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| ENFOPOL 130    | COMPET 272 |
| CRIMORG 34     | MI 247     |
| IXIM 63        | CONSOM 108 |
| DATAPROTECT 83 | DIGIT 55   |
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#### COVER NOTE

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From: Houses of the Oireachtas, Joint Committee on Justice  
date of receipt: 30 March 2023  
To: The President of the Council of the European Union

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Subject: Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse [9068/22 - COM(2022) 209 final]

- Opinion on the application of the Principles of Subsidiarity and Proportionality

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Delegations will find enclosed the opinion<sup>1</sup> of the Houses of the Oireachtas on the above-mentioned Regulation.

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<sup>1</sup> The translation(s) of the opinion may be available on the Interparliamentary EU Information Exchange website (IPEX) at the following address: <https://secure.ipex.eu/IPEXL-WEB/document/COM-2022-209>



**Tithe an  
Oireachtais**  
**Houses of the  
Oireachtas**

**Tithe an Oireachtais**  
**An Comhchoiste um Dhlí agus Ceart**

**An Cion Polaitiúil i ndáil leis an Togra le haghaidh RIALACHÁN Ó  
PHARLAIMINT NA hEORPA AGUS ÓN gCOMHAIRLE lena  
leagtar síos rialacha chun drochúsáid ghnéasach leanaí a chosc  
agus a chomhrac {SEC(2022) 209 críochnaitheach} –  
{SWD(2022) 209 críochnaitheach} – {SWD(2022) 210  
críochnaitheach}**

**Márta 2023**

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**Houses of the Oireachtas**  
**Joint Committee on Justice**

**Political Contribution on**  
**Proposal for a REGULATION OF THE EUROPEAN**  
**PARLIAMENT AND OF THE COUNCIL laying down rules to**  
**prevent and combat child sexual abuse {SEC(2022) 209 final} -**  
**{SWD(2022) 209 final} - {SWD(2022) 210 final}**

**March 2023**

**33/JC/37**

## INTRODUCTION

1. The Joint Oireachtas Committee on Justice considers *COM(2022)209 REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down rules to prevent and combat child sexual abuse* to be of major significance to Ireland and to the European Union.

## COMMITTEE SCRUTINY

2. The Committee considered this proposal at meetings on 13<sup>th</sup> July 2022 and 13<sup>th</sup> December 2022 and agreed that it would be further scrutinised.
3. The Committee heard from officials from the Department of Justice at its meeting on 21<sup>st</sup> March 2023.
4. The Committee agreed on 21<sup>st</sup> March 2023 that a political contribution on the proposal would be prepared for issue to the European Union institutions.

## DECISION OF THE COMMITTEE

5. On 28<sup>th</sup> March 2023, the Committee agreed to forward a copy of this political contribution to Simon Harris T.D., as Minister for Justice; to Ursula von der Leyen, as President of the European Commission; to Roberta Metsola, as President of the European Parliament; and to Charles Michel, as President of the European Council.
6. The Committee further agreed that, in the interests of interparliamentary cooperation on European Union matters, a copy of this political contribution would be forwarded to the appropriate body in the national parliament of each European Union Member State and to Ireland's Members of the European Parliament.

## OPINION OF THE JOINT COMMITTEE

7. Having considered the proposal in detail, the Joint Committee on Justice makes the following observations:

- a. The Committee is supportive of the fundamental objective behind this proposal to combat online child sexual abuse.
- b. The Committee notes figures from the European Commission which highlighted the pervasive nature of child sexual abuse and found that 85 million images and videos depicting child sexual abuse were reported globally in 2021.
- c. The Committee agrees that this issue is of grave importance and welcomes this legislative initiative to combat the issue at an EU level. However, the Committee expresses its concerns regarding several elements of the proposal as currently formulated.
- d. The Committee notes that the proposal will place a significant responsibility on national authorities in terms of implementation measures. The Committee observes that, as the headquarters of several large service provider companies are located in Ireland, there may be a particular burden placed on Irish national authorities in this regard.
- e. The Committee believes that the proposed legislation is unprecedented in requiring indiscriminate scanning of digital communications and cloud storage, threatening the safety, privacy, and freedom of expression of every citizen.
- f. The Committee is of the opinion that the proposed legislation would significantly undermine the security of our communications and online services by requiring firms to either remove end-to-end encryption or

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introduce backdoors into apps or other local software ('client-side scanning').

