recently enlarged tasks and competences with regard to CSAM and research and innovation. This should be studied further in order to make sure operational activities remain purely within Europol's focus. The clear distinction between Europol and the EU center should be protected in order to prevent competition between Europol and the EU center at all times (for example in relation to tasks but also personnel).
- We have a specific scrutiny reservation for Article 42. It seems contradictory to the Common Approach as agreed upon by the European Parliament, the Council and the Commission to assign the seat for an EU agency in the Regulation.
- Belgium wants to underline the importance of the hotlines. We are studying how the work of the hotlines and the cooperation with them could be acknowledged more appropriately throughout the text. We would welcome the document announced by the Commission on the role of the hotlines and INHOPE throughout the text. Because several hotlines also do analysis and classification of CSAM as well as detect false positives, their value cannot be underestimated. For example, in the EU center the cooperation between three parties should be ensured: the law enforcement authorities, hotlines and providers.

Articles 45-46

- We would like to hear more about the proposal in Article 45(2)(f) to let the EU center request the Coordinating Authority for a removal order. How do we know if a provider has, voluntarily, deleted the reported CSAM? It seems useful to add in Article 13 that the providers should indicate whether they deleted or made inaccessible CSAM on a voluntary basis already. The proactive check by the EU center of whether CSAM has been deleted spontaneously apparently is not standard, but should be requested by the Member State? How would this work in practice taking into account the many reports to come?
- How is the chain of custody guaranteed?

Articles 48-49

- We concur that it should probably be made clear in the text that sending a report to the law enforcement authorities and to Europol happens simultaneously and in parallel. It should be ensured in practice that no duplication arises further down the road, due to this action.

- Furthermore, also duplication through different ways of reporting the same content should be avoided (for example something is detected through detection technologies as well as through hotline reporting as well as through victim reporting). It seems that the EU center is in the best place to detect such duplication.
- We understand that victims are not required to specify which provider is hosting CSAM depicting them in their request for assistance. We would like to be and make sure that the text in Article 49(1) and Article 21(1) adequately reflects this. It should be clear that the search on the internet goes beyond any provider that is indicated, if any, by the victim.
- We stress the importance and the relevance of the American legal framework with regard to the implementation of the CSA Regulation by providers located in the United States. Moreover, this has links to other ongoing debates concerning data retention and e-evidence. Belgium is therefore interested to learn about the Commission's views on this and on possible interactions with the United States on this matter.

CROATIA

Article 48.

Paragraph 3

The European Commission, referring to Art. 48. reported at the LEWP meeting on October 5 that the system is designed so that the EU Center checks each report and then removes false positives. After that, all other reports are submitted simultaneously to the member states and Europol. Europol may or may not supplement the received reports with criminal intelligence information. After that, Europol can submit such supplementary reports to Member States for criminal investigation. In this way, the Member States do not know if and when Europol will deliver supplementary reports, which may contain important information that may have a significant impact on the outcome of the investigation. For this reason, we ask the European Commission to propose an amended text that will precisely define the deadlines for Europol's actions upon receipt of the EU Center's report and the deadlines for delivering report supplements to Member States.

Paragraph 4

According to the proposed text, service providers independently assess whether the report requires urgent action or not. After that, EU Center urgently processes such reports. The above paragraph should be supplemented with criteria for service providers based on which they would be obliged to mark reports as urgent, instead of leaving it to their arbitrary decision. Also, it is necessary to prescribe the urgency deadlines in which the EU Center is obliged to process emergency reports and deliver them to Europol and the Member States. In this way, the primary purpose of this proposal will be achieved, which is the effective protection of children from sexual abuse.

GERMANY

General information

- Germany welcomes the opportunity to discuss the articles of the fourth chapter.
- As the Federal Government has not yet completed its examination, we would like to enter a general **scrutiny reservation**.

Workshop on technologies

- Germany would like to thank you for running the workshop and for the experts' interesting presentations.
- The referenced documents are of particular interest to Germany.
- Due to the short time frame, we have unfortunately not yet had a chance to respond to the questions that were asked in advance of the meeting.
- We therefore propose a follow-up meeting.
- Perhaps these questions could be discussed in the workshop on age verification or data protection.

Chapter IV EU Centre

- We hope that the CSA Regulation will also improve the effectiveness of law enforcement in the field of CSA (in particular, the planned EU Centre must not lead to any delays in prosecution). With this in mind, a number of aspects of the Commission's draft Regulation require further specification. We are currently drawing up proposals which we will present in the negotiations.
- We believe the following issues in particular need to be clarified:
 - Which tasks should the planned EU Centre take on and which tasks would it make sense for Europol to assume as part of its new responsibility under Article 4 (1) (y) of the Europol Regulation? To avoid duplication of efforts, the division of responsibilities should be clearly defined in the Regulation. In Germany's view, it remains unclear why Europol is to be consulted not only if the member state with jurisdiction is unclear (Article 48 (3) subparagraph 2) but also in every other case (Article 48 (3) subparagraph 1).
 - In this context, a clear legal basis for sharing personal data between both institutions is needed in order to ensure future cooperation in practice.
 - Which specific Europol resources is the EU Centre supposed to have access to, as referred to in Article 53 (2) subparagraph 2, and under what conditions is this supposed to be possible? We need to develop a clear idea and specific provisions in the Regulation for this in order to avoid negative impacts on Europol's core tasks. In this context, Germany would like to point out that the Commission's legislative proposal does not provide for any additional resources for Europol.

