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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2021/1232 of the European Parliament and of the Council on a temporary derogation from certain provisions of Directive 2002/58/EC for the purpose of combating online child sexual abuse - Outcome of the European Parliament's first reading (Brussels, 10 to 11 April 2024)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

¹ OJ C 145, 30.6.2007, p. 5.

In this context, the Chair of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) Juan Fernando LÓPEZ AGUILAR (S&D, ES) presented on behalf of LIBE a compromise amendment (amendment number 13) to the abovementioned proposal for a Regulation, for which Birgit SIPPEL (S&D, DE) had prepared a draft report. This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

II. VOTE

When it voted on 10 April 2024, the plenary adopted the compromise amendment (amendment number 13) to the abovementioned proposal for a Regulation. No other amendments were adopted. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

P9_TA(2024)0198

Temporary derogation: combating online child sexual abuse

European Parliament legislative resolution of 10 April 2024 on the proposal for a regulation of the European Parliament and of the Council Amending Regulation (EU) 2021/1232 of the European Parliament and of the Council on a temporary derogation from certain provisions of Directive 2002/58/EC for the purpose of combating online child sexual abuse (COM(2023)0777 – C9-0437/2023 – 2023/0452(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2023)0777),
- having regard to Article 294(2), Article 16(2) and Article 114(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0437/2023),
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the opinion of the European Economic and Social Committee¹,
- having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 21 February 2024 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
- having regard to Rule 59 of its Rules of Procedure,
- having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0021/2024),
- having regard to the Report from the European Commission on the implementation of Regulation (EU) 2021/1232 of the European Parliament and of the Council of 14 July 2021 on a temporary derogation from certain provisions of Directive 2002/58/EC as regards the use of technologies by providers of number-independent interpersonal communications services for the processing of personal and other data for the purpose of combating online child sexual abuse (COM(2023)0797),

¹ Opinion of 17 January 2024 (not yet published in the Official Journal).

1. Adopts its position at first reading hereinafter set out;
2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 10 April 2024 with a view to the adoption of Regulation (EU) 2024/... of the European Parliament and of the Council amending Regulation (EU) 2021/1232 on a temporary derogation from certain provisions of Directive 2002/58/EC as regards the use of technologies by providers of number-independent interpersonal communications services for the processing of personal and other data for the purpose of combating online child sexual abuse

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16(2), in conjunction with Article 114(1), thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure²,

¹ Opinion of 17 January 2024 (not yet published in the Official Journal).

² Position of the European Parliament of 10 April 2024.

Whereas:

- (1) Regulation (EU) 2021/1232 of the European Parliament and of the Council³ provides for a temporary regime as regards the use of technologies by certain providers of publicly available interpersonal communications services for the purpose of combating online child sexual abuse, pending the preparation and adoption of a long-term legal framework *addressing the prevention of and combating online child sexual abuse (the ‘long-term legal framework’)*. That Regulation applies until 3 August 2024.
- (2) The proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse, *which the Commission adopted on 11 May 2022*, aims to provide the long-term legal framework. However, the interinstitutional negotiations on that proposal have not yet *started* and it is *certain that* they will *not* be concluded on time for the long-term legal framework, including any amendments to Regulation (EU) 2021/1232 that it might contain, to be adopted, enter into force and apply by 4 August 2024.

³ Regulation (EU) 2021/1232 of the European Parliament and of the Council of 14 July 2021 on a temporary derogation from certain provisions of Directive 2002/58/EC as regards the use of technologies by providers of number-independent interpersonal communications services for the processing of personal and other data for the purpose of combating online child sexual abuse (OJ L 274, 30.7.2021, p. 41, ELI: <http://data.europa.eu/eli/reg/2021/1232/oj>).

