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NOTE

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laying down rules to prevent and combat child sexual abuse
– Presidency compromise texts

Delegations will find in the Annex Presidency compromise texts on the above proposal. Changes to document 9068/22 are marked in **bold underline** and ~~strikethrough underline~~.

Compromise texts in Articles 25 to 39 are based on the discussions during the LEWP meeting of 22 September 2022 and delegations' written comments.

Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
laying down rules to prevent and combat child sexual abuse

(Text with EEA relevance)

CHAPTER III

SUPERVISION, ENFORCEMENT AND COOPERATION

Section 1
Coordinating Authorities for child sexual abuse issues

Article 1

Coordinating Authorities for child sexual abuse issues and other competent authorities

1. Member States shall, by ~~{Date— two~~ six months from the date of entry into force of this Regulation~~}~~, designate one or more competent authorities as responsible for the application and enforcement of this Regulation ('competent authorities')
2. Member States shall, by the date referred to in paragraph 1, designate one of the competent authorities as their Coordinating Authority for child sexual abuse issues ('Coordinating Authority').

The Coordinating Authority shall be responsible for all matters related to application and enforcement of this Regulation in the Member State concerned, unless that Member State has assigned certain specific tasks or sectors to other competent authorities.

The Coordinating Authority shall in any event be responsible for ensuring coordination at national level in respect of those matters and for contributing to the effective, efficient and consistent application and enforcement of this Regulation throughout the Union.

3. Where a Member State designates more than one competent authority in addition to the Coordinating Authority, it shall ensure that the respective tasks of those authorities and of the Coordinating Authority are clearly defined and that they cooperate closely and effectively when performing their tasks. The Member State concerned shall communicate the name of the other competent authorities as well as their respective tasks to the EU Centre and the Commission.

4. Within one week after the designation of the Coordinating Authorities and any other competent authorities pursuant to paragraph 1, Member States shall make publicly available, and communicate to the Commission and the EU Centre, the name of their Coordinating Authority. They shall keep that information updated.
5. Each Member State shall ensure that a contact point is designated or established within the Coordinating Authority's office to handle requests for clarification, feedback and other communications in relation to all matters related to the application and enforcement of this Regulation in that Member State. Member States shall make the information on the contact point publicly available and communicate it to the EU Centre. They shall keep that information updated.
6. Within two weeks after the designation of the Coordinating Authorities pursuant to paragraph 2, the EU Centre shall set up an online register listing the Coordinating Authorities and their contact points. The EU Centre shall regularly publish any modification thereto.
7. Coordinating Authorities may, where necessary for the performance of their tasks under this Regulation, request the assistance of the EU Centre in carrying out those tasks, in particular by requesting the EU Centre to:
 - (a) provide certain information or technical expertise on matters covered by this Regulation;
 - (b) assist in assessing, in accordance with Article 5(2), the risk assessment conducted or updated or the mitigation measures taken by a provider of hosting or interpersonal communication services under the jurisdiction of the Member State that designated the requesting Coordinating Authority;
 - (c) **provide opinion on** ~~verify~~ the possible need to request competent ~~national~~ authorities to issue a detection order, a removal order, ~~or~~ a blocking order **or a delisting order** in respect of a service under the jurisdiction of the Member State that designated that Coordinating Authority;
 - (d) **provide opinion on** ~~verify~~ the effectiveness of a detection order ~~or a removal order~~ issued upon the request of the requesting Coordinating Authority.
8. The EU Centre shall provide such assistance free of charge and in accordance with its tasks and obligations under this Regulation and insofar as its resources and priorities allow.
9. The requirements applicable to Coordinating Authorities set out in Articles 26, 27, 28, 29 and 30 shall also apply to any other competent authorities that the Member States designate pursuant to paragraph 1.

