

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on a temporary derogation from certain provisions of Directive 2002/58/EC of the European Parliament and of the Council as regards the use of technologies by number-independent interpersonal communications service providers for the processing of personal and other data for the purpose of combatting child sexual abuse online

DATE: 29 April 2021

The amendments made by the EP and the Council on the text of the proposal compared to the Commission's proposal are marked as follows:

- the new text is marked in ***bold italics***;
- the deleted parts of the text are marked in ~~strikethrough~~.
- where full paragraphs of the Commission's proposal were not amended by the EP they are not repeated in the columns reflecting their respective positions, but are marked with a diagonal line. When The Commission's proposal is not amended by the Council, it is repeated in the Council column.
- if the three texts are the same, a diagonal line is marked on the 4th column.

Parts provisionally agreed at the trilogue are **marked in green**.

Parts provisionally agreed at the technical meetings and to be confirmed at the trilogue are **marked in blue**.

Parts to be further discussed are **marked in yellow**.

Parts needed legal confirmation from each Institution are **marked in pink**.

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1.	<p>Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a temporary derogation from certain provisions of Directive 2002/58/EC of the European Parliament and of the Council as regards the use of technologies by number-independent interpersonal communications service providers for the processing of personal and other data for the purpose of combatting child sexual abuse online</p>	<p>AM 1</p> <p>Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a temporary derogation from restriction of certain provisions of rights and obligations under Directive 2002/58/EC of the European Parliament and of the Council as regards the use of specific technologies by number-independent interpersonal communications service providers for the processing of personal data for the purpose of combatting online child sexual abuse</p>	<p>Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a temporary derogation from certain provisions of Directive 2002/58/EC of the European Parliament and of the Council as regards the use of technologies by number-independent interpersonal communications service providers for the processing of personal and other data for the purpose of combatting child sexual abuse online</p>	<p>4th Trilogue (25/03/21)</p> <p>Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on a temporary [derogation/ restriction] from certain [provisions/ rights and obligations] of Directive 2002/58/EC of the European Parliament and of the Council as regards the use of technologies by number-independent interpersonal communications service providers for the processing of personal [and other data] for the purpose of combatting child sexual abuse online.</p>
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2.	<p>THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,</p> <p>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,</p> <p>Having regard to the proposal from the European Commission,</p> <p>After transmission of the draft legislative act to the national parliaments,</p> <p>Having regard to the opinion of the European Economic and Social Committee¹,</p> <p>Acting in accordance with the ordinary legislative procedure,</p> <p>Whereas:</p>		<p>THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,</p> <p>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,</p> <p>Having regard to the proposal from the European Commission,</p> <p>After transmission of the draft legislative act to the national parliaments,</p> <p>Having regard to the opinion of the European Economic and Social Committee²,</p> <p>Acting in accordance with the ordinary legislative procedure,</p> <p>Whereas:</p>	<p>2nd Trilogue (23/02/2021)</p> <p>THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,</p> <p>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,</p> <p>Having regard to the proposal from the European Commission,</p> <p>After transmission of the draft legislative act to the national parliaments,</p> <p>Having regard to the opinion of the European Economic and Social Committee³,</p> <p>Acting in accordance with the ordinary legislative procedure,</p> <p>Whereas:</p>
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3.	(1) Directive 2002/58/EC of the European Parliament and of the Council ⁴ lays down rules ensuring the right to privacy and confidentiality with respect to the processing of personal data in exchanges of data in the electronic communication sector. That Directive particularises and complements Regulation (EU) 2016/679 of the		(1) Directive 2002/58/EC of the European Parliament and of the Council ⁶ lays down rules ensuring the right to privacy and confidentiality with respect to the processing of personal data in exchanges of data in the electronic communication sector. That Directive particularises and complements Regulation (EU) 2016/679 of the European Parliament and of the Council ⁷ .	2 nd Trilogue (23/02/2021) (1) Directive 2002/58/EC of the European Parliament and of the Council ⁸ lays down rules ensuring the right to privacy and confidentiality with respect to the processing of personal data in exchanges of data in the electronic communication sector. That Directive particularises and complements Regulation (EU) 2016/679 of the European Parliament and of the Council ⁹ .
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¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

⁴ 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).

⁶ 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).

⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁸ 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).

⁹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

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	European Parliament and of the Council ⁵ .			
4	(2) Directive 2002/58/EC applies to the processing of personal data in connection with the provision of publicly available electronic communication services. The definition of electronic communication service is currently to be found in Article 2, point (c), of Directive 2002/21/EC of the European Parliament and of the Council ¹⁰ . Directive (EU) 2018/1972 of the European Parliament and of the Council ¹¹ repeals	AM 2 (2) Directive 2002/58/EC applies to the processing of personal data in connection with the provision of publicly available electronic communication services. <i>Up until 21 December 2020</i> , the definition of electronic communication service <i>set out</i> is currently to be found in Article 2, point (c), of Directive 2002/21/EC of the European Parliament and of the Council ⁴ <i>applied. On that date</i> , Directive (EU) 2018/1972 of the European Parliament and of the Council ⁵ <i>repealed</i> repeals Directive 2002/21/EC with effect from 21 December 2020 . The definition of electronic communications services	(2) Directive 2002/58/EC applies to the processing of personal data in connection with the provision of publicly available electronic communication services. The definition of electronic communication service is currently to be found in Article 2, point (c), of Directive 2002/21/EC of the European Parliament and of the Council ¹² . Directive (EU) 2018/1972 of the European Parliament and of the Council ¹³ repeals Directive 2002/21/EC with effect from 21 December	3 rd Trilogue (09/03/2021) (2) Directive 2002/58/EC applies to the processing of personal data in connection with the provision of publicly available electronic communication services. <i>Up until 21 December 2020</i> , the definition of electronic communication service <i>set out</i> is currently to be found in Article 2, point (c), of Directive 2002/21/EC of the European Parliament and of the Council ⁴ <i>applied. On that date</i> , Directive (EU) 2018/1972 of the European Parliament and of the Council ⁵ <i>repealed</i> repeals Directive 2002/21/EC with effect from 21 December 2020 . The definition of

⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

¹⁰ Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33).

¹¹ 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).

¹² Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33).

¹³ 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,

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	Directive 2002/21/EC with effect from 21 December 2020. From that date, the definition of electronic communications services will be replaced by a new definition, in Article 2(4) of Directive (EU) 2018/1972, which includes number-independent interpersonal communications services as defined in Article 2(7) of that Directive. Those services, which include, for example, voice over IP, messaging and web-based e-mail services, will therefore fall within the scope of Directive 2002/58/EC, as of 21 December 2020.	in Article 2(4) of Directive (EU) 2018/1972 includes number-independent interpersonal communications services as defined in Article 2(7) of that Directive. Those services, which include, for example, voice over IP, messaging and web-based e-mail services, <i>have</i> will therefore <i>been</i> fall within the scope of Directive 2002/58/EC, as of 21 December 2020.	2020. From that date, the definition of electronic communications services will be replaced by a new definition, in Article 2(4) of Directive (EU) 2018/1972, which includes number-independent interpersonal communications services as defined in Article 2(7) of that Directive. Those services, which include, for example, voice over IP, messaging and web-based e-mail services, will therefore fall within the scope of Directive 2002/58/EC, as of 21 December 2020.	electronic communications services in Article 2(4) of Directive (EU) 2018/1972 includes number-independent interpersonal communications services as defined in Article 2(7) of that Directive. Those services, which include, for example, voice over IP, messaging and web-based e-mail services, <i>have</i> will therefore <i>been</i> fall within the scope of Directive 2002/58/EC, as of 21 December 2020.
5	(3) In accordance with Article 6(1) of the Treaty on European Union, the Union	AM 3 (3) In accordance with Article 6(1) of the Treaty on European Union, the	(3) In accordance with Article 6(1) of the Treaty on European Union, the Union recognises the rights,	3 rd Trilogue (09/03/2021) (3) In accordance with Article 6(1) of the Treaty on European Union,

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	<p>recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union. Article 7 of the Charter of Fundamental Rights of the European Union (“the Charter”) protects the fundamental right of everyone to the respect for his or her private and family life, home and communications, which includes the confidentiality of communications. Article 8 of the Charter contains the right to protection of personal data. Article 24(2) of the Charter provides that, in all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.</p>	<p>Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union. Article 7 of the Charter of Fundamental Rights of the European Union (“the Charter”) protects the fundamental right of everyone to the respect for his or her private and family life, home and communications, which includes the confidentiality of communications. Article 8 of the Charter contains the right to protection of personal data. Article 3(1) of the 1989 United Nations Convention on the Rights of the Child ("UNCRC") and Article 24(2) of the Charter provide that, in all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration. Articles 3(3) of the UNCRC and 24(1) of the Charter furthermore evoke the right of children to protection and care as is necessary for their well-being.</p>	<p>freedoms and principles set out in the Charter of Fundamental Rights of the European Union. Article 7 of the Charter of Fundamental Rights of the European Union (“the Charter”) protects the fundamental right of everyone to the respect for his or her private and family life, home and communications, which includes the confidentiality of communications. Article 8 of the Charter contains the right to protection of personal data. Article 24(2) of the Charter provides that, in all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.</p>	<p>the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union. Article 7 of the Charter of Fundamental Rights of the European Union (“the Charter”) protects the fundamental right of everyone to the respect for his or her private and family life, home and communications, which includes the confidentiality of communications. Article 8 of the Charter contains the right to protection of personal data. Article 3(1) of the 1989 United Nations Convention on the Rights of the Child ("UNCRC") and Article 24(2) of the Charter provide that, in all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration. Articles 3(3) of the UNCRC and 24(1) of the Charter furthermore evoke the right of children to protection and care as is necessary for their well-being.</p>
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6	<p>(4) Sexual abuse and sexual exploitation of children constitute serious violations of human rights, in particular of the rights of children to be protected from all forms of violence, abuse and neglect, maltreatment or exploitation, including sexual abuse, as provided for by the 1989 United Nations Convention on the Rights of the Child and by the Charter. Digitisation has brought about many benefits for society and the economy, but also challenges including an increase of child sexual abuse online. The protection of children online is one of the Union's priorities. On 24 July 2020, the Commission adopted an</p>	<p>AM 4</p> <p>(4) <i>The protection of children is one of the Union's priorities.</i> Sexual abuse and sexual exploitation of children constitute serious violations of human <i>and fundamental</i> rights, in particular of the rights of children to be protected from all forms of violence, abuse and neglect, maltreatment or exploitation, including sexual abuse, as provided for by the 1989 United Nations Convention on the Rights of the Child and by the Charter. Digitisation has brought about many benefits for society and the economy, but also challenges including an increase of <i>online</i> child sexual abuse online <i>resulting from broader access to potential victims and a sharp rise in the exchange of online child sexual abuse material. Online child sexual abuse material is based on actual abuse in the offline world, where most abuses are committed</i></p>	<p>(4) Sexual abuse and sexual exploitation of children constitute serious violations of human rights, in particular of the rights of children to be protected from all forms of violence, abuse and neglect, maltreatment or exploitation, including sexual abuse, as provided for by the 1989 United Nations Convention on the Rights of the Child and by the Charter. Digitisation has brought about many benefits for society and the economy, but also challenges including an increase of child sexual abuse online. The protection of children online is one of the Union's priorities. On 24 July 2020, the Commission adopted an EU strategy for a more effective fight against child sexual abuse¹⁴ (“the</p>	<p>4th Trilogue (25/03/21)</p> <p>(4) <i>The protection of children is one of the Union's priorities.</i> Sexual abuse and sexual exploitation of children constitute serious violations of human <i>and fundamental</i> rights, in particular of the rights of children to be protected from all forms of violence, abuse and neglect, maltreatment or exploitation, including sexual abuse, as provided for by the 1989 United Nations Convention on the Rights of the Child and by the Charter. Digitisation has brought about many benefits for society and the economy, but also challenges including an increase of <i>online</i> child sexual abuse online . The protection of children online is one of the Union's priorities. On 24 July 2020, the Commission adopted an EU strategy for a more effective fight against child sexual abuse⁶ (“the Strategy”), which aims to provide an effective response, at</p>
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¹⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU strategy for a more effective fight against child sexual abuse, 24.7.2020 COM (2020) 607 final.

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	EU strategy for a more effective fight against child sexual abuse ⁶ (“the Strategy”), which aims to provide an effective response, at Union level, to the crime of child sexual abuse.	<i>by persons belonging to the family or being close to it.</i> The protection of children online is one of the Union's priorities. On 24 July 2020, the Commission adopted an EU strategy for a more effective fight against child sexual abuse⁶ (“the Strategy”), which aims to provide an effective response, at Union level, to the crime of child sexual abuse.	Strategy”), which aims to provide an effective response, at Union level, to the crime of child sexual abuse.	Union level, to the crime of child sexual abuse.
7		AM 5 <i>(4a) Teenagers have the right to discover their sexual identity in a safe and private environment. The rise in reported numbers of online child sexual abuse material is also partially due to the emerging practice of teenagers who, in the development of their sexual identity and experiences, take explicit pictures of videos of themselves and send them to peers, or share such material without a sexual motivation. In addition, the age of sexual consent differs across Member States. If users have reached the age of sexual consent</i>		<i>Outcome of technical meeting (19/04/2021)</i> (4a) In line with Directive (EU) 2011/93/EU, this Regulation does not govern Member States’ policies with regard to consensual sexual activities in which children may be involved and which can be regarded as the normal discovery of sexuality in the course of human development, taking account of the different cultural and legal traditions and of new forms of establishing and maintaining relations among children and adolescents, including through information and communication technologies.