- Funding: We would like to point out that the funding limits specified in the current Multiannual Financial Framework must be complied with and the future financial framework cannot be predetermined. Further, resource allocation is decided in the annual budget negotiations, which must not be preempted.
 - The Commission should provide more detailed information on the planned funding from the EU budget for the new agency and for the proposed support from Europol. On page 15 of the draft proposal, the Commission states that the budgetary impacts are covered by the financial envelopes of the Internal Security Fund. However, the financial statement does not make clear what kind of ISF resources this is referring to.
 - On what basis is the Commission proposing funding for 2028 to 2030? We would also be grateful for an explanation of what exactly the Commission means by “to the extent that it falls within the current budgetary perspective” (page 15 of the proposal for a CSA Regulation) in no. 4, “Budgetary Implications”.
 - We also do not understand what the Commission means by “reprogramming of Heading 7 of the Financial Perspective”. Please explain this further. Are funds from Heading 7 to be used to pay for human resources for the new EU Centre? The funding and resources for an agency are usually supplied from the relevant heading (in this case, Heading 5). We are opposed to using funds from Heading 7 for this purpose.
- Governance structure: By delegating central decision-making powers to a separate Executive Board, the governance structure proposed for the EU Centre would limit the powers of the Management Board as the usual primary organ of decentralised agencies. The Commission would have a veto right on key issues in the Executive Board. Germany finds that unacceptable. The governance structure of the EU Centre should instead use the established structures as agreed in the Joint Statement of the European Parliament, the Council and the European Commission of 19 July 2012 on decentralised agencies. This would ensure the necessary equivalence with the tried and tested governance structure of Europol, which was recently confirmed by the co-legislators.
- In setting up an EU Centre for preventing and combating child sexual abuse, Germany is committed to ensuring the best possible participation of victims. The specific experience and insights of victims is crucial for setting up a structure such as the planned EU Centre in a sustainable manner which is sensitive to victims’ needs and which comprises all relevant areas, i.e. prevention, intervention/assistance, research and helping victims recover from trauma. We ask the Commission to please check how best to ensure continuous and structured participation from victims from the outset. What does the Commission think about setting up a committee of victims of sexual abuse?

HUNGARY

Hungary fully supports the objectives of the draft regulation; however, we have some general and specific comments regarding its approach on certain important elements.

Chapter IV

Article 42 designates The Hague in the Netherlands as the seat of the EU Centre. This was previously objected by several member states. This solution seems logical in terms of efficient use of capacity and the need for close cooperation with Europol, but it should still be a decision for Member States. We support liaison via liaison officers. We believe that more detailed rules are needed for the relationship with the Europol.

We try to be as constructive as possible during the negotiations and we will provide our more detailed position within the framework of the discussions within the LEWP-P.

IRELAND

EU Centre to prevent and combat child sexual abuse

Ireland welcomes the establishment of a new EU Centre, which we think has an important role to play in supporting the operation of the Regulation and supporting other stakeholders.

Questions by Article

Section 1 Principles

Article 42 Seat

Ireland wishes to place a reservation on this Article. As previously stated, the Commission's approach seems contrary to the Common Approach on the location of the seats of decentralised agencies, which anticipates that such decisions are taken by agreement between the Member States/Council.

Section 2 Tasks

Article 43 Tasks of the EU Centre

We seek the provision of flowcharts to provide greater clarity on the interaction between the EU centre and national Coordinating Authorities and other relevant agencies such as EPOL, and associated timelines for these interactions.

Article 44 Databases of indicators

Is it a correct understanding that the indicators generated by the EU Centre must come from the MS Coordinating Authorities, courts or other independent authorities of the Member States, submitted to it by the Coordinating Authorities? We would like the Centre to be able to generate indicators based on databases that already exist in NCMEC or other existing bodies.

How long will it take the EU Centre to build up its databases after it is established?

Article 46 Access, accuracy and security

We would like to give providers that are not subject to detection orders access to the EU Centre databases of indicators, in order to assist in their voluntary efforts to combat CSA

Article 48 Reporting

What timeframe is associated with “expeditiously” assessing and processing reports, as detailed in 48(1)?

48(4) states that a provider can indicate that the report requires “urgent action” and that the EU Centre will assess and process the report as “a matter of priority”; we recommend that a time limit is set for this assessment and processing, given the urgent nature of the report.

In the revised article 12(2), a timeframe of six months is referenced, with a further six month extension possible, for delaying notification to the user and in this article (48) (7), a period of up to eighteen months is referenced. Does this mean that the six month extension referenced in 12(2) can be extended to a maximum of eighteen months?

Article 49 Searches and notification

The EU Centre should be given the capacity to proactively search for CSAM without having to be requested to do so under 49(1).

Section 4 Cooperation

Article 53 Cooperation with Europol

The previously requested provision of flowcharts, combined with clarity regarding respective responsibilities for the EU Centre and Europol, with respect to this regulation, would be welcomed.

