

## Public Consultation on a Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse

### Submission of ECPAT International in consultation with ECPAT members in the EU

[ECPAT International](#) is the world's largest influencing network dedicated on ending the sexual exploitation of children, with a membership of 122 civil society organisations in 104 countries. A cross-cutting theme of its work is the evolving relationship between digital technology and child sexual exploitation and abuse. Through its flagship [Project Beacon](#), ECPAT is leading and collaborating in efforts to put children's rights at the centre of EU digital legislation and policy.

This submission outlines the position of ECPAT International and relevant European ECPAT Members regarding the [European Commission Proposal for a Regulation laying down the rules to prevent and combat child sexual abuse](#). We invite the reader to look through publications from ECPAT International and relevant ECPAT members for further in-depth analysis.

- [ECPAT International](#)
- [ECPAT Austria](#) (Austria)
- [ECPAT Belgium](#) (Belgium)
- [National Network for Children](#) (NNC) (Bulgaria)
- [Neglected Children's Society](#) (Bulgaria)
- [Tartu Child Support Center](#) (Estonia)
- [Save the Children Finland](#) (Finland)
- [ECPAT France](#) (France)
- [ECPAT Germany](#) (Germany)
- [Association for the Social Support of Youth](#) (ARSIS) (Greece)
- [Hıntalovon Child Rights Foundation](#) (Hungary)
- [ECPAT Italy](#) (Italy)
- [ECPAT Luxembourg](#) (Luxembourg)
- [Defence for Children - ECPAT Netherlands](#) (Netherlands)
- [Empowering Children Foundation](#) (Poland)
- [Centro Integrado de Apoio Familiar \(CIAF\)](#) (Portugal)
- [Salvati Copiii - Save the Children Romania](#) (Romania)
- [The Federacion de Asociaciones para la Prevencion del Maltrato Infantil \(FAPMI\) - ECPAT Spain](#) (Spain)
- [ECPAT Sweden](#) (Sweden)
- [ECPAT Norway](#) (Norway - member of the European Economic Area Agreement)

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## WIDESPREAD CSOs AND PUBLIC SUPPORT

Together with **over 90s organisations that strive for children’s rights**, safety, and security online and offline, ECPAT commends the European Commission for its bold and comprehensive proposal that has significant potential to transform the landscape of child protection from sexual abuse online. In a [recent survey](#) conducted by ECPAT International in partnership with Defence for Children – ECPAT Netherlands, we asked over 9.000 citizens across 8 European countries about their opinion on this issue. A vast majority (**68 %**) supported EU plans to introduce long-term legislation that will keep children safe online and the use of automated technology tools to detect child sexual abuse materials. Their message was clear: **EU citizens want action to keep children safe, and they see automated tools as the answer.**<sup>1</sup> With this proposal, the European Commission is finally responding to these calls.

Below we outline our priority areas of support and concern regarding the content of the proposal. ECPAT International and its members look forward to further engagement with all EU institutions and stakeholders to turn this legislative process into tangible outcomes for child protection online.

## CHILD’S RIGHTS AND CHILD PARTICIPATION

1. As stated by UN Committee on the Rights of the Child in its General comment No. 25 (2021) on children’s rights in relation to the digital environment, ECPAT stresses that **the best interests of every child must be the primary consideration of this Regulation.**<sup>2</sup> In this respect, we call for a **continuous process of child rights impact assessment** to evaluate the impact of the Regulation on child’s rights.<sup>3</sup> As a *Lex Specialis* that will de facto co-exist with the full range of EU laws and policies already in place to protect children from sexual abuse and exploitation, and supersede national legislation, it is crucial that the Regulation establishes a clear provision ensuring that the legal rights of children, including victims, will be upheld. The Regulation must leave no stone unturned and should be free of legal loopholes that could weaken its goal of protecting children. The Regulation should also ensure that all children are protected, with **specific attention to vulnerable children**. This includes minor suspects-offenders of child sexual abuse, children with disabilities, as well as LGBTQI children and children who are seen as not conforming to conventional norms relating to sexual orientation, gender identity and expression.
2. ECPAT calls on the European Commission, the Council and the European Parliament to **involve children in the drafting, implementation and evaluation** of the proposed Regulation. Reflecting the views of the intended beneficiaries of the Regulation is not only smart, it is also their right. To that end, we press the Commission to set up the ‘EU Children’s Participation Platform’ as committed under the EU Strategy on the rights of the child. We also call on the Commission to generate more data about the experiences of European children regarding to sexual abuse and exploitation online – complying with ethical standards for research with children on this sensitive issue – as well as their views on digital platforms regulation, notably via Eurobarometer surveys.

