



This document contains the second and final opinion of the Regulatory Scrutiny Board, annotated (blue font) to explain how the each of the Board's comments has been taken into account in the revised version of the impact assessment report

Opinion

Title: Impact assessment / Regulation on detection, removal and reporting of child sexual abuse online, and establishing the EU centre to prevent and counter child sexual abuse

Overall 2nd opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

Child sexual abuse (CSA) is a particularly serious crime that has serious life-long consequences for victims.

The aim of this initiative is to establish an obligation for relevant online service providers to detect child sexual abuse online, to report this to the public authorities and to remove the relevant content. It also explores the option of creating a EU centre to prevent and counter child sexual abuse.

This initiative follows up on the CSA strategy adopted in July 2020.

(B) Summary of findings

The Board notes that the report has been substantially redrafted and improved in many aspects.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the DG to rectify the following aspects:

- (1) The role of the EU centre and associated costs are not sufficiently described. The implementation options for the EU centre are not presented in a sufficiently open, complete and balanced manner.**
- (2) The report is not sufficiently clear on how the options that include the detection of new child sexual abuse material or grooming would respect the prohibition of general monitoring obligations.**
- (3) The efficiency and proportionality of the preferred option is not sufficiently demonstrated.**
- (4) The scope and quantification of the cost and cost savings for the ‘one in, one out’ purposes are not clear.**

(C) What to improve

(1) The report should further strengthen the problem analysis. It should elaborate exactly how ‘the continued presence and dissemination of child sexual abuse material [...] hampers growth on the Internal Market (i.e. single market for digital services)’.

- Clarifications added in section 1 (Introduction): “In the absence of harmonised rules at EU level, providers of social media platforms, gaming services, and other hosting and online communications services find themselves faced with divergent rules across the internal market. The proliferation of rules is increasing, with recent legislative changes in the Netherlands and Germany, and at the same time there is evidence that current efforts at national level are insufficient to successfully address the underlying problem.”
- The internal market aspect has also been reinforced in the definition of the problem, section 2.1.1. For example: “The Member States have sought to address this growing phenomenon through rules at the national level, reinforcing existing legislation or adopting new rules to improve the detection and follow-up on online child sexual abuse. This has inadvertently created a fragmentation of the internal market which negatively impacts the provision of certain online services, while at the same time failing to stem the proliferation of this particularly harmful content.”
- Clarifications have also been added to section 2.1.2. on “Why is it a problem?” to highlight that the ‘the continued presence and dissemination of child sexual abuse material [...] hampers growth on the Internal Market (i.e. single market for digital services) due to the **fragmentation** created by divergent national approaches trying to address the problem of CSA online.
- Section 2.2.2. and annex 5 further elaborate on the legal fragmentation.

(2) The report should explain better the role of the proposed EU centre. The options description should clarify the centre’s role in the area of prevention and whether the centre will coordinate Member States’ victim support efforts including health, legal, child protection, education and employment.

Clarifications added in section 5.2.1.:

- On prevention: “The Centre would facilitate Member States’ action on prevention by serving as a hub of expertise at the service of Member States, notably to help avoid duplication of efforts and to foster an evidence-based approach to prevention policies.” And: “The Centre will not have any power to impose any initiative on prevention to Member States, i.e. it will not coordinate in the sense of determining “which Member State is obliged to do what”.
- On assistance to victims: “Also, the Centre would serve as a facilitator at the service of Member States, including by sharing best practices and existing initiatives across the Union. In that sense, it would facilitate the coordination of Member States’ efforts to increase effectiveness and efficiency. Similarly to prevention, the Centre will not have any power to impose any initiative to Member States on assistance to victims, including on issues concerning health, legal, child protection, education and employment.”

It should explain:

- how the centre will perform proactive search:

Clarifications added in section 5.2.2., specifying that the Centre would use the databases of indicators to conduct proactive searches of CSAM. Footnote added to further clarify how this could be done, e.g. using a crawler similar to the one used in Project Arachnid in Canada.

