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OUT OF SCOPE

**Cc:** SG F2

**Subject:** Minutes of the meeting with Microsoft, 21 January 2021

### Minutes of the meeting with Microsoft, 21 January 2021

Participants: [REDACTED] OUT OF SCOPE Microsoft)  
Commission: C. Hili, A. Whelan (CAB President) [REDACTED] OUT OF SCOPE

The video-conference call was organised at the request of Microsoft to discuss the impact of the application of the European Communications Code on providers that voluntarily scan for child sexual abuse material on their services.

It was acknowledged that NCMEC reported that reports concerning child sexual exploitation in the EU went down by 46% in the first 21 days since the entry into force of the European Electronic Communications Code.

Microsoft informed that on 20 December it published a blog post where it reconfirmed its commitment to digital safety. It explained that it decided to still scan for child sexual abuse material and that companies have made different decisions, with some deciding to stop and others continuing, while waiting for the interim Regulation proposed by the Commission to be adopted and to enter into force. Microsoft pointed out that if the interim Regulation brings a lot of burden on providers (such as prior agreements from DPAs) it may be counterproductive and some may choose to not apply the voluntary measures anymore.

Microsoft also explained that it did not scan its services just for child sexual abuse, but also for terrorist content, although the Terrorist Content Online Regulation excludes communications services. It pointed out that in the new e-Privacy Regulation, ancillary features (like the Xbox) would be part of the secrecy communications provisions, which would mean that the ability to moderate chats in games targeted to children would no longer exist. It regretted also the lack of an earlier discussion on communications secrecy in the context of fundamental rights. Microsoft also pointed out that its understanding was that the Xbox was entirely in scope of the Digital Services Act but also that the due diligence of taking down illegal content would be in contrast to expanding the e-Privacy Regulation's telecoms secrecy to ancillary features. It also explained that it had not yet come to a conclusion on whether the definition of "dissemination to the public" would apply to Xbox.

The Commission appreciated that Microsoft's decision to continue scanning for child sexual abuse was a difficult one given the lack of legal certainty. It also pointed out that a sectoral approach for tackling instances of illegal content was one that helped explain why measures limiting certain freedoms had to be taken in areas such as terrorist content or child sexual abuse online. It took note of the distinction between the extension of the telecoms rules for market regulation purposes and for ePrivacy purposes and of the suggestion that, as regards the separate track of the e-Privacy Regulation, some more reflection would be needed on communication services intensively used by children. Linked to the Digital Service Act, it was explained that the law enforcement part was focused on services where the

service provider is made aware or would have the means to become aware of what happens on its service, which is typically not the case for interpersonal communication services, which are not moderated.

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