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NOTE

From:	Presidency
To:	Delegations
Subject:	Proposal for a Directive on combating sexual abuse and sexual exploitation of children and child sexual abuse material (recast) – Examination of the Presidency compromise text on the recitals

Ahead of the next JHA Counsellors on 7 September 2026, delegations will find in this document a first set of compromise proposals for the recitals. The Presidency has amended the recitals in order to reflect the operative part, as agreed at the political trilogue on 22 June 2026. Recitals marked as "[AGREED]" were agreed during political trilogues, and therefore these have not been amended by the Presidency and are deemed outside the scope of this exercise. Many of the proposed amendments in this document have been discussed with the European Parliament as part of a provisional compromise package. However, some amendments require further consideration. The Presidency invites delegations to outline any redlines that they may have in respect of the below proposed amendments.

The Irish Presidency wants to take the opportunity to thank the Cyprus Presidency for their relentless effort to reach an agreement on the operative part.

Delegations will also find in annex the operative part, with all the cross-references and numbering of the articles updated. In addition, the four-column table is provided in WK 10948/26.

Delegations are invited to assess the compromise proposals for the recitals tabled by the Presidency and to indicate whether these are acceptable.

All recitals are provided below for the sake of completeness (the recitals agreed are indicated as such). Changes in the open recitals are indicated in comparison to the General Approach in **bold and underlined**. To ease the reading and comparison to the operative part, the articles to which the recitals correspond are also indicated (delegations should be aware that the new numbering is used).

PUBLIC

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on combating the sexual abuse and sexual exploitation of children and child sexual abuse material and replacing Council Framework Decision 2004/68/JHA (recast)

PUBLIC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2) and Article 83(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

[AGREED]

(1) A number of amendments are to be made to Directive 2011/93/EU of the European Parliament and of the Council[1]. In the interests of clarity, that Directive should be recast.

[AGREED]

(2) Sexual abuse and sexual exploitation of children, including child sexual abuse material , constitute serious violations of fundamental rights, in particular of the rights of children to the protection and care necessary for their well-being, as provided for by the 1989 United Nations Convention on the Rights of the Child and by the Charter of Fundamental Rights of the European Union[2].

[AGREED]

(3) In accordance with Article 6(1) of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union, in which Article 24(2) provides that in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. Moreover, the EU Strategy for a more effective fight against child sexual abuse[3] gives a clear priority to stepping up the fight against the sexual abuse and sexual exploitation of children and child sexual abuse material, including through actions aimed at ensuring the continued effectiveness of existing Union legislation, if needed through its updating. This is also supported by the EU Strategy on the rights of the child in its objective to fight violence against children and ensure child-friendly justice.

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1 Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1, ELI: http://data.europa.eu/eli/dir/2011/93/oj1, ELI: http://data.europa.eu/eli/dir/2011/93/oj).

2 OJ C 364, 18.12.2000, p. 1.

3 COM (2020) 607 of 24 July 2020.

[AGREED]

(4) Child sexual abuse material and other particularly serious forms of sexual abuse and sexual exploitation of children are increasing and spreading through the use of new technologies and the Internet.

PUBLIC

[General (other legal instruments)]

(5) Directive 2012/29/EU of the European Parliament and of the Council[4] establishes a set of victims' rights for all victims of all crime, including for child victims of sexual abuse. These rights include the right to information, the rights to support and protection in accordance with victims' individual needs, a set of procedural rights and a right to a decision on compensation from the offender. ~~The proposal for the revision of the Victims' Rights~~ Directive **2026/1472 of the European Parliament and of the Council**[5] further strengthens the rights of victims of crime in the EU, including strengthening of the right to support and protection for child victims of crime[6]. This Directive builds on and is applicable in addition to the Victims' Rights Directive. Moreover, the coordination of prosecution of cases of sexual abuse, sexual exploitation of children and child sexual abuse material is facilitated by the implementation of Council Framework Decision 2009/948/JHA. Where prosecution of such cases falls within jurisdiction of more than one Member State, the Member States concerned should cooperate to determine which Member State is best placed to prosecute. Where the competent authorities of the Member States concerned decide, following cooperation or direct consultations under Council Framework Decision 2009/948/JHA[7], to centralise criminal proceedings in a single Member State through the transfer of criminal proceedings, Regulation (EU) **2024/3011 of the European Parliament and of the Council of 27 November 2024** on the transfer of proceedings in criminal matters[8] should be used for such a transfer.

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4 Directive 2012/29 EU of the European Parliament and of the Council of 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crime (OJ L 315, 14.11.2012, p. 57).