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<sup>1</sup> You can read more on the survey delivered by YouGov [here](#).

<sup>2</sup> CRC/C/GC/25 par 12.

<sup>3</sup> CRC/C/GC/14 par 35.

## SCOPE

3. We recall the need to **update the definitions of child sexual abuse material and solicitation of children**. The proposed Regulation is based on outdated and harmful definitions of [EU Directive 2011/93/EU on combatting sexual abuse and sexual exploitation of children and child pornography](#). As asked by ECPAT in the recent public consultation on the Directive<sup>4</sup>, these definitions should be revised, as recommended notably by the Luxembourg Guidelines<sup>5</sup> and the Lanzarote Committee opinion adopted in 2015<sup>6</sup> (in particular regarding the solicitation of children).

## SAFEGUARDS

4. We support the **strong safeguards** this Regulation will put in place to ensure that online service providers and the technology used respect the fundamental rights of all users, including children. Technologies will need to be assessed by the European Data Protection Board and not be able to extract any other information than what is strictly necessary to detect the abuse. Their use will be subject to a balancing of fundamental rights by national court or independent authority. Any user affected will have the right to effective redress. ECPAT stresses that the proposed Regulation aims to combat and prevent child sexual exploitation. Therefore, any discussion on rights and freedoms must **put every child's right to freedom from sexual exploitation and abuse first along with every child's right to privacy**.
5. We commend the **horizontal obligation for all information society services to assess risks and adopt preventive measures** to avoid their service being used for child sexual abuse, hence supporting **safety by design**.
6. We equally support the **new transparency requirements**, such as annual public reporting, the **data collection obligation** imposed on online service providers, national authorities and the EU Centre. It is essential that this **new system of transparency be meaningful** to foster efficient and evidence-based responses to tackle CSAM and ensure trust between technology and users. At the same time, transparency reporting should not only cover detection order outcomes but also critical information from the risk assessments and in regards to mitigation measures. As part of the recognition of victims' rights, transparency reports should include information regarding the time taken to remove CSAM. Besides, the EU Centre could play a role in facilitating access to more sensitive data for research purposes, including victims' characteristics or possibly the type of offenders and the methods they use.

## MANDATORY DETECTION, VOLUNTARY DETECTION AND DETECTION GAPS

7. We welcome the **mandatory use of safe technologies** to detect, report and remove child sexual abuse materials online, as we have learned over time that voluntary actions alone will

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<sup>4</sup> See ECPAT's submission [here](#) for more details.

<sup>5</sup> Interagency Working Group, [Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse](#) ("Luxembourg Guidelines"), ECPAT International and ECPAT Luxembourg, Luxembourg, 28 January 2016.

<sup>6</sup> Committee of the Parties to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (T-ES), [Opinion on Article 23 of the Lanzarote Convention and Its Explanatory Note](#), 23 June 2015, Paragraph 17.

not solve this problem. In addition, ECPAT International acknowledges the different approaches and legal and technical considerations required for responding to ‘known CSAM’, ‘new CSAM’ and ‘grooming’. However, ECPAT would like to emphasize the importance of legislation that protects children from **all forms of sexual exploitation and abuse**, whether relating to digital content (images and videos) or grooming via messages or text. A compromise that fails to establish the legal foundation for technology-based prevention and response for each of this form will mean legislation that fails to protect children from exploitation and abuse both now and in the future. We strongly support safeguards in the design and application of these technologies, but cannot accept an outcome that prohibits their use now and in the future.