- (3) It is important that online child sexual abuse can be combated effectively, in accordance with the applicable rules of Union law, including the conditions set out in Regulation (EU) 2021/1232, and without interruption, pending the conclusion of the interinstitutional negotiations on the proposal for, and the adoption, entry into force and application of, the long-term legal framework. ***The co-legislators express their commitment to reaching an agreement on the long-term legal framework as soon as possible and with a view to avoiding any further extensions of Regulation (EU) 2021/1232 in the future.***

- (4) ***Given the particular circumstances***, Regulation (EU) 2021/1232 should be amended to extend its period of application for ***a*** period of time that is limited to that which is strictly necessary to adopt the long-term legal framework and for it to enter into force. ***It is crucial to note that that extension is exceptional and should not establish a precedent for further extensions. Regulation (EU) 2021/1232 was initially designed as a transitional, temporary instrument serving as a link between the implementation of Directive (EU) 2018/1972 of the European Parliament and the Council⁴, which brought number-independent interpersonal communications services within the scope of Directive 2002/58/EC of the European Parliament and the Council⁵ from 21 December 2020, and the establishment of the long-term legal framework. Contrary to the co-legislators' expectation, the application of Regulation (EU) 2021/1232 needs to be extended, due to the absence of an agreed long-term legal framework.***

⁴ ***Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36).***

⁵ ***Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).***

- (5) *Pursuant to Regulation (EU) 2021/1232, in order for the temporary derogation from certain provisions of Directive 2002/58/EC to apply, providers of number-independent interpersonal communications services are required to publish and submit to the competent supervisory authority and to the Commission a report on the processing of personal data under that Regulation.*
- (6) *In view of the report from the Commission on the implementation of Regulation (EU) 2021/1232, it is necessary to improve reporting to the Commission both from the Member States and from providers of number-independent interpersonal communication services. It is also important to stress that the Commission should report on the implementation of Regulation (EU) 2021/1232 in a timely manner.*

- (7) *In order to facilitate reporting by providers of number-independent interpersonal communications services, in particular to ensure that their reports are machine readable and easily accessible, a common reporting format for those reports should be established.*
- (8) *In order to ensure uniform conditions for the implementation of Article 3(1), point (g)(vii), of Regulation (EU) 2021/1232, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁶.*
- (9) Considering the need to ensure, in a timely manner, legal certainty and considering the limited nature of the amendments provided for in this Regulation, namely the extension of the period of application of the temporary regime and the conferral of implementing powers on the Commission for the purpose of establishing a common reporting format, it is appropriate to provide that this Regulation should enter into force as soon as possible.
- (10) *The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council⁷ and delivered its opinion on 24 January 2024.*
- (11) *Regulation (EU) 2021/1232 should therefore be amended accordingly,*

HAVE ADOPTED THIS REGULATION:

⁶ *Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13, ELI: <http://data.europa.eu/eli/reg/2011/182/oj>)*

⁷ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39, ELI: <http://data.europa.eu/eli/reg/2018/1725/oj>).

Article 1

Regulation (EU) 2021/1232 is amended as follows:

(1) in Article 3, the following paragraph is added:

‘4. The data included in the report referred to in paragraph 1, point (g)(vii), shall be provided in writing by means of a standard form. By 3 December 2024 at the latest, the Commission shall determine the content and presentation of that form by means of implementing acts. In doing so, the Commission may divide the data categories listed in paragraph 1, point (g)(vii), into subcategories.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 9a(2).’;

(2) in Article 9, paragraph 1 is replaced by the following:

‘1. On the basis of the reports submitted pursuant to Article 3(1), point (g)(vii), and the statistics provided pursuant to Article 8, the Commission shall, by 4 September 2025, prepare a report on the implementation of this Regulation and submit and present it to the European Parliament and to the Council.’;

(3) *the following article is inserted:*

‘Article 9a

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a Committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.’;

(4) in Article 10, the second *paragraph* is replaced by the following:

‘It shall apply until 3 April 2026.’.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...,

For the European Parliament
The President

For the Council
The President