5 **Directive (EU) 2026/1472 of the European Parliament and of the Council of 17 June 2026 amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA**

6 ~~COM(2023) 424 final of 12 July 2023. The proposal is still under negotiation and the references to it in this text will only be retained if the Directive will be adopted in a form close to the proposal.~~

7 Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42, ELI: http://data.europa.eu/eli/dec_framw/2009/948/oj.

8 Regulation (EU) 2024/3011 of the European Parliament and of the Council of 27 November 2024 on the transfer of proceedings in criminal matters (OJ L, 2024/3011, 18.12.2024, ELI: http://data.europa.eu/eli/reg/2024/3011/oj.

Presidency note: The Presidency proposes technical changes to this recital. These are provisionally agreed with the EP.

[AGREED]

(6) In accordance with Article 34 of the United Nations Convention on the Rights of the Child, States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. The 2000 United Nations Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and, in particular, the 2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse are crucial steps in the process of enhancing international cooperation in this field.

[AGREED]

(7) Serious criminal offences such as the sexual exploitation of children and sexual abuse material require a comprehensive approach covering the prosecution of offenders, the protection of child victims, and prevention of the phenomenon, including its recent and foreseeable evolutions and trends, increasingly involving the use of information and communication technologies. For that purpose, the current legal framework needs to be updated, in order to ensure it remains effective and to ensure, where appropriate, that offences committed by means of information and communication technology fall within the scope of this Directive. The child's best interests must be a primary consideration when carrying out any measures to combat these offences in accordance with the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child.

PUBLIC

[General (other legal instruments)]

(8) This Directive should be fully complementary with Directive **EU 2024/1712** of the European Parliament and of the Council **of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims**, as some victims of human trafficking have also been child victims of sexual abuse or sexual exploitation.

[Article 4, 14]

(9) In the context of criminalising acts related to child sexual abuse performance**s**, this Directive refers to such acts which consist of an organised live exhibition, aimed at an audience **of one or more persons**, thereby excluding personal face-to-face communication between consenting peers, as well as children over the age of sexual consent and their partners from the definition.

Presidency note: alignment with the operative part. Moreover, this provides important clarity to ensure that performances directed towards one person are sufficient to fall within the scope of this Article. This also meets the needs of a number of delegations who have previously requested clarity in respect of this Article.

PUBLIC

[Article 4, 14]

From EP mandate

~~*(9a) Children are increasingly active online from a young age, and the available evidence indicates that boys and girls appear to be vulnerable in different ways. While girls are disproportionately vulnerable to cyber violence, including online harassment, sexual extortion, sexual harm, and exploitation, boys are more likely to experience financial sexual coercion and are less attuned to online risks compared to girls. Studies show that one in 10 women has faced gender-based cyber violence since age 15, and 58 % of girls report online harassment. LGBTIQ+ children face even higher risks. Nonconsensual image distribution and the trading of child sexual abuse materials further reinforce harmful gender stereotypes and inequalities. At least two-thirds of child sexual abuse and exploitation victims are girls. Therefore, rather than indiscriminately using the same interventions to target all children, tailored, gender-sensitive interventions should be developed to prevent and combat online child sexual abuse, ensuring digital platforms implement robust protections aligned with fundamental rights and recent legislation on violence against women, including cyber violence.*~~

Presidency note: The Presidency proposes the deletion of this recital, and proposes instead a compromise proposal in recital 43a (please see proposal in relation to recital 43a later in this document).

[AGREED]

(10) Child sexual abuse material frequently includes images recording the sexual abuse of children. It may also include images of children involved in sexually explicit conduct, or of their sexual organs, breasts or anal area, where such images are produced or used for primarily sexual purposes and exploited with or without the child's knowledge. Furthermore, the concept of child sexual abuse material also covers realistic images of a child, where a child is engaged or depicted as being engaged in sexually explicit conduct for primarily sexual purposes. This Directive does not govern unrealistic depictions, reproductions or representations of a child engaged in sexually explicit conduct, or of the sexual organs, breasts or anal area of a child, such as unrealistic doodles or sketches. The term image includes any visual representation, regardless of the method of creation or manipulation, including by using artificial intelligence, deepfake technologies, or augmented, extended, or virtual reality settings. The term image includes e.g. images in printed publications as well as photographic images including films and videos, videograms and digital representation. It may also include pseudo-photographs, i.e. an image made by computer graphics, or in any other way, that appears to be a photograph or data that can be converted into a photograph. This recital is not an exhaustive list of what may constitute a visual representation.