8. We urge the Commission to address **any detection gaps emerging from the new system, notably by providing a clear transition regime and by ensuring the continuation of voluntary detection after the Regulation enters into force**. This is crucial notably to limit the potential revictimization and risk of secondary trauma for the victims. We have seen just what a devastating impact detection gaps can have on identifying child sexual abuse material, 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 National Center for Missing and Exploited Children.<sup>7</sup> The proposed Regulation does not foresee any transition regime between the expiration of the Interim Regulation (Temporary Derogation from E-privacy Directive) and the entry into force of the proposed Regulation, leaving a potential gap of several months between the two. The Regulation should equally prevent any detection gap due to long detection order processes as well as detection gap emerging between the renewal of detection order. The process foreseen to mandate the use of technology is likely to take at least a year as it requires a risk assessment and the implementation of mitigation measures before the start of the procedure to issue detection orders, which itself involves national courts, national coordinating authorities, the European Data Protection Board, and the EU Centre. Further clarification on the renewal of detection orders is also needed. Finally, detection order will only apply to services facing a significant risk of being used for the purpose of online child sexual abuse. This would prevent companies that do not fall within that threshold to pro-actively use technologies to prevent the circulation of child sexual abuse material on their platforms.
9. Accordingly, and in line with the Commission emphasis on prevention, we request that the Regulation provides a **clear legal basis and the required safeguards** for the continuation of **voluntary detection of child sexual abuse**. While existing European laws allow for some form of voluntary detection by hosting platforms, there is a need for greater legal clarity for all online platforms that fall under the scope of the proposed Regulation. **All relevant information society services** (including, specifically, messaging and email services) should be entitled to continue to voluntarily prevent the spread of CSAM on their platforms before being required to through a Detection Order, using the same safe detection technologies and provided the **respect of strong safeguards** similar to those imposed for detection orders that ensure transparency, accountability and proportionality of action to protect children and ensure victims’ rights (including, but not limited to, human oversight, users right to information and redress, data collection and transparency and requirements, use of least

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<sup>7</sup> National Center for Missing and Exploited Children, [Battle won but not the war in global fight for child safety](#), Last updated 11 May 2022.

intrusive technologies approved by the Technology Committee and the European Data Protection Board).

10. The Regulation must ensure **a clear legal framework that would allow companies to innovate and refine their detection technologies**. Companies developing technologies must be able to get things wrong and improve their technologies outside the process of detection orders. According to robust safeguards, they should also be supported by the EU Centre to train and test their products iteratively on relevant original data sets. Where possible, the principles of responsible innovation should apply, and frameworks for guiding this process can be considered by the EU Centre. At the same time, companies should disclose the nature of the improvements they make throughout relevant risk assessment and mitigation processes.