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		<i>under national law, no reporting on solicitation of children should be reported to law enforcement authorities.</i>		
8	(5) Certain providers of number-independent interpersonal communications services, such as webmail and messaging services, are already using specific technologies to detect and report child sexual abuse online to law enforcement authorities and to organisations acting in the public interest against child sexual abuse, or to remove child sexual abuse material, on a voluntary basis. Those organisations refer to national hotlines for reporting child sexual abuse material, as well as to organisations whose purpose is to reduce child sexual exploitation, and	<p>AM 6</p> <p>(5) Certain providers of number-independent interpersonal communications services, such as webmail and messaging services, are already using specific technologies, to detect online on their services and report it to law enforcement authorities and to organisations acting in the public interest against child sexual abuse on a voluntary basis by scanning either the content, such as images and text, or the traffic data of communications using, in some instances, historical data. The technology used for these activities could be hashing technology for images and videos and classifiers and artificial intelligence for analysing text or traffic data. Those organisation The providers refer to national hotlines for reporting online child sexual abuse material, as well</p>	(5) Certain providers of number-independent interpersonal communications services, such as webmail and messaging services, are already using specific technologies to detect and report child sexual abuse online to law enforcement authorities and to organisations acting in the public interest against child sexual abuse, or to remove child sexual abuse material, on a voluntary basis. Those organisations refer to national hotlines for reporting child sexual abuse material, as well as to organisations whose purpose is to reduce child sexual exploitation, and prevent child victimisation, located both within the Union and in	<p>Outcome of technical meeting of 19/04/2021</p> <p>(5) Certain providers of number-independent interpersonal communications services, such as webmail and messaging services, are already using specific technologies, to detect online on their services and report it to law enforcement authorities and to organisations acting in the public interest against child sexual abuse on a voluntary basis by scanning either the content, such as images and text, or the traffic data of communications using, in some instances, historical data. The technology used for these activities could be hashing technology for images and videos and classifiers and artificial intelligence for analysing text or traffic data. Those</p>

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	<p>prevent child victimisation, located both within the Union and in third countries. Collectively, those voluntary activities play a valuable role in enabling the identification and rescue of victims, and reducing the further dissemination of child sexual abuse material, while also contributing to the identification and investigation of offenders, and the prevention of child sexual abuse offences.</p>	<p>as to organisations whose purpose is to identify children and reduce child sexual exploitation and sexual abuse, and prevent child victimisation, located both within the Union and in third countries, in particular the National Center for Missing and Exploited Children (NCMEC) in the United States. Such organisations usually do not fall within the scope of Regulation (EU) 2016/679. Collectively, those such voluntary activities play a valuable role in enabling the identification and rescue of victims, whose fundamental rights to human dignity and to physical and mental integrity are severely violated, and reducing the further dissemination of online child sexual abuse material, while also contributing to the identification and investigation of offenders, and the prevention, detection, investigation and prosecution of child sexual abuse offences.</p>	<p>third countries. Collectively, those voluntary activities play a valuable role in enabling the identification and rescue of victims, and reducing the further dissemination of child sexual abuse material, while also contributing to the identification and investigation of offenders, and the prevention of child sexual abuse offences.</p>	<p>organisation The providers refer to national hotlines for reporting online child sexual abuse material, as well as to organisations whose purpose is to identify children and reduce child sexual exploitation and sexual abuse, and prevent child victimisation, located both within the Union and in third countries; in particular the National Center for Missing and Exploited Children (NCMEC) in the United States.</p> <p>Such organisations may usually do not fall within the scope of Regulation (EU) 2016/679. Collectively, those such voluntary activities play a valuable role in enabling the identification and rescue of victims, whose fundamental rights to human dignity and to physical and mental integrity are severely violated, and reducing the further dissemination of online child sexual abuse material, while also contributing to the identification and investigation of offenders, and the prevention,</p>
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				<i>detection, investigation and prosecution</i> of child sexual abuse offences.
9		<p>AM 7</p> <p><i>(5a) Notwithstanding their legitimate objective, these activities constitute an interference with the fundamental rights to respect for private and family life and protection of personal data of the individuals concerned, namely all users, potential offenders and victims.</i></p> <p><i>Any limitation to the fundamental right to respect for private and family life, including the confidentiality of communications, cannot be justified merely on the ground that certain technologies were previously deployed when the services concerned did not, from a legal perspective, constitute electronic communications services.</i></p> <p><i>Such interference is only possible under certain conditions. It needs to</i></p>		<p>Derogation vs. restriction is a horizontal issue, amongst others.</p> <p>Outcome of technical meeting of 19/04/2021</p> <p>EP text proposal for first sentence and keep the first part of last sentence (19/04/2021)</p> <p>(5a) Notwithstanding their legitimate objective, these activities constitute an interference with the fundamental rights to respect for private and family life and protection of personal data of the individuals concerned, namely all users, potential offenders and victims.</p> <p>Any limitation to the fundamental right to respect for private and family life, including the</p>

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		<p><i>be provided for by law, respect the essence of the rights to private and family life and to the protection of personal data and, in compliance with the principle of proportionality, be necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others as enshrined in Article 52 (1) of the Charter.</i></p> <p><i>Where such measures permanently involve a general and indiscriminate monitoring and analysis of communications of all users, they violate the right to confidentiality of communications, as the Court of Justice has ruled in the joined Cases C-511/18, C-512/18 and C-520/18 - La Quadrature et al.^{1a} and in joined cases C-293/12 – Digital Rights Ireland and C-594/12 – Seitlinger^{1b}.</i></p>		<p>confidentiality of communications, cannot be justified merely on the ground that certain technologies were previously deployed when the services concerned did not, from a legal perspective, constitute electronic communications services.</p> <p>Such interference is only possible under certain conditions. It needs to be provided for by law, respect the essence of the rights to private and family life and to the protection of personal data and, in compliance with the principle of proportionality, be necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others as enshrined in Article 52 (1) of the Charter.</p> <p>EP proposal keep the text in grey</p> <p><u>Where such measures permanently involve a general and indiscriminate monitoring and analysis of communications of all users, they violate the right to confidentiality of communications., as the Court of</u></p>
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				<p><u>Justice has ruled in the joined Cases C-511/18, C-512/18 and C-520/18 – La Quadrature et al.^{1a} and in joined cases C-293/12 – Digital Rights Ireland and C-594/12 – Seitlinger^{1b}.</u></p>
10	<p>(6) Until 20 December 2020, the processing of personal data by providers of number-independent interpersonal communications services by means of voluntary measures for the purpose of detecting and reporting child sexual abuse online and removing child sexual abuse material is governed by Regulation (EU) 2016/679.</p>	<p>AM 8</p> <p>(6) Until 20 December 2020, The processing of personal data by providers of number-independent interpersonal communications services by means of voluntary measures for the purpose of detecting and reporting online child sexual abuse online and removing online child sexual abuse material is governed by Regulation (EU) 2016/679. Directive (EU) 2018/1972 does not have a direct effect on providers of number-independent interpersonal communications services.</p>	<p>(6) Until 20 December 2020, the processing of personal data by providers of number-independent interpersonal communications services by means of voluntary measures for the purpose of detecting and reporting child sexual abuse online and removing child sexual abuse material is governed by Regulation (EU) 2016/679.</p>	<p><i>Rapporteur's proposal of 26/04/21 based on Commission proposal of 22/04/21:</i></p> <p>(6) Until 20 December 2020, the processing of personal data by providers of number-independent interpersonal communications services by means of voluntary measures for the purpose of detecting and reporting child sexual abuse online and removing child sexual abuse material was governed solely by Regulation (EU) 2016/679. Directive (EU) 2018/1972, which had to be transposed which by that date, brought providers of number-independent interpersonal communications services within the scope of Directive 2002/58/EC, was not transposed by all Member states within the time limit for transposition . In order to continue using such voluntary measures after</p>

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				<p>20 December 2020 in accordance with Regulation (EU) 2016/679, providers of number-independent interpersonal communications services should comply with the conditions set out in this Regulation. Thus, Regulation (EU) 2016/679 will continue to apply to the processing of personal data carried out by means of such voluntary measures.</p> <p>Presidency proposal of 28/04/21 on the last sentence of rapporteur:</p> <p>In order to continue using such voluntary measures after 20 December 2020 in accordance with Regulation (EU) 2016/679, providers of number-independent interpersonal communications services should comply with the conditions set out in this Regulation. Thus, in order for Regulation (EU) 2016/679 will continue to apply to the processing of personal data carried out by means of such voluntary measures.</p>
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11	(7) Directive 2002/58/EC does not contain any specific provisions concerning the processing of personal and other data in connection with the provision of electronic communication services for the purpose of detecting and reporting child sexual abuse online and removing child sexual abuse material. However, pursuant to Article 15(1) of Directive 2002/58/EC, Member States may adopt legislative measures to restrict the scope of the rights and obligations provided for in, inter alia, Articles 5 and 6 of that Directive, which concern confidentiality of communications and traffic data, for the purpose of prevention, investigation, detection	AM 9 (7) Directive 2002/58/EC does not contain any specific provisions concerning the processing of personal data in connection with the provision of electronic communication services for the purpose of detecting and reporting online child sexual abuse online and removing child sexual abuse material. However, pursuant to Article 15(1) of Directive 2002/58/EC, Member States may adopt legislative measures to restrict the scope of the rights and obligations provided for in, inter alia, Articles 5 and 6 of that Directive, which concern the confidentiality of communications and traffic data, for the purpose of prevention, investigation, detection and prosecution of criminal offences linked to child sexual abuse. In the absence of such national legislative measures and pending the adoption of a longer-term legal framework to tackle child sexual abuse effectively at Union level, as announced in the	(7) Directive 2002/58/EC does not contain any specific provisions concerning the processing of personal and other data in connection with the provision of electronic communication services for the purpose of detecting and reporting child sexual abuse online and removing child sexual abuse material. However, pursuant to Article 15(1) of Directive 2002/58/EC, Member States may adopt legislative measures to restrict the scope of the rights and obligations provided for in, inter alia, Articles 5 and 6 of that Directive, which concern confidentiality of communications and traffic data, for the purpose of prevention, investigation, detection and prosecution of criminal offences linked to child sexual abuse. In the absence of such legislative	4 th Trilogue (25/03/21) (7) Directive 2002/58/EC does not contain any specific provisions concerning the processing of personal data in connection with the provision of electronic communication services for the purpose of detecting and reporting online child sexual abuse online and removing child sexual abuse material. However, pursuant to Article 15(1) of Directive 2002/58/EC, Member States may adopt legislative measures to restrict the scope of the rights and obligations provided for in, inter alia, Articles 5 and 6 of that Directive, which concern the confidentiality of communications and traffic data, for the purpose of prevention, investigation, detection and prosecution of criminal offences linked to child sexual abuse. In the absence of such national legislative measures and pending the adoption of a longer-term legal framework to tackle child sexual abuse effectively at Union level, as announced in the
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	<p>and prosecution of criminal offences linked to child sexual abuse. In the absence of such legislative measures, and pending the adoption of a new longer-term legal framework to tackle child sexual abuse effectively at Union level as announced in the Strategy, there would be no legal basis for providers of number-independent interpersonal communications services to continue to detect and report child sexual abuse online and remove child sexual abuse material in their services beyond 21 December 2020.</p>	<p>Strategy, there would be no legal basis for those voluntary measures of providers of number-independent interpersonal communications services can no longer rely on Article 6 of Regulation (EU) 2016/679 to continue to detect and report online child sexual abuse online and remove online child sexual abuse material from in their services beyond 21 December 2020. This Regulation does not provide for the processing of personal data by number-independent interpersonal communications services for the sole purpose of detecting and reporting online child sexual abuse and removing online child sexual abuse material from their services, but it provides for a restriction of certain rights and obligations laid down in Directive 2002/58/EC. It also lays down additional safeguards to be respected by the providers of number-independent interpersonal communication services if they wish to rely on this Regulation.</p>	<p>measures, and pending the adoption of a new longer-term legal framework to tackle child sexual abuse effectively at Union level as announced in the Strategy, there would be no legal basis for providers of number-independent interpersonal communications services to continue to detect and report child sexual abuse online and remove child sexual abuse material in their services beyond 21 December 2020.</p>	<p>Strategy, there would be no legal basis for those voluntary measures of providers of number-independent interpersonal communications services can no longer rely on Article 6 of Regulation (EU) 2016/679 to continue to detect and report online child sexual abuse online and remove online child sexual abuse material from in their services beyond 21 December 2020. This Regulation does not provide for a legal ground for the processing of personal data by number-independent interpersonal communications services for the sole purpose of detecting and reporting online child sexual abuse and removing online child sexual abuse material from their services, but it provides for [a derogation from certain provisions of Directive 2002/58/EC / a restriction of certain rights and obligations laid down in Directive 2002/58/EC]. It also lays down additional safeguards to be respected by the providers of number-independent interpersonal</p>
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				<i>communication services if they wish to rely on this Regulation.</i>
12		<p>AM 10</p> <p><i>(7a) The processing of images and videos for the purposes of this Regulation be considered to constitute processing of special categories of personal data, under Article 9 of Regulation (EU) 2016/679 because images and videos are biometric data that are processed through a specific technical means allowing the unique identification or authentication of a natural person.</i></p>		<p><i>Rapporteur's proposal (16/04/2021):</i></p> <p>(7a) The processing for the purposes of this Regulation <i>could entail the</i> processing of special categories of personal data under Article 9 of Regulation (EU) 2016/679. <i>Where the</i> processing of images and videos through specific technical means <i>allows for</i> the unique identification or authentication of a natural person, <i>it</i> is considered as processing of special categories of personal data.</p> <p><i>Presidency proposal 05/03/2021:</i></p> <p>(7a) The processing of images and videos for the purposes of this Regulation should always could entail be considered to constitute the processing of special categories of personal data, under Article 9 of Regulation (EU) 2016/679 because images and</p>

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				videos are biometric data that are processed through a specific technical means allowing the unique identification or authentication of a natural person.
13	<p>(8) This Regulation therefore provides for a temporary derogation from Article 5(1) and Article 6 of Directive 2002/58/EC, which protect the confidentiality of communications and traffic data. Since Directive 2002/58/EC was adopted on the basis of Article 114 of the Treaty on the Functioning of the European Union, it is appropriate to adopt this Regulation on the same legal basis. Moreover, not all Member States have adopted legislative measures at national level</p>	<p>AM 11</p> <p>(8) This Regulation therefore provides for a temporary derogation from restriction of Articles 5(1) and Article 6 (1) of Directive 2002/58/EC, which protect the confidentiality of communications and traffic data. Voluntary measures applied by providers offering number-independent interpersonal communications services in the Union for the sole purpose of detecting and reporting online child sexual abuse and detecting, removing and reporting online child sexual abuse material therefore become subject to the safeguards and conditions set out in this Regulation as well as in Regulation (EU) 2016/679. Since Directive</p>	<p>(8) This Regulation therefore provides for a temporary derogation from Article 5(1) and Article 6 of Directive 2002/58/EC, which protect the confidentiality of communications and traffic data. Since Directive 2002/58/EC was adopted on the basis of Article 114 of the Treaty on the Functioning of the European Union, it is appropriate to adopt this Regulation on the same legal basis. Moreover, not all Member States have adopted legislative measures at national level to restrict the scope of the rights and obligations provided for in</p>	<p><i>Commission proposal of 22/04/21</i></p> <p>(8) This Regulation therefore provides for a temporary derogation from Articles 5(1) and Article 6 (1) of Directive 2002/58/EC, which protect the confidentiality of communications and traffic data. The voluntary use by providers of number-independent interpersonal communications services of technologies for the processing of personal [and other data] to the extent necessary to detect and report online child sexual abuse and remove online child sexual abuse material and for detecting online solicitation of children falls within</p>