Part 1: Management Board

Article 56 Composition of the Management Board

56(4) are Member States management board representatives appointed from Member State Coordinating Authority staff? And how does the CION envisage balanced representation on the Management Board, when each Member State is responsible for appointing their representative?

Part 2: Executive Board

Article 61 Composition and appointment of the Executive Board

We seek further detail on the “assessment of performance” of the Executive Board; what are the parameters of this assessment?

Article 62 Tasks of the Executive Board

With reference to article 62(5), in what scenario does the CION envisage the Executive Board taking provisional decisions on behalf of the Management Board? What is considered urgent?

Part 3: Executive Director

Article 64 Responsibilities of the Executive Director

In what circumstances does the CION envisage the establishment of a “local office”, as referenced in 64(5)?

Subsection 5: Technology Committee

Article 66 Establishment of the Technology Committee

We support the recommendation of the Netherlands, to replace half the committee on a staggered basis, in order to avoid committee knowledge loss and maintain continuity.

Section 6: Establishment and Structure of the Budget

Subsection 2: Presentation, implementation and control of the budget

Article 69 Budget

If the EU Centre is located with Europol, what is the planned division of shared expenses, in particular, expenses referenced in 69(4), administrative and infrastructure and operating costs?

Section 7 Staff

Article 71 General provisions

We welcome the counselling and support provisions for the support of staff working in the areas of detection, reporting and removal of online child sexual abuse material.

LV maintains a **general scrutiny reservation**, as well as enters a **scrutiny reservation** on the whole Chapter IV “EU Centre to prevent and combat child sexual abuse” (hereinafter – EU Centre) of the proposed CSA Regulation.

PRELIMINARY COMMENTS

Europol and EU Centre

LV finds it important that a cooperation model between Europol and EU Centre in combatting child sexual abuse online is **clear and with an obvious added value**. LV considers it being particularly important that the activities of those two agencies in this area **do not overlap and are complementary**, in this way ensuring **the most efficient use of available resources**. In view of this, LV is looking forward to the Commission’s (hereinafter – COM) document outlining the respective competences and interplay between Europol and the new EU Centre.

Seat of the EU Centre

Regarding the seat of the future EU Centre, LV notes that in accordance with the Common Approach¹ the determination of the seat of a new EU agency is a **political decision** taken by common agreement between the representatives of the Member States meeting at Head of State or government level or by the Council. However, LV also notes that the Court of Justice of the European Union (hereinafter – CJEU) has recently ruled² that “the competence to determine the location of the seat of that agency lies not with the Member States but **with the EU legislature** (...)”³.

According to LV understanding, it is legally sound to have a separate article on the seat of EU Centre (article 42) in the CSA Regulation. LV also notes that “such a decision [on determining the seat] must primarily ensure that the tasks entrusted to the body, office or agency of the Union concerned are carried out with a view to **achieving the objectives of a given policy**”. In light of this, the above-mentioned COM analysis (outlining the respective competences and interplay between Europol and the new EU Centre) would, indeed, be critical in deciding whether the Hague as the seat of the EU Centre would ensure the objectives of the “given policy” in the best way possible. LV, of course, also bears in mind that there is a **certain political dimension** (*inter alia* reflected in the Common Approach) in taking decision on the exact seat of the EU Centre (CJEU has stated that political dimension may “constitute a factor which the EU legislature can take into account in exercising its discretion”⁴). Bearing this in mind, LV, at this point, **reserves a right to put forward its position on the exact seat of EU Centre at a later stage of negotiations in the Council**.

¹11450/20.

² CJEU judgment of 14/07/2022; case C-743/19

³Point 98 of the judgement

⁴ Point 71 of the judgement

Executive Board

LV also shares the doubts of Member States (particularly France) expressed in the previous LEWP-P meeting regarding the establishment of **an Executive Board** as a part of the management and administrative structure of the EU Centre. LV notes that the Common Approach provides for the possibility of establishing an Executive Board with a view of reinforcing supervision of administrative and budgetary management, in particular, on audit matters. LV also notes that the mandates of **four out of nine Justice and Home Affairs agencies** (EASO, Eurojust, FRA and Frontex) provide for the possibility of establishing an Executive Board. However, in none of them the tasks of the Executive Boarding are **so far reaching** as in case of the EU Centre. In addition, LV also finds it important that **all Member States** are adequately and fully involved in the management of the EU Centre. In view of this, LV suggests either to **delete** the Executive Board from the management and administrative structure of the EU Centre (it is the preferable option for LV) or to include **references to the Executive Board only in the recitals** (similar to the mandates of EASO and Frontex).

Following the Law Enforcement Working Party meeting held on 5 October 2022, below please find Malta's comments on Chapter IV from article 40 onwards as follows:

Article 42 - Seat

Cooperation with Europol: the relationship between the two agencies needs to be further defined since the EU Centre is expected to be functionally and legally independent from Europol and yet share resources. To this end, making sure that this arrangement does not reduce Europol's operations is important. Malta looks forward to receiving from the Commission the promised document outlining the respective competences and interplay.