Article 2

Requirements for Coordinating Authorities

1. Member States shall ensure that the Coordinating Authorities that they designated perform their tasks under this Regulation in an objective, impartial, transparent and timely manner, while fully respecting the fundamental rights of all parties affected. Member States shall ensure that their Coordinating Authorities have adequate technical, financial and human resources to carry out their tasks.
- ~~2. When carrying out their tasks and exercising their powers in accordance with this Regulation, the Coordinating Authorities shall act with complete independence. To that aim, Member States shall ensure, in particular, that they:~~
 - ~~(a) are legally and functionally independent from any other public authority;~~
 - ~~(b) have a status enabling them to act objectively and impartially when carrying out their tasks under this Regulation;~~
 - ~~(c) are free from any external influence, whether direct or indirect;~~
 - ~~(d) neither seek nor take instructions from any other public authority or any private party;~~
 - ~~(e) are not charged with tasks relating to the prevention or combating of child sexual abuse, other than their tasks under this Regulation.~~
- ~~3. Paragraph 2 shall not prevent supervision of the Coordinating Authorities in accordance with national constitutional law, to the extent that such supervision does not affect their independence as required under this Regulation.~~
4. The Coordinating Authorities shall ensure that relevant members of staff have the required qualifications, experience and technical skills to perform their duties.
5. The management and other staff of the Coordinating Authorities shall, in accordance with Union or national law, be subject to a duty of professional secrecy both during and after their term of office, with regard to any confidential information which has come to their knowledge in the course of the performance of their tasks. Member States shall ensure that the management and other staff are subject to rules guaranteeing that they can carry out their tasks in an objective, impartial and independent manner, in particular as regards their appointment, dismissal, remuneration and career prospects.

Section 2 **Powers of Coordinating Authorities**

Article 3

Investigatory powers

1. Where needed for carrying out their tasks, Coordinating Authorities shall have the following powers of investigation, in respect of providers of relevant information society services under the jurisdiction of the Member State that designated them:
 - (a) the power to require those providers, as well as any other persons acting for purposes related to their trade, business, craft or profession that may reasonably be aware of information relating to a suspected infringement of this Regulation, to provide such information within a reasonable time period;
 - (b) the power to carry out on-site inspections of any premises that those providers or the other persons referred to in point (a) use for purposes related to their trade, business, craft or profession, or to request other public authorities to do so, in order to examine, seize, take or obtain copies of information relating to a suspected infringement of this Regulation in any form, irrespective of the storage medium;
 - (c) the power to ask any member of staff or representative of those providers or the other persons referred to in point (a) to give explanations in respect of any information relating to a suspected infringement of this Regulation and to record the answers;
 - (d) the power to request information, including to assess whether the measures taken to execute a detection order, removal order or blocking order comply with the requirements of this Regulation.
2. Member States may grant additional investigative powers to the Coordinating Authorities.

Article 4

Enforcement powers

1. Where needed for carrying out their tasks, Coordinating Authorities shall have the following enforcement powers, in respect of providers of relevant information society services under the jurisdiction of the Member State that designated them:
 - (a) the power to accept the commitments offered by those providers in relation to their compliance with this Regulation and to make those commitments binding;
 - (b) the power to order the cessation of infringements of this Regulation and, where appropriate, to impose remedies proportionate to the infringement and necessary to bring the infringement effectively to an end;

- (c) the power to impose fines, or request a judicial authority in their Member State to do so, in accordance with Article 35 for infringements of this Regulation, including non-compliance with any of the orders issued pursuant to Article 27 and to point (b) of this paragraph;
 - (d) the power to impose a periodic penalty payment in accordance with Article 35 to ensure that an infringement of this Regulation is terminated in compliance with an order issued pursuant to point (b) of this paragraph or for failure to comply with any of the orders issued pursuant to Article 27 and to point (b) of this paragraph;
 - (e) the power to adopt interim measures to avoid the risk of serious harm.
2. Member States may grant additional enforcement powers to the Coordinating Authorities.
 3. As regards paragraph 1, points (c) and (d), Coordinating Authorities shall have the enforcement powers set out in those points also in respect of the other persons referred to in Article 27, for failure to comply with any of the orders issued to them pursuant to that Article.
 4. They shall only exercise those enforcement powers after having provided those other persons in good time with all relevant information relating to such orders, including the applicable time period, the fines or periodic payments that may be imposed for failure to comply and redress possibilities.

Article 5

Additional enforcement powers

1. Where needed for carrying out their tasks, Coordinating Authorities shall have the additional enforcement powers referred to in paragraph 2, in respect of providers of relevant information society services under the jurisdiction of the Member State that designated them, provided that:
 - (a) all other powers pursuant to Articles 27 and 28 to bring about the cessation of an infringement of this Regulation have been exhausted;
 - (b) the infringement persists;
 - (c) the infringement causes serious harm which cannot be avoided through the exercise of other powers available under Union or national law.

