



## Briefing note

# EDPS Seminar on the CSAM proposal - The Point of No Return?

23 October 2023

## The CSAM Proposal

The Child Sexual Abuse Material (CSAM) proposal aims to prevent and combat child sexual abuse online and offline by detecting the dissemination of child sexual abuse material and grooming. Whilst there is a consensus about the paramount importance of this task, many stakeholders question the effectiveness, necessity and proportionality of the proposed measures. Strong concerns have been voiced not only by EU data protection authorities, but also by experts in the EU institutions, including the Legal Service of the Council and the European Commission's Regulatory Scrutiny Board, as well as a broad group of other stakeholders, including child protection organisations, academia, cybersecurity experts and child sexual abuse survivors. Some of the key points of criticism are the following.

### Ineffective

The CSAM proposal fails to protect those who it intends to protect. Experts consider that detection measures can not only be easily circumvented, but can also generate false positives. At the same time, the interpersonal communications of a huge number of innocent citizens would be subject to surveillance without substantial benefit for the safety and wellbeing of children or for fighting of crime.

The proposal risks inundating the EU Centre and the respective national authorities with false positive hits, resulting from high error rates. Even when real child sexual abuse is

detected, increased reporting in itself will not increase criminal prosecutions. Already today, law enforcement authorities often do not have the necessary resources to follow all leads with fully-fledged investigations. Conversely, the Proposal could entail risks of criminal prosecution of minors due to consensual sharing of self-produced content.

### Technically unworkable

It is technically impossible to implement scanning for known or new content, and for the detection of grooming by a service provider without weakening end-to-end encryption and undermining users' privacy. This is the unequivocal conclusion of hundreds of leading scientists and researchers in the field. In addition, many experts agree that current state-of-the-art technological solutions for detection are not sufficiently reliable and are also vulnerable to cyberattacks.

The CSAM proposal also does not offer any solutions on how to mitigate the emerging risk of 'synthetic CSAM', i.e. computer-generated images, video and text/voice, including with the help of publicly available generative AI applications.

### Surveillance society

Large-scale scanning of communications is likely to generate the feeling of constant surveillance. This does not only affect the exercise of our fundamental rights, but also deeply interferes with the rights of children and young people, who should grow up in a



democratic environment where freedom of expression and confidentiality of communications are upheld and protected.

In addition, we should be mindful of other possible negative consequences, such as the risks associated with accumulating extensive amounts of communication and other data at the level of the proposed EU Centre, much of which with no investigative value but nevertheless attractive for EU agencies, like Europol and other entities for other purposes.

The CSAM proposal should be considered not only from a legal perspective, but from a political and geopolitical viewpoint. Is the Union and its Member States ready to accept large-scale surveillance of communications and thus blur the line between democratic countries and authoritarian regimes?

### Way forward

Child abuse and its perpetuation on the internet are real and demand a strong and effective response. Given the many doubts expressed regarding the effectiveness, necessity and proportionality, it is unlikely that the CSAM proposal would deliver the

promised results. We need alternative ways forward that are genuinely capable to address such complex societal problem. Mass scanning of communications is certainly not the answer and cannot compensate the lack of other crucial measures, such as a harmonised criminal justice approach regarding child sexual abuse crimes in Member States, sufficient resources for the competent law enforcement authorities, effective prevention, and others.

### Conclusion

The EDPS, like the other critics of the CSAM proposal, have never disputed the need for effective protection of children against such an odious crime. However, there is a very broad and almost unprecedented consensus between the different groups of stakeholders, including data protection bodies, legal experts, academia, industry and civil society, national legislators and law enforcement authorities that the proposal is not only ineffective, but also harmful. In its current form, the CSAM proposal would fundamentally change the internet and digital communication as we know it, and that will be a point of no return.

### Further reading:

- The CSAM proposal, [52022PC0209 - EN - EUR-Lex](#)
- EDPS-EDPB, [Joint Opinion 4/2022 04/2022 on the Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse](#), July 2022
- Proposal for a regulation laying down the rules to prevent and combat child sexual abuse, [Complementary impact assessment](#), April 2023
- [Opinion of the Council Legal Service](#), 26 April 2023
- [Statement by the Kinderschutzbund](#) (German child protection association), March 2023
- [Joint statement of scientists and researchers on EU's proposed Child Sexual Abuse Regulation](#), July 2023