Similar to other Member States, Malta would like further information regarding the identification of the seat for the Centre as the procedure seems to depart from the usual procedures.

Article 43 – Tasks of the EU Centre

In terms of sub article (6), the EU Centre will function as a knowledge hub. While in principle this is viewed positively, Malta reiterates its call for this function carried out through other fora namely Insafe through Safer Internet Centres (SICs) and internet helplines and the Better Internet for Kids platform to be respected. If the EU Centre will assume a similar role, some form of contribution should be forwarded to SICs and other relevant stakeholders with a view to ensuring that the awareness raising measures created by the EU Centre are adopted amongst all Member States.

Nonetheless, it is imperative to retain focus on one of the roles that the EU Centre has been envisaged to fill, that is, to produce quality reports on child sexual abuse material. To this end, existing work strands should be viewed carefully in order to avoid duplicating the work of such other relevant stakeholders that have experience in the field and reducing the efficiency of the EU Centre.

Article 53 – Cooperation with Europol

Malta wishes to place a scrutiny reservation on this article in view of the novel approach being taken for the two agencies to share facilities and resources.

Article 54 – Cooperation with partner organisations

Malta wishes to place a scrutiny reservation on this article. Malta suggests that the modal verb 'may' is not enough to safeguard the activities of partner organisations, as the operative text is not considered as reflecting enough the spirit of the corresponding recital 69. Reiterating our written comments following the 20 July meeting, Malta continues to stress the importance of the work of such organisations such as the INHOPE Network. It is essential that the EU Centre consults with such partner organisations on its function and role. Malta therefore recommends that, to solidify this cooperation, the modal verb 'may' is replaced with 'shall'.

Article 55 – Administrative and management structure

Malta would like further information from the Commission on the need for an executive board. Malta joins other Member States in raising concerns that this is not considered as established practice in the setting up of EU agencies and may weaken the integrity of the management board to fulfil its tasks effectively.

THE NETHERLANDS

The Netherlands is a major proponent of a joint European approach to combat child sexual abuse material, particularly given the fact that the Internet so easily crosses national boundaries. We are therefore pleased that the European Commission has published a proposal that should enable the Member States to fight child sexual abuse more effectively and jointly, all across Europe. We applaud the efforts of the Commission and we welcome the proposal of the establishment of a EU Centre. The Netherlands appreciates the opportunity to ask questions about the proposal and looks forward to the Commission's response.

General remarks

Establishment of EU Centre

The Netherlands supports the establishment of a EU Centre. The EU Centre could play a central role in a joint approach to combat online child sexual abuse.

As far as the Netherlands is concerned, the added value of the EU Centre lies in the exchange of best practices between EU Member States and internet service providers on prevention, victim support and the removal of CSAM from the internet. Also in boosting innovation and research on phenomena, such as live streaming. Moreover, the EU Centre could play a role in supporting third countries with increasing their resilience to online child sexual abuse, so that there is also a worldwide cooperation in tackling this problem. As for the management of a database of indicators by the EU Centre, the Netherlands sees possibilities for using hash databases of known material. The EU Centre can also play a role in collaborating with national hotlines to check reports for accuracy and forward them to the appropriate national law enforcement authority and Europol.

The Netherlands is pleasantly surprised that The Hague is proposed as the location for the EU Centre. Considering the benefits for the EU Centre to be hosted near Europol, the Netherlands supports the proposal. For the EU Centre, the proximity of Europol has benefits for the envisaged close cooperation, secure information exchange and shared use of secure infrastructure, including in cooperation with the private sector.

Questions art. 40 – art. 66

The Netherlands would appreciate the Commission to clarify on some matters regarding the following articles.

Article 43

(1)(b)

Can the Commission please clarify what they mean by analyses of anonymised data samples?

(3)

It states that the EU Centre will facilitate the reporting process, by maintaining and managing a reporting database. And assessing, processing and, where necessary, forwarding these reports and providing feedback. Some national hotlines already carry out some of these tasks. What does this mean for the role of national hotlines of Member States? How can the work of the European centre and hotlines complement each other? Can the Commission please elaborate on how they see the role of national hotlines and how this relates to the EU Centre.

Article 44

(2)(a, b, c)

- The question is whether these safeguards properly ensure that no more personal data is stored (and then further processed) than is strictly necessary. Who determines what is "relevant" and "necessary"?
- The concept of "relevant" itself is extensive, in relation to the necessity requirement of the directive (only what is necessary may be processed). Can the Commission please clarify how relevant and necessary relates to each other?

(4)

Which data are specifically stored in the process? Proposal for an amendment to the text:

4. *The EU Centre shall keep records of the submissions and of the process applied to generate the indicators and compile the list referred to in the first and second subparagraphs. It shall keep those records for ~~as long as~~ **no longer than** the indicators, including the uniform resource locators, to which they correspond are contained in the databases of indicators referred to in paragraph 1.*

Article 46

(2)

- Can the Commission please specify what is meant by 'access to indicator databases' by hosting service providers, interpersonal communication service providers and internet access service providers?
- Who determines what is 'a restricted access and what is strictly necessary'. Is this the EU Centre? Could the Commission please clarify this?