- g. The Committee notes that the European Data Protection Board ('EDPB') and European Data Protection Supervisor ('EDPS') have stated that: "client-side scanning would likely lead to substantial, untargeted access and processing of unencrypted content on end user's devices. Such a substantial degradation of confidentiality would especially affect children since the services they use are more likely to be targeted by detection orders, making them vulnerable to monitoring or eavesdropping."<sup>1</sup>
- h. The Committee is concerned that this scanning technique is already leading many people to be pulled into a net of suspicion for the worst kind of crime even though they have done nothing wrong.
- i. The Committee believes that this is extremely intrusive in terms of people's right to privacy, confidentiality of communications, data protection, and right to freedom of expression.
- j. The Committees notes that the Irish Council of Civil Liberties have reported that of all National Center for Missing & Exploited Children (NCMEC) reports made to Gardaí in 2020, only 9.7% were actionable. The referrals included innocuous images of children playing on a beach.<sup>2</sup> Similarly, according to the Swiss Federal Police, 80% of the reports they receive from NCMEC are criminally irrelevant.<sup>3</sup>
- k. The Committee is of the opinion that, rather than improving child protection, this proposal is likely to inundate police with false positives.

<sup>1</sup> EDPB-EDPS Joint Opinion 04/22 at paragraph 100.

<sup>2</sup> <https://www.iccl.ie/news/an-garda-siochana-unlawfully-retains-files-on-innocent-people-who-it-has-already-cleared-of-producing-or-sharing-of-child-sex-abuse-material/>

<sup>3</sup> <https://fedpol.report/de/fedpol-in-zahlen/kampf-gegen-paedokriminalitat>

The flagging of so many innocent files will take vital resources away from abused children. As stated by security experts, there are approximately 10 billion messages sent and received every day in the EU. Even a 0.001% false positive rate would mean 100,000 messages would be sent for moderation every day. For context the UK National Crime Agency triages 100,000 alerts a year from NCMEC, and this takes 200 staff.<sup>4</sup>

- i. The Committee notes that the recently published REPHRAIN study<sup>5</sup> is the first independent, public evaluation of automated industry tools for child sexual abuse material (CSAM) detection and prevention, the kinds of tools that will be mandated if this proposed EU law is implemented. It evaluated five different systems for detecting suspected child sexual abuse material and found that, in each case, the system didn't meet fundamental rights standards; they created risks based on automated assessment; and they couldn't quantify the rate of false positives, or the rate was unacceptably high.
- m. The Committee notes that the former Court of Justice of the European (CJEU) judge Prof. Dr. Ninon Colneric was commissioned to give a formal opinion on the proposed law and categorically stated the proposed law is incompatible with EU case law.<sup>6</sup>
- n. The Committee believes that effective child protection will not be served by passing a counter-productive regulation, only for it to be later struck down by the courts.

<sup>4</sup> Anderson, R., *Chat Control or Child Protection?*, Universities of Cambridge and Edinburgh Foundation for Information Policy Research, 11 October, 2022, <https://arxiv.org/abs/2210.08958>

<sup>5</sup> <https://bpb-eu-w2.wpmucdn.com/blogs.bristol.ac.uk/dist/1/670/files/2023/02/Safety-Tech-Challenge-Fund-evaluation-framework-report.pdf>

<sup>6</sup> Legal opinion commissioned by MEP Patrick Breyer, The Greens/EFA Group in the European Parliament, <https://www.patrick-breyer.de/wp-content/uploads/2021/03/Legal-Opinion-Screening-for-child-pornography-2021-03-04.pdf>

- o. The Committee is of the opinion that effective policing, particularly of crimes embedded in devastating social problems, must be locally led and involve multiple stakeholders; the idea of using 'artificial intelligence' to replace police officers, social workers and teachers is a kind of magical thinking that leads to bad policy.
- p. The Committee believes the debate must also be conducted within the boundary conditions set by human rights and privacy law, and to be pragmatic must also consider reasonable police priorities.
- q. The Committee recommends that the option of allowing service providers to pursue voluntary detection of CSAM should be preserved in some format.

*James Lawless*

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James Lawless T.D.,  
Cathaoirleach,  
Joint Committee on Justice  
28<sup>th</sup> March 2023