

Eurochild response to the European Commission consultation on the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2021/1232 on a temporary derogation from certain provisions of Directive 2002/58/EC for the purpose of combating online child sexual abuse

About Eurochild

As Europe's leading child rights umbrella network with 200 member organisations in 41 countries, including 23 national child rights coalitions, [Eurochild](http://eurochild.org) brings the experiences and knowledge of children's rights organisations and children and young people themselves to the proposed extension of the temporary derogation. Eurochild is a member of the European Child Sexual Abuse Legislation Advocacy Group (ECLAG), a coalition of more than 60 organisations working to end child sexual abuse on and offline.

Introduction

We **positively welcome the Commission's proposal** to extend the temporary derogation from specific provisions of Directive 2002/58/EC aimed at combating online child sexual abuse ('Interim Regulation'). Given delays in the negotiations for the proposed Regulation on rules to prevent and combat child sexual abuse, it is crucial to extend this derogation beyond its current expiry date and with the same scope, ensuring no lapse in the protection of children online.

These delays in the inter-institutional negotiations amply justify the necessity for an extension of the Interim Regulation, in sight of its expiration on the 3rd August 2024. We have seen what a **devastating impact detection gaps can have on identifying child sexual abuse cases**, when in the 18 weeks between December 2020 and securing the Temporary Derogation from the E-privacy Directive, there was a [58% drop in reports from EU](#) accounts to the US National Center for Missing and Exploited Children. Avoiding a protection gap for children remains paramount.

Child sexual abuse is a serious violation of children's rights as laid down by the [UN Convention on the Rights of the Child \(UNCRC\)](#). Firstly, because every child has the right to be protected from all forms of abuse. Secondly, because the disclosure of personal information and material (i.e., sexual abuse photos or videos) is a major violation of the child's right to privacy. Finally, because of the long-lasting effects on their wellbeing and development, which hinders their capacity to fully participate in society. Children's rights to development, participation, protection and privacy are safeguarded by the UN Convention on the Rights of the Child, by which all 27 EU Member States are bound. Children's rights should be given the same weight as any other fundamental right.

Time extension

We request the extension to be adopted with an extension of at least 2 years, with the possibility of further extensions if needed. Considering the reality that 2024 is an electoral year and given the technical nature of this file, an extension of **two years is the minimum time** required to guarantee the continuation of this crucial work of detection and removal of illegal material, while also ensuring enough time for EU co-legislators to agree on a long-term solution. Such extension will also allow time for the long-term Regulation to be fully rolled out and implemented by the time this extension elapses.



The EU must always guarantee leeway mechanisms to ensure basic standards of child protection in any scenario. We call on the EU to live up to their responsibility and ensure room of manoeuvre to further extensions in case the long-term Regulation is not achieved under the period of the extension.

Only a minimum two year extension and **flexibility for further extensions** will guarantee enough time to negotiate, adopt and roll out a permanent framework while ensuring children do not face any gaps in their protection from online sexual abuse.

Scope

Retaining the **full scope** of the derogation is key to ensure children are protected from all types of abuse online, including known and unknown child sexual abuse material (CSAM) and grooming. As the Implementation report released by the European Commission states, NCMEC has reported having received a total of 87.2 million images and videos globally and 5.1 million images and videos concerning the EU in 2022. Providers have also reported that this Interim Derogation has allowed Meta to detect 6.6 million of content items categorised as child sexual abuse, X has suspended 2.3 million accounts for child sexual abuse and Microsoft around 50k content items, in the EU and globally.

In fact, detecting new CSAM and grooming is crucial to prevent a child from falling victim in the first place. As evidenced by the [82% increase in grooming cases from 2021 to 2022](#), curtailing the use of existing detection tools to limit the detection of grooming is not the solution. Ensuring the technologic and procedural safeguards to guarantee the rights of all users when detecting grooming and other forms of abuse is the way forward.

When reported to NCMEC, **detection of child sexual abuse has proved to facilitate the rescuing of victims and identify perpetrators**. Having noted the differences in reporting on this Interim Regulation among Member States, the implementation report highlights almost 5,000 child victims being identified from 1 January 2021 to 6 March 2023. We would welcome **improved reporting** provisions for both the Member States and the online service providers under the extended Interim Regulation.

EU Member States are bound by the UNCRC to fulfil the child's right to be protected **from all forms of abuse**, and to have their rights to privacy and development respected. The European Union is also bound to the UNCRC as part of its *acquis*, and must respect the child's right to protection and the child's best interests as called by [Art. 24 of the Charter of Fundamental Rights](#). Therefore the inclusion of all forms of abuse, including grooming, under any instrument addressing child sexual abuse in the EU should not be up for negotiation.

The need for a permanent framework

While we commend the proposal for extension to prevent gaps in child protection, the priority should be to **swiftly adopt a child-rights based, robust and long-term Regulation** that builds upon the current voluntary actions and formalises clear legal obligations for the prevention, detection and removal of *all* child sexual abuse online.

The permanent framework must ensure a child rights-based approach that includes child rights impact assessments and balances the full spectrum of children's rights, including having their voices heard in the EU Centre. It must prioritise child safety by design through ample risk assessments and



mitigation measures, to ensure that platforms improve their services with the needs and rights of children at the centre. Risk management must be equipped with the possibility of voluntary detection as a risk mitigation measure. The Regulation must allow for mandatory detection, reporting, and removal of *all* forms of online child sexual abuse (known and unknown child sexual abuse materials and grooming), across *all* platforms, in a technologically neutral manner.

Key recommendations

- We request the extension to be adopted with a **time extension of at least 2 years**, to allow for the necessary time for a child-rights based long-term framework to be negotiated, adopted and implemented.
- The extension should **allow the possibility of further extensions** after the new expiry date, to avoid future gaps in protection and ensure a fall back mechanism that enables child protection against child sexual abuse in all scenarios.
- The extension must **retain the same scope**, including known and unknown child sexual abuse materials and grooming, in compliance with the UNCRC provisions on children’s right to protection from all forms of abuse.