(7)

If incorrect personal data is included in the system, are the affected individuals informed about this? Is it possible to have incorrect data corrected? If so, could the Commission please clarify how?

(8)

A database could be an attractive target for malicious parties given the amount of sensitive data. The database should therefore be adequately secured and protected. Can the Commission please indicate what 'appropriate technical and organisational safeguards' are? Can the Commission provide standards for that?

Article 47

Article 47 of the regulation empowers the Commission to adopt delegated acts in accordance with Article 86. It aims to supplement this regulation with the necessary detailed rules 1) on the design of the databases of indicators, 2) the processing of notifications by coordinating bodies for the purpose of completing the databases, 3) the content of databases, 4) access to the databases and 4) the controls and audits of the databases.

The Netherlands questions whether the granting of this power is possible, as it seems to involve the adoption of essential parts of the regulation. Supplementing the regulation with the necessary detailed rules on databases may infringe the right to data protection, the right to privacy and the security of electronic communications. This requires an important political assessment of whether such interference is strictly necessary and proportionate. This cannot be left to the Commission through a delegated act. The Netherlands would appreciate clarification from the Commission on this point.

Article 48

(1)

Why is there marginal assessment by the EU centre? If the purpose of the EU centre is to relieve national implementing organisations (impact assessment report p 349), a more demanding test would be necessary. It is not clear why the EU centre, as a hub of expertise, cannot apply a more demanding test to ensure that data is not kept unnecessarily long and without proper justification. Could the Commission please elaborate on this?

(3)

Third paragraph, states that a report that is not manifestly unfounded will be forwarded by the European centre to Europol and the competent law enforcement agency or agencies of the Member State. Can the Commission confirm that this concerns reports of new material and grooming? If it includes known material, how will it be ensured that law enforcement agencies are not overwhelmed with reports?

(4)

The Fourth paragraph states that a provider, who has submitted the notification, indicating that the notification requires urgent action, the EU centre will then ensure priority review and processing of that notification. Do providers have to review the material to assess whether urgent action is required? The Netherlands would like to stress that the review of such material by providers should be avoided at all times. How can a provider know whether urgent action is required? Do we leave this assessment to providers? The Netherlands would like to have the process of assessing whether or not urgent follow-up is required described more specifically in the text.

(7)

The term of 18 months seems quite long. Can the Commission please clarify this.

Article 50

(1)

The Netherlands considers it important that the proposal retains the following passages of paragraph 1:

Before including specific technologies on those lists, the EU Centre shall request the opinion of its Technology Committee and of the European Data Protection Board. The Technology Committee and the European Data Protection Board shall deliver their respective opinions within eight weeks. That period may be extended by a further six weeks where necessary, taking into account the complexity of the subject matter. The Technology Committee and the European Data Protection Board shall inform the EU Centre of any such extension within one month of receipt of the request for consultation, together with the reasons for the delay.

Article 51

(1)

- The Netherlands suggests including here that existing (EU) personal data protection rules also apply to the EU centre (and more generally in this regulation).
- 'may process personal data' is broadly formulated. Which personal data are included? Can the Commission clarify this?

(2)

The second paragraph states that personal data shall be processed as 'strictly necessary for the purposes'. What exactly does this imply. Can the Commission clarify this?

Does paragraph 2 concern an enumerative list of purposes for which personal data may be processed by the EU centre? If so, a text proposal to clarify that this is an enumerative list:

2. *The EU Centre ~~shall~~ **may** process **only** personal data as strictly necessary for the purposes of:*

(3)

The definition on paragraph is relatively open, given the sensitivity of the data. Has the Commission considered the possibility of a time limit for reviewing the necessity and justification of continued storage? Can the Commission please clarify this?

(4)

- The security requirements set out in Article 51(4) of the Proposal should be more specific. In this regard, inspiration may be drawn from the security requirements laid down in other Regulations regarding large-scale systems involving high risk processing, such as Regulation 767/2008 95 (see Article 32), Regulation 1987/2006 96 (see Article 16), Regulation 2018/1862 97 (see Article 16), and Regulation 603/201398 (see Article 34).
- Fourth paragraph states: it regularly reviews these safeguards and adjusts them where necessary. Is this referring to the EU centre? Shouldn't this be independently reviewed? This could include the obligation for the EU centre to keep logs for processing operations in automated processing systems concerning the data, such that it is possible to establish the justification for of operations i.e. processing of personal data.

Article 53

What does "in accordance with acts of Union law" mean? Can the Commission please specify this?

Article 56

The Management Board seems to have relatively little power, e.g. regarding budgets, work programmes, director appointments, etc, and is at a greater distance than in other agencies (Europol, ECDC, EMCDDA). It seems that the Executive Board has more power. Can the Commission please elaborate on the background of this proposal with regard to this specific point? Suggestion to see if the Management Board should be given more tasks currently assigned in the proposal to the Executive Board. Suggestion that, for example, the Management Board should appoint the director and also set the work programme etc. The Executive Board should be about execution and not strategic decisions.

(1)

Why does the Commission have 2 representatives on the Management Board? At Europol there is 1 representative. Can the Commission please clarify this?

(2)

Why should the Management Board also include one independent expert observer designated by the European Parliament. Can the Commission please clarify this?

