

Brussels, 11 December 2020

Dear Member of the European Parliament,

Ahead of the vote in Plenary on **the Interim Regulation on the processing of personal data for the purpose of combatting child sexual abuse**, [Victim Support Europe](#)<sup>1</sup> (VSE) is urging you to **vote in favour of its adoption**.

The interim legislation would ensure that providers of online communications services **can continue to apply voluntary measures for the detection and reporting of child sexual abuse materials online, and removal of child sexual abuse material**. These are the measures that have already been operating for many years.

If the Interim Regulation is not adopted, voluntary practices to detect, report and remove child sexual abuse would not be possible beyond December 2020 when the European Electronic Communications Code will fully apply. Voting against this Interim Regulation will mean that as of 2021:

- *paedophiles operating online will again be able to store child pornography and other abuse materials on European online platforms;*
- *sexual predators will again be able to groom children for sexual exploitation without fear from being detected;*
- *child sexual abusers will be again free to share explicit content involving children as young as several months old in online messaging without the fear of being detected.*

**Victim Support Europe strongly advocates for the protection of all fundamental rights.** The e-privacy Directive seeks to protect **Articles 7 and 8 of the Charter of Fundamental Rights which we are strongly in favour of**. However, the **e-privacy Directive has failed to properly consider and mitigate risks to Articles 1, 2, 3, 4, 5, 6 and 24 of the Charter**. The implementation of the e-privacy Directive without appropriate safeguards for fundamental rights puts in danger thousands of children's lives, their personal dignity and integrity and the interests of the child as a primary consideration. This is not a balanced approach.

**The interim regulation seeks a temporary solution to prevent breaches of these fundamental rights.** The establishment of appropriate safeguards to prevent privacy breaches is absolutely critical in the processing of personal data. However, solutions are complex and difficult to agree upon. Time must be taken to ensure they are workable and effective such that no fundamental rights are breached. VSE understands if adjustments to the proposed Regulation are necessary such as a shortening in the life of the law. However, a positive vote with amendments in 2020 is critical.

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<sup>1</sup> [Victim Support Europe](#) is the leading European umbrella organisation advocating on behalf of all victims of crime, no matter what the crime, no matter who the victim is. VSE represents 61 national member organisations, providing support and information services to more than 2 million people affected by crime every year in 31 countries.

Yet during this period, thousands of children's lives are at stake. **The harm caused will often be irrevocable, leaving children with lifelong trauma. Your vote in favour of this Regulation will help save hundreds of children.** It is **not** a vote to diminish privacy rights but to **fully protect multiple fundamental rights** and to give time to establishing a world class privacy regime.

Yours sincerely,

Victim Support Europe

## ANNEX – DETAILED ISSUES

The information and statistics below provide more detailed argumentation in favour of the adoption of the Interim regulation. They are focused around the principle that multiple fundamental rights must be balanced to ensure the least harm is caused.

### Victim harm and the protection of Fundamental Rights: Articles 1-6, 24 of the Charter

- The victims' right to human dignity (Art. 1), the right to life (Art. 2), the right to integrity (Art. 3), the freedom from torture and degrading treatment (Art. 5), freedom from slavery and forced labor (Art. 6), the right to liberty and security (Art. 6) and the rights of the child (Art. 24) are at stake. Art. 24 (2) stresses that the child's best interest must be a primary consideration in all actions relating to children.
- The Commission highlighted the dramatic increase in reports of child sexual abuse online concerning the EU: from 23 000 in 2010 to more than 725 000 in 2019, which included more than 3 million images and videos.<sup>2</sup>
- Victims suffer not only from the actual physical effects of sexual abuse but also, repeatedly through the creation, distribution and circulation of child sexual exploitation materials of their abuse.
- A [number of studies](#) showed that the life-long consequences include post-traumatic symptoms, depression, substance abuse, helplessness, suicidal and aggressive behaviour, conduct problems, eating disorders and psychotic disorders.<sup>3</sup>
- To date, VSE has not been able to identify actual cases brought forward where individuals are severely harmed by the practice of automated detection of CSAM online. Whilst VSE does not devalue the risks of inadequate privacy protection, where different fundamental rights must be balanced against each other, the harm caused by breeches should be demonstrated as a real and ongoing issue, not a theoretical concern. With respect to online child sexual abuse, the statistics are clear.