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	<p>to restrict the scope of the rights and obligations provided for in those provisions in accordance with Article 15(1) of Directive 2002/58/EC, and the adoption of such measures involves a significant risk of fragmentation likely to negatively affect the internal market.</p>	<p>2002/58/EC was adopted on the basis of Article 114 of the Treaty on the Functioning of the European Union, it is appropriate to adopt this Regulation on the same legal basis. Moreover, not all Where Member States have adopted adopt legislative measures at national level to restrict the scope of the rights and obligations provided for in those provisions in accordance with Article 15(1) of Directive 2002/58/EC and the adoption of such measures involves a significant risk of fragmentation likely to negatively affect the internal market they should respect Regulation (EU) 2016/679, in particular Article 23 thereof.</p>	<p>those provisions in accordance with Article 15(1) of Directive 2002/58/EC, and the adoption of such measures involves a significant risk of fragmentation likely to negatively affect the internal market.</p>	<p><i>the scope of the derogation provided that it complies with the conditions set out in this Regulation, and is therefore becomes subject to the safeguards and conditions set out in Regulation (EU) 2016/679, provided that it complies with the conditions set out in this Regulation.</i> Since Directive 2002/58/EC was adopted on the basis of Article 114 of the Treaty on the Functioning of the European Union, it is appropriate to adopt this Regulation on the same legal basis.</p> <p>Moreover, not all Member States have adopted legislative measures at national level to restrict the scope of the rights and obligations provided for in those provisions in accordance with Article 15 (1) of Directive 2002/58/EC, and the adoption of such measures involves a significant risk of fragmentation likely to negatively affect the internal market.</p>
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				<p><i>Outcome of technical meeting on 19/04/21</i></p> <p>(8) This Regulation therefore provides for a temporary <i>[derogation from/ restriction of]</i> <i>Articles 5(1) and Article 6 (1)</i> of Directive 2002/58/EC, which protect the confidentiality of communications and traffic data.</p> <p><i>Voluntary measures applied by providers offering number-independent interpersonal communications services in the Union for the sole purpose of detecting and reporting online child sexual abuse and detecting, removing and reporting online child sexual abuse material and for detecting online solicitation of children therefore become subject to the safeguards and conditions set out in this Regulation as well as in Regulation (EU) 2016/679.</i></p>
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				<p>Since Directive 2002/58/EC was adopted on the basis of Article 114 of the Treaty on the Functioning of the European Union, it is appropriate to adopt this Regulation on the same legal basis. Moreover, not all</p> <p><i>PCY text proposal (19/04/2021) : keep sentence one and three above unchanged and the following drafting for the second sentence :</i></p> <p><i>The voluntary use by providers of number-independent interpersonal communications services of technologies for the processing of personal [and other data] to the extent necessary to detect and report online child sexual abuse and remove online child sexual abuse material therefore is subject, to the safeguards and conditions set out in Regulation (EU) 2016/679 provided that it complies with the conditions set out in this Regulation.</i></p>
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				<p><i>Presidency proposal 05/03/2021 for the last part:</i> Moreover, not all Member States have adopted legislative measures at national level to restrict the scope of the rights and obligations provided for in those provisions in accordance with Article 15(1) of Directive 2002/58/EC, and the adoption of such measures involves a significant risk of fragmentation likely to negatively affect the internal market.</p> <p>Rapporteurs proposal of 16/04/2021 (move last sentence to a separate new recital (8a)):</p>
13-A				<p><u><i>EP agrees to delete line 13 A</i></u></p> <p><i>Presidency's proposal (19/04/2021):</i></p> <p><u><i>(8a) Where Member States adopt legislative measures at national level to restrict the scope of the rights and</i></u></p>

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				<p><u>obligations provided for in those provisions in accordance with Article 15(1) of Directive 2002/58/EC, they should comply with the Charter</u> <u>Commission proposal of 22/04/21</u> <u>[and the ECJ case law]</u></p> <p><i>Rapporteur's proposal of 16/04/2021 (move last sentence to a separate new recital (8a)):</i></p> <p><i>(8a) Where Member States have adopted adopt legislative measures at national level to restrict the scope of the rights and obligations provided for in Article 5(1) and Article 6(1) in accordance with Article 15(1) of Directive 2002/58/EC, and the adoption of such measures involves a significant risk of fragmentation likely to negatively affect the internal market they should respect Regulation (EU) 2016/679, in particular Article 23 thereof.</i></p>
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14	(9) Given that electronic communications involving natural persons will normally qualify as personal data, this Regulation should also be based on Article 16 of the Treaty, which provides a specific legal basis for the adoption of rules relating to the protection of individuals with regard to the processing of personal data by Union institutions and by the Member States when carrying out activities which fall within the scope of Union law, and rules relating to the free movement of such data.	AM 12 (9) Given that <i>data related to</i> electronic communications involving natural persons will normally <i>always</i> qualify as personal data, this Regulation should also be based on Article 16 of the Treaty <i>on the Functioning of the European Union</i> , which provides a specific legal basis for the adoption of rules relating to the protection of individuals with regard to the processing of personal data by Union institutions and by the Member States when carrying out activities which fall within the scope of Union law, and rules relating to the free movement of such data.	(9) Given that electronic communications involving natural persons will normally qualify as personal data, this Regulation should also be based on Article 16 of the Treaty, which provides a specific legal basis for the adoption of rules relating to the protection of individuals with regard to the processing of personal data by Union institutions and by the Member States when carrying out activities which fall within the scope of Union law, and rules relating to the free movement of such data.	3 rd Trilogue (09/03/2021) (9) Given that <i>data related to</i> electronic communications involving natural persons will normally qualify as personal data, this Regulation should also be based on Article 16 of the Treaty <i>on the Functioning of the European Union</i> , which provides a specific legal basis for the adoption of rules relating to the protection of individuals with regard to the processing of personal data by Union institutions and by the Member States when carrying out activities which fall within the scope of Union law, and rules relating to the free movement of such data.
15	(10) To the extent that processing of personal data in connection with the provision of electronic communications services by number-independent	AM 13 (10) To the extent that processing of personal data in connection with the provision of electronic communications services by number-independent interpersonal	(10) To the extent that processing of personal data in connection with the provision of electronic communications services by number-independent interpersonal	3 rd Trilogue (09/03/2021) (10) To the extent that processing of personal data in connection with the provision of electronic communications services by number-independent interpersonal

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	<p>interpersonal communications services for the sole purpose of detecting and reporting child sexual abuse online and removing child sexual abuse material falls within the scope of the derogation provided for by this Regulation, Regulation (EU) 2016/679 applies to such processing, including the requirement to carry out an assessment of the impact of the envisaged processing operations where appropriate pursuant to Article 35 of that Regulation prior to the deployment of the technologies concerned.</p>	<p>communications services for the sole purpose of detecting and reporting online child sexual abuse online and removing online child sexual abuse material falls within the scope of the derogation restriction provided for by this Regulation, Regulation (EU) 2016/679 applies to such processing, including but not limited to, its provisions on principles relating to the processing of personal data (Article 5), lawfulness of processing (Article 6), processing of special categories of personal data (Article 9), restrictions (Article 23), the security of processing (Article 32), transfers of personal data to third countries or international organisations (Chapter V), independent supervisory authorities (Chapter VI), cooperation and consistency (Chapter VII) and text, liability and penalties (Chapter VIII), as well as the requirement to carry out an assessment of the impact of the envisaged processing operations pursuant to Article 35 of that Regulation prior to the deployment of the any technologies</p>	<p>communications services for the sole purpose of detecting and reporting child sexual abuse online and removing child sexual abuse material falls within the scope of the derogation provided for by this Regulation, Regulation (EU) 2016/679 applies to such processing, including, but not limited to, its provisions on principles relating to processing of personal data (Article 5), lawfulness of processing (Article 6), processing of special categories of personal data (Article 9), restrictions (Article 23), independent supervisory authorities (Chapter VI), cooperation and consistency (Chapter VII) and remedies, liability and penalties (Chapter VIII), as well as the requirement to carry out an assessment of the impact of the envisaged processing operations where</p>	<p>communications services for the sole purpose of detecting and reporting online child sexual abuse online and removing online child sexual abuse material falls within the scope of the [derogation / restriction] provided for by this Regulation, Regulation (EU) 2016/679 applies to such processing.</p> <p>, including but not limited to, its provisions on principles relating to the processing of personal data (Article 5), lawfulness of processing (Article 6), processing of special categories of personal data (Article 9), restrictions (Article 23), the security of processing (Article 32), transfers of personal data to third countries or international organisations (Chapter V), independent supervisory authorities (Chapter VI), cooperation and consistency (Chapter VII) and text, liability and penalties (Chapter VIII), as well as the requirement to carry out an</p>
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		<p>concerned <i>and the requirement pursuant to Article 36 thereof to consult the supervisory authority concerned prior to processing</i>, or <i>in the case of technologies analysing traffic or content data for the purpose of identifying possible instances of solicitation of children, a prior authorisation from the supervisory authorities.</i></p>	<p>appropriate pursuant to Article 35 of that Regulation prior to the deployment of the technologies concerned.</p>	<p>assessment of the impact of the envisaged processing operations pursuant to Article 35 of that Regulation prior to the deployment of the <i>any</i> technologies concerned <i>and the requirement pursuant to Article 36 thereof to consult the supervisory authority concerned prior to processing</i>, or <i>in the case of technologies analysing traffic or content data for the purpose of identifying possible instances of solicitation of children, a prior authorisation from the supervisory authorities.</i></p>
16	<p>(11) Since the sole objective of this Regulation is to enable the continuation of certain existing activities aimed at combating child sexual abuse online, the derogation provided for by this Regulation should be limited to well-established technology that is regularly used by number-independent interpersonal</p>	<p>AM 14</p> <p>(11) Since the sole objective of this Regulation is <i>aims</i> to enable the continuation of certain existing activities aimed at combating <i>detecting, reporting and removing online child sexual abuse online material and detecting and reporting online child sexual abuse that comply with Regulation (EU) 2016/679</i>, the derogation restriction provided for by this Regulation should be limited to well-established</p>	<p>(11) Since the sole objective of this Regulation is to enable the continuation of certain existing activities aimed at combating child sexual abuse online, the derogation provided for by this Regulation should be limited to well-established technology that is regularly used by number-independent interpersonal communications services for the purpose of detecting and</p>	<p><i>Rapporteur's proposal of 28/04/21</i></p> <p>(11) The types of technologies deployed should be the least privacy-intrusive in accordance with the state of the art in the industry. <i>[To the extent that they are used to scan text in communications containing text,] They should not be used for systematic filtering and scanning of text in communications other than solely to detect patterns which point to possible concrete elements of suspicion of online child sexual</i></p>

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	<p>communications services for the purpose of detecting and reporting child sexual abuse online and removing child sexual abuse material before the entry into force of this Regulation. The reference to the technology includes where necessary any human review directly relating to the use of the technology and overseeing it. The use of the technology in question should therefore be common in the industry, without it necessarily being required that all providers use the technology and without precluding the further evolution of the technology in a privacy-friendly manner. In this respect, it should be immaterial whether or not a particular provider that</p>	<p>technology that is regularly used by number-independent interpersonal communications services for the purpose of detecting and reporting child sexual abuse online and removing child sexual abuse material before the entry into force of this <i>has been subject to prior consultation in accordance with Article 36 of Regulation (EU) 2016/679 or, where required by this Regulation, prior authorisation by a national supervisory authority, technology that is regularly used by number-independent interpersonal communications services for the sole purpose of detecting and reporting online child sexual abuse and removing online child sexual abuse material</i> . The reference to the technology includes where necessary any human review directly relating to the use of the technology and overseeing its <i>functioning with a view to avoid unnecessary and disproportionate interference with fundamental rights</i>. The use of the technology in question should therefore be common in the industry,</p>	<p>reporting child sexual abuse online and removing child sexual abuse material before the entry into force of this Regulation. The reference to the technology includes where necessary any human review directly relating to the use of the technology and overseeing it. The use of the technology in question should therefore be common in the industry, without it necessarily being required that all providers use the technology and without precluding the further evolution of the technology in a privacy-friendly manner. In this respect, it should be immaterial whether or not a particular provider that seeks to rely on this derogation itself already uses such technology on the date of entry into force of this Regulation. The types of technologies deployed</p>	<p>abuse <i>without being able to understand the substance of the content. In the case of technology used for identifying solicitation, such concrete elements of suspicion exist only where a child below the age of sexual consent is involved in the scanned communications. Therefore, the technology used for identifying solicitation should be based on objectively identified risk factors such as the involvement of a child in the scanned communication.</i></p> <p><i>COM proposal of 26/02/21 supported by the Presidency:</i></p> <p>(11) The types of technologies deployed should be the least privacy-intrusive in accordance with the state of the art in the industry.</p> <p><i>and should not be used for systematic filtering and scanning of communications containing text but only to look into specific communications in case of concrete</i></p>
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	<p>seeks to rely on this derogation itself already uses such technology on the date of entry into force of this Regulation. The types of technologies deployed should be the least privacy-intrusive in accordance with the state of the art in the industry and should not include systematic filtering and scanning of communications containing text but only look into specific communications in case of concrete elements of suspicion of child sexual abuse.</p>	<p>without it necessarily being required that all providers use the technology and without precluding the further evolution of the technology in a privacy-friendly manner. In this respect, it should be immaterial irrelevant whether or not a particular provider that seeks to rely on this derogation the restriction provided for by this Regulation itself already uses such technology on the date of entry into force of this Regulation. The types of technologies deployed should be the least privacy-intrusive in accordance with the state of the art in the industry. The types of technologies deployed should be the least privacy-intrusive in accordance with the state of the art in the industry and should not be used for systematic filtering and scanning of communications containing text but only to look into specific communications in case of concrete elements of suspicion of child sexual abuse. To the extent that they are used to scan communications containing text, technologies should not be able to understand the substance of the content but should</p>	<p>should be the least privacy-intrusive in accordance with the state of the art in the industry and should not include systematic filtering and scanning of communications containing text but only look into specific communications in case of concrete elements of suspicion of child sexual abuse.</p>	<p>elements of suspicion of child sexual abuse.</p> <p><i>COM proposal 02/03/2021, Delete:</i></p> <p><i>[To the extent that they are used to scan text in communications containing text, they should not be used for systematic filtering and scanning of text in communications other than solely to detect patterns which point to possible concrete elements of suspicion of online child sexual abuse without being able to understand the substance of the content.</i></p>
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		<i>solely detect patterns, which point to possible online child sexual abuse.</i>		
16-A				4th Trilogue (25/03/21) (11a) Appropriate procedures and redress mechanisms should be in place to ensure that individuals can lodge complaints with the provider of a number-independent interpersonal communications service. This is in particular relevant where content that does not constitute online child sexual abuse has been removed or reported to law enforcement authorities or to an organisation acting in the public interest against online child sexual abuse.
17	(12) In order to ensure accuracy and reliability as much as possible, the technology used should, in accordance with the state of the art in the industry, be such as to limit the error rate of false positives to the maximum extent possible and, where necessary, to		(12) In order to ensure accuracy and reliability as much as possible, the technology used should, in accordance with the state of the art in the industry, be such as to limit the error rate of false positives to the maximum extent possible and, where necessary, to rectify without delay any	2 nd Trilogue (23/02/2021) (12) In order to ensure accuracy and reliability as much as possible, the technology used should, in accordance with the state of the art in the industry, be such as to limit the error rate of false positives to the maximum extent possible and, where necessary, to rectify without

