



**EUROPEAN COMMISSION**  
**DIRECTORATE-GENERAL FOR MIGRATION AND HOME AFFAIRS**

Directorate D – Internal Security  
**D.4 – Security in the Digital Age**

Brussels  
 HOME.D.4/

Dear Signatories,

Thank you for your letter of 28 April 2022 addressed to President Von der Leyen, Vice-Presidents Vestager, Jourová and Šuica, as well as Commissioners Johansson, Breton and Schinas, on the EU proposal to prevent and combat child sexual abuse online. We welcome and share your engagement in the protection of fundamental rights and freedoms in our Union.

The protection of the privacy of all users is essential, and so is the protection of the fundamental rights of our children, including their rights to the integrity of the person and to privacy, which are severely violated by online child sexual abuse.

Taking action to combat child sexual abuse, including online abuse, as well as protecting children rights, is a priority for the Commission, as highlighted also in its strategy for a more effective fight against child sexual abuse adopted on 24 July 2020. As part of this strategy, the Commission adopted on 11 May 2022 a new legislative proposal with the aim of providing an effective long-term solution to combat child sexual abuse online, including certain obligations for relevant online services providers to detect and report child sexual abuse online to public authorities.

We can - and must - pursue both the protection of children against child sexual abuse and the protection of privacy of all users (including of the children subject to sexual abuse). The Commission's proposal strikes the right balance in this respect, notably by limiting any interference with privacy to what is necessary and proportionate, in compliance with the Charter of Fundamental Rights of the European Union and the case law of the European Court of Justice.

In your letter, you mention concerns with respect to the proposal, in particular in relation to generalised detection, privacy intrusive technologies and a possible weakening of end-to-end encryption.

On the first point, you affirm that 'the upcoming EU proposal to replace the ePrivacy derogation would compel all providers to scan all private communications for the purpose of detecting CSAM'. This is not the case. The adopted proposal's main objective is to prevent online child sexual abuse through effective safety by design. It is only when this is not possible that a case-by-case decision on whether to impose detection obligations is taken. In other words, detection under the proposal is a last resort measure subject to strict proportionality requirements. To ensure a correct balancing of all the rights and interests at stake in each case, the proposal entrusts the decision to order detection to a judge or other independent administrative authority.

Concerning your arguments on detection technologies, the proposal ensures that these are only used to identify online child sexual abuse and that they are the least intrusive in accordance with the state of the art. The detection process is embedded in a constellation of safeguards, including the involvement of data protection authorities in the selection and application of detection technologies, the mandatory use of the database of online child sexual abuse indicators provided by the EU Centre, the attribution of the competence to issue detection orders to a judicial or independent administrative authority, and the provision of avenues for judicial redress for all actors whose rights might be affected during the process.

Finally, the proposal should not be understood as incentivising or disincentivising the use of any given technology, since a balance between children's rights and privacy of other users needs to be struck regardless of the technology used to provide interpersonal communication services. That includes the use of end-to-end encryption technology, which is an important tool to guarantee the security and confidentiality of the communications of users, including those of children. When executing the detection order, providers should take all available safeguard measures to ensure that the technologies employed by them cannot be used by them or their employees for purposes other than compliance with the proposal, nor by third parties, and thus to avoid undermining the security and confidentiality of the communications of users.

In conclusion, the Commission's proposal aims to ensure full respect for the rights to privacy and data protection of children, and of others online. In the proposal, the detection of child sexual abuse is in line with data protection rules and privacy of communication rules, which require a proportionate legal basis.

We thank you again for your input and look forward to further constructive engagement with stakeholders in our efforts to protect the fundamental rights of all our citizens.

Yours sincerely,

[E-Signed]

