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REGULATORY SCRUTINY BOARD OPINION

Regulation on detection, removal and reporting of child sexual abuse online,
and establishing the EU centre to prevent and counter child sexual abuse

{COM(2022) 209}

{SWD(2022) 209, 210}



Brussels,
RSB

Opinion

Title: Impact assessment / Regulation on detection, removal and reporting of child sexual abuse online, and establishing the EU centre to prevent and counter child sexual abuse

Overall 2nd opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

Child sexual abuse (CSA) is a particularly serious crime that has serious life-long consequences for victims.

The aim of this initiative is to establish an obligation for relevant online service providers to detect child sexual abuse online, to report this to the public authorities and to remove the relevant content. It also explores the option of creating a EU centre to prevent and counter child sexual abuse.

This initiative follows up on the CSA strategy adopted in July 2020.

(B) Summary of findings

The Board notes that the report has been substantially redrafted and improved in many aspects.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

- (1) The role of the EU centre and associated costs are not sufficiently described. The implementation options for the EU centre are not presented in a sufficiently open, complete and balanced manner.**
- (2) The report is not sufficiently clear on how the options that include the detection of new child sexual abuse material or grooming would respect the prohibition of general monitoring obligations.**
- (3) The efficiency and proportionality of the preferred option is not sufficiently demonstrated.**
- (4) The scope and quantification of the cost and cost savings for the ‘one in, one out’ purposes are not clear.**

This opinion concerns a draft impact assessment which may differ from the final version.

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(C) What to improve

(1) The report should further strengthen the problem analysis. It should elaborate exactly how ‘the continued presence and dissemination of child sexual abuse material [...] hampers growth on the Internal Market (i.e. single market for digital services)’.

(2) The report should explain better the role of the proposed EU centre. The options description should clarify the centre’s role in the area of prevention and whether the centre will coordinate Member States’ victim support efforts including health, legal, child protection, education and employment. It should explain how the centre will perform proactive search, how the coordination of this task with the detection done by the service providers themselves will be assured and how it will support SMEs by verifying the illegality of reported material. It should also provide the analysis of the cost of the centre under each policy option.

(3) The implementation options for the centre should be presented in a more open, balanced and complete manner in the main text. The preferred implementation option should not be identified upfront, but emerge as result of an analytical assessment and comparison process. In this respect, the report should be clearer on the relevance and functioning of the externalisation sub-option on prevention and assistance to victims functions via non-EU staff and covered by calls for proposal or grants. It should clarify whether this sub-option would in practice remove the need for a separate entity under the Europol implementation option. It should be clear on the related impacts on infrastructure and operational expenditure costs as well as organisational efficiency.

(4) The report is clearer about the limitations of available technologies that exist for the use in encrypted communications and acknowledges that they have not yet been deployed at large scale. In view of this assertion, the report should be clearer about the practical feasibility of the policy options and provide reassurance about the effective application. The report should be clear how legal uncertainty for obliged service providers and risks of unintended consequences on privacy and security will be avoided.

(5) The report should clarify how the options that include an obligation to detect new child sexual abuse material or grooming would respect privacy requirements, in particular the prohibition of general monitoring obligations. It should more explicitly explain how the risk-assessment process could identify specific high risks groups that would be at the basis of more targeted searches.

(6) Given the significant differences of options in terms of costs and benefits, the report should better argue the choice of the preferred option in terms of efficiency and proportionality. It should better substantiate and justify why it prefers an option that neither provides the highest net benefits nor delivers the anticipated level of benefits in the most efficient way.

(7) Differing stakeholder views, including from targeted consultation, should be presented in a more transparent way throughout the report and especially in the analysis of impacts and the selection of the preferred option. It should be clear who has said what, and how concerns have been taken into account, in particular where views by category of stakeholders differ. The focus should not be on majority views, as the consultations are not a representative survey.