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	rectify without delay any such errors that may nonetheless occur.		such errors that may nonetheless occur.	delay any such errors that may nonetheless occur.
18	(13) The personal and other data used when carrying out the activities covered by the derogation set out in this Regulation, as well as the period during which the data is subsequently retained in case of positive results, should be minimised so as to ensure that the derogation remains limited to what is strictly necessary.	AM 15 (13) The personal and other data used when carrying out the activities covered by the derogation set out restriction provided for by this Regulation, as well as the period during which the data and any result of the processing of this data are is subsequently retained in case of positive results, should be minimised to what is strictly necessary so as to ensure that the derogation the interference with the confidentiality of communications remains as limited as possible to what is strictly necessary .	(13) The personal and other data used when carrying out the activities covered by the derogation set out in this Regulation, as well as the period during which the data is subsequently retained in case of positive results, should be minimised so as to ensure that the derogation remains limited to what is strictly necessary. This regulation does not prevent providers from requesting a proof of receipt by law enforcement authorities after reporting child sexual abuse online to them.	<i>Outcome of technical meeting 26/04/21</i> (13) The content and traffic data processed, and personal data generated when carrying out the activities covered by this Regulation, as well as the period during which the data is subsequently stored in case of identification of suspected child sexual abuse, should remain limited to what is strictly necessary to carry out those activities. When no longer strictly necessary for one of the purposes specified in this Regulation, including where no suspected online child sexual abuse is identified, any data should be immediately and irrevocably deleted, and in any event after expiration of the time period of twelve months for specific purposes as specified. This should be without prejudice to the possibility to store

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				relevant content and traffic data in accordance with Directive 2002/58/EC. This Regulation does not affect the application of any legal obligation under EU or Member state law to preserve data that may apply to the provider concerned.
18- A				<i>Outcome of technical meeting of 19/04/2021</i> (13a) This Regulation does not prevent providers from requesting a proof of receipt by law enforcement authorities after reporting child sexual abuse online to them.
19	(14) In order to ensure transparency and accountability in respect of the activities undertaken pursuant to the derogation, the providers should publish reports on an annual basis on the processing falling within the scope of this Regulation, including on	AM 16 (14) In order to ensure transparency and accountability in respect of the activities undertaken pursuant to the derogation restriction, provided for by this Regulation, interpersonal communications service the providers should publish and submit reports by ... [six months after the	(14) In order to ensure transparency and accountability in respect of the activities undertaken pursuant to the derogation, the providers should make publicly available reports on an annual basis on the processing falling within the scope of this Regulation, including on the type and	<i>Compare with line 81, operative part of the text</i> <i>Presidency proposal of 28/04/21:</i> (14) In order to ensure transparency and accountability in respect of the activities undertaken pursuant to the [/restriction], provided for by this Regulation, interpersonal communications

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	<p>the type and volumes of data processed, number of cases identified, measures applied to select and improve key indicators, the numbers and ratios of errors (false positives) of the different technologies deployed, measures applied to limit the error rate and the error rate achieved, the retention policy and the data protection safeguards applied.</p>	<p><i>entry into force of this Regulation], and on an annual basis thereafter, on the processing falling within the scope of this Regulation, including on the type and volumes of data processed, the ground relied on for transfers of personal data pursuant to Article 6 of Regulation (EU) 2016/679, the ground relied on for transfers of personal data outside the Union pursuant to Chapter V of Regulation (EU) 2016/ 679, where applicable, the number of cases identified, the number of cases in which a user has lodged a complaint with the internal redress mechanism or with a judicial authority and the outcome of those proceedings, measures applied to select and improve key indicators, the numbers and ratios of errors (false positives) of the different technologies deployed, measures applied to limit the error rate and the error rate achieved, the retention policy and the data protection safeguards applied pursuant to Regulation (EU) 2016/679. Providers should also submit their</i></p>	<p>volumes of data processed, number of cases identified, measures applied to select and improve key indicators, the numbers and ratios of errors (false positives) of the different technologies deployed, measures applied to limit the error rate and the error rate achieved, the retention policy and the data protection safeguards applied. In order to ensure efficient supervision, providers should also submit their reports to the supervisory authorities responsible in accordance with Regulation (EU) 2016/679.</p>	<p><i>service the providers should publish and submit reports to the supervisory authority as determined in accordance with Regulation (EU) 2016/679 and to the Commission by ... [six months after the entry into force of this Regulation], and on an annual basis thereafter by 31 January every year, on the processing falling within the scope of this Regulation, including on the type and volumes of data processed, the specific ground relied on for the processing of personal data pursuant to Regulation (EU) 2016/679, the ground relied on for transfers of personal data outside the Union pursuant to Chapter V of Regulation (EU) 2016/ 679, where applicable, the number of cases identified, [differentiating between child sexual abuse material and solicitation], the number of cases in which a user has lodged a complaint with the internal redress mechanism or with a judicial authority and the outcome of those proceedings, measures applied to</i></p>
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		<p><i>reports to the supervisory authorities in accordance with Regulation (EU) 2016/679.</i></p>		<p><i>select and improve key indicators,</i> the numbers and ratios of errors (false positives) of the different technologies deployed, measures applied to limit the error rate and the error rate achieved, the retention policy and the data protection safeguards applied <i>pursuant to Regulation (EU) 2016/679 as well as the names of the organisations acting in the public interest against child sexual abuse with whom data has been shared pursuant to this Regulation. Providers should also submit their reports to the supervisory authorities in accordance with Regulation (EU) 2016/679.</i></p> <p>Rapporteur proposal (16/04/2021):</p> <p>(14) In order to ensure transparency and accountability in respect of the activities undertaken pursuant to the <i>[derogation/restriction], provided for by this Regulation, interpersonal communications</i></p>
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				<p><i>service</i> the providers should publish <i>and submit reports by ... [six months after the entry into force of this Regulation], and on an annual basis thereafter by 31 January every year,</i> on the processing falling within the scope of this Regulation, including on the type and volumes of data processed, <i>the specific ground relied on for the processing of personal data pursuant to Regulation (EU) 2016/679, the ground relied on for transfers of personal data outside the Union pursuant to Chapter V of Regulation (EU) 2016/ 679, where applicable, the number of cases identified, differentiating between child sexual abuse material and solicitation, the number of cases in which a user has lodged a complaint with the internal redress mechanism or with a judicial authority and the outcome of those proceedings,</i> measures applied to select and improve key indicators, the numbers and ratios of errors (false positives) of the different technologies deployed, measures</p>
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				<p>applied to limit the error rate and the error rate achieved, the retention policy and the data protection safeguards applied <i>pursuant to Regulation (EU) 2016/679 as well as the names of the organisations acting in the public interest against child sexual abuse with whom data has been shared pursuant to this Regulation. Providers should also submit their reports to the supervisory authorities in accordance with Regulation (EU) 2016/679.</i></p> <p><i>Outcome of technical discussion:</i></p> <p>(14) In order to ensure transparency and accountability in respect of the activities undertaken pursuant to the derogation <i>restriction, provided for by this Regulation, interpersonal communications service</i> the providers should publish <i>and submit reports by ... [six months after the entry into force of this Regulation], and</i> on an annual basis <i>thereafter,</i> on the processing falling</p>
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				<p>within the scope of this Regulation, including on the type and volumes of data processed, <i>the ground relied on for transfers of personal data pursuant to Article 6 of Regulation (EU) 2016/679, the ground relied on for transfers of personal data outside the Union pursuant to Chapter V of Regulation (EU) 2016/ 679, where applicable, the number of cases identified, the number of cases in which a user has lodged a complaint with the internal redress mechanism or with a judicial authority and the outcome of those proceedings,</i> measures applied to select and improve key indicators, the numbers and ratios of errors (false positives) of the different technologies deployed, measures applied to limit the error rate and the error rate achieved, the retention policy and the data protection safeguards applied <i>pursuant to Regulation (EU) 2016/679. Providers should also submit their reports to the supervisory authorities in</i></p>
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				<i>accordance with Regulation (EU) 2016/679.</i>
20		<p>AM 17</p> <p><i>(14a) In order to support the responsible supervisory authorities in their task, the Commission should request the European Data Protection Board to issue guidelines on compliance with Regulation (EU) 2016/679 of processing falling within the scope of the restriction laid down in this Regulation. Those guidelines should in particular assist the supervisory authorities in providing advice in the framework of the prior consultation procedure set out in Article 36 of Regulation (EU) 2016/679, which is to be carried out when assessing whether an established or new technology to be used is state-of-the-art, the least privacy-intrusive and operating on an adequate legal basis under Regulation (EU) 2016/679.</i></p>	<p>(14a) In order to support the responsible supervisory authorities in their task, the European Data Protection Board should issue guidelines on compliance with Regulation (EU) 2016/679 of the processing falling within the scope of the derogation laid down in this Regulation. Those guidelines will in particular assist the supervisory authorities in providing advice in the framework of the prior consultation procedure set out in Article 36 of Regulation (EU) 2016/679, that should be carried out when assessing if a new technology to be used is state-of-the-art and the least privacy-intrusive.</p>	<p>3rd Trilogue (09/03/2021)</p> <p><i>(14a) In order to support the responsible supervisory authorities in their task, the Commission should request the European Data Protection Board to issue guidelines on compliance with Regulation (EU) 2016/679 of processing falling within the scope of [the restriction laid down in] this Regulation. Those guidelines should in particular assist the supervisory authorities in providing advice in the framework of the prior consultation procedure set out in Article 36 of Regulation (EU) 2016/679, which is to be carried out when assessing whether an established or new technology to be used is state-of-the-art, the least privacy-intrusive and operating on an adequate legal basis under Regulation (EU) 2016/679.</i></p>

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21	(15) This Regulation should enter into force on the third day following that of its publication in the Official Journal of the European Union, in order to ensure that it is applicable as from 21 December 2020.	AM 18 This Regulation should enter into force on the third day following that of its publication in the Official Journal of the European Union, in order to ensure that it is applicable as from 21 December 2020.	(15) This Regulation should enter into force on the third day following that of its publication in the <i>Official Journal of the European Union</i> , in order to ensure that it is applicable as from 21 December 2020.	3 rd Trilogue (09/03/2021) <i>Delete</i>
22	(16) This Regulation restricts the right to protection of the confidentiality of communications and derogates from the decision taken in Directive (EU) 2018/1972 to subject number-independent interpersonal communications services to the same rules as all other electronic communications services as regards privacy. The period of application of this Regulation should, therefore, be limited until 31 December 2025, that	AM 19 (16) This Regulation restricts the right to protection of the confidentiality of communications and derogates from the decision taken in Directive (EU) 2018/1972 to subject number-independent interpersonal communications services to the same rules as all other electronic communications services as regards privacy <i>carried out by number-independent interpersonal communications services for the sole purpose of detecting and removing online child sexual abuse material and reporting it to law enforcement authorities and to organisations acting in the public interest against child sexual abuse and of detecting</i>	(16) This Regulation restricts the right to protection of the confidentiality of communications and derogates from the decision taken in Directive (EU) 2018/1972 to subject number-independent interpersonal communications services to the same rules as all other electronic communications services as regards privacy. The period of application of this Regulation should, therefore, be limited until 31 December 2025, that is to say for a time period reasonably required for the	Rapporteur's proposal of 28/04/21 (16) This Regulation restricts the right to protection of the confidentiality of communications and derogates from the decision taken in Directive (EU) 2018/1972 to subject number-independent interpersonal communications services to the same rules as all other electronic communications services as regards privacy <i>carried out by number-independent interpersonal communications services for the sole purpose of detecting and removing online child sexual abuse material and reporting it to law enforcement authorities and to organisations acting in the public interest against</i>