(5)

The Netherlands would like to make a suggestion here that the 4-year term for members should not be synchronised. For example, by including in the proposal that some of the new members are appointed every 2 years, otherwise there is a risk that after 4 or 8 years all experience will disappear at once.

Article 61

(2)

Similar with article 56(5) the suggestion of replacing half the members of the Executive Board every 2 years to retain experience.

Article 62

(2)

Suggestion to replace the tasks named under a, b, i, o and p to the Management Board.

Article 65

(4)(5)

The Europol Executive Director is appointed for 4 years, with a 4-year extension. Why does this proposal appoint the Executive director for 5 years, with a 5-year extension?

Article 66

- The tasks of the technology committee are not yet clearly defined. Can the Commission please elaborate on this?
- The number of executive committee members is yet to be included in the proposal. Can the Commission clarify what number they have in mind?

(5)

Similar with article 56(5) and 61(2) the suggestion of replacing half the members of the Executive Board every 2 years to retain experience.

PORTUGAL

We would like to emphasize that the Centre's attachment to Europol may risk diminishing Europol's operational role and divert it towards administrative and logistical supervision obligations;

We would also like to see a more detailed approach on the role that the Centre could play in terms of policy and legislative strategy, as well as on the functions of the Centre;

We disagree with the emphasis placed on the fact that the functions of the center should be assessed "in particular" regarding to online sexual abuse, which seems excessive. On the one hand, we cannot forget that behind every image of abuse there is real abuse, so, without jeopardizing the development of the foreseen activities, we consider that we cannot leave aside, or lessen, the importance of sexual abuse other than online, either in the prevention or in the assistance regarding sexual abuse.

This dissonance is accentuated throughout section 2 (functions) and is reflected in section 3 (on information processing) and 4 (cooperation). Cf. for example we only see reference to providing information and support to victims under s 43.4 d).

Following our previous point, coordination with existing European funding projects on prevention actions and assistance to victims, should be provided.

PT also wishes to reiterate the concern with the absence of references to the participation of children in this process (see Article 40, paragraph 2).

We would like to highlight a few points of the EDPB and EDPS opinion that stress the importance of having clear rules in the process of making a balanced protection of fundamental rights while protection children against sexual abuse.

More specifically:

➤ Article 42

We think that this provision should be further discussed.

➤ Article 48

- a. In Paragraphs 1 and 2, the phrase 'the complaint is manifestly unfounded', implies the threshold according to which the complaint will or will not be forwarded by the law enforcement authorities, should be further clarified. This is to avoid "false positives being stored in Europol information systems, potentially for prolonged periods" in line with the Joint Opinion of the EDPB and EDPS.
- b. Concerning paragraph 3, PT proposes that, following the EDPB and EDPS opinion, attention should be paid to the conditions of adequacy, relevance and limitation to what is strictly necessary, of the transmission of personal data to Europol, as well as to establish rules avoiding duplication of processing of personal data.
- c. It should be adapted to the terms of Article 19 of the New Europol Regulation, according to which a Union body supplying information to Europol shall be obliged to determine the purpose or purposes for which it is to be processed by the Agency, as well as the conditions of processing. It is also responsible for ensuring the accuracy of the personal data transferred.

➤ Article 50, §1.3

The issues in these and other articles relate to the need, where relevant, possible and appropriate, to take on board the indications of the opinion of EDPB and EDPS especially:

- a. On the clarification of the purpose on the opinion EDPB and EDPS and how the EU Centre should act upon receipt of the opinion.
- b. Including in Article 50 of a task for the EU Centre to provide a list of recommended mitigating measures (Article 12(1), providers are obliged to report all information indicating potential child sexual abuse online on their services, not only that resulting from the execution of a detection order), as well as the desirability of requesting the above-mentioned opinions before issuing the list.

➤ Article 53, §3

PT recalls that further explanations could be given on why it is necessary to grant Europol direct access to the information systems of a non-police agency. We would therefore welcome a debate on the case-by-case transmission of data.

We maintain the scrutiny reservation on Chapter IV.

We are still concerned about the possible overlap of the Centre's competences with certain activities that Europol already carries out in the context of combating child sexual abuse. Therefore, we kindly ask the European Commission to make available the tables/ flow charts with the responsibilities of the Centre versus Europol and the responsibilities of the national Coordination Authorities. Hopefully these will bring more clarity and a better understanding of certain issues.

Art. 42 – The seat of the Centre

Member States should have a say in this matter, therefore, we support the position of the Member States that have objected to the explicit mention of the seat in The Hague.

Given the multiple tasks that Europol has to fulfil and the limited resources it has at its disposal, we consider that, all the more so, establishing the headquarters of the Centre in The Hague in order to benefit from Europol's resources is not an argument that can stand up to scrutiny.

Art. 53 – Cooperation with Europol

53.2 – “...*sharing administrative functions with Europol, including functions relating to personnel management, information technology (IT) and budget implementation.*” Clarification is needed regarding the sharing of the resources. At this point we do not consider that “*sharing resources*” is the best solution to maximize efficiency. Since Europol’s resources are already quite limited we do not consider it appropriate to burden them further by sharing them with the Centre.