- how the coordination of this task with the detection done by the service providers themselves will be assured

Clarifications added in section 5.2.2., specifying that the Centre would ensure coordination of the material found in proactive searches and the one found by the providers through the detection obligations, through the necessary data management systems.

- and how it will support SMEs by verifying the illegality of reported material.

Clarifications added in sections 5.2.3., 5.2.4. and 5.2.5. that SMEs would not be obliged to verify the illegality of the content before submitting it to the Centre. As specified in sections 5.2.3., 5.2.4. and 5.2.5., the Centre would not confirm the illegality of the reported material, as this would need to be done by the competent national authorities. The Centre would flag possible new CSAM and grooming to national authorities for confirmation.

- It should also provide the analysis of the cost of the centre under each policy option.

The analysis of the costs of the Centre under each policy option is included in Annex 4, section 4.2.

(3) The implementation options for the centre should be presented in a more open, balanced and complete manner in the main text. The preferred implementation option should not be identified upfront, but emerge as result of an analytical assessment and comparison process.

Section 5.2.2. has been restructured to have first the analytical assessment and comparison process, leading to the preferred implementation option.

In this respect, the report should be clearer on the relevance and functioning of the externalisation sub-option on prevention and assistance to victims functions via non-EU staff and covered by calls for proposal or grants. It should clarify whether this sub-option would in practice remove the need for a separate entity under the Europol implementation option. It should be clear on the related impacts on infrastructure and operational expenditure costs as well as organisational efficiency.

Clarifications added in section 5.2.2:

“As indicated above, 28 posts corresponding to the prevention and assistance to victims functions in all options could be non-EU staff and be covered by a call for proposals/grant. In particular, in the case of option 2, Europol + separate entity, the possibility to cover these posts through a call for proposals/grant would not remove the need for a separate entity, as the envisaged prevention and assistance functions are currently not carried out by any organisation. Even if an existing entity applied for the potential call for proposals/grant, it would need to expand to accommodate the 28 posts, with the estimated infrastructure costs of e.g. rental of buildings, IT systems and audits, and the operational expenditure costs of e.g. support to expert networks, translation and interpretation, dissemination of knowledge and communication (see Annex 10, section 4.2.). Furthermore, a single separate entity should deal with both the prevention and assistance to victims functions to ensure organisational efficiency, given the strong interlinkages between both functions.”

(4) The report is clearer about the limitations of available technologies that exist for the use in encrypted communications and acknowledges that they have not yet been deployed at large scale. In view of this assertion, the report should be clearer about the practical feasibility of the policy options and provide reassurance about the effective application. The report should be clear how legal uncertainty for obliged service providers and risks of unintended consequences on privacy and security will be avoided.

Clarifications added in section 5.2.3.:

“In particular, the competent national authorities would take into account the availability of the technologies in their decision to impose a detection order, ensuring the effective application of the obligation to detect. In the cases in which the technology to detect CSA online was not yet available to be deployed at scale, the legislation could foresee for the competent authorities the possibility to consider this circumstance when deciding the start date of application of the detection order on a case by case basis. The EU Centre and the Commission could facilitate the exchange of best practices and cooperation among providers in the deployment efforts of new technologies.”

In addition: “Also, some providers have already deployed tools that perform content-based detection in the context of end-to-end encrypted communications, demonstrating the swift development of technologies in this area.

The legislative proposal should remain technology-neutral also when it comes to possible solutions to the challenge of preventing and detecting online child sexual abuse.”

(5) The report should clarify how the options that include an obligation to detect new child sexual abuse material or grooming would respect privacy requirements, in particular the prohibition of general monitoring obligations. It should more explicitly explain how the risk-assessment process could identify specific high risks groups that would be at the basis of more targeted searches.