PUBLIC

[Article 2(3) letter (c)]

(11) Research has shown that limiting the dissemination of child sexual abuse material is not only crucial to avoid the re-victimisation linked to the circulation of images and videos of the abuse but is also essential as a form of offender-side prevention, as accessing child sexual abuse material is often the first step towards hands-on abuse, regardless of whether it depicts real or simply realistic abuse and exploitation. The ongoing development of artificial intelligence applications capable of creating realistic images that are indistinguishable from real images, **and** the number of so-called 'deep-fake' images ~~and~~ **as well as** videos depicting child sexual abuse is expected to grow exponentially in the coming years. The inclusion of an explicit reference to 'reproductions and representations' ~~could~~ ensure**s** that the definition of child sexual abuse material covers these and future technological developments in a sufficiently technology-neutral and hence future-proof way.

Presidency note: the deletion of 'could' (from General Approach) ensures further clarity that the definition is future-proof and covers all forms of CSAM irrespective of how they were generated. The EP amendments in this recital are already covered in recital 10 were already agreed at trilogue. The Presidency suggests that this amendment should be acceptable to delegations and provides negotiating room with the EP. The EP has provisionally agreed with this.

[Article 2(3) letter (c)]

(11a) Member States may also pay particular attention to the production and marketing of child-like sex dolls or sex robots, that give reason for concern~~s~~. These objects that represent a child are intended to be used for sexual purposes. [Member States are encouraged to criminalise child-like sex dolls or sex robots, giving due regard to the dangers that these objects may pose.]

Presidency note: the Presidency considers that this text, from the General Approach, goes beyond the operative text as now agreed. Therefore, the Presidency wishes to understand from delegations whether it could be deleted. The EP is also considering this recital further. There is not currently a clear mandate in respect of this text.

[AGREED]

(12) Handbooks and manuals in any form, like hardcopy, digital or coded, may provide advice on how to find, groom and abuse children and avoid being identified and prosecuted. By lowering barriers and providing the necessary know-how, they contribute to inciting offenders and support the commission of sexual abuse. Their online dissemination has already led certain Member States to amend their criminal law and explicitly criminalise possession and distribution of such manuals. The lack of harmonisation creates an uneven level of protection across the EU. To prevent offences involving the sexual abuse of children, intentionally producing, offering, disseminating, possessing instructions on how to commit child sexual abuse and sexual exploitation, in writing or in other form, such as (online) sessions in which information on how to commit sexual abuse is shared, should be punishable when committed without right. To encompass the various ways such manuals and instructions may appear, the provision pertains to any material, regardless of its form or method of creation, and could, for instance, include prompts to be given to artificial intelligence systems.

PUBLIC

[AGREED]

~~(12a)~~

[Articles 3 to 13]

From EP mandate

(12b) The rights set out in this Directive are without prejudice to the rights of the offender. The term 'offender' refers to a person who has been convicted of a crime. However, for the purposes of this Directive, it also refers to a suspected or accused person before any acknowledgement of guilt or conviction, and it is without prejudice to the presumption of innocence.

Presidency note: the term 'offender' is clearly defined in criminal law, and does not include a person who is suspected or accused of a crime. It is notable that this recital stems from recital 12 of the Victims' Rights Directive. The Victims' Rights Directive applies to sector-specific legislation, including in the area of child sexual abuse. Its recital on offenders already clarifies that the concept of "offender" is not limited to persons who have been convicted, which may also inform the interpretation of the term in this Directive. Moreover, other sector-specific instruments, such as the Anti-Trafficking Directive and the Counter-Terrorism Directive, do not contain specific recitals on the notion of "offender". In addition, in the recast, the term "offender" is used only in provisions relating to the definition of offences, aggravating circumstances, jurisdiction, compensation and statistics. In this context, the Presidency does not consider that there is a risk that the term would be interpreted restrictively in a way that would warrant further clarification in a recital. The EP is currently considering this argument and will revert to us later in September. The Presidency welcomes any comments from delegations on this recital.

PUBLIC

[AGREED]

(13) Disability, by itself, does not automatically constitute an impossibility to consent to sexual relations. However, the abuse of the existence of such a disability in order to engage in sexual activities with a child should be criminalised. For the purposes of this Directive, the notion of disability should be understood broadly, including physical, mental, intellectual or sensory impairments.

[Articles 3 to 13]

(14) In adopting legislation on substantive criminal law, the Union should ensure consistency of such legislation in particular with regard to the level of penalties. **The Council conclusions of 24 and 25 April 2002 on the approach to apply regarding approximation of penalties, which indicate four levels of penalties, and the Council conclusions on model provisions, guiding the Council's criminal law deliberations, of 9 December 2025 ~~30 November 2009~~, should be kept in mind in the light of the Lisbon Treaty.** This Directive, because it contains an exceptionally high number of different offences, requires, in order to reflect the various degrees of seriousness, a differentiation in the level of penalties which goes further than what should usually be provided **for** in Union legal instruments.