53.3 - Of course, the terms of cooperation can be laid down in a memorandum of cooperation, but certain principles must be established from the outset. In the same way that there must be a clear separation of duties, there must also be a separation of budgets, staff and resources in general.

Art. 54 - Cooperation with partner organisations

As Europol currently supports MS work with reports on sexual exploitation of minors by unknown individuals who have used IPs from a MS, prepared by the US NGO NCMEC, we would like the Commission to further clarify its view on avoiding overlaps as far as the cooperation with NCMEC is concerned.

Also, given that during the LEWP meeting on 5 October mention was made of the possibility of the Centre being able to use SIENA, we would appreciate receiving further information on the Commission's vision.

CHAPTER IV – General scrutiny reservation on the whole chapter

Article 42 – In our opinion, the decision about the seat of the EU Centre should be made by the Member States. In addition, some states have pointed out the need to take into consideration the entire logistic capacity of each country. We also have to consider the accommodation capacities for the employees at the EU Centre and whether the educational system enables the possibility of education for the children the employees would bring along.

We agree that the boundary between tasks and responsibilities of the EU Centre and Europol should be clearly marked.

Article 43 – Should the EU Centre have access to other tools for investigation of child sexual abuse and analysis of the material? If yes, one of its tasks could be to send such tool to the law enforcement agencies of the Member States or establish if other Member States have proper tools on the request of the Member State.

Article 43 – Tasks of the EU Centre – we miss the regulation of cooperation with law enforcement agencies, especially in the sense of acquisition of information from foreign or domestic internet services providers, where the law enforcement agencies often turn for additional information. This is the case with NCMEC. Sometimes, the reports are inaccurately or differently filled-out, for example, the time of the commission of the criminal offence in some cases is the actual time, when the perpetrator downloaded the file, and sometimes the time of the criminal offence is when the provider detected it. This is a big difference for the investigators. The cooperation of the police with the EU Centre should be one of its tasks. The LEAs often need information on the provider, their point of contact for acquisition of additional evidence. The information from the centre would be very valuable in these cases.

Given the need for constant training and exchange of good practises and knowledge, the EU Centre could organize regular consultations with the law enforcement agencies, where experiences could be exchanged and we could discuss false hits, technology efficiency, etc.

Article 48 – Reporting –EU Centre sends the report to Europol and LEAs of the competent Member State. In the Article 48, there should be a possibility of notification of the EU Centre on a possible false hit by the Member State or the law enforcement agencies of the Member State, which received such report. Especially due to different legislation in Member States, it could happen that something is illegal in one state and legal in another. Namely, there are already some false hits in the NCMEC reports, which repeat itself. These false hits could be prevented.

Paragraph 6 of the Article 48 states that, on the request of the competent law enforcement agency of the Member State, the EU Centre informs the provider, which reported the sexual abuse, that they must not notify the user or remove the footages or disable access to it. This should be automatic until cancellation of the LEAs or maximum of 18 months. With the notification of the EU Centre about each case separately, we lose time and human resources, and it is not exactly clear when this should happen and how. Namely, before the investigation in the Member State begins, one month or more may pass.

In the 2nd paragraph of the Article 51, a cooperation with law enforcement agencies in case of victim identification could be added after the item (n). If such cooperation is possible with Europol, it is also possible with the law enforcement agencies of the Member States.

Article 54 – Cooperation with partner organisations – here, we could add a paragraph that Member States or Europol could propose the organisations and networks from the preceding paragraphs for the cooperation with the EU Centre, and, as already stated, we would add law enforcement agencies of the Member States.

As regards to the Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse (Chapters I and II of the CSA proposal): Spain supports all measures to strengthen the detection and surveillance of child pornography and other sexual abuse of minors on the Internet and the idea of encouraging the cooperation of companies that offer services on the web in order to develop prevention strategies. However, this legislative development is very complicated and involves several actors, which is why Spain has a scrutiny reservation on this issue. Having said that, Spain has a general comment to share:

Article 2 Definitions: (i) ‘child’ mean any natural person below the age of 18 years; (j) ‘child user’ means a natural person child who uses a relevant information society service and who is a natural person below the age of 17 year: these two ages present legal uncertainty under our national law. We call for an age unification of the two ages.

Article 3 Risk assessment; (b) functionalities enabling age verification: does it refer to the age of the user or the age of the persons appearing in the illegal content? Clarification is needed in the article. We understand that it will not be possible to verify the age of the person unless it is linked to a verified ID number.

Article 3. 4. b: at a reasonable earlier date: This reference is legally generic and indeterminate. It would be desirable to specify the specific time.

Article 7.7: The detection orders concerning the solicitation of children shall apply only to interpersonal communications between where one of the users is a child user and an adult: In line with the Commission. It is considered more appropriate to define the victim (age, etc.) without the need to define the person acting against the victim (it is recalled that only the victim is defined in the directive and we would leave out cases where both (aggressor and victim) are minors).

In relation to data protection, it notes that the proposal is based on the General Data Protection Regulation (GDPR). In practice, providers often invoke various grounds for processing under the GDPR to carry out the processing of personal data inherent to the voluntary detection and reporting of online child sexual abuse of children. The proposal establishes a system of specific detection orders and specifies the conditions for detection, providing greater legal certainty for these activities.

