

INCEPTION IMPACT ASSESSMENT

Inception Impact Assessments aim to inform citizens and stakeholders about the Commission's plans in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Citizens and stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options.

TITLE OF THE INITIATIVE	Regulation of the European Parliament and of the Council on the detection, removal and reporting of child sexual abuse online, and establishing the EU centre to prevent and counter child sexual abuse
LEAD DG (RESPONSIBLE UNIT)	Home.D4
LIKELY TYPE OF INITIATIVE	Regulation
INDICATIVE PLANNING	Q2 2021
ADDITIONAL INFORMATION	https://ec.europa.eu/home-affairs/what-we-do/policies/cybercrime/child-sexual-abuse_en

The Inception Impact Assessment is provided for information purposes only. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by the Inception impact assessment, including its timing, are subject to change.

A. Context, Problem definition and Subsidiarity Check

Context

In the [EU strategy for a more effective fight against child sexual abuse](#) the Commission committed to propose the necessary legislation to tackle child sexual abuse online effectively including by requiring relevant online services providers to detect child sexual abuse on their services and to report any such abuse to relevant public authorities.

The Commission also committed in the strategy to work towards the possible creation of a European centre to prevent and counter child sexual abuse to enable a comprehensive and effective EU response against child sexual abuse online and offline, based on a thorough study and impact assessment.

Problem the initiative aims to tackle

Recent years have seen a dramatic increase in reports of child sexual abuse online concerning the EU: from 23 000 in 2010 to more than 725 000 in 2019, which included more than 3 million images and videos; as well as globally: from 1 million reports in 2010 to almost 17 million in 2019, which included nearly 70 million images and videos. Most of the child sexual abuse material hosted globally is located in the EU¹.

These reports result from voluntary action by companies to detect images, videos and text-based threats such as grooming, where a perpetrator builds a relationship, trust and emotional connection with a child or young person so they can manipulate, exploit and abuse them². The reports are instrumental in saving children from ongoing abuse as they are key to help identify victims and rescue them from ongoing abuse. However, there are discrepancies among companies' voluntary efforts, meaning there is likely to be much more content that is not being detected.

The current absence of legal obligations to detect and report child sexual abuse online results in a lack of clarity and certainty for the work of both law enforcement and relevant actors in the private sector in

¹ Internet Watch Foundation, [Annual Reports of 2016-2019](#)

² NSPCC, [What is Child Abuse?](#)

their efforts to tackle child sexual abuse online swiftly and effectively.

Efforts to combat child sexual abuse in the EU are fragmented, duplicated, and/or insufficient in some areas, as shown in particular by the monitoring of the implementation of [Directive 2011/93](#) (Child Sexual Abuse Directive). In particular, efforts to prevent child sexual abuse online and offline in the EU are insufficient, uncoordinated and of unclear effectiveness, while the efficiency and effectiveness of Member States' efforts to assist victims of child sexual abuse is limited as they do not systematically make use of existing best practices and lessons learned in other Member States or globally.

Basis for EU intervention (legal basis and subsidiarity check)

The legal basis for a legislative proposal concerning the detection, reporting and removal of online child sexual abuse and establishing a European centre to prevent and combat child sexual abuse would depend on the scope of the proposal, but could include Article 114 of the [Treaty on the Functioning of the European Union](#) (internal market) where proposed legislative changes would focus on the functioning of the internal market.

The cross-border nature dimension of the Internet through which child sexual abuse takes place, the variable effectiveness of existing notice-and-action procedures and related measures for the detection, reporting and removal of online child sexual abuse, and the need for a more effective and more coordinated approach to prevention and victim support within and across Member States justify an analysis of the need for EU action.

B. Objectives and Policy options

The overall objectives of this initiative are to

- reduce child sexual abuse, and ensure improved identification and protection of victims of child sexual abuse;
- ensure effective prevention, investigation and prosecution of child sexual abuse offences;
- provide holistic support to Member States in the fight against child sexual abuse, online and offline, ensuring coordination to maximise the efficient use of resources and avoiding duplication of efforts.

More specifically, the initiative aims to

- prevent the abuse of online infrastructure for child sexual abuse by offenders, for example by distributing child sexual abuse material or grooming children;
- ensure measures for the detection, removal and reporting of online child sexual abuse are implemented where they are currently missing, built upon principles of legal certainty, protection of fundamental rights, transparency and accountability; and
- enable a coherent, coordinated approach to online and offline child sexual abuse, involving prevention, victim support, and law enforcement.

Baseline scenario – no legislative change and a set of practical measures

Practical measures could enhance the voluntary detection, removal and reporting of online child sexual abuse by relevant online service providers. However, they cannot ensure legal certainty, transparency and accountability.