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	is to say for a time period reasonably required for the adoption of a new long-term legal framework, with more elaborate safeguards. In case the long-term legislation is adopted and will enter into force before that date, that legislation should repeal this Regulation.	<i>or reporting online child sexual abuse to law enforcement authorities.</i> The period of application of this Regulation should, therefore, be limited until 31 December 2025 2022 . that is to say for a time period reasonably required for the adoption of a new long-term legal framework, with more elaborate safeguards. In case the long-term legislation is adopted and will enter into force before that date, that legislation should repeal this Regulation.	adoption of a new long-term legal framework, with more elaborate safeguards. In case the long-term legislation is adopted and will enter into force before that date, that legislation should repeal this Regulation.	<i>child sexual abuse and of detecting or reporting online child sexual abuse to law enforcement authorities.</i> The period of application of this Regulation should, therefore, be limited until [...]. that is to say for a time period reasonably required for the adoption of a new long-term legal framework, with more elaborate safeguards. In case the long-term legislation is adopted and will enter into force before that date, that legislation should repeal this Regulation.
23	(17) Providers of number-independent interpersonal communications services should be subject to the specific obligations set out in Directive 2002/58/EC with regard to any other activities that fall within its scope.		(17) Providers of number-independent interpersonal communications services should be subject to the specific obligations set out in Directive 2002/58/EC, and consequently to the monitoring and investigative powers of the competent authorities designated pursuant to that Directive , with regard	2 nd Trilogue (23/02/2021) (17) With regard to all other activities that fall within the scope of Directive 2002/58/EC, Providers of number-independent interpersonal communications services should be subject to the specific obligations set out in that Directive, and consequently to the monitoring and investigative powers of the competent authorities

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			to any other activities that fall within its scope.	designated pursuant to that Directive.
24		<p>AM 20</p> <p><i>(17a) The supervisory authorities responsible for monitoring the application of this Regulation should be the same as the independent supervisory authorities designated pursuant to Chapter VI of Regulation (EU) 2016/679.</i></p>		<p>2nd Trilogue (23/02/2021)</p> <p><i>EP drops AM 20, covered in Article 3 e, lines 99, 100</i></p>
25		<p>AM 21</p> <p><i>(17b) End-to-end encryption is an important tool to guarantee secure and confidential communications of users, including those of children. Any weakening of encryption could potentially be abused by malicious third parties. Nothing in this Regulation should therefore be interpreted as prohibiting or weakening end-to-end encryption.</i></p>		<p>3rd Trilogue (09/03/2021)</p> <p><i>(17b) End-to-end encryption is an important tool to guarantee secure and confidential communications of users, including those of children. Any weakening of encryption could potentially be abused by malicious third parties. Nothing in this Regulation should therefore be interpreted as prohibiting or weakening end-to-end encryption.</i></p>
26		<p>AM 22</p> <p><i>(17c) The right to respect for private and family life, including the confidentiality of</i></p>		<p>Presidency proposal 05/03/2021: Keep line 26, delete 27</p> <p><i>(17c) The right to respect for private and family life, including</i></p>

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		<i>communications, is a fundamental right guaranteed under Article 7 of the Charter. It is thus also a prerequisite for secure communications between victims of child sexual abuse and a trusted adult or organisations active in the fight against child sexual abuse as well as in communications between victims and their lawyers.</i>		<i>the confidentiality of communications, is a fundamental right guaranteed under Article 7 of the Charter. It is thus also a prerequisite for secure communications between victims of child sexual abuse and a trusted adult or organisations active in the fight against child sexual abuse as well as in communications between victims and their lawyers.</i>
27		<p>AM 23</p> <p><i>(17d) All communications between an accused or convicted person and his or her lawyer should be protected, in order to guarantee the fundamental rights to an effective remedy and to a fair trial pursuant to Article 47 of the Charter as well as the right to the presumption of innocence and the right of defence pursuant to Article 48 thereof.</i></p>		<p><i>Presidency proposal 05/03/2021: Keep line 26, delete 27</i></p> <p><i>Rapporteur Proposal 16/04/2021:</i></p> <p><i>(17d) Confidentiality of communication between suspects or accused persons and their lawyer is key to ensuring the effective exercise of the rights of the defence and is an essential part of the right to a fair trial. Nothing in this Regulation should be interpreted as derogating from the right to confidentiality of communications between the lawyer and the suspect or accused</i></p>

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				<i>person as provided for in Directive (EU) 2013/48.</i>
27-A				<p>3rd Trilogue (09/03/2021)</p> <p>Rapporteur's proposal 22/04/21 (to merge Lines 27 and 27-A)</p> <p>(27-a) This Regulation is without prejudice to the rules on professional secrecy under national law, such as rules on the protection of professional communications, between doctors and their patients, journalists and their sources, or lawyers and their clients - <i>in particular since confidentiality of communication between a suspect or accused person and their lawyer is key to ensuring the effective exercise of the rights of the defence as an essential part of the right to a fair trial</i> - including national rules on registers on public authorities or organisations which offer counselling to individuals in distress.</p>

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				<p>(17ca) This Regulation is without prejudice to the rules on professional secrecy under national law, such as rules on the protection of professional communications between doctors and their patients, journalists and their sources or lawyers and their clients, including national rules on registers on public authorities or organisations which offer counselling to individuals in distress.</p> <p>[Providers of number independent interpersonal communications services should undertake reasonable measures to ensure that the communications protected by professional secrecy are not scanned. In particular, these rules may require that as soon as Where providers of number-independent interpersonal communications services become aware, including through human oversight, that they are processing communications protected by professional secrecy, they should immediately stop such processing and delete all data collected.</p>
28	(18) The objective of this Regulation is to create a temporary	AM 24 (18) The objective of this	(18) The objective of this Regulation is to create a temporary derogation from	3 rd Trilogue (09/03/2021)

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	<p>derogation from certain provisions of Directive 2002/58/EC without creating fragmentation in the Internal Market. In addition, national legislation would most probably not be adopted in time in all Member States. As this objective cannot be sufficiently achieved by the Member States, but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives. It introduces a temporary and strictly</p>	<p>Regulation is to create a temporary derogation from certain restriction of specific provisions of Directive 2002/58/EC without creating fragmentation in the Internal Market. In addition, national legislation would most probably not be adopted in time in all Member States. As this objective cannot be sufficiently achieved by the Member States, but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives. It introduces a temporary and strictly limited derogation from restriction of the applicability of Articles 5 (1) and 6 (1) of Directive 2002/58/EC, with a series of safeguards to ensure that it does not go beyond what is necessary for the achievement of the set objectives.</p>	<p>certain provisions of Directive 2002/58/EC without creating fragmentation in the Internal Market. In addition, national legislation would most probably not be adopted in time in all Member States. As this objective cannot be sufficiently achieved by the Member States, but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives. It introduces a temporary and strictly limited derogation from the applicability of Articles 5 (1) and 6 of Directive</p>	<p>(18) The objective of this Regulation is to create a temporary [derogation from certain/ restriction of specific] provisions of Directive 2002/58/EC without creating fragmentation in the Internal Market. In addition, national legislation would most probably not be adopted in time in all Member States. As this objective cannot be sufficiently achieved by the Member States, but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives. It introduces a temporary and strictly limited [derogation from / restriction of] the applicability of Articles 5 (1) and 6 (1) of Directive 2002/58/EC, with a series of safeguards to ensure that it does not</p>
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	limited derogation from the applicability of Articles 5 (1) and 6 of Directive 2002/58/EC, with a series of safeguards to ensure that it does not go beyond what is necessary for the achievement of the set objectives.		2002/58/EC, with a series of safeguards to ensure that it does not go beyond what is necessary for the achievement of the set objectives.	go beyond what is necessary for the achievement of the set objectives.
28-A				<p>2nd Trilogue (23/02/2021)</p> <p>(18a) The providers of number-independent interpersonal communications services should communicate to the Commission the names of the organisations acting in the public interest against child sexual abuse to which they report potential online child sexual abuse under this Regulation. While it is the sole responsibility of the providers of number-independent interpersonal communication services acting as controllers to assess with which third party they can share personal data under Regulation (EU) 2016/679, the Commission should ensure</p>

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				<p>transparency regarding the transfer of potential cases of online child sexual abuse by making public on its website a list of the organisations acting in the public interest against child sexual abuse communicated to it. That public register <u>list</u> should be easily accessible and may also be used by the providers of number-independent interpersonal communications services to identify trusted relevant organisations in the global fight against online child sexual abuse. That list is without prejudice to the obligations of the providers of number-independent interpersonal communications services acting as controllers under Regulation (EU) 2016/679, including with regards to their obligation to conduct any transfer of personal data outside the Union pursuant to Chapter V of Regulation (EU) 2016/679 and their obligation to fulfil all of the obligations under chapter IV of that Regulation.</p>
28-B				2 nd Trilogue (23/02/2021)

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				<p>(18b) Statistics on criminal proceedings as set out in [Article on statistics] are important indicators for the evaluation of policy, including legislation. In addition, it is important to recognise However, such statistics do not fully reflect the impact of secondary victimisation inherent in the sharing of images and videos of victims of child sexual abuse that may have been circulating for years and which is not fully reflected in such statistics. do not fully reflect. It is nonetheless important to recognise that impact.</p>
28-C				<p>3rd Trilogue (09/03/2021)</p> <p>(18c) In line with the requirements laid down in Regulation (EU) 2016/679, in particular the requirement that Member States ensure that supervisory authorities are provided with the human, technical and financial resources necessary for the effective performance of their tasks and exercise of their powers, Member States should also ensure that</p>

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				<p>supervisory authorities have such sufficient resources for the effective performance of their tasks and exercise of their powers under this Regulation,</p> <p>including for carrying out prior data protection impact assessments, prior consultation procedures [and prior authorisation procedures].</p>
28-D				<p><i>Rapporteurs proposal 16/04/2021:</i></p> <p>(18ca) Where a provider has conducted a data protection impact assessment and consulted the supervisory authorities with regard to a technology in accordance with Regulation (EU) 2016/679 prior to the entry into force of this Regulation, that provider should not be obliged under this Regulation to carry out an additional data protection impact assessment or consultation provided that the supervisory authorities have indicated that the processing of data by that technology would not result in a high risk to the rights and</p>

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				freedoms of natural persons or that measures have been taken by the controller to mitigate such a risk.
28-E				<p>4th Trilogue (25/03/21)</p> <p>(18d) Users should have a right to effective judicial remedy where their rights have been infringed as a result of the processing of personal [and other data] for the purposes of detecting and reporting child sexual abuse online and removing child sexual abuse material on those services, <i>for instances</i> where the users' content or identity have been reported to an organisation acting in the public interest against child sexual abuse or to law enforcement authorities or where the users' content has been removed or their account has been blocked or a service offered to them has been suspended.</p>
28-F				<p><i>Outcome of technical meeting on 22/04/21:</i></p> <p>(18e) It is appropriate to specify that, in line with Directive 2002/58/EC and the principle of</p>

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				data minimisation, the processing of personal data should remain limited to the categories of content data and related traffic data, in as far as strictly necessary to achieve the purpose of this Regulation.
28 G				Outcome of technical meeting on 22/04/21: (18f) The present derogation extends to the categories of data referred to in Article 5(1) and 6(1) Directive 2002/58/EC, which are applicable to the processing of both personal and non-personal data processed in the context of the provision of a number-independent interpersonal communications service.
29	(19) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and	AM 25 (19) 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 Council ⁷ and delivered its opinion on	(19) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament	2 nd Trilogue (23/02/2021) (19) 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

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	of the Council ¹⁵ and delivered its opinion on [...],	<i>10 November 2020</i> ,	and of the Council ¹⁶ and delivered its opinion on [...],	Council ⁷ and delivered its opinion on <i>10 November 2020</i> ,
30	HAVE ADOPTED THIS REGULATION:		HAVE ADOPTED THIS REGULATION:	2 nd Trilogue (23/02/2021) HAVE ADOPTED THIS REGULATION:
31	<i>Article 1 Subject matter</i>		<i>Article 1 Subject matter</i>	2 nd Trilogue (23/02/2021) 3 rd Trilogue (09/03/2021) <i>Article 1 Subject matter and scope</i>
32	This Regulation lays down temporary and strictly limited rules derogating from certain obligations laid down in Directive 2002/58/EC, with the sole objective of enabling providers of number-independent interpersonal	AM 26 This Regulation lays down temporary and strictly limited rules derogating from restricting certain rights and obligations laid down in Directive 2002/58/EC, with the sole objective of enabling providers of certain number-independent interpersonal communications	This Regulation lays down temporary and strictly limited rules derogating from certain obligations laid down in Directive 2002/58/EC, with the sole objective of enabling providers of number-independent interpersonal communications services to	This Regulation lays down temporary and strictly limited rules [derogating/ restricting] from certain obligations laid down in Directive 2002/58/EC, with the sole objective of enabling providers of certain number-independent interpersonal communications services to use <u>continue</u>, without prejudice to Regulation (EU)

¹⁵ 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 C 20, 21.1.2019, p. 1).

¹⁶ 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 C 20, 21.1.2019, p. 1).