As regards mandatory detection activities involving the processing of personal data, the proposal, in particular the detection orders issued on this basis, sets out the ground for processing referred to in Article 6(1)(c) of the GDPR, which provides for the processing of personal data necessary for compliance with a legal obligation under Union or Member State law applicable to the controller. Only a reference to Directive 2016/680, General Provisions, Article 1, is included, this Regulation shall not affect the rules contained in the following legal acts: Regulation (EU) 2016/679, Directive 2016/680, Regulation (EU) 2018/1725 and, without prejudice to paragraph 4 of this Article, Directive 2002/58/EC. References to Directive 2016/680 would be missing in the Articles, given that the processing of data by the judicial and/or law enforcement authority will be based on DIRECTIVE (EU) 2016/680 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties and on the free movement of such data and repealing Council Framework Decision 2008/977/JHA.

Article 12.2: General comment to this article: The role of the EU Centre is not clear. It is clear from reading Article 48 that it affects the public security competences of the Member States, because it states that it is the EU Centre which will analyse all complaints and forward them to Europol or to the competent police force, and if it is not known who the competent authority is, they will be forwarded to Europol.

We believe that this is difficult to fit into the framework of our internal legislation on police powers. **It would be advisable to consider amending Article 12 in conjunction with Article 48.**

Where within the three months' time period referred to in the second subparagraph the provider receives such a communication from the EU Centre indicating that the information is not to be provided, it shall inform the user concerned, without undue delay, after the expiry of the time period set out in that communication: This content would have to be changed, because if this happens, the user would have the ability to remove any evidence of the facts.

Article 13: Specific requirements for reporting: It would be appropriate for Article 13, which refers to the specific requirements for the submission of reports, to mention in point 1(d) that not only the available data associated with the user should be provided, but also the technology used, such as the identification data associated with the device used. Consideration could also be given to the possibility of providing the geolocation by coordinates of the place where the offence was committed, if available to service providers.

Article 16: scrutiny reservation

Article 26.4: The following wording is proposed at the end of this item: "to perform their duties by complying with the corresponding requirements of item 2 of this Article 26".

Article 34.2.: It is considered of interest that the complaint made by a minor be referred to a legal department under the coordinating authority as a prior step to a possible referral to police bodies if the facts constitute a crime; in the case, the minor's complaint should be supervised by an adult.

Article 36.1: The following is of interest for clarification: So far, the material was forwarded to EUROPOL, once the operation had been exploited. There could be a conflict of competence if it now has to be forwarded to the EU Center.

As for the deadline (without undue delay), it should be made clear that it is always after the operation has been closed, except in cases where it is desired to cross-check this information with the information available from the Center or from EUROPOL, as the case may be. the period of undue delay should take into account the need to comply with deadlines set by national regulations or those imposed by circumstances affecting possible investigations and judicial authorities.

Article 38: For clarification, it is important to detail the role of the Center in research where coordination was previously carried out through EMPACT or AP TWINS.

Article 42: As we indicated in our last intervention on this content in Brussels, Spain requests that the content of this article be changed to state that the headquarters of the Centre will be chosen by the member countries.

The reasons for requesting this change are based on the following reasoning:

- Initially, the Commission indicated that the member states could decide the seat of such a Centre UE.

- For this kind of agency to have its headquarters in an EU country is a common practice and does not interfere in any way with its functions. An example is the European Drugs Agency, which was reinforced on 9 June 2022 and is based in Lisbon. We believe that keeping the headquarters in a different location from the Europol Centre helps to avoid duplication between the two bodies, helps transparency and helps to comply with data protection regulations.

As you know, Spain is very interested in being able to host this European Centre, due to our extensive experience in investigating this type of criminality, and because we believe that Spain would facilitate international cooperation with South American countries, which are essential in the fight against online child sexual abuse.

Articles 44-48: general comments: clarification of these articles is requested, as they show duplication and overlap between the functions that would be performed by this centre and those currently performed by Europol. It is considered of interest to clarify the terms under which EU CENTRE could make use of SIENA.

Article 44(1) does not specify the three types of indicators to be used for the detection of known paedophile material, newly produced paedophile material or grooming of minors.

Article 46(5) excludes competent law enforcement authorities from access to the complaints database referred to in Article 45. It is proposed that just as law enforcement authorities are given access to the database of indicators under Article 46(4), they should also be given access to the complaints database for the purpose of assisting in the investigation of child sexual abuse offences.

Article 48.8: The removal of the content by the service provider is usually accompanied by a NOTICE to the user which may alert the user to the police investigation and trigger the removal of evidence. WE BELIEVE it is in our interest to take this into account and propose a DISCRETED REMOVAL OF CONTENT without putting the user on NOTICE until the authorities deem it appropriate.

Article 49.1: INTERPOL-ICSE already performs these functionalities. It is proposed to have interoperable access to ICSE to enhance searches.

Article 54: INTERPOL is not explicitly mentioned. It is considered to be an entity of great potential for the work of this CENTRE and we would like to clarify if it is not mentioned because the relationship with INTERPOL will be via EUROPOL.
