

# Second CSA Shadow meeting

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**14 December 2022**

## **EDPS Opening Statement**

- Thank you for the invitation and for the opportunity to intervene in today's discussion. I very much recognise the importance of this file, of the need to fight child sexual abuse, and to create a safe environment for this to happen. I am myself father to two girls, of 8 and 15 years old, and I strongly defend the need to protect them. At the same time, we must be careful in avoiding putting in danger all other communications, on which extensive debate took place already.
- Because of the importance of this file, and its ability to affect all EU markets and jurisdictions, I am joined today by two colleagues from the EDPB, Luca Tosoni from the Norwegian supervisory authority and Gintare Pazereckaite from the Secretariat to the EDPB, as the Commission had requested a joint Opinion on the Proposal from EDPB and EDPS, recognising its particular importance for the for the protection of individuals' rights and freedoms with regard to the processing of personal data.
- In our Joint Opinion, while understanding the importance of the discussion, as said, the DPAs in the EU we have made clear that scanning of the content of interpersonal communications on the basis of "detection orders" (which, in practice, will be neither individually targeted nor limited to only a selection of service providers) will always be illegal under the Charter of Fundamental Rights (and probably under a number of national constitutional laws as well).
- Indiscriminate access to content also touches on the essence of the fundamental right to privacy (see the Court of Justice judgments in cases such as *Tele2 Sverige* and *Digital Rights Irelands*). When the essence of a fundamental right is affected, it is not possible to remedy it and ensure proportionality by adducing safeguards (substantive or procedural).
- The view of this legal situation, which is quite straightforward in light of the jurisprudence of the Court, is somewhat obscured by the fact that in the Proposal, the detection order comes in the guise of an individual targeted measure. However, the Proposal blurs procedurally the difference between the unknown criminal, the provider as a classical third party and the users of the services of the provider whose fundamental rights are interfered with by the measure. In my



opinion, this is a unique constellation in the law of state coercive measures, and all but typical for targeted measures.

- In fact, this Proposal creates an illusion of legality by introducing numerous procedural "safeguards" which, however, do not fundamentally change the substance, i.e. that it would amount to a generalised access to the content of interpersonal communications of most, if not all, users.
- I admit that the current situation for victims of child sexual abuse requires urgent action. Still, I am convinced that, in order to be successful, this action should not overplay the potential technological solutions, and must not violate the fundamental rights of citizens protected under the Charter and numerous national constitutions.
- Let me also say at the outset that there might be viable measures that would not amount to indiscriminate and generalised access to content to communications which may be worth exploring.