Legislative Options

The impact assessment will develop various policy options based on further analysis, focusing in particular on the following possible measures at EU level:

1. A legal framework establishing a clear legal basis under which relevant service providers could choose to implement voluntary measures for the detection, reporting and removal of child sexual abuse on their services, including both previously known and new material, and text-based threats. This framework could also set out the relevant public authority/authorities, at Union level or national level, to which reports should be made.
2. A legal framework which, in addition to establishing a clear legal basis as in Option 1, would also create a binding obligation for relevant service providers to detect, report and remove known child sexual abuse material from their services. Under this Option, relevant service providers

could also choose to implement measures for the detection, reporting and removal of new material and/or text-based threats, but this would not be mandatory.

3. A legal framework which creates a binding obligation for relevant service providers to detect, report and remove child sexual abuse from their services, applicable to both known and new material, and to text-based threats such as grooming. As in the case of Option 1, this framework would also set out the relevant public authority/authorities, at Union level or national level, to which reports should be made.

In the analysis and development of these options, it will be necessary to ensure consistency with the liability regime in relation to illegal content in the planned Digital Services Act.

Under each of the above policy options, including the baseline scenario, the creation of a centre that could provide support for measures to ensure the detection, removal and reporting of child sexual abuse would be explored.

In particular, the centre's functions could cover the three areas mentioned in the July 2020 Strategy (law enforcement, prevention, and victim support), taking into account existing resources in the fight against child sexual abuse, such as the INHOPE network of hotlines. The centre could meet the specific objectives through the activities mentioned for each of these areas in the strategy, including working to ensure that victims are identified and assisted as soon as possible and that offenders are brought to justice; supporting Member States in putting in place usable, rigorously evaluated and effective prevention measures to decrease the prevalence of child sexual abuse in the EU; and supporting Member States to ensure that victims receive appropriate and holistic support, by coordinating efforts at EU level.

C. Preliminary Assessment of Expected Impacts

- All options for the detection, removal and reporting of child sexual abuse online address the policy objectives in diminishing child sexual abuse online and promoting and protecting the fundamental rights of victims. All three legislative options would also prevent regulatory fragmentation within their respective scopes. In addition, Options 2 and 3 involve substantial obligations on relevant online service providers, and should thus lead to compliance of a broader number of service providers than the measures currently in place (under the Baseline).
- All options for the establishment of the centre address to some extent the policy objective of supporting Member States in the fight against child sexual abuse. However, it is likely that in the case of the non-legislative option and Option 1, the objective would only be partially addressed, meaning that the overall objective of holistic support in the areas of law enforcement, prevention and victim support may not be fulfilled.

Likely economic impacts

Subject to further assessment, the likely economic impacts could include:

- For both the public and the private sector, administrative and compliance costs could arise from implementing new legislation.
- All three of the legislative options could be expected to have a positive effect on the Single Market through additional legal clarity and certainty, thus limiting compliance costs.
- Obligations on relevant online service providers under Options 2 and 3 could imply costs in technological developments and/or acquisition, infrastructure expenditure and expert staff recruitment and training, in particular in with regard to smaller companies. This includes the impact on the development of the digital single market and the setting up and scaling up of new, innovative digital businesses.
- Supporting measures and technology and expertise sharing across platforms could limit potential economic burdens on relevant online service providers, and there are examples of this already in practice.
- Obligations on service providers under Options 2 and 3 are likely to lead to an increase in the number of reports forwarded to law enforcement authorities, potentially implying additional costs in order to adequately respond to reports.
- Mandatory detection and reporting of child sexual abuse material could affect business models