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	communications services to continue the use of technologies for the processing of personal and other data to the extent necessary to detect and report child sexual abuse online and remove child sexual abuse material on their services.	services, to continue the use of, while fully respecting the rights and obligations laid down in Regulation (EU) 2016/679, using specific technologies for the, namely the use of a unique non-reconvertible digital signature ('hash') and the use of technologies analysing traffic or content data for the sole purpose of processing of personal and other data to the extent strictly necessary to detect and report online child sexual abuse online and remove online child sexual abuse material on their services.	continue, without prejudice to Regulation (EU) 2016/679 , the use of technologies for the processing of personal and other data to the extent necessary to detect and report child sexual abuse online and remove child sexual abuse material on their services.	2016/679, specific of technologies for the processing of personal and other data to the extent strictly necessary to detect and report child sexual abuse online and remove child sexual abuse material on their services.
32 A				2 nd Trilogue (23/02/2021) 1a. This Regulation shall not apply to the scanning of audio communications.
33	<i>Article 2 Definitions</i>		<i>Article 2 Definitions</i>	2 nd Trilogue (23/02/2021) <i>Article 2 Definitions</i>
34	For the purpose of this Regulation, the following definitions apply:		For the purpose of this Regulation, the following definitions apply:	2 nd Trilogue (23/02/2021) For the purpose of this Regulation, the following definitions apply:

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35	(1) ‘number-independent interpersonal communications service’ means a service as defined in Article 2(7) of Directive (EU) 2018/1972;	AM 27 (1) ‘number-independent interpersonal communications service’ means a service number-independent interpersonal communications service as defined in Article 2(7) of Directive (EU) 2018/1972;	(1) ‘number-independent interpersonal communications service’ means a service as defined in Article 2(7) of Directive (EU) 2018/1972;	2 nd Trilogue (23/02/2021) (1) ‘number-independent interpersonal communications service’ means a service number-independent interpersonal communications service as defined in Article 2(7) of Directive (EU) 2018/1972;
36	(2) ‘child sexual abuse online’ means:	(2) ‘ online child sexual abuse online material ’ means:	(2) ‘child sexual abuse online’ means:	2 nd Trilogue (23/02/2021) (2) ‘child sexual abuse online material ’ means:
37	(a) material constituting child pornography as defined in Article 2, point (c), of Directive 2011/93/EU of the European Parliament and of the Council;	(a) material constituting ‘child pornography’ as defined in Article 2, point (c), of Directive 2011/93/EU of the European Parliament and of the Council;	(a) material constituting child pornography as defined in Article 2, point (c), of Directive 2011/93/EU of the European Parliament and of the Council;	2 nd Trilogue (23/02/2021) (a) material constituting child pornography as defined in Article 2, point (c), of Directive 2011/93/EU of the European Parliament and of the Council;
38	(b) solicitation of children for the purpose of engaging in sexual activities with a child or of producing child pornography by any of the following:	(b) solicitation of children for the purpose of engaging in sexual activities with a child or of producing child pornography by any of the following:	(b) ‘ solicitation ’ as:	2 nd Trilogue (23/02/2021) <i>Definitions of “pornographic performance”, “solicitation”, “online child sexual abuse” “positive hit” further below.</i>

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39	(i) luring the child by means of offering gifts or other advantages;	(i) luring the child by means of offering gifts or other advantages;	(i) the proposal by an adult to meet a child who has not reached the age of sexual consent, for the purpose of committing any of the offences referred to in Article 3(4) and Article 5(6) of Directive 2011/93/EU, where that proposal was followed by material acts leading to such a meeting;	2 nd Trilogue (23/02/2021) <i>Definitions of “pornographic performance”, “solicitation”, “online child sexual abuse” “positive hit” further below.</i> <i>Definitions of “pornographic performance”, “solicitation”, “online child sexual abuse” “positive hit” further below.</i>
40	(ii) threatening the child with a negative consequence likely to have a significant impact on the child;	(ii) threatening the child with a negative consequence likely to have a significant impact on the child;	(ii) an attempt to commit the offences provided for in Article 5(2) and (3) by an adult soliciting a child who has not reached the age of sexual consent to provide child pornography depicting that child.	2 nd Trilogue (23/02/2021) <i>Definitions of “pornographic performance”, “solicitation”, “online child sexual abuse” “positive hit” further below.</i>
41	(iii) presenting the child with pornographic materials or making them available to the child.	(iii) presenting the child with pornographic materials or making them available to the child.	solicitation of children for the purpose of engaging in sexual activities with a child or of producing child pornography by any of the following:	2 nd Trilogue (23/02/2021) <i>Definitions of “pornographic performance”, “solicitation”, “online child sexual abuse” “positive hit” further below.</i>

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42			(i) luring the child by means of offering gifts or other advantages;	2 nd Trilogue (23/02/2021) <i>Definitions of “pornographic performance”, “solicitation”, “online child sexual abuse” “positive hit” further below.</i>
43			(ii) threatening the child with a negative consequence likely to have a significant impact on the child;	2 nd Trilogue (23/02/2021) <i>Definitions of “pornographic performance”, “solicitation”, “online child sexual abuse” “positive hit” further below.</i>
44			(iii) presenting the child with pornographic materials or making them available to the child.	2 nd Trilogue (23/02/2021) <i>Definitions of “pornographic performance”, “solicitation”, “online child sexual abuse” “positive hit” further below.</i>
45	(c) ‘pornographic performance’ as defined in Article 2(e) of Directive 2011/93/EU.	(c) ‘pornographic performance’ as defined in Article 2, <i>point (e)</i> , of Directive 2011/93/EU;	(c) ‘pornographic performance’ as defined in Article 2(e) of Directive 2011/93/EU.	2 nd Trilogue (23/02/2021) <i>(b) ‘pornographic performance’ as defined in Article 2, point (e), of Directive 2011/93/EU;</i>
46		<i>(2a) ‘solicitation of children’ means any intentional conduct constituting a criminal offense under Article 6</i>		2 nd Trilogue (23/02/2021)

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		<i>of Directive 2011/93/EC;</i>		<i>(2a) ‘solicitation of children’ means any intentional conduct constituting a criminal offense under Article 6 of Directive 2011/93/EC;</i>
47		<i>(2b) ‘online child sexual abuse material’ and ‘solicitation of children’;</i>		2 nd Trilogue (23/02/2021) <i>(2 b) ‘online child sexual abuse’ means ‘online child sexual abuse material’ and ‘solicitation of children’;</i>
48		<i>(2c) ‘positive hit of online child sexual abuse material’ means a match resulting from a comparison between an image or a video and a ‘hash’ from a data base containing verified online child sexual abuse material and maintained by an organisation recognised by the Commission pursuant to Article 3f of this Regulation.</i>		2 nd Trilogue (23/02/2021) and 4th Trilogue (25/03/21) <i>(2c) ‘positive hit of online child sexual abuse material’ means a match resulting from a comparison between an image or a video and a ‘hash’ from a data base containing verified online child sexual abuse material and maintained by an organisation recognised by the Commission pursuant to Article 3f of this Regulation. acting in the public interest against child sexual abuse.</i>

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49	<i>Article 3 Scope of the derogation</i>	<i>Article 3 Scope of the derogation restriction</i>	<i>Article 3 Scope of the derogation</i>	4th Trilogue (25/03/21) Article 3 <i>Scope of the [restriction/ derogation]</i>
50	The specific obligations set out in Article 5(1) and Article 6 of Directive 2002/58/EC shall not apply to the processing of personal and other data in connection with the provision of number-independent interpersonal communications services strictly necessary for the use of technology for the sole purpose of removing child sexual abuse material and detecting or reporting child sexual abuse online to law enforcement authorities and to organisations acting in the public interest against child sexual abuse, provided that:	AM 28 1. The specific rights and obligations set out in Article 5(1) and Article 6 (I) of Directive 2002/58/EC shall not apply to be restricted with regard to the confidentiality of communications involving the processing of personal and other data in connection with the provision of number-independent interpersonal communications services provided that such restriction is strictly necessary for the use of specific technology for the sole purpose of detecting and removing online child sexual abuse material and detecting or reporting child sexual abuse online and detecting or reporting it to law enforcement authorities and to organisations acting in the public interest against child sexual abuse and for detecting online child	The specific obligations set out in Article 5(1) and Article 6 of Directive 2002/58/EC shall not apply to the processing of personal and other data in connection with the provision of number-independent interpersonal communications services strictly necessary for the use of technology for the sole purpose of removing child sexual abuse material and detecting or reporting child sexual abuse online to law enforcement authorities and to organisations acting in the public interest against child sexual abuse, provided that:	3 rd Trilogue (09/03/2021) <i>Outcome of technical meeting of 19/04/2021</i> The specific rights and obligations set out in Article 5(1) and Article 6 (I) of Directive 2002/58/EC shall [not apply to / be restricted]-with regard to the confidentiality of communications involving the processing of personal and other data in connection with the provision of number-independent interpersonal communications services where the processing is strictly necessary for the use of specific technology for the sole purpose of detecting and removing online child sexual abuse material and reporting it to law enforcement authorities and to organisations acting in the public interest against child sexual abuse and for detecting

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		<i>sexual abuse and reporting it to law enforcement authorities</i> provided that:		<i>online solicitation of children and reporting it to law enforcement authorities</i> or organisations acting in the public interest against child sexual abuse provided that:
51	(a) the processing is proportionate and limited to well-established technologies regularly used by providers of number-independent interpersonal communications services for that purpose before the entry into force of this Regulation, and that are in accordance with the state of the art used in the industry and are the least privacy-intrusive;	(a) the processing is proportionate and limited to well-established technologies regularly used by providers of number-independent interpersonal communications services for that <i>sole</i> purpose before the entry into force of this Regulation, and that are in accordance with the state of the art used in the industry and are the least privacy-intrusive; and provided that the technologies fulfil all of the following conditions:	(a) the processing is proportionate and limited to well-established technologies regularly used by providers of number-independent interpersonal communications services for that purpose before the entry into force of this Regulation, and that are in accordance with the state of the art used in the industry and are the least privacy-intrusive;	4th Trilogue (25/03/21) (a) the processing is proportionate and limited to well-established technologies regularly for used by providers of number-independent interpersonal communications services for that sole purpose before the entry into force of this Regulation, and that are in accordance with the state of the art used in the industry and are the least privacy-intrusive; and provided that:

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				<i>(state of the art moved to line 52 - to be discussed later)</i>
52		<i>(i) they are in accordance with the state- of- the art used in the industry and are the least privacy-intrusive, including with regard to the principle of data protection by design and by default as laid down in Article 25 of Regulation (EU) 2016/679, and, to the extent that they are used to scan communications containing text, they are not able to understand the substance of the content but solely detect patterns, which point to possible online child sexual abuse;</i>		Presidency proposal 3 rd Trilogue (09/03/2021) <i>(i) the technologies are in accordance with the state of the art used in the industry and are the least privacy-intrusive, including with regard to the principle of data protection by design and by default as laid down in Article 25 of Regulation (EU) 2016/679, and, to the extent that they are used to <u>scan text in communications</u>, they are not able to understand the substance of the content but solely detect patterns, which point to possible online child sexual abuse;</i>
53		<i>(ii) a prior data protection impact assessment pursuant to Article 35 of Regulation (EU) 2016/679 and a prior consultation procedure pursuant to Article 36 of Regulation (EU) 2016/679 have been conducted in accordance with Article 3a of this Regulation and have indicated that the processing would not result in a high risk to the</i>		2 nd Trilogue (23/02/2021) <i>(ii) in respect of any specific technology used for that purpose, a prior data protection impact assessment and a prior consultation procedure have been conducted pursuant to Articles 35 and 36 of Regulation (EU) 2016/679;</i>

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		<i>rights and freedoms of natural persons or that measures have been taken by the controller to mitigate the risk;</i>		
54		<i>(iii) in the case of technologies analysing traffic or content data for the purpose of identifying possible instances of solicitation of children, a prior authorisation has been given from the supervisory authorities, following the prior data protection impact assessment and the consultation of the supervisory authority;</i>		<p><i>Rapporteur's proposal of 26/04/21:</i></p> <p>(iii) in respect of technology used for the purpose of identifying possible solicitation of children, the provider reports back to the competent authority about the measures taken to demonstrate compliance with any written advice issued in accordance with Article 36(2) of Regulation (EU) 2016/679 by the competent supervisory authority in the course of the prior consultation procedure.</p> <p><i>Presidency proposal of 14/04/21</i></p> <p>(iii) in respect of technology used for the purpose of identifying possible solicitation of children, the provider reports back to the competent authority about the measures taken following any written advice in accordance with</p>

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				<p>Article 36(2) of Regulation (EU) 2016/679 provided by the competent supervisory authority in the course of the prior consultation procedure. <i>Lines 54E to 54H the same as in COM proposal of 13/03/21</i></p> <p>COM proposal 13/03/2021:</p> <p><i>L53: (ii) [...]; and</i> <i>L54: (iii) in respect of technology used for the purpose of identifying possible solicitation of children, the provider complies with the written advice in accordance with Article 36(2) of Regulation (EU) 2016/679 provided by the competent supervisory authority in the course of the prior consultation procedure.</i></p>
				<p>Suggestion lawyer linguist: move both 70 and 72 here. This way we would have everything dealing with “technologies” under point (a).</p>
54-A				<p>Comment EP lawyer linguist: 54 A-G need to be moved to after line 81 at least - it is a new parag 1a and is</p>

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				<p>now in the middle of a list of provisions under para 1.</p> <p>3rd Trilogue (09/03/2021) 4rd Trilogue (25/03/2021)</p> <p>1a. The condition relating to the prior consultation procedure set out in point (ii) of paragraph 1(a) shall, until [date of entry into force of this Regulation + 8 months], not apply to providers that:</p>
54-B				<p>3rd Trilogue (09/03/2021)</p> <p>(a) were using a specific technology referred to in that point before [date of entry into force of this Regulation] without previously having conducted a data protection impact assessment and completed a consultation procedure in respect of that technology;</p>
54-C				<p>3rd Trilogue (09/03/2021)</p> <p>(b) conduct such an impact assessment and start such a consultation procedure before [date of entry into force + 1 month]; and</p>

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54-D				(c) duly cooperate with the competent supervisory authority in connection to that consultation procedure.
54-E				<i>COM proposal 13/03/2021:</i> [1b. The condition set out in point (iii) of paragraph 1(a) shall, until [date of entry into force of this Regulation + 8 months], not apply to providers that:
54-F				(a) were using a technology referred to in that point before [date of into force of this Regulation] without having obtained a prior authorisation in respect of that technology;
54-G				(b) start the procedure to obtain such a prior authorisation before [date of entry into force + 1 month]; and]
54-H				(c)[duly cooperate with the competent supervisory authority in connection to that prior authorisation procedure].
55		<i>(iv) the processing is based on Article 6(1) of Regulation (EU)2016/679, provided that,</i>		2 nd Trilogue (23/02/2021) <i>EP agreed to drop (iv)</i>

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		<i>without prejudice to Regulation (EU) 2016/ 679, all the conditions laid down in this Regulation have been complied with;</i>		
56		<i>(v) the categories of personal data to be processed for each processing operation are the content data, related traffic data as well as other personal data generated through such processing;</i>		4th Trilogue (25/03/21) (aa) the processing of personal data is limited to content data and related traffic data that is strictly necessary for the purpose set out in paragraph 1.
57		<i>(vi) there are internal procedures within the number-independent interpersonal communications service to prevent abuse, unauthorised access or transfers;</i>		2 nd Trilogue (23/02/2021) and 4 th Trilogue (25/03/21) (ab) the provider of the number-independent interpersonal communications service has established internal procedures to prevent abuse, unauthorised access and transfers;
58		<i>(vii) the identity and categories of the controller or controllers are clearly specified;</i>		2 nd Trilogue (23/02/2021) <i>EP agreed to drop (vii)</i>
59		<i>(viii) the provider of the number-independent interpersonal communications services ensures human oversight and intervention for the processing of personal data,</i>		2 nd Trilogue (23/02/2021) <i>Deletion, moved to line 60</i>

