

## CCBE comments on the key issues for trilogue negotiations on the Proposal for a Regulation laying down rules to prevent and combat child sexual abuse (CSA Regulation)

February 2026

The CCBE considers that child sexual abuses are particularly serious and heinous crimes and fully supports the objectives of combatting such crime and the adoption of specific measures to prevent and fight it. The CCBE notes the amendments made by each of the co-legislators to the Commission proposal. In light of the ongoing trilogue negotiations, the CCBE would seek to share its concerns and to make suggestions regarding the final text of the proposed regulation. These concerns are set out in more detail in the CCBE [position paper](#). The most pertinent of these concerns are recalled below.

### 1. Protection of confidentiality of lawyer-client communications

While the CCBE welcomes the addition of Recital 12a in the Council compromise text, which aims to exclude information subject to professional secrecy (among others) from the scope of the Regulation, this provision requires greater clarification in order properly to reflect that the protection of material covered by Legal Professional Privilege and professional secrecy is a fundamental right both in terms of Article 8 of the European Convention on Human Rights and, in respect of matters relating to legal representation, Article 6 of the Convention. Additionally, it is not acceptable that the issue of professional secrecy is expressed merely in a recital, and not in the operative provisions. The CCBE therefore suggests an amendment to Article 1 that would regulate the exclusion of electronic communications services that are not publicly available and concrete measures to protect lawyer-client communications in publicly available communications services.

In this regard, the CCBE recalls that in the transitional provisions of the Regulation (EU) 2021/12327 adopted to modify the e-privacy directive to fight against child sexual abuse, the EU legislator had explicitly provided for a clause on the protection of professional secrecy / legal professional privilege (PS/LPP), stating that the temporary rules to detect online child sexual abuse should be *'without prejudice to the rules on professional secrecy under national law, such as rules on the protection of professional communications, between doctors and their patients, between journalists and their sources, or between lawyers and their clients, in particular since the confidentiality of communications between lawyers and their clients is key to ensuring the effective exercise of the rights of the defence as an essential part of the right to a fair trial'* (Recital 27).<sup>1</sup>

**The CCBE urges the co-legislators to include explicit provisions to ensure and safeguard the protection of confidentiality of lawyer-client communications in the final text of the proposed**

<sup>1</sup> Regulation (EU) 2021/1232 of the European Parliament and of the Council of 14 July 2021 on a temporary derogation from certain provisions of Directive 2002/58/EC as regards the use of technologies by providers of number-independent interpersonal communications services for the processing of personal and other data for the purpose of combating online child sexual abuse, 30.7.2021, OJ L 274/41: <http://data.europa.eu/eli/reg/2021/1232/oj>

**regulation.** Such provisions are an essential cornerstone to ensure the existence of a proper and just functioning of any legal or judicial system. The importance of these provisions is reflected in the law of all European countries and the well-established case law of the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECtHR).

## 2. Protection of encryption

**The CCBE calls on the co-legislators to guarantee the protection of end-to-end encryption (E2EE) in the final text.** To this end, the CCBE welcomes specific references to protecting encryption:

- (Council) Article 1(4a) *'[...] Providers should remain free to offer services using end-to-end encryption and should not be obliged by this Regulation to decrypt data or create access to end-to-end encrypted data.'*
- (EP) Article 1(3a): *'[...] Detection orders should not apply to end-to-end encryption.'*
- (EP) Article 10(3)(da) *'not apply to end-to-end encrypted communications.'*

The CCBE points out, however, that the current proposal of the Commission is contradictory in this regard. To give but one example, it is obviously impossible for service providers offering encrypted communication services to perform the obligatory risk assessment without accessing and thereby compromising encrypted communications.

## 3. Voluntary vs mandatory regime for detection

**The CCBE welcomes the shift away from an obligatory regime to detect child sexual abuse material.** However, it questions whether so-called voluntary screening will be sustainable or whether it will be illusory with the practical result that screening becomes the norm. Furthermore, the CCBE also considers that maintaining voluntary screening still poses unacceptable risks to the confidentiality of online communications, particularly confidentiality of lawyer-client communications, and opens the door for mass surveillance. Therefore, **the CCBE calls on the co-legislators to include relevant safeguards against generalised monitoring of communications.** To this end, the CCBE welcomes the addition of Article 1(3b) by the Parliament that *'[n]othing in this Regulation shall undermine the prohibition of general monitoring under Union law or introduce general data retention obligations, or be interpreted in that way.'*

Moreover, **the CCBE stresses that there exist other instruments** available under national criminal law that can be used to pursue the objectives stated in the regulation.

## 4. Risk assessment and mitigation

Moreover, the CCBE also notes that the recent proposal of the Council introduces a compulsory and expanded risk assessment, risk mitigation and reporting procedure. **The CCBE warns against such an obligation to detect and minimise risk as it may indirectly lead to introducing monitoring obligations and compromising encryption.** This is especially important given the proposed risk assessment methodology, set out in Annex XIV, which includes several criteria that imply monitoring of communications.<sup>2</sup> Moreover, the CCBE notes that the Council expanded Article 19 thereby introducing stricter limitations on providers' liability for child sexual abuse offences and a greater incentive to carry out monitoring activities (the change of wording from *'because'* to *'if and insofar as'*).

Furthermore, the CCBE is strictly opposed to Recital 77a, which has been newly proposed by the Council. Any evidence-based assessment should either consist of an entirely neutral approach and not

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<sup>2</sup> See for example, Annex XIV, Section '4. Mapping of user tendencies' which includes: A. Assessing User Patterns, B. Service's Popularity Among Different Age Groups, C. Analysis of Grooming Risks Based on User Mapping

“with a view to considering the inclusion of detection obligations” or the approach should be “with a view to considering the entire abolition of this highly intrusive instrument”.

#### **5. Other remarks**

**The CCBE would question the change of wording** by the Council in Article 26 on the tasks of coordinating authorities. In paragraph 1, the wording ‘impartial, transparent and timely’ has been deleted, leaving ‘objective and non-discriminatory.’ The text also adds: ‘Those authorities shall not seek or take instructions from any other body in relation to carrying out their tasks under this Regulation.’ but the relevant paragraph 2 which sets out the detailed requirements for independence was deleted. The same wording was left in the Parliament text.