Use of technologies by number-independent interpersonal communications service providers for the processing of personal and other data for the purpose of combatting child sexual abuse online (temporary derogation from certain provisions of Directive 2002/58/EC)

2020/0259(COD) - 10/09/2020 - Legislative proposal

PURPOSE: to enable the continuation of certain activities to combat sexual abuse of children online by creating a temporary derogation from certain provisions of Directive 2002/58/EC (Directive on privacy and electronic communications).

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: Directive 2002/58/EC of the European Parliament and of the Council lays down rules ensuring the right to privacy and confidentiality with respect to the processing of personal data in exchanges of data in the electronic communication sector.

Protecting children online is one of the EU's priorities. On 24 July 2020, the Commission adopted an EU strategy for a more effective fight against child sexual abuse which aims to provide an effective response, at Union level, to the crime of child sexual abuse. It announced that it shall propose the necessary legislation to tackle child sexual abuse online effectively by the second quarter of 2021.

Certain providers of number-independent interpersonal communications services are already using specific technologies to detect child sexual abuse on their services and report it to law enforcement authorities and to organisations acting in the public interest against child sexual abuse, and/or to remove child sexual abuse material.

These organisations refer to national hotlines for reporting child sexual abuse material, as well as organisations whose purpose is to reduce child sexual exploitation.

The ePrivacy Directive does not contain an explicit legal basis for voluntary processing of content or traffic data for the purpose of detecting sexual abuse of children online. However, it does provide that Member States may adopt legislative measures to limit the scope of the rights and obligations provided for in this Directive, which concern the confidentiality of communications and traffic data, for the purpose of the prevention and detection of offences related to sexual abuse of children.

Lack of Union action on this issue would risk creating fragmentation shall Member States adopt diverging national legislation. Pending the adoption of the announced long-term legislation, the Commission considers that it is essential to take immediate action to enable the continuation of some current activities to combat sexual abuse of children online.

CONTENT: the proposal aims to introduce a temporary and strictly limited derogation from the applicability of certain obligations of the ePrivacy Directive to enable providers of number-independent interpersonal communications services to continue using specific technologies and continue their current activities to the extent necessary to detect and report child sexual abuse online and remove child sexual abuse material on their services from December 2020, pending the adoption of the announced long-term legislation.

The proposal therefore contains safeguards to ensure that technologies benefitting from the derogation meet the standards of the best practices currently applied, and thereby limits the intrusiveness to the confidentiality of communications and the risk of circumvention.

The personal and other data used when carrying out the activities covered by the derogation set out in this Regulation, as well as the period during which the data is subsequently retained in case of positive results, shall be minimised so as to ensure that the derogation remains limited to what is strictly necessary. The providers shall publish reports on an annual basis on the processing falling within the scope of this Regulation.

The proposed Regulation shall apply from 21 December 2020 and shall cease to apply in December 2025. If the long-term legislation announced by the Commission is adopted and enters into force before that date, it shall repeal this Regulation.