

Valletta, 23/11/2020

To:
The Parliament of the European Union

By electronic transmission

EUCTF Statement on the Interim Regulation to Provide a Temporary Derogation from the Impact of the European Electronic Communications Code and the e-Privacy Directive

The European Union Cybercrime Task Force (EUCTF), formed by the Heads of the National Cybercrime Units, is aware of the current legislative proposal regarding an Interim Regulation to provide a Temporary Derogation from the impact of the European Electronic Communications Code and the e-Privacy Directive when they come into effect on the 20th of December 2020.

The EUCTF welcomes this proposal, as such a derogation shall continue to allow on-line service providers to carry out an essential function in the fight against child sexual exploitation and child sexual abuse online. Over the last number of years, the US National Centre for Missing and Exploited Children (NCMEC) and the Canadian National Child Exploitation Coordination Centre (NCECC) have made an important contribution through the provision of information on the distribution of child sexual abuse material (CSAM) and child sexual abuse online such as grooming. The ability for NCMEC and the NCECC to provide law enforcement with such information is only possible through the proactive work carried out by on-line service providers to detect child sexual abuse online on their platforms. Such information has often been the foundational element to start investigations, which in turn have become a significant part of the work carried out by investigators in each of the European Agencies that are part of the EUCTF.

That work has resulted in the protection of many children, by removing them from harmful situations involving either online or in-person child sexual abuse and exploitation. To illustrate the scale of matter at hand, NCMEC indicates that the global law enforcement community has been able to identify over 18,900 victims. In many cases, offenders initially contact children through social media before transferring the communication to other on-line services such as electronic communications services. The use of such services provides offenders with more privacy, effectively isolating the children and encouraging them to keep the communications secret from others. Usually based on a notification, law enforcement has also investigated offences against perpetrators using electronic communications services as a vehicle to circulate and re-circulate images of child sexual abuse and exploitation.

Those investigations follow all the legal requirements, management and judicial oversight that are appropriate to any criminal investigation in the Member States of the European Union. So, they are followed in accordance with the acknowledgement that the laws of each of those states have for the rights of the individuals, whether they are under investigation or are the victims depicted in the material. It is always in the interest of investigators to meet the highest possible standards in that regard.

As illustrated above, the proactive detection of child sexual abuse or child sexual exploitation online by on-line services providers has a positive effect enabling law enforcement to conduct investigations. Prohibiting this proactive detection in electronic communications would result in a significant reduction of investigations. The ability to remove children from circumstances in which they are being harmed, either in person or online, is a primary duty of law enforcement not only to those children but to society in general. Similarly, identifying and locating those who are offending against children is also a basic requirement for investigators in protecting the ability of society to be safe from the harm that they can commit.

The duty that currently falls on legislators in the European Parliament is to decide on weighing the needs and interests of the fundamental rights of the children who are victimised versus those of the users of on-line services,

including those who abuse on-line services to offend against, groom and extort children. That decision making should consider the effect that limiting the ability of the on-line service providers to prevent the circulation of this content and detect the online sexual abuse of children will have on the victims and on the trust that society places in law enforcement's ability to keep children safe.

Yours sincerely,



Timothy Zammit

EUCTF Board Chairman

on behalf of the EUCTF