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		<i>and no 'positive hit of online child sexual abuse material' is sent to law enforcement authorities or organisations as referred to in Article 3f of this Regulation without prior human confirmation;</i>		
60		<i>(ix) the provider of the number-independent interpersonal communications services ensures human oversight and intervention for the processing of personal data, and no reasoned suspicion, based on concrete elements, of online child sexual abuse, is sent to law enforcement authorities without prior human confirmation;</i>		<p>4th Trilogue (25/03/21)</p> <p><i>(ac)</i> the provider of the number-independent interpersonal communications services ensures human oversight of, and, where necessary, intervention in the processing of personal data using technologies falling under this Regulation, and ensures that no reasoned suspicion, based on concrete elements report of [new child sexual abuse materials] or child solicitation of online child sexual abuse, is sent to law enforcement authorities or organisations acting in the public interest against child sexual abuse without prior human confirmation.</p>

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61		<i>(x) appropriate procedures and redress mechanisms are in place to ensure that individuals can lodge complaints with the provider of a number-independent interpersonal communications service within a reasonable timeframe for the user to present their views in accordance with Article 3c;</i>		4 th Trilogue (25/03/21) <i>ad) the provider of a number-independent interpersonal communications service has established appropriate procedures and redress mechanisms to ensure that individuals can lodge complaints with it within a reasonable timeframe for the purpose of presenting their views;</i>
62		<i>(xi) without prejudice to the information provided for in Articles 13 and 14 of Regulation (EU) 2016/679, the data subjects are informed about the restriction of the confidentiality of their communications for the sole purpose of removing child sexual abuse material and detecting or reporting child sexual abuse material, including the possibility that personal data is shared with law enforcement authorities and organisations acting in the public interest against child sexual abuse;</i>		3 rd Trilogue (09/03/2021) <i>(ae) without prejudice to the information provided for in Articles 13 and 14 of Regulation (EU) 2016/679, the end-users are informed <u>in a clear, prominent and comprehensible way that the provider invokes the legal [restriction/ derogation], in accordance with this Regulation, from Articles 5(1) and 6(1) of Directive 2002/58/EC restriction of the concerning the confidentiality of their communications, for the sole purpose of detecting, removing or reporting child sexual abuse</u></i>

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				<i>online material, the logic behind such measures and the impact on users' communications confidentiality, including the possibility that personal data is shared with law enforcement authorities and organisations acting in the public interest against child sexual abuse;</i>
63		<i>(xii) in the event of a 'positive hit of online child sexual abuse material' or a reasoned suspicion, based on concrete elements, of online child sexual abuse, the data subjects are given the following information, without prejudice to the information provided for in Articles 13 and 14 of Regulation (EU) 2016/679, unless to do so would be prejudicial to an ongoing investigation, in which case the provision of that information may be delayed to the extent strictly necessary and the data subjects shall be informed without delay after the investigation is closed:</i>		<p><i>Presidency proposal 02/03/2021: Delete</i></p> <p>COM proposal 12/03/2021:</p> <p><i>L63: xii) in the event of a report, the provider provides the user concerned with the following information, six months after the date of the report, unless, within that period, a law enforcement authority of a Member State informs the provider that the provision of that information is to be deferred for a specified period of time that is no longer than strictly necessary, in which case the provider provides that information only after that specified period;</i></p>

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				<p><i>COM proposal - EP version with changes - rejected on technical level:</i></p> <p><i>(af) in the event of a report ‘positive hit of online child sexual abuse material’ or a reasoned suspicion, based on concrete elements, of online child sexual abuse, the data subjects are given the following information, without prejudice to the information provided for in Articles 13 and 14 of Regulation (EU) 2016/679, unless, within six months of the data being shared with a law enforcement authority or organisation referred to in Article 3f, a law enforcement authority or organisation informs the provider that the provision of that information is to be deferred for a specified period of time, in which case the provider shall not provide that information until after that period, which may be renewed but which shall not be longer than strictly necessary: to do so would</i></p>
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				<p><i>be prejudicial to an ongoing investigation, in which case the provision of that information may be delayed to the extent strictly necessary and the data subjects shall be informed without delay after the investigation is closed</i></p>
64		<p><i>(a) the competent law enforcement authorities and organisations acting in the public interest against child sexual abuse with whom their personal data have been shared;</i></p>		<p><i>Presidency proposal 22/04/21 delete</i></p> <p><i>COM proposal 12/03/2021:</i></p> <p><i>L64: (a) the name and location of the competent law enforcement authorities and organisations acting in the public interest against child sexual abuse to which the report has been submitted;</i></p> <p><i>(i) the competent law enforcement authorities and organisations acting in the public interest against child sexual abuse with whom their personal data have been shared;</i></p>

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65		<i>(b) the avenues for redress with the provider of number-independent interpersonal communications services; and</i>		4 th Trilogue (25/03/21) b) the avenues for redress with the provider of number-independent interpersonal communications services; and
66		<i>(c) the possibility of lodging a complaint with the competent supervisory authority and of a judicial remedy, and the identity of those authorities;</i>		4 th Trilogue (25/03/21) <i>(c) the possibility of lodging a complaint with a supervisory authority and of a judicial remedy;</i>
67		<i>(xiii) there is no interference with any communication protected by professional secrecy, such as between doctors and their patients, journalists and their sources or lawyers and their clients;</i>		3 rd Trilogue (09/03/2021) <i>Moved to a recital, line 27 A</i>
68		<i>(xiv) any transfer of personal data to third countries or international organisations complies with Chapter V of Regulation (EU) 2016/679;</i>		2 nd Trilogue (23/02/2021) <i>EP agreed to drop (xiv)</i>
69			<i>(aa) technology which has not been used before the entry into force of this regulation, the prior</i>	2 nd Trilogue (23/02/2021) <i>Council agreed to drop (aa)</i>

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			consultation procedure set out in Article 36 of Regulation (EU) 2016/679 shall apply;	
70	(b) the technology used is in itself sufficiently reliable in that it limits to the maximum extent possible the rate of errors regarding the detection of content representing child sexual abuse, and where such occasional errors occur, their consequences are rectified without delay;	(b) the technology used <i>to identify online child sexual abuse material</i> is in itself sufficiently reliable in that it limits to the maximum extent possible <i>the rate of errors regarding the rate of errors where content is wrongly identified as content representing online child sexual online abuse (“false positives”) to at most 1 in 50 billion</i> regarding the detection of content representing child sexual abuse, and where such occasional errors occur, their consequences are rectified without delay;	(b) the technology used is in itself sufficiently reliable in that it limits to the maximum extent possible the rate of errors regarding the detection of content representing child sexual abuse, and where such occasional errors occur, their consequences are rectified without delay;	2 nd Trilogue (23/02/2021) (b) the technology used is in itself sufficiently reliable in that it limits to the maximum extent possible the rate of errors regarding the detection of content representing child sexual abuse, and where such occasional errors occur, their consequences are rectified without delay;
71		<i>(ba) the technology used to identify solicitation of children is in itself sufficiently reliable in that it limits to the maximum extent possible the rate of errors regarding the detection of content representing child sexual abuse, and where such occasional errors occur, their consequences are rectified without delay;</i>		2 nd Trilogue (23/02/2021) <i>EP agreed to drop</i>

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72	(c) the technology used to detect solicitation of children is limited to the use of relevant key indicators, such as keywords and objectively identified risk factors such as age difference, without prejudice to the right to human review;	(c) the technology used to detect patterns of possible solicitation of children is limited to the use of relevant key indicators and objectively identified risk factors such as age difference , without prejudice to the right to human review;	(c) the technology used to detect solicitation of children is limited to the use of relevant key indicators, such as keywords and objectively identified risk factors such as age difference, without prejudice to the right to human review;	<p><i>Rapporteur's proposal of 26/04/21:</i></p> <p>(c) the technology used to detect patterns of possible solicitation of children is limited to the use of relevant key indicators and objectively identified risk factors such as age difference, without prejudice to the right to human review;</p> <p>Presidency Proposal 3rd Trilogue (09/03/2021)</p> <p>(c) the technology used to detect patterns of possible solicitation of children is limited to the use of relevant key indicators and objectively identified risk factors such as age difference, without prejudice to the right to human review;</p>
73	(d) the processing is limited to what is strictly necessary for the purpose of detection and reporting of child sexual abuse online and removal of	(d) the processing allowed by the restriction provided for in this Regulation is limited to what is strictly necessary for the sole purpose of detection and reporting of online child sexual abuse online and	(d) the processing is limited to what is strictly necessary for the purpose of detection and reporting of child sexual abuse online and removal of child sexual	<p><i>Outcome of 16th technical meeting (22/04/2021)</i></p> <p>(d) the processing [allowed by the restriction provided for in this Regulation] is limited to what is</p>

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	child sexual abuse material and, unless child sexual abuse online has been detected and confirmed as such, is erased immediately;	removal of online child sexual abuse material and, unless child sexual abuse online has been detected and confirmed as such, is erased immediately;	abuse material and, unless child sexual abuse online has been detected and confirmed as such, data generated through such processing is erased immediately;	strictly necessary for the <i>sole</i> purpose of detection and reporting of <i>online</i> child sexual abuse online and removal of online child sexual abuse material and, unless child sexual abuse online has been detected and confirmed as such, is erased immediately;
74		<i>(da) where no online child sexual abuse has been detected and confirmed as such, all content data, related traffic data and any result of processing of these data is erased immediately after the processing;</i>		<i>Delete, move to line 18</i>
75		<i>(db) where child sexual abuse has been detected and confirmed as such, the strictly relevant content data, the related traffic data and personal data generated through such processing, are retained solely for the following purposes and only for the time period strictly necessary, but in any case no longer than three months, after which they are deleted immediately and permanently:</i>		4 th Trilogue (25/03/21) (db) where suspected online child sexual abuse has been identified, the strictly necessary content data, related traffic data, as well as personal data generated through such processing, are stored in a secure manner, solely for the following purposes:
76		<i>- in order to report and transfer them, pursuant to</i>		4 th Trilogue (25/03/2021)

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		<i>Regulation (EU) 2016/679, to the competent law enforcement authorities without undue delay;</i>		<p><i>Outcome of technical meeting on 22/04/21</i></p> <p>(i) in order to report, without undue delay, the suspected online child sexual abuse Proposal Council 02/02/2021: in accordance with Regulation (EU) 2016/679 to the competent law enforcement and judicial authorities or organisations acting in the public interest against child sexual abuse;</p>
77		- <i>in order to report and transfer them, pursuant to Regulation (EU) 2016/679, to organisations acting in the public interest against child sexual abuse operating a database pursuant to Article 3f of this Regulation;</i>		<p>4th Trilogue (25/03/21)</p> <p><i>Delete, move to line 76</i></p>
78		- <i>in order to block the account of the user concerned or suspend a service offered to him or her</i>		<p>4th Trilogue (25/03/21)</p> <p>(ii) - in order to block the account of, or suspend or terminate the provision of the service to, the user concerned;</p>

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79		- <i>regarding personal data reliably identified as online child sexual abuse material online, in order to create a 'hash';</i>		4 th Trilogue (25/03/21) (iii)- in order to create a unique, non-reconvertible digital signature ('hash') of data reliably identified as online child sexual abuse material;
80		- <i>for the purpose of seeking redress from the provider or pursuing administrative review or judicial remedies;</i>		4 th Trilogue (25/03/21) (iv)- in order to enable the user concerned to seek redress from the provider or pursue administrative review or judicial remedies on matters related to the suspected child sexual abuse; <i>or</i>
80-A				4 th Trilogue (25/03/21) (v) - in order to respond to requests issued by competent law enforcement and judicial authorities in accordance with the applicable law to provide them with the necessary data for the prevention, investigation, detection or prosecution of criminal offences set out in Directive 2011/93/EU; and
80-B				4th trilogue (25/03/2021)

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				(dc) the data are stored no longer than strictly necessary for the relevant purpose specified in point (db) and in any event no longer than [three / Council proposal 02/03/2021: 12] months from the date of the identification of the suspected online child sexual abuse.
81	(e) the provider annually publishes a report on its related processing, including on the type and volumes of data processed, number of cases identified, measures applied to select and improve key indicators, numbers and ratios of errors (false positives) of the different technologies deployed, measures applied to limit the error rate and the error rate achieved, the retention policy and the data protection safeguards applied.	(e) the provider annually publishes and submits a report on its related-to the supervisory authority in accordance with Regulation (EU) 2016/679 and to the Commission, by ... [six months after the date of entry into force of this Regulation], and annually thereafter, of the processing of personal data allowed by the restriction provided for in this Regulation, including the type and volumes of data processed, the ground relied on for the processing pursuant to Article 6 of Regulation (EU) 2016/679, the legal ground relied on for transfers of personal data outside the Union pursuant to Chapter V of Regulation (EU) 2016/679 where applicable, the	(e) the provider annually publishes and submits a report to the supervisory authority responsible in accordance with Regulation (EU) 2016/679 six months after the entry into force of this Regulation, and thereafter annually , on its related processing, including on the type and volumes of data processed, number of cases identified, measures applied to select and improve key indicators, numbers and ratios of errors (false positives) of the different technologies deployed,	2 nd Trilogue (23/02/2021) <i>Outcome of technical meeting of 19/03/2021 redrafted by COM proposal of 22 April as regards the deadlines</i> (e) the provider annually publishes and submits a report on its related-to the supervisory authority in accordance with as determined by Regulation (EU) 2016/679 and to the Commission, by ... [six months after the date of entry into force of this Regulation], and thereafter by 31 January every year annually thereafter, of the