2. Coordinating Authorities shall have the additional enforcement powers to take the following measures:
- (a) require the management body of the providers to examine the situation within a reasonable time period and to:
 - (i) adopt and submit an action plan setting out the necessary measures to terminate the infringement;
 - (ii) ensure that the provider takes those measures;
 - (iii) report on the measures taken;
 - (b) request the competent judicial authority or independent administrative authority of the Member State that designated the Coordinating Authority to order the temporary restriction of access of users of the service concerned by the infringement or, only where that is not technically feasible, to the online interface of the provider on which the infringement takes place, where the Coordinating Authority considers that:
 - (i) the provider has not sufficiently complied with the requirements of point (a);
 - (ii) the infringement persists and causes serious harm;
 - (iii) the infringement results in the regular and structural facilitation of child sexual abuse offences.

3. The Coordinating Authority shall, prior to submitting the request referred to in paragraph 2, point (b), invite interested parties to submit written observations on its intention to submit that request within a reasonable time period set by that Coordinating Authority. That time period shall not be less than two weeks.

The invitation to submit written observations shall:

- (a) describe the measures that it intends to request;
- (b) identify the intended addressee or addressees thereof.

The provider, the intended addressee or addressees and any other third party demonstrating a legitimate interest shall be entitled to participate in the proceedings regarding the request.

4. Any measure ordered upon the request referred to in paragraph 2, point (b), shall be proportionate to the nature, gravity, recurrence and duration of the infringement, without unduly restricting access to lawful information by users of the service concerned.

The temporary restriction shall apply for a period of four weeks, subject to the possibility for the competent judicial authority, in its order, to allow the Coordinating Authority to extend that period for further periods of the same lengths, subject to a maximum number of extensions set by that judicial authority.

The Coordinating Authority shall only extend the period where it considers, having regard to the rights and legitimate interests of all parties affected by the restriction and all relevant facts and circumstances, including any information that the provider, the addressee or addressees and any other third party that demonstrated a legitimate interest may provide to it, that both of the following conditions have been met:

- (a) the provider has failed to take the necessary measures to terminate the infringement;
- (b) the temporary restriction does not unduly restrict access to lawful information by users of the service, having regard to the number of users affected and whether any adequate and readily accessible alternatives exist.

Where the Coordinating Authority considers that those two conditions have been met but it cannot further extend the period pursuant to the second subparagraph, it shall submit a new request to the competent judicial authority, as referred to in paragraph 2, point (b).

Article 6

Common provisions on investigatory and enforcement powers

1. The measures taken by the Coordinating Authorities in the exercise of their investigatory and enforcement powers referred to in Articles 27, 28 and 29 shall be effective, dissuasive, **necessary** and proportionate, having regard, in particular, to the nature, gravity, recurrence and duration of the infringement of this Regulation or suspected infringement to which those measures relate, as well as the economic, technical and operational capacity of the provider of relevant information society services concerned, where applicable.
2. Member States shall ensure that any exercise of the investigatory and enforcement powers referred to in Articles 27, 28 and 29 is subject to adequate safeguards laid down in the applicable national law to respect the fundamental rights of all parties affected. In particular, those measures shall only be taken in accordance with the right to respect for private life and the rights of defence, including the rights to be heard and of access to the file, and subject to the right to an effective judicial remedy of all parties affected.

Article 7

Searches to verify compliance

Coordinating Authorities shall have the power to carry out searches on publicly accessible material on hosting services to detect the dissemination of known or new child sexual abuse material, using the indicators contained in the databases referred to in Article 44(1), points (a) and (b), where necessary to verify whether the providers of hosting services under the jurisdiction of the Member State that designated the Coordinating Authorities comply with their obligations under this Regulation.

Article 8

Notification of known child sexual abuse material

Coordinating Authorities shall have the power to notify providers of hosting services under the jurisdiction of the Member State that designated them of the presence on their service of one or more specific items of known child sexual abuse material and to request them to remove or disable access to that item or those items, for the providers' voluntary consideration.

The request shall clearly set out the identification details of the Coordinating Authority making the request and information on its contact point referred to in Article 25(5), the necessary information for the identification of the item or items of known child sexual abuse material concerned, as well as the reasons for the request. The request shall also clearly state that it is for the provider's voluntary consideration.

Section 3

Other provisions on enforcement

Article 9

Jurisdiction

1. The Member State in which the main establishment of the provider of relevant information society services is located shall have jurisdiction for the purposes of this Regulation.
2. A provider of relevant information society services which does not have an establishment in the Union shall be deemed to be under the jurisdiction of the Member State where its legal representative resides or is established.