- Reference added in the introduction to section 5.2. on the need to comply with the prohibition of general monitoring obligation for all policy options, in particular the legislative ones.
- Further clarifications added in section 5.2.3. on the risk assessment process (applicable to the detection of known material, new material and grooming), in particular:

“Only a subgroup of the providers required to submit a risk assessment would receive a detection order, based on the outcome of the risk assessment after proposing mitigating measures. The legislation would list possible risk factors that the providers should take into account when conducting the risk assessment. In addition, the EU Centre or the Commission could issue non-binding guidelines to support the risk assessment process, after having conducted the necessary public consultations”.

(6) Given the significant differences of options in terms of costs and benefits, the report should better argue the choice of the preferred option in terms of efficiency and proportionality. It should better substantiate and justify why it prefers an option that neither provides the highest net benefits nor delivers the anticipated level of benefits in the most efficient way.

Clarifications added in section 8.3. (trade-offs):

“Specifically, the detection of grooming included in option E adds a significant prevention aspect to this option, which determines its highest score on effectiveness compared to the other options. Child sexual abuse material depicts scenes of crimes already committed, and, whereas its detection contains an important prevention aspect as described in box 1, the detection of grooming focuses on preventing crimes such as hands-on abuse or sexual extortion. This avoids the short-term and long-term consequences for victims, all of which cannot be numerically quantified.”

(7) Differing stakeholder views, including from targeted consultation, should be presented in a more transparent way throughout the report and especially in the analysis of impacts and the selection of the preferred option. It should be clear who has said what, and how concerns have been taken into account, in particular where views by category of stakeholders differ. The focus should not be on majority views, as the consultations are not a representative survey.

The stakeholder consultation boxes have been reviewed throughout the report, in particular to ensure that they do not explicitly refer to majority views.

(8) The report elaborates some mitigation measures for SMEs e.g. access to training and to free detection technologies, and the support from the centre for the verification of illegality of the reported material. However, the impacts section should better outline the measures from which SMEs will not be exempted, quantify their costs and elaborate on possible barriers to entry.

Annex 11 on the SME test in section 3 has been revised to highlight the above:

“SMEs will be subject to the same obligations as larger providers. As the report indicates, they are particularly vulnerable to exploitation of illegal activities, including CSA, not least since they tend to have limited capacity to deploy state-of-the-art technological solutions to detect CSAM or specialised staff. Even though companies may have unequal resources to integrate technologies for the detection of CSAM into their products, this negative effect is outweighed by the fact that excluding them from this obligation would create a safe space for child sexual abuse and therefore defeat the purpose of the proposal.

The implementation of technologies for the detection of such abuse may create new barriers and present a burden to SMEs. While the EU Centre would make technologies available to SMEs without charge, the continuous operation of those technologies could also lead to increased costs. SMEs would also experience

an increased burden in relation to ensuring the appropriate human resources for the process of detection, reporting and removal of CSA online, including responding to follow-up requests from law enforcement authorities. The additional costs would imply that SMEs might have less funds at their disposal for research and innovation, increasing their competitive disadvantage towards large companies.

It is not possible to quantify exactly these costs since they would depend on the level of abuse that they would be exposed to. And this depends on the services they offer, and whether the degree to which they can be subject to effective and efficient mitigation measures, rather than the size of the company. For example, a SME with a small number of employees may offer a service with millions of users, which is particularly prone to be misused for CSA online, whereas a larger company may offer relatively niche services where the possibilities of misuse to commit CSA online are very limited.”

(9) The report should explain better its approach to the ‘one in, one out’ principle. It should clarify what exact costs and savings are included in quantification for one in, one out purposes, making sure that only administrative cost savings are taken into account for offsetting and that administrative costs are identified. It should also further elaborate on how the estimates were calculated. It should be more explicit on the expected significant adjustment costs for business under the preferred option in the section on the application of the one in, one out approach.

Clarifications have been added to section 8.4., including on the adjustment costs for businesses under the preferred option. Also, administrative costs have been identified: “The preferred option also creates administrative costs for service providers and administrations. These are costs that result of administrative activities performed to comply with the administrative obligations included in the proposed legislation. They concern costs for providing information, notably on the preparation of annual transparency reports.”