(8) The report elaborates some mitigation measures for SMEs e.g. access to training and to free detection technologies, and the support from the centre for the verification of illegality of the reported material. However, the impacts section should better outline the

measures from which SMEs will not be exempted, quantify their costs and elaborate on possible barriers to entry.

(9) The report should explain better its approach to the ‘one in, one out’ principle. It should clarify what exact costs and savings are included in quantification for one in, one out purposes, making sure that only administrative cost savings are taken into account for offsetting and that administrative costs are identified. It should also further elaborate on how the estimates were calculated. It should be more explicit on the expected significant adjustment costs for business under the preferred option in the section on the application of the one in, one out approach.

(10) Annex 1 of the Impact Assessment should be further elaborated to indicate how the recommendations made by the Regulatory Scrutiny Board in both opinions have been treated and considered.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

(D) Conclusion

The DG must revise the report in accordance with the Board’s findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Impact Assessment on a proposal for a Regulation on detection, removal and reporting of child sexual abuse online, and establishing the EU centre to prevent and counter child sexual abuse
Reference number	PLAN/2020/8915
Submitted to RSB on	20 January 2022
Date of RSB meeting	Written procedure

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of Benefits (total for all provisions) – Preferred Option (EUR million/year)		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
<i>Direct benefits</i>		
Reduction of crime/ child sexual abuse.	3 448.0	Annual benefits from reduction of crime.
<i>Indirect benefits</i>		
Facilitation of efforts by the EU Centre.	N/A	Cost savings due to a more effective and efficient use of resources (e.g. avoid duplication of efforts in the EU).
<i>Administrative cost savings related to the 'one in, one out' approach</i>		
Replacement of Interim Regulation and Council Decision.	18	Compliance of service providers and public authorities with the existing legislation.

II. Overview of costs – Preferred option (EUR million/year)							
Policy measure		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
1	Direct adjustment costs	-	-	0.2	2.8	0.4	3.5
	Other costs	-	-	-	-	-	-
3	Direct adjustment costs	-	-	-	-	5.0	25.7
	Other costs	-	-	-	-	-	-
4***	Direct adjustment costs	-	-	-	6.9	-	11.1
	Other costs	-	-	-	-	-	-
5	Direct adjustment costs	-	-	20.4	1.7	-	3.3
	Other costs	-	-	-	-	-	-
6	Direct adjustment costs	-	-	352.2	459.4	-	503.6
	Other costs	-	-	-	-	-	-
7	Direct adjustment costs	-	-	604.4	520.5	-	250.1
	Other costs	-	-	-	-	-	-
8	Direct adjustment costs	-	-	618.0	471.9	-	28.2
	Other costs	-	-	-	-	-	-
Costs related to the 'one in, one out' approach (EUR million/year)							
Total	Direct adjustment costs	-	-	1 595.3	1 463.3		
	Indirect adjustment costs	-	-	-	-		
	Administrative costs (for offsetting)	-	-	-	-		



Brussels,
RSB

Opinion

Title: Impact assessment / Regulation on detection, removal and reporting of child sexual abuse online, and establishing the EU centre to prevent and counter child sexual abuse

Overall opinion: NEGATIVE

(A) Policy context

Child sexual abuse (CSA) is a particularly serious crime that has serious life-long consequences for victims. The exponential development of the digital world makes this crime a truly global one.

The aim of this initiative is to establish an obligation for relevant online service providers to detect child sexual abuse online, to report this to the public authorities and to remove the relevant content. It also explores the option of creating a European centre to prevent and counter child sexual abuse.

This initiative follows up on the CSA strategy adopted in July 2020.

(B) Summary of findings

The Board notes the additional information provided in advance of the meeting and the commitments to make changes to the report.