Where a provider failed to appoint a legal representative in accordance with Article 24, all Member States shall have jurisdiction. Where a Member State decides to exercise jurisdiction under this subparagraph, it shall inform all other Member States and ensure that the principle of *ne bis in idem* is respected.

Article 10

Right of users of the service to lodge a complaint

1. Users shall have the right to lodge a complaint alleging an infringement of this Regulation affecting them against providers of relevant information society services with the Coordinating Authority designated by the Member State where the user resides or is established.
2. Coordinating Authorities shall provide child-friendly mechanisms to submit a complaint under this Article and adopt a child-sensitive approach when handling complaints submitted by children, taking due account of the child's age, maturity, views, needs and concerns.
3. The Coordinating Authority receiving the complaint shall assess the complaint and, where appropriate, transmit it to the Coordinating Authority of establishment.

Where the complaint falls under the responsibility of another competent authority of the Member State that designated the Coordinating Authority receiving the complaint, that Coordinating Authority shall transmit it to that other competent authority.

Article 11

Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of the obligations pursuant to Chapters II and V of this Regulation by providers of relevant information society services under their jurisdiction and shall take all the necessary measures to ensure that they are implemented.

The penalties shall be effective, proportionate and dissuasive. Member States shall, by [Date of application of this Regulation], notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendments affecting them.

2. Member States shall ensure that the maximum amount of penalties imposed for an infringement of this Regulation shall not exceed 6 % of the annual income or global turnover of the preceding business year of the provider.
3. Penalties for the supply of incorrect, incomplete or misleading information, failure to reply or rectify incorrect, incomplete or misleading information or to submit to an on-site inspection shall not exceed 1% of the annual income or global turnover of the preceding business year of the provider or the other person referred to in Article 27.

4. Member States shall ensure that the maximum amount of a periodic penalty payment shall not exceed 5 % of the average daily global turnover of the provider or the other person referred to in Article 27 in the preceding financial year per day, calculated from the date specified in the decision concerned.
5. Member States shall ensure that, when deciding whether to impose a penalty and when determining the type and level of penalty, account is taken of all relevant circumstances, including:
 - (a) the nature, gravity and duration of the infringement;
 - (b) whether the infringement was intentional or negligent;
 - (c) any previous infringements by the provider or the other person;
 - (d) the financial strength of the provider or the other person;
 - (e) the level of cooperation of the provider or the other person;
 - (f) the nature and size of the provider or the other person, in particular whether it is a micro, small or medium-sized enterprise;
 - (g) the degree of fault of the provider or other person, taking into account the technical and organisational measures taken by it to comply with this Regulation.

Section 4

Cooperation

Article 12

Identification and submission of online child sexual abuse

1. Coordinating Authorities shall submit to the EU Centre, without undue delay and through the system established in accordance with Article 39(2):
 - (a) specific items of material and transcripts of conversations that ~~Coordinating Authorities or that~~ the competent judicial authorities or other independent administrative authorities of a Member State have identified, after a diligent assessment, as constituting child sexual abuse material or the solicitation of children, as applicable, for the EU Centre to generate indicators in accordance with Article 44(3);

- (b) exact uniform resource locators indicating specific items of material that ~~Coordinating Authorities or that~~ **the** competent judicial authorities or other independent administrative authorities of a Member State have identified, after a diligent assessment, as constituting child sexual abuse material, hosted by providers of hosting services not offering services in the Union, that cannot be removed due to those providers' refusal to remove or disable access thereto and to the lack of cooperation by the competent authorities of the third country having jurisdiction, for the EU Centre to compile the list of uniform resource locators in accordance with Article 44(3).

Member States shall take the necessary measures to ensure that the Coordinating Authorities that they designated receive, without undue delay, the material identified as child sexual abuse material, the transcripts of conversations identified as the solicitation of children, and the uniform resource locators, identified by a competent judicial authority or other independent administrative authority than the Coordinating Authority, for submission to the EU Centre in accordance with the first subparagraph.