### The extent of the criminal threat

- The Internet Watch Foundation finds that online child sexual abuse is scaling, with 95% of the world's CSAM hosted in Europe and North America, with the Netherlands alone hosting 47%.<sup>4</sup>

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<sup>2</sup> [EC, 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 July 2020.](#)

<sup>3</sup> Judith Cashmore and Rita Shackel, 'The long-term effects of child sexual abuse', CFCA Paper No. 11 2013. *Australian Institute of Family Studies*. < <https://aifs.gov.au/cfca/sites/default/files/cfca/pubs/papers/a143161/cfca11.pdf> >

<sup>4</sup> The Internet Watch Foundation. 'IWF Annual Report 2018: Once Upon a Year', April 2019.

- As noted by [ECPAT International](#), comprehensive data on child sexual abuse online is difficult to obtain due to the complexity of the nature of this criminal activity. On average [less than 1% of CSAM uploaded on the internet gets identified for potential removal](#), leaving 99% of CSAM undetected.<sup>5</sup>
- CSAM is connected and uncovers offline sexual abuse.
- INHOPE, acting globally, reported that they received 9 357 240 reports in 2016, with 8 474 713 confirmed as containing CSAM.<sup>6</sup>
- There has been an exponential growth in CSAM available online: over the past decade the volume of images and videos of suspected child sexual abuse reported to the US National Center for Missing & Exploited Children has exploded from 450,000 files in 2004 to more than 45 million files in 2018.<sup>7</sup>

### Increased criminal activity during COVID

- [Europol](#) has found that sexual predators are increasingly targeting children and young people online. In **March 2020 only**, Europol received over **1 million of referrals** from National Center for Missing and Exploited Children. This indicates the number of CSAM distributed on the surface web.<sup>8</sup>

### The Interim Regulation only covers existing technologies

- Internet service companies have been using specific technologies for a number of years to identify and report behaviours which were raising suspicion as to child sexual abuse, grooming and other similar illegal behaviours.
- The Regulation does not cover future approaches, but gives space to develop safeguards without endangering children.

### Existing technologies are protecting children helping prevent breaches of Article 1-6, 24.

- Every year, through processing activity, internet service providers submit 17 million voluntary reports of child sexual abuse material and grooming of children to the relevant national authorities.
- These practices have proved to be essential to the law enforcement authorities' ability to identify victims and remove them from harm, as well as prosecute perpetrators.

### Failure to consider e-privacy Directive impact on Fundamental Rights

- An examination of the full impact assessment on the e-privacy Directive indicates there was a failure to consider if the Directive might impact on any rights other than Articles 7 on privacy. No references to risks to law enforcement capability to identify criminals, nor of any risks that the Directive could allow criminals to operate with impunity have been identified in the Impact Assessment. This demonstrates a concerning imbalance in the consideration of fundamental rights.
- The Interim Regulation is redressing these gaps in assessment.

### The interim Regulation does not set a precedent

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<sup>5</sup> [Bracket Foundation](#) : 'Artificial Intelligence Combating Online Sexual Abuse of Children', 2019, p. 13.

<sup>6</sup> ECPAT International: 'Trends in online child sexual abuse material', April 2018, para. 3, p. 8.. < <https://www.ecpat.org/wp-content/uploads/2018/07/ECPAT-International-Report-Trends-in-Online-Child-Sexual-Abuse-Material-2018.pdf>>.

<sup>7</sup> Julie Cordua, 'A Bold Goal: Eliminating Child Sexual Abuse from the Internet', *Thorn*. April 2019 in [Bracket Foundation](#) : 'Artificial Intelligence Combating Online Sexual Abuse of Children', 2019, para. 7, p. 6.

<sup>8</sup> Europol, 'Exploiting Isolation: Offenders and victims of online child sexual abuse during the Covid-19 pandemic'. 19 June 2020, p. 6.

- The Interim Regulation does not set precedent since the practices are already existing and are explicitly envisaged in EU law through Member State action (**Directive 2002/58/EC**). This regulation only creates space and time to find an appropriate solution to balance all rights and seeks to redress failures to assess all impacts of e-privacy laws.
- The scope of the Regulation is limited to the use of technology for the sole purpose of removing child sexual abuse material.