Annex 3 has been reviewed accordingly, including the table with the overview of costs under the preferred option (also updated with highlights below). The administrative costs have been estimated at 5% of the total costs, with the rest being adjustment costs. Only the administrative costs savings have been taken for offsetting (estimated at 5% of the total costs under measure 4 on voluntary detection, as described in Annex 3).

(10) Annex 1 of the Impact Assessment should be further elaborated to indicate how the recommendations made by the Regulatory Scrutiny Board in both opinions have been treated and considered.

Annex 1 has been reviewed accordingly, notably adding a dedicated table to detail how the report and annexes have been updated to incorporate the comments from the second opinion.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

(D) Conclusion

The DG must revise the report in accordance with the Board's findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Impact Assessment on a proposal for a Regulation on detection, removal and reporting of child sexual abuse online, and establishing the EU centre to prevent and counter child sexual abuse
Reference number	PLAN/2020/8915
Submitted to RSB on	20 January 2022
Date of RSB meeting	Written procedure

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

I. Overview of Benefits (total for all provisions) - Preferred Option (EUR million/year)		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
<i>Direct benefits</i>		
Reduction of crime/ child sexual abuse.	3 448.0	Annual benefits from reduction of crime.
<i>Indirect benefits</i>		
Facilitation of efforts by the EU Centre.	N/A	Cost savings due to a more effective and efficient use of resources (e.g. avoid duplication of efforts in the EU).
<i>Administrative cost savings related to the 'one in, one out' approach</i>		
Replacement of Interim Regulation and Council Decision.	0.9	Compliance of service providers and public authorities with the existing legislation.

II. Overview of costs - Preferred option (EUR million/year)							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
1	Direct adjustment costs	-	-	€0,21	€2,69	€0,41	€3,36
	Other costs	-	-	€0,01	€0,14	€0,02	€0,18
3	Direct adjustment costs	-	-	-	€0,00	€4,75	€24,42
	Other costs	-	-	-	€0,00	€0,25	€1,29
4***	Direct adjustment costs	-	-	-	€6,55	-	€10,58
	Other costs	-	-	-	€0,34	-	€0,56
5	Direct adjustment costs	-	-	€19,43	€1,62	-	€3,09
	Other costs	-	-	€1,02	€0,09	-	€0,16
6	Direct adjustment costs	-	-	€334,59	€436,46	-	€478,45
	Other costs	-	-	€17,61	€22,97	-	€25,18
7	Direct adjustment costs	-	-	€574,18	€494,45	-	€237,62
	Other costs	-	-	€30,22	€26,02	-	€12,51
8	Direct adjustment costs	-	-	€587,13	€448,32	-	€26,76
	Other costs	-	-	€30,90	€23,60	-	€1,41
<i>Costs related to the 'one in, one out' approach (EUR million/year)</i>							
Total	Direct adjustment costs	-	-	€1.515,54	€1.390,09		
	Indirect adjustment costs	-	-	-	-		
	Administrative costs (for offsetting)	-	-	€79,77	€73,16		



Brussels,
RSB

Opinion

Title: Impact assessment / Regulation on detection, removal and reporting of child sexual abuse online, and establishing the EU centre to prevent and counter child sexual abuse

Overall opinion: NEGATIVE

(A) Policy context

Child sexual abuse (CSA) is a particularly serious crime that has serious life-long consequences for victims. The exponential development of the digital world makes this crime a truly global one.

The aim of this initiative is to establish an obligation for relevant online service providers to detect child sexual abuse online, to report this to the public authorities and to remove the relevant content. It also explores the option of creating a European centre to prevent and counter child sexual abuse.

This initiative follows up on the CSA strategy adopted in July 2020.

(B) Summary of findings

The Board notes the additional information provided in advance of the meeting and the commitments to make changes to the report.

