



DOT Europe position paper

Proposal to extend the temporary derogation (Regulation (EU) 2021/1232) to the ePrivacy Directive

A necessary framework

In July 2021, an interim Regulation was adopted temporarily granting number-independent interpersonal communications services (ICS) a derogation from certain messaging confidentiality provisions contained in the ePrivacy Directive for the purpose of detecting, reporting and removing child sexual abuse online (hereafter, “the derogation”). The derogation entered into force on 2 August 2021 and is set to expire on 3 August 2024. It has become a vital tool in the fight against child sexual abuse (CSA) online.

It was hoped that the derogation would be replaced by a permanent solution in the form of the proposed Regulation laying down rules to prevent and combat child sexual abuse online¹ (hereafter, “the CSA proposal”) before its expiration; however it now seems increasingly unlikely that the CSA proposal will be adopted and enter into effect in time. Therefore a legal gap is highly likely and ICS providers will, absent an extension, have to cease to deploy proactive measures against CSA.

DOT Europe therefore welcomes the Commission’s proposal to extend the derogation and **urges the co-legislators to adopt the text quickly to ensure legal certainty.**

A swift adoption is crucial

In view of the state of the negotiations on the CSA proposal, an extension of the temporary framework by at least two years, or until the long-term framework is adopted, is necessary.

DOT Europe cautions against creating a legal gap that would prevent ICS providers from continuing this very important proactive work against child sexual abuse online. We therefore ask the Parliament and the Council to support the European Commission’s proposal and adopt the necessary legislation before the electoral recess.

The focus should be on the long-term solution

While adopting this extension is necessary, policy-makers’ attention should also remain focused on reaching an **agreement on the CSA proposal**, which would create a horizontal, permanent EU-wide framework for tackling CSA online. Such a comprehensive framework should enable proactive work by companies to prevent, detect, report and remove CSA from their service. We thus strongly recommend that the co-legislators create the right conditions for providers in scope, and ICS providers

¹ Proposal 2022/0155 (COD) for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse





specifically, to develop comprehensive approaches to mitigating the risk of misuse of their services for the purpose of child sexual abuse online, with relevant safeguards. DOT Europe therefore calls on policy makers to reconsider the case for a continuation of the deployment of proactive measures and **calls for the inclusion of appropriate language in the text of the CSA proposal to provide the necessary legal certainty** for such work to be carried out. DOT Europe has proposed amendments that would provide this certainty and would be happy to engage with anyone interested in those.

We will continue to participate in the discussion around the CSA proposal and to show our commitment to child safety online more broadly.

