

To:
Ms. Yeşilgöz-Zegerius
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Dear Minister Yeşilgöz-Zegerius,

Bits of Freedom is shocked at the recent revelations concerning the conflict of interest in the establishment of the proposal for the European regulation on preventing and combatting the sexual abuse and sexual exploitation of children.¹ We urge you to refrain from moving forward with the proposal and to withhold your support in upcoming negotiations. In the following letter we would like to take the opportunity to elaborate on why we think this is necessary.

Conflict of interest

Multiple media reports give the impression that it is not the interests of the child that are paramount, but the commercial interests of a number of tech companies. The articles speak of a longstanding and close collaboration between the European Commission and a large network of mostly interrelated tech companies, non-governmental organizations, a motley of partnerships and lobbyists², not all of which present themselves truthfully. For instance, tech company Thorn is registered in the transparency register of the European Union as a “non-governmental organization”, but in reality it is a commercial enterprise with a for-profit motive. Some of the organizations involved also receive financial support from the European Commission.

This is particularly worrisome because some of the technologies the companies involved provide as a service, are at the heart of the controversial parts of the proposal. For example, Thorn is one of the few companies that could provide the technology for the so-called detection orders. On top of that, the European Commission relies primarily on these companies’ accounts to substantiate the effectiveness of that very same technology.³

Our concerns are compounded by the lack of reflective capacity shown by the Commissioner

¹ Regulation laying down rules to prevent and combat child sexual abuse, as proposed on 11 Mei 2022 by the European Commission.

² See for instance the article “‘Who Benefits?’ Inside the EU’s Fight over Scanning for Child Sex Content” by balkaninsight.com and “Warum Ashton Kutcher für Überwachungspläne lobbyiert” by zeit.de, both dated 25 September 2023

³ The European Commission’s response to the request for information on the technology’s effectiveness, 4 October 2022

concerned, Ylva Johansson. In her response to the revelations, she simply states that the proposal is hers, and subsequently resorts to emotional blackmail in order to avoid a balanced and nuanced debate⁴. That is a defensive tactic, not the actions of someone taking responsibility.

Propaganda by the European Commission

It is clear that the European Commission leverages a variety of other organizations to launch campaigns to gain support from policy makers and politicians for the Commission's proposal. The aforementioned media articles show, for example, that around the time of its launch, the European Commission asked at least one of the companies benefiting from the proposal "to help make sure that this launch is a successful one." In addition, the European Commission set up a targeted advertisement campaign on social media, targeting people who follow specific politicians or officials.⁵ The campaign features misleading or even seemingly incorrect information. Earlier, the European Commission also amplified the campaigns of supposedly independent organizations. That is unbecoming in a democratic state under the rule of law.

Recent developments in the Netherlands

We respectfully wish also to draw your attention to the opinion of your principal advisory body on this subject, the National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children. In her recently issued opinion, she invites you to "engage in a broader discussion." She suggests that you commit to extending the temporary regulation currently in effect, in order to create more time for the necessary substantive debate and answering of the fundamental questions that have been posed. The National Rapporteur believes that a proposal as important as this one, which seeks to strengthen the response to the sexual abuse and exploitation of children, and which will be directly applicable in all member states, must be deliberately and thoughtfully constructed.⁶

Urgent request

Precisely because the proposal concerns the protection of children, Bits of Freedom endorses this appeal. In the debate the Rapporteur calls for, it must also become clear which interests have played a role in the design of the proposal. Are the interests of the child really paramount, or have the financial interests of tech companies perhaps been leading?

On these grounds, Bits of Freedom requests that you do not express your support for the proposal until 1) the scope of the detection orders is narrowed to specific suspects or suspects against whom there is a concrete suspicion related to child sexual abuse and 2) the confidentiality of communications is ensured, including the protection of end-to-end encryption and the elimination of client side device scanning.

Bits of Freedom is of course happy to provide further information on the issues covered in this letter.

4 Ylva Johansson on X, on 29 September 2023: "Let's be clear: this is MY proposal."

5 "[...] If you click on "Why this ad?" you'll find that it is targeted at people that follow Mark Rutte or Pascaline Grotenhuis (DG International Cooperation)." (Dutch journalist Marieke Kuypers on X, on 22 September 2023)

6 Position paper EU regulation, 19 September 2023

Kind regards,

Rejo Zenger, on behalf of Bits of Freedom

A handwritten signature in black ink, appearing to read 'Rejo', with a long horizontal line extending to the right.

Rejo Zenger