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		<p>number of cases identified, <i>the number of cases in which a user has lodged a complaint with the internal redress mechanism or with a judicial authority and the outcome of those proceedings</i>, measures applied to select and improve key indicators, numbers and ratios of errors (false positives) of the different technologies deployed, measures applied to limit the error rate and the error rate achieved, the retention policy and the data protection safeguards applied <i>pursuant to Regulation (EU) 2016/679</i>;</p>	<p>measures applied to limit the error rate and the error rate achieved the retention policy and the data protection safeguards applied.</p>	<p><i>processing of personal data under this Regulation</i>, including the type and volumes of data processed, <i>the specific ground relied on for the processing pursuant to Article 6 of Regulation (EU) 2016/679, the legal ground relied on for transfers of personal data outside the Union pursuant to Chapter V of Regulation (EU) 2016/679 where applicable, the number of cases of child sexual abuse online [differentiating between child sexual abuse material and solicitation]</i> identified, <i>the number of cases in which a user has lodged a complaint with the internal redress mechanism or with a judicial authority and the outcome of those proceedings</i>, measures applied to select and improve key indicators, numbers and ratios of errors (false positives) of the different technologies deployed, measures applied to limit the error rate and the error rate achieved, the retention policy and the data protection safeguards applied <i>pursuant to Regulation (EU)</i></p>
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				<i>2016/679, as well as the names of the organisations acting in the public interest against child sexual abuse with whom data has been shared pursuant to this Regulation;</i>
82	As regards point (d), where child sexual abuse online has been detected and confirmed as such, the relevant data may be retained solely for the following purposes and only for the time period necessary:	As regards point (d), where child sexual abuse online has been detected and confirmed as such, the relevant data may be retained solely for the following purposes and only for the time period necessary:	As regards point (d), where child sexual abuse online has been detected and confirmed as such, the relevant data may be retained processed solely for the following purposes and only for the time period necessary:	4th trilogue (25/03/2021) (Lines 82 to 85 - Delete, linked to COM's proposal in lines 74-80B)
83	- for its reporting and to respond to proportionate requests by law enforcement and other relevant public authorities;	- for its reporting and to respond to proportionate requests by law enforcement and other relevant public authorities;	- for its reporting to one or several law enforcement authorities and to organisations acting in the public interest against child sexual abuse and to respond to proportionate requests by law enforcement and other relevant public authorities;	4th trilogue (25/03/2021) (Lines 82 to 85 - Delete, linked to COM's proposal in lines 74-80B)
84	- for the blocking of the concerned user's account;	- for the blocking of the concerned user's account;	- for the blocking of the concerned user's account;	4th trilogue (25/03/2021) (Lines 82 to 85 - Delete, linked to COM's proposal in lines 74-80B)

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85	- in relation to data reliably identified as child pornography, for the creation of a unique, non-reconvertible digital signature ('hash').	- in relation to data reliably identified as child pornography, for the creation of a unique, non-reconvertible digital signature ('hash').	- in relation to data reliably identified as child pornography, for the creation of a unique, non-reconvertible digital signature ('hash').	4th trilogue (25/03/2021) (Lines 82 to 85 - Delete, linked to COM's proposal in lines 74-80B)
86		<i>(ea) every case of a reasoned and verified suspicion of online child sexual abuse is immediately reported to the competent national law enforcement authorities.</i>		3 rd Trilogue (09/03/2021) 4 th trilogue (25/03/2021) Outcome of technical meeting on 22/04/21 <i>(ea) every case of a reasoned and verified suspicion of online child sexual abuse is reported without undue delay to the competent national law enforcement authorities or to organisations acting in the public interest against child sexual abuse.</i>
87		<i>1a. This Regulation shall not apply to the scanning of audio communications.</i>		2 nd Trilogue (23/02/2021) Agreed and moved to Article 1 (new line 32 A)
88		AM 29 <i>Article 3a</i>		2 nd Trilogue (23/02/2021) <i>Deletion, moved to lines 53, 54</i>

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		<i>Obligation for a prior data protection impact assessment and a prior consultation of the supervisory authorities</i>		
89		<i>1. Providers of number-independent interpersonal communications services shall, in order to rely on the restriction provided for by this Regulation, conduct a prior data protection impact assessment pursuant to Article 35 of Regulation (EU) 2016/679 and a prior consultation procedure pursuant to Article 36 thereof.</i>		2 nd Trilogue (23/02/2021) <i>Deletion, moved to lines 53, 54</i>
90		<i>2. The Member States shall ensure that the supervisory authorities have sufficient resources for prior data protection impact assessments and prior consultation procedures, in line with the requirements laid down in Regulation (EU) 2016/679.</i> <i>This Article shall not apply where a data protection impact assessment and a prior consultation of the supervisory authorities have been</i>		2 nd Trilogue (23/02/2021) <i>Moved to recital 28 C (sufficient resources for DPAs).</i>

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		<i>conducted prior to ... [the entry into force of this Regulation] and have indicated that the processing would not result in a high risk to the rights and freedoms of natural persons or that measures have been taken by the controller to mitigate the risk.</i>		
91		AM 30 <i>Article 3b European Data Protection Board guidelines</i>	<i>Article 3a European Data Protection Board guidelines</i>	2 nd Trilogue (23/02/2021) <i>Article 3a European Data Protection Board guidelines</i>
92		<i>By ... [one month after the date of entry into force of this Regulation], and pursuant to Article 70 of Regulation (EU) 2016/679, the Commission shall request the European Data Protection Board to issue guidelines for the purpose of assisting the supervisory authorities responsible in accordance with Regulation (EU) 2016/679 to assess whether the processing falling within the scope of this Regulation, for existing as well as future technologies, used for the sole purpose of combatting online child sexual abuse complies with</i>	The European Data Protection Board shall publish guidelines for the purpose of assisting the supervisory authorities responsible in accordance with Regulation (EU) 2016/679 in assessing compliance with Regulation (EU) 2016/679 of the processing falling within the scope of this regulation.	2 nd Trilogue (23/02/2021) <i>By ... [one month after the date of entry into force of this Regulation], and pursuant to Article 70 of Regulation (EU) 2016/679, the Commission shall request the European Data Protection Board to issue guidelines for the purpose of assisting the supervisory authorities responsible in accordance with Regulation (EU) 2016/679 to assess whether the processing falling within the scope of this Regulation, for existing as</i>

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		<i>Regulation (EU) 2016/679.</i>		<i>well as future technologies, used for the sole purpose of combatting online child sexual abuse complies with Regulation (EU) 2016/679.</i>
93		AM 31 <i>Article 3c Complaint mechanism</i>		4 th Trilogue (25/03/21) Delete (Moved to line 61)
94		<i>Providers of number-independent interpersonal communications services using technologies for the processing of personal data to detect and report online child sexual abuse and detect and report and remove online child sexual abuse material shall establish an effective and accessible mechanism allowing users whose content has been removed or reported to law enforcement authorities or an organisation acting in the public interest against online child sexual abuse to submit a complaint against the action of the provider concerned, where the material reported or removed does not constitute online child sexual abuse in accordance with this Regulation.</i>		4 th Trilogue (25/03/21) Delete (Moved to line 61)

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95		AM 32 <i>Article 3d</i> <i>Effective remedies</i>		4 th Trilogue (25/03/21) Article 3d <i>Effective remedies</i>
96		<i>Users who have been adversely affected by the use of specific technologies for the processing of personal data to detect and report online child sexual abuse and remove online child sexual abuse material from the services of number-independent interpersonal communications services shall have the right to an effective remedy where the material reported or removed does not constitute online child sexual abuse in accordance with this Regulation. Member States shall put in place effective procedures for the exercise of that right, including for the following cases:</i>		4 th Trilogue (25/03/21) In accordance with Article 79 of Regulation 2016/679 and Article 15, paragraph 2, of Directive 2002/58, users of number-independent interpersonal communications services shall have the right to an effective judicial remedy where they consider that their rights have been infringed as a result of the processing of personal and other data for the purposes of detecting and reporting child sexual abuse online and removing child sexual abuse material on those services.
97		<i>(i) the users' content or identity have been reported to an organisation acting in the public interest against child sexual abuse or to law enforcement authorities;</i>		4 th Trilogue (25/03/21) Moved to a recital, line 28 E

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98		<i>(ii) the users' content has been removed or their account has been blocked or a service offered to them has been suspended.</i>		4 th Trilogue (25/03/21) <i>Moved to a recital, line 28 E</i>
99		AM 33 <i>Article 3e Supervisory authorities</i>		2 nd Trilogue (23/02/2021) Article 3e Supervisory authorities
100		<i>The supervisory authorities responsible for monitoring the application of this Regulation shall be the same as the independent supervisory authorities designated pursuant to Chapter VI of Regulation (EU) 2016/679.</i>		2 nd Trilogue (23/02/2021) The supervisory authorities designated pursuant to Chapter VI of Regulation (EU) 2016/679 shall monitor the processing falling within the scope of this Regulation in accordance with their competences and powers under that Chapter and enforce all the obligations under this Regulation
101		AM 34 <i>Article 3f Public register of organisations acting in the public interest against child sexual abuse</i>		2 nd Trilogue (23/02/2021) <i>Article 3f Public register list of organisations acting in the public interest against child sexual abuse</i>

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102		<p><i>By ... [one month of the date of entry into force of this Regulation], the Commission shall establish a public register of organisations acting in the public interest against child sexual abuse with which providers of number-independent interpersonal communications services can share personal data under this Regulation and without prejudice to Chapter V of Regulation (EU) 2016/679. That public register shall be established based on transparent and objective criteria and kept up to date.</i></p>		<p>2nd Trilogue (23/02/2021)</p> <p>By ... two months of the date of entry into force of this Regulation, the Commission shall make public the names of establish a public register of organisations acting in the public interest against child sexual abuse with to which the providers of public independent interpersonal communications services have indicated sharing personal data that they report child sexual abuse online under this Regulation. with which providers of number-independent interpersonal communications services can share personal data under this Regulation and without prejudice to Chapter V of Regulation (EU) 2016/679. The providers shall communicate the names of these organisation to the Commission by one month after the entry into force of this Regulation and any modifications thereto regularly. The Commission shall keep that public register <u>list</u> up to date.</p>
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103		AM 35 <i>Article 3g Statistics</i>		Article 3g Statistics
104		<i>1. By ... [six months after entry into force of Regulation], and on annual basis thereafter, the Member States shall make publicly available and submit reports to the Commission with statistics on all of the following elements:</i>		<i>Outcome of the discussions at technical level</i> 1. By ... [Presidency proposal 26/02/2021: eighteen months Rapporteur's proposal: 12 months/ six months after entry into force of Regulation], and on annual basis thereafter, the Member States shall make publicly available and submit reports to the Commission with statistics on all of the following elements:
105		<i>(a) the total number of reports of detected online child sexual abuse that have been provided by number-independent interpersonal communications services and organisations acting in the public interest against child sexual abuse to the competent national law enforcement authorities, differentiating between the absolute number of cases and those cases</i>		<i>(a) the total number of reports of detected online child sexual abuse that have been provided by number-independent interpersonal communications services and organisations acting in the public interest against child sexual abuse to the competent national law enforcement authorities,</i> Presidency proposal 26/02/2021:

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		<i>reported several times and the type of provider of number-independent interpersonal communications services where the online child sexual abuse was detected;</i>		delete [differentiating between the absolute number of cases and those cases reported several times and] <i>the type of provider of number-independent interpersonal communications services where the online child sexual abuse was detected;</i>
106		<i>(b) the number of children identified through actions pursuant to Article 3 of this Regulation, differentiated according to gender;</i>		<i>(b) the number of children identified through actions pursuant to Article 3 of this Regulation, differentiated according to gender;</i>
107		<i>(c) the number of perpetrators prosecuted, following identification through technology;</i>		Presidency proposal 26/02/2021: delete <i>(c) the number of perpetrators prosecuted, following identification through technology;</i>
108		<i>(d) the number of perpetrators convicted;</i>		<i>(d) the number of perpetrators convicted;</i>
109		<i>(e) the number of false positives reported;</i>		Presidency proposal 14/04/2021: delete <i>(e) the number of false positives reported;</i>

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110		<i>(f) the technologies used to detect online child sexual abuse and their percentage in contributing to the detection of online child sexual abuse; and</i>		<u>Presidency proposal 14/04/2021:</u> <u>delete</u> <i>(f) the technologies used to detect online child sexual abuse and their percentage in contributing to the detection of online child sexual abuse; and</i>
111		<i>(g) the providers of number-independent interpersonal communications services offering services in their territory using technology to detect, remove or report online child sexual abuse.</i>		<i>g) the providers of number-independent interpersonal communications services offering services in their territory using technology to detect, remove or report online child sexual abuse.</i>
112		<i>2. The Commission shall aggregate the statistics referred to in paragraph 1 of this Article and shall take them into account when reviewing this Regulation, pursuant to Article 3h of this Regulation.</i>		
113		AM 36 <i>Article 3h Review</i>		
114		<i>1. On the basis of the reports provided pursuant to Article 3(1), point(e), and the statistics provided</i>		

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		<p><i>pursuant to Article 3g, the Commission shall, by ...[two years after entry into force of Regulation], and annually thereafter, conduct a review of this Regulation and submit and present a report to the European Parliament and to Council.</i></p>		
115		<p><i>2. In conducting its review, the Commission shall pay special attention to:</i></p>		
116		<p><i>(a) all conditions for the processing of personal data enumerated under Article 3 3, point (a);</i></p>		
117		<p><i>(b) the proportionality of the restriction provided for by this Regulation, including an assessment of the statistics submitted by the Member States under Article 3g;</i></p>		
118		<p><i>(c) developments in technological progress regarding such activities, and the extent to which such developments improve accuracy and reduce false positives.</i></p>		

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119		AM 37 Article 3i <i>Terms and conditions</i>		3 rd Trilogue (09/03/2021) <i>Deleted because covered by the compromise text above (line 62)</i>
120		<i>Without prejudice to Article 3(a), points (xi) and (xii), providers of number-independent interpersonal communications services that use technologies falling within the scope of this Regulation shall include in their terms and conditions clear and comprehensive information on the functioning of such measures and the impact on users' confidentiality of communications.</i>		3 rd Trilogue (09/03/2021) <i>Deleted because covered by the compromise text above (line 62)</i>
121	<i>Article 4</i> <i>Entry into force and application</i>		<i>Article 4</i> <i>Entry into force and application</i>	2 nd Trilogue (23/02/2021) <i>Article 4</i> <i>Entry into force and application</i>
122	This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Union.		This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Union.	3 rd Trilogue (09/03/2021) This Regulation shall enter into force on the third day following that of its publication in the Official Journal of the European Union.

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123	It shall apply from 21 December 2020 until 31 December 2025 .	AM 38 It shall apply from 21 December 2020 until 31 December 2022 .	It shall apply from 21 December 2020 until 31 December 2025.	<i>Presidency proposal 20/01/2021:</i> 2025 <i>EP proposal 20/01/2021:</i> 2022
124	This Regulation shall be binding in its entirety and directly applicable in all Member States.		This Regulation shall be binding in its entirety and directly applicable in all Member States.	2 nd Trilogue (23/02/2021) This Regulation shall be binding in its entirety and directly applicable in all Member States.
125	Done at Brussels,		Done at Brussels,	2 nd Trilogue (23/02/2021) Done at Brussels,