However, the Board gives a negative opinion, because the report contains the following significant shortcomings:

- (1) The internal market dimension and the necessity for EU action in the area of prevention and victim support is not always clear.**
- (2) The report does not fully describe all the available policy choices and leaves a number of questions open. It does not discuss in a transparent and balanced manner the alternative implementation forms for a European centre.**
- (3) The report does not clearly establish how safeguards will ensure fundamental rights, in particular regarding technologies to detect CSA in encrypted communications.**
- (4) The comparison of policy options does not comply with the standard assessment criteria and is not based on a clear and consistent ranking methodology.**

(C) What to improve

(1) The context section does not present clearly enough how the initiative builds on and interacts with related policy instruments (e.g. CSA Directive, Prevention Network, Digital Services Act, interim derogation), and how the CSA responsibilities are distributed between the EU and the Member States. The baseline should fully integrate what these other instruments can achieve for the detection, removal and reporting of CSA material as well as for prevention and victim support.

(2) The report should further elaborate the internal market dimension of this initiative and provide clear evidence of fragmentation and conflicts of law. It should better explain why these issues cannot be adequately tackled on the basis of existing policy instruments. It should better argue why EU action is needed for prevention and support of victims in addition to the responsibilities already established at Member State level and to existing coordination mechanisms.

(3) The report should clearly identify the key issues for which policy choices need to be made. It should provide in its main part a full and open discussion of the main implementation options identified for the European centre, including those relying on existing structures (e.g. Europol). It should assess in a balanced and evidence-based manner their strengths and weaknesses, including in terms of accountability, independence, transparency, governance and organisational synergies. As regards non-EU body options (e.g. foundation) the independence and governance discussion should take into account the fact that part of its funding could depend on third parties and that its legal status will depend on national provisions of the Member State in which it will be established.

(4) The report should be more precise regarding the nature of safeguards for fundamental rights. It should also discuss how the proposed obligations to detect CSA material and grooming would be compatible with the criteria indicated by the Court of Justice for permissible preventive monitoring.

(5) The report should be more specific and analytical regarding the treatment of technologies to detect CSA in encrypted communications. The report should assess the coherence with the horizontal approach on encryption. It should indicate whether and how political oversight on the use of detection technology will operate, including a discussion of the relevance of certification and implementing measures. As technological solutions are not yet available for encryption, the report should be clear how legal uncertainty for obliged service providers and risks of unintended consequences on privacy and security will be avoided.

(6) The report foresees certain exemptions and mitigation measures for SMEs under the various options. These measures should be explained upfront in the options section and thoroughly assessed in the impacts analysis, including how they will affect the operation and the financing of the centre as well as the competitiveness of SMEs. The report should also further develop the impact analysis of the measures from which SMEs will not be exempt. It should quantify their costs and elaborate on possible barriers to entry.

(7) The impact analysis should be clear about the analytical methods and the categories of costs and benefits. It should explain data sources, underlying assumptions as well as uncertainties and limitations of the analysis. In particular, it should explain how the extrapolation of a US study to the EU context has been done, how robust its results are for the EU and whether it has been peer reviewed. It should indicate which part of the overall benefits is due to mandatory obligations and which is due to the centre.

(8) The policy options (both for the EU centre and the service providers) should be compared on the basis of the standard assessment criteria effectiveness, efficiency and coherence. This should help to avoid assessing the same impacts under several criteria. The comparison of

options should provide more detail on the methodology chosen to rank the different options. It should further elaborate on the quantitative comparison of options and explain the analytical method chosen.

(9) Stakeholder views, including from targeted consultation, should be presented in a transparent way throughout the report and especially in the analysis of impacts and the selection of the preferred option. It should be clear who has said what, and how concerns have been taken into account, in particular where views by category of stakeholders differ.

Some more technical comments have been sent directly to the author DG.

<u>(D) Conclusion</u>	
The DG must revise the report in accordance with the Board's findings and resubmit it for a final RSB opinion.	
Full title	Impact Assessment on a proposal for a Regulation on detection, removal and reporting of child sexual abuse online, and establishing the EU centre to prevent and counter child sexual abuse
Reference number	PLAN/2020/8915
Submitted to RSB on	25 May 2021
Date of RSB meeting	16 June 2021