<p>chosen by relevant service providers, in particular where they also provide services outside the Union.</p> <ul style="list-style-type: none"> • A more efficient system would likely lead to a corresponding increase of requests to the referring online service providers for further relevant data from public authorities, meaning additional costs for the service providers having to provide more data. • Furthermore, both the public and the private sector would benefit from a common framework creating more legal certainty and mutual trust between the public and the private sector. • Significant costs would also be incurred if there is a decision to establish a centre, both for its creation and for carrying out its duties on an ongoing basis. On the other hand, the centre's activities would support both law enforcement authorities and industry in the detection and reporting of child sexual abuse online, leading to greater efficiencies. The centre's activities in the areas of prevention could lead to a reduction in relevant offences, while its victim support role could contribute to the recovery of victims, reducing the long-term impact of these crimes on victims and society. In all areas, the centre's work could reduce duplication of efforts.
Likely social impacts
<p>The proposed measures would help protect online users – particularly the young and vulnerable – enhancing the ability of relevant public authorities to respond to cases of online child sexual abuse and prevent further related crimes.</p> <p>This would have a positive effect on the psychological and physical wellbeing of victims by rescuing them from child sexual abuse and reducing the distribution of child sexual abuse material in which they are depicted. Furthermore, effective repression of crimes that create harm to society, resulting in successful prosecution of those crimes, should entail a corresponding positive effect on society as well as generally creating more confidence in digital services and activities.</p>
Likely environmental impacts
None
Likely impacts on fundamental rights
<p>Improving the detection, removal and reporting of online child sexual abuse, and establishing a European centre to prevent and counter child sexual abuse, both online and offline, would serve the interest of effective prevention, detection and prosecution of related crimes, and the protection of victims of crime. The interests of victims' fundamental rights, as recognised by the Charter of Fundamental Rights of the European Union, would in particular be served in relation to the fundamental rights to physical and mental integrity (Article 3), liberty and security of person (Article 6), respect for private and family life (Article 7), and the right of children to such protection and care as is necessary for their well-being (Article 24). The rights of the child elaborated in the UN Convention on the Rights of the Child, to which all Member States are Parties, would also be served. These include in particular the obligation that the best interests of the child must be a primary consideration (Article 3), the right to privacy (Article 16), and the right to protection from sexual abuse (Article 19). Furthermore, the Treaty on European Union obliges the Union to promote protection of the rights of the child (Article 3(3)). At the same time, contemplating measures to facilitate or mandate the detection of such crimes by relevant online service providers, raises questions of impact on fundamental rights of users of relevant online services.</p> <p>An important aspect is the impact on the fundamental rights to data protection and privacy. Subscriber information, traffic data, metadata, and content data are personal data, and are thus covered by the safeguards under the EU data protection acquis. Respect of data protection and privacy rules would be paramount both for service providers when detecting and reporting child sexual abuse on their services and to law enforcement when responding to those reports. The options considered in the impact assessment will take into account the need to ensure that any impact upon privacy that would arise as a result of obligations to detect and report child sexual abuse online would be strictly limited to what is necessary and proportionate.</p> <p>The impact assessment will consider how the possible establishment of a centre could play a role in</p>

safeguarding these rights by ensuring transparency and accountability for the measures implemented by service providers in the fight against child sexual abuse online, and could further protect these rights by receiving complaints from users who believe, for example, that their content has been mistakenly removed.
Likely impacts on simplification and/or administrative burden
<p>Transparency reporting at regular intervals on content identified, reported and removed entails burdens on the online service providers concerned. In addition, the cost of implementing the reporting system and of identification of online child sexual abuse would have to be supported by those providers.</p> <p>The public sector would incur administrative and compliance costs associated with appropriately dealing with the significantly increased volume of reports of online child sexual abuse expected to be received from relevant online service providers. On the other hand, the initiative is expected to improve the efficiency of reporting processes. It would foster cooperation between relevant authorities and service providers – depending on the selected policy option – by simplifying and streamlining the current different channels and policies largely set by service providers themselves to deal with online child sexual abuse within the current legal framework.</p>
D. Evidence Base, Data collection and Better Regulation Instruments
Impact assessment
An impact assessment will be prepared to support the preparation of this initiative. It will look at the potential economic, social and environmental impacts of this initiative as well as of its potential impacts on fundamental rights. The assessment will support the preparation of this initiative and inform the Commission's decision.
Evidence base and data collection
A public consultation and specific stakeholder consultations will be carried out to further explore the impacts of the options on all relevant stakeholders, as necessary, and ensure that those who would be affected by this initiative can provide their views and opinion. These consultations will draw on the opportunities presented by existing dialogues, taking into account the variety of interests and stakeholders involved.
Consultation of citizens and stakeholders
<p>The consultation aims to ensure that citizens and stakeholders, including those who will be directly affected by this initiative, can provide their views and input. This will also improve the evidence base underpinning the initiative. The consultation targets all relevant stakeholders: industry, civil society and public authorities, but also citizens.</p> <p>This will comprise a 12-week public consultation, expected to be launched in November 2020 in all official EU official languages. Replies will be possible in all official EU languages. The public consultation will be accessible via the Commission's central public consultations page. Targeted consultations with industry and other key stakeholders to collect information and data regarding the current practices and legal framework, anticipated developments and needs, and on the impact of the possible measures will be used as needed.</p> <p>At the end of this consultation process, an overall synopsis report will be drawn up covering the results of the different consultation activities that took place. This report will be annexed to the Impact Assessment.</p>
Will an Implementation plan be established?
Depending on the complexity of the final proposal an implementation plan may be established.