2. Upon the request of the EU Centre where necessary to ensure that the data contained in the databases referred to in Article 44(1) are complete, accurate and up-to-date, Coordinating Authorities shall verify or provide clarifications or additional information as to whether the conditions of paragraph 1, points (a) and (b) have been and, where relevant, continue to be met, in respect of a given submission to the EU Centre in accordance with that paragraph.
3. Member States shall ensure that, where their law enforcement authorities receive a report of the dissemination of new child sexual abuse material or of the solicitation of children forwarded to them by the EU Centre in accordance with Article 48(3), a diligent assessment is conducted in accordance with paragraph 1 and, if the material or conversation is identified as constituting child sexual abuse material or as the solicitation of children, the Coordinating Authority submits the material to the EU Centre, in accordance with that paragraph, within one month from the date of reception of the report or, where the assessment is particularly complex, two months from that date.
- ~~4.~~ They shall also ensure that, where the diligent assessment indicates that the material does not constitute child sexual abuse material or the solicitation of children, the Coordinating Authority is informed of that outcome and subsequently informs the EU Centre thereof, within the time periods specified in the first subparagraph.

Article 13

Cross-border cooperation among Coordinating Authorities

1. Where a Coordinating Authority that is not the Coordinating Authority of establishment has reasons to suspect that a provider of relevant information society services infringed this Regulation, it shall request the Coordinating Authority of establishment to assess the matter and take the necessary investigatory and enforcement measures to ensure compliance with this Regulation.

Where the Commission has reasons to suspect that a provider of relevant information society services infringed this Regulation in a manner involving at least three Member States, it may recommend that the Coordinating Authority of establishment assess the matter and take the necessary investigatory and enforcement measures to ensure compliance with this Regulation.

2. The request or recommendation referred to in paragraph 1 shall at least indicate:
 - (a) the point of contact of the provider as set out in Article 23;
 - (b) a description of the relevant facts, the provisions of this Regulation concerned and the reasons why the Coordinating Authority that sent the request, or the Commission suspects, that the provider infringed this Regulation;
 - (c) any other information that the Coordinating Authority that sent the request, or the Commission, considers relevant, including, where appropriate, information gathered on its own initiative and suggestions for specific investigatory or enforcement measures to be taken.
3. The Coordinating Authority of establishment shall assess the suspected infringement, taking into utmost account the request or recommendation referred to in paragraph 1.

Where it considers that it has insufficient information to assess the suspected infringement or to act upon the request or recommendation and has reasons to consider that the Coordinating Authority that sent the request, or the Commission, could provide additional information, it may request such information. The time period laid down in paragraph 4 shall be suspended until that additional information is provided.

4. The Coordinating Authority of establishment shall, without undue delay and in any event not later than two months following receipt of the request or recommendation referred to in paragraph 1, communicate to the Coordinating Authority that sent the request, or the Commission, the outcome of its assessment of the suspected infringement, or that of any other competent authority pursuant to national law where relevant, and, where applicable, an explanation of the investigatory or enforcement measures taken or envisaged in relation thereto to ensure compliance with this Regulation.

Article 14

Joint investigations

1. Coordinating Authorities may participate in joint investigations, which may be coordinated with the support of the EU Centre, of matters covered by this Regulation, concerning providers of relevant information society services that offer their services in several Member States.

Such joint investigations are without prejudice to the tasks and powers of the participating Coordinating Authorities and the requirements applicable to the performance of those tasks and exercise of those powers provided for in this Regulation.

2. The participating Coordinating Authorities shall make the results of the joint investigations available to other Coordinating Authorities, the Commission and the EU Centre, through the system established in accordance with Article 39(2), for the fulfilment of their respective tasks under this Regulation.

Article 15

General cooperation and information-sharing system

1. Coordinating Authorities shall cooperate with each other, any other competent authorities of the Member State that designated the Coordinating Authority, the Commission, the EU Centre and other relevant Union agencies, including Europol, to facilitate the performance of their respective tasks under this Regulation and ensure its effective, efficient and consistent application and enforcement.
2. The EU Centre shall establish and maintain one or more reliable and secure information sharing systems supporting communications between Coordinating Authorities, the Commission, the EU Centre, other relevant Union agencies and providers of relevant information society services.
3. The Coordinating Authorities, the Commission, the EU Centre, other relevant Union agencies and providers of relevant information society services shall use the information-sharing systems referred to in paragraph 2 for all relevant communications pursuant to this Regulation.
4. The Commission shall adopt implementing acts laying down the practical and operational arrangements for the functioning of the information-sharing systems referred to in paragraph 2 and their interoperability with other relevant systems. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 87.