

Feedback on the proposal for a directive of the European parliament and of the council on combating the sexual abuse and sexual exploitation of children and child sexual abuse material and replacing Council Framework Decision 2004/68/JHA (recast)

Cologne/ Berlin, 21 May 2024

On 6 February 2024, the EU Commission published its proposal for a directive of the European parliament and of the council on combating the sexual abuse and sexual exploitation of children and child sexual abuse material and replacing Council Framework Decision 2004/68/JHA (recast).

eco is the Association of the Internet Industry, representing roughly 1,000 members (based in Germany and abroad). Tackling illegal content (including combatting CSAM) is an important topic for the whole society. eco and its members are committed to contributing to this, e.g. by operating a German hotline (eco Complaints Office) receiving reports of illegal and harmful content including child sexual abuse material (CSAM) for more than 25 years, collaborating with the network of hotlines (INHOPE), or by adjusting internal policies.

eco welcomes the opportunity to comment on the commission's proposal. Based on the experience as an association of the Internet industry and as operator of the eco Complaints Office, eco wants to address the following for further consideration and adjustments:

Notice and takedown and role of hotlines

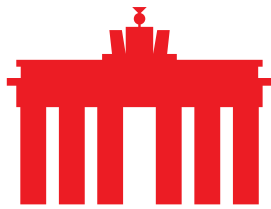
Effective notice and takedown (NTD) procedures are a key element in combating CSAM.

Removal at source is the most effective approach when tackling CSAM online as it aims for the deletion of content rather than relying on inefficient methods that merely conceal and potentially even increasing the risk by the creation of blacklists.

In many cases, NTD procedures are supported or initiated by hotlines.

Thus, the appreciation of the hotlines in Article 5 and recitals 20 and 45 of the proposed directive is a significant course setting. It provides for a better legal certainty and strengthens the important role that hotlines are playing when it comes to reporting of CSAM and NTD procedures. Thus, the positive assessment of hotlines is an important step in the fight against child sexual abuse material.

However, for the ongoing legislative procedure, eco suggests amending Article 5 by including take-down requests as part of the hotline's activities.



Hotlines are trusted partners and notifier for hosting services providers and platform providers, and the NTD measures in place allow for a swift removal of CSAM, reducing the negative impact on victims.

According to our experience, the collaboration between hotlines, law enforcement agencies and providers is key for effective NTD procedures and a swift removal of CSAM at source. Thus, this collaboration should be further strengthened.

In Germany, for example, hotlines are the major point of contact for the public for reporting of web-based CSAM. The option to report to hotlines anonymously seems to be highly appreciated by internet users.

The German hotlines are allowed to assess material and send notices to ISPs. But in some EU countries the current legal situation and framework is still different.

In Germany, for many years, the hotlines of eco, FSM and jugendschutz.net have a written memorandum of understanding with the German Federal Criminal Police (BKA) which clearly defines that the hotlines notify the BKA first via a dedicated reporting channel. After an agreed waiting period – allowing the BKA to start investigations including victim/offenders identification and saving necessary evidence – the hotlines reach out to the hosting service provider requesting a take-down of the CSAM in question.

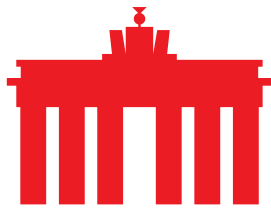
Due to the reliable legal assessment of the hotline and the procedures in place, the eco Complaints Office is a trusted partner for hosting services providers. This speeds up the takedown of CSAM on the one hand. On the other hand, the high quality of the hotlines' work allows for raising awareness for emerging challenges and developments. This helps companies to strengthen their efforts.

This effective approach of hotlines sending take-down requests should be reflected in the proposed directive providing for comprehensive legal certainty for hotlines in all EU member states.

Solicitation of children for sexual purposes

In addition, eco suggests to re-consider amendments concerning the criminalization of the solicitation of children for sexual purposes in Article 6. The provision in the current CSAM Directive aims to ensure that contacting children who have not reached the age of sexual consent is punishable by law. The proposed amendment in the directive's recast extends this provision to include contact for sexual purposes with any person under the age of eighteen.

eco understands the aim of the proposed amendment to protect any child against online grooming and acknowledges the overall intention behind it. Nevertheless, we want to draw attention to upcoming inconsistencies concerning this amendment.



It is important to ensure consistency between actions in both analog and digital realms. Thus, we would like to raise concerns regarding these changes, as individuals who have reached the age of sexual consent are capable of making decisions about their own sexuality. Therefore, the age of consent should also be taken into consideration when engaging in conversations about sexual activities. In offline scenarios, adults are permitted to address persons under the age of eighteen who have reached the age of sexual consent. Under the proposed regulations, such interactions would be prohibited online. This discrepancy could lead to challenges in effectively communicating and enforcing these rules.

Article 10 of the proposal includes an exception for peers, defined as persons who are close in age and degree of psychological and physical development or maturity. This definition may lead to legal uncertainty, particularly with regard to the extent of investigative efforts companies must undertake in response to complaints. Legal uncertainty consequently can lead to issues concerning the compliance with legal provisions. In addition, implementing these changes would likely increase the complexity of complaint handling processes for companies.

In the light of these considerations eco recommends reconsidering the proposed regulation to address these concerns and ensure a more coherent and practical approach to the protection of minors.