#### THE EU CENTRE AND COORDINATING AUTHORITIES

11. We support the creation of an **EU Centre** which will serve as a vital pillar to fighting CSAM. Similar centres exist in various jurisdictions around the world and have demonstrated their value and utility in coordinating efforts to fight child sexual abuse. With a strong mandate to ensure action by online service providers, support prevention efforts and provide crucial victim redress, however, more clarity on the role and obligations of the EU Centre and the interactions with relevant actors should be set out. ECPAT is concerned that national authorities may question the role or authority of this Centre when it is first established. At the same time, the success of the new centre will require sustained collaboration from all sectors from the start. The EU Centre, as well as national Coordinating Authorities, should **cooperate closely and integrate the work of the existing ecosystem, including all relevant helplines and hotlines (notably, but not limited to, CSAM, child safety, anti-trafficking, missing, travel and tourism) as well as victims' support services, civil society organisations working with victims, and existing regulatory bodies**. Such cooperation needs to be laid out in more detail in the Regulation. The Regulation should notably encourage national Coordinating Authorities to conclude memoranda of understanding with above-mentioned organisations, as provided for the EU Centre (Article 54).
12. It is envisaged that the EU Centre will cooperate “intensively” with Europol by sharing “highly sensitive” reports, as well as human, logistical, administrative and IT resources. To ensure the effective independence of the Centre, we call for a **clear separation of human, logistical, administrative and IT resources from Europol**. At the same time, the Regulation should establish the mechanisms for monitoring and evaluating the **independence of the EU Centre** and establish checks and balances to ensure that data shared between the organisations meets clear criteria. This will help ensure public trust in the EU Centre as an organisation independent of law enforcement, thereby facilitating public engagement with the EU Centre, National Coordinating Authorities and by extension hotlines and other trusted bodies that work within national ecosystems to respond to child sexual abuse and exploitation online.

We welcome that the role of the EU Centre in **establishing a database of indicators** allowing the reliable identification of child sexual abuse materials and of solicitation of children, as well as **checking for false positives** before sending material to law enforcement. To ensure trust through **transparency and data quality**, the Regulation must state the minimum standards and processes by which material submitted to the EU Centre is confirmed and categorised as constituting child sexual abuse material in the EU and across Member States national

legislative frameworks Information on these elements should be made available to external stakeholders as is feasible while still maintaining the privacy and security needed (e.g. to avoid offenders circumventing the system). This includes a measured and child rights-based approach to material produced by children themselves in age-appropriate consensual situations – recalling that **children should be protected by the law from unnecessary prosecution**.<sup>8</sup> In the case of ‘language identifiers’, the Regulation must clarify the criteria upon which this data is considered illegal and/or can be collected, the EU languages in which the data must be available, and for what purposes and in what format (e.g. key words, chat logs).

13. We also recommend providing more clarity on the conditions supporting the **availability of technology free of charge**. In particular, clarification is needed on whether the EU Centre commits to cover ‘reasonable’ costs for maintenance, development in addition to licensing for tools on its list, and how ‘reasonable’ will be defined, audited and reviewed for each technology and/or for the list as a whole.
14. The Regulation must ensure the **efficient co-existence between reporting obligations** under national and EU law as well as other regional initiatives.
15. We also stress the importance to ensure **a harmonised implementation of the Regulation** to avoid the emergence of different standards across the EU Member States. Despite the possible issuance of guidelines on how to implement the Regulation and the obligation for National Coordinating Authorities to justify opinion deviating from the EU Centre, the final decision regarding the mandatory use of technology will be taken by National Coordinating Authorities and national courts.

## VICTIMS

16. We commend the inclusion of formal **support and redress mechanisms for victims** of child sexual abuse. The Regulation grants victims residing in the European Union the right to know when, where and how their images are shared, and what action has been taken. The Regulation must also acknowledge that **non-EU victims** have their abuse spread and hosted by online service providers operating in the EU and accordingly recognise their rights in accordance with the Victims’ Rights Directive 2012/29/EU which applies if the crime was committed in the European Union or if the proceeding takes place in the European Union, irrespective of the nationality or the residing status of the victim. Victims not residing in the EU but suffering crimes committed in the EU should therefore be able to apply for information about their imagery and access support to remove their imagery in the EU.
17. The Regulation should include **clearer obligations on the swift removal of CSAM** as part of the recognition of victims’ rights. This is the only way to limit the potential revictimization and risk of secondary trauma for the victims. The Regulation should notably impose a strict and short timeframe for providers to remove CSAM. As soon as a victim has reported CSAM an automatic hold or disabling could be placed on it while the investigation is carried out. The use of technology to prevent the upload of CSAM should be considered.

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<sup>8</sup> See ECPAT’s submission on the revision of EU Directive 2011/93/EU [here](#) for more details (in particular p. 4 on Article 8).