However, the Board gives a negative opinion, because the report contains the following significant shortcomings:

- (1) The internal market dimension and the necessity for EU action in the area of prevention and victim support is not always clear.**
- (2) The report does not fully describe all the available policy choices and leaves a number of questions open. It does not discuss in a transparent and balanced manner the alternative implementation forms for a European centre.**
- (3) The report does not clearly establish how safeguards will ensure fundamental rights, in particular regarding technologies to detect CSA in encrypted communications.**
- (4) The comparison of policy options does not comply with the standard assessment criteria and is not based on a clear and consistent ranking methodology.**

(C) What to improve

(1) The context section does not present clearly enough how the initiative builds on and interacts with related policy instruments (e.g. CSA Directive, Prevention Network, Digital Services Act, interim derogation), and how the CSA responsibilities are distributed between the EU and the Member States. The baseline should fully integrate what these other instruments can achieve for the detection, removal and reporting of CSA material as well as for prevention and victim support.

(2) The report should further elaborate the internal market dimension of this initiative and provide clear evidence of fragmentation and conflicts of law. It should better explain why these issues cannot be adequately tackled on the basis of existing policy instruments. It should better argue why EU action is needed for prevention and support of victims in addition to the responsibilities already established at Member State level and to existing coordination mechanisms.

(3) The report should clearly identify the key issues for which policy choices need to be made. It should provide in its main part a full and open discussion of the main implementation options identified for the European centre, including those relying on existing structures (e.g. Europol). It should assess in a balanced and evidence-based manner their strengths and weaknesses, including in terms of accountability, independence, transparency, governance and organisational synergies. As regards non-EU body options (e.g. foundation) the independence and governance discussion should take into account the fact that part of its funding could depend on third parties and that its legal status will depend on national provisions of the Member State in which it will be established.

(4) The report should be more precise regarding the nature of safeguards for fundamental rights. It should also discuss how the proposed obligations to detect CSA material and grooming would be compatible with the criteria indicated by the Court of Justice for permissible preventive monitoring.

(5) The report should be more specific and analytical regarding the treatment of technologies to detect CSA in encrypted communications. The report should assess the coherence with the horizontal approach on encryption. It should indicate whether and how political oversight on the use of detection technology will operate, including a discussion of the relevance of certification and implementing measures. As technological solutions are not yet available for encryption, the report should be clear how legal uncertainty for obliged service providers and risks of unintended consequences on privacy and security will be avoided.

(6) The report foresees certain exemptions and mitigation measures for SMFs under the various options. These measures should be explained upfront in the options section and thoroughly assessed in the impacts analysis, including how they will affect the operation and the financing of the centre as well as the competitiveness of SMEs. The report should also further develop the impact analysis of the measures from which SMEs will not be exempt. It should quantify their costs and elaborate on possible barriers to entry.

(7) The impact analysis should be clear about the analytical methods and the categories of costs and benefits. It should explain data sources, underlying assumptions as well as uncertainties and limitations of the analysis. In particular, it should explain how the extrapolation of a US study to the EU context has been done, how robust its results are for the EU and whether it has been peer reviewed. It should indicate which part of the overall benefits is due to mandatory obligations and which is due to the centre.

(8) The policy options (both for the EU centre and the service providers) should be compared on the basis of the standard assessment criteria effectiveness, efficiency and

coherence. This should help to avoid assessing the same impacts under several criteria. The comparison of options should provide more detail on the methodology chosen to rank the different options. It should further elaborate on the quantitative comparison of options and explain the analytical method chosen.

(9) Stakeholder views, including from targeted consultation, should be presented in a transparent way throughout the report and especially in the analysis of impacts and the selection of the preferred option. It should be clear who has said what, and how concerns have been taken into account, in particular where views by category of stakeholders differ.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings and resubmit it for a final RSB opinion.

Full title	Impact Assessment on a proposal for a Regulation on detection, removal and reporting of child sexual abuse online, and establishing the EU centre to prevent and counter child sexual abuse
Reference number	PLAN/2020/8915
Submitted to RSB on	25 May 2021
Date of RSB meeting	16 June 2021