Presidency note: this recital is challenging insofar as the reference to the model provisions is unacceptable to the EP and is also not supported by the Commission. The Presidency wishes to ask whether any delegations could accept deletion of the text in bold stemming from the Council General Approach. Should this not be acceptable, the Presidency wishes to test whether language to slightly soften the Council General Approach might be acceptable. Please see Presidency proposal below:

PUBLIC

(14) In adopting legislation on substantive criminal law, the Union should ensure consistency of such legislation in particular with regard to the level of penalties. **The Council conclusions of 24 and 25 April 2002 on the approach to apply regarding approximation of penalties, which indicate four levels of penalties, and the Council conclusions on model provisions, guiding the Council's criminal law deliberations, of 9 December 2025, should be kept in mind in the light of the Lisbon Treaty. [<u>These model provisions are not binding on the co-legislators and rather guide the work of the Council on proposals for EU substantive criminal law acts. However, given that this Directive deviates from these provisions in a number of areas, it is worthwhile recalling that this Directive contains an exceptionally high number of different offences. In order to reflect the various degrees of seriousness, a differentiation in the level of penalties is foreseen which goes further than what should usually be provided in Union legal instruments.</u>]**

[Articles 6, 7 and 8]

~~(14a) *This Directive should ensure that technology-facilitated offences are the same penalties as other offences, as the seriousness and trauma resulting from those offences is equivalent.*~~

Presidency note: This recital stems from the EP mandate. However, there is provisional agreement to delete this recital on the basis that the substance is adequately covered by reference to technology in other recitals. There is provisional agreement to delete this recital. This is covered in other recitals which reference technology.

PUBLIC

[Article 2(3), point (c), Articles 3 to 13]

(15) Serious forms of sexual abuse and sexual exploitation of children should be subject to effective, proportionate and dissuasive penalties. This includes, in particular, various forms of sexual abuse and sexual exploitation of children which are facilitated by the use of information and communication technology, such as the online solicitation of children for sexual purposes via social networking websites and chat rooms. The definition of child sexual abuse material should also be clarified and brought closer to that contained in international instruments. The terminology used in this Directive should be brought into line with recognised international standards**,** ~~such as~~ **including** the Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse adopted by the Interagency Working Group in Luxembourg ~~on 28 January 2016, as well as~~ **and the UN Committee on the Rights of the Child's** ~~Report "~~**Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography**[22]. ~~The said Terminology Guidelines point out that the term child sexual abuse material is increasingly being used to replace the term child pornography. This switch of terminology is based on the argument that sexualised material that depicts or otherwise represents children is indeed a representation and a form, of child sexual abuse, and should not be described as pornography.~~ **Accordingly, the term "child pornography" should be replaced by "child sexual abuse material", as it more accurately reflects that such material either records or depicts the sexual abuse of children and avoids terminology that may be understood as equating it with lawful or consensual adult pornography. Likewise, references to "child prostitution" should be replaced by "sexual exploitation of children in prostitution", in order to emphasise the exploitative nature of the conduct and avoid any implication that the child has consented to or bears responsibility for the acts.**

Presidency note: the EP amendment in recital 15 is not retained, instead we propose recital 15a (see below), with some adjustments. Following discussions, the Presidency proposes to update the terminology to reflect developments in the Luxembourg Guidelines. Please see suggested amendments to this recital above. The Presidency welcomes any comments from delegations on this proposal.

[Article 3(2)]

(15a) The change in terminology from 'child pornography' to 'child sexual abuse material' does not affect or prejudice any existing legal obligations of Member States arising from international legal instruments that use the term 'child pornography.' Following this change in terminology, Member States are encouraged, ~~but not obliged,~~ to adapt their national legislation accordingly.

Presidency note: 'but not obliged' can be considered redundant in the context of Member States being encouraged to make this adaptation. The EP has provisionally welcomed this change, in exchange for their amendment not being accepted in recital 15.

[Article 3(2)]

(15b) In order to ~~achieve greater~~ ensure effective protection for children ~~online and to reinforce preventive measures~~, ~~also~~ the intentional conduct of causing a child who has not reached the age of sexual consent to witness sexual activities, including by exposing the child to pornographic content, for sexual purposes, should be criminalised. ~~exposing children to pornographic content, for sexual purposes, should be criminalised.~~

Presidency note: Following discussions with the EP, the Presidency proposes to retain elements of this EP proposal but to update the wording to more accurately reflect the operative text. The EP wishes to ensure that it is clear that exposing children below the age of sexual consent to pornographic content is within the scope of Art. 3(2). The Presidency welcomes the views of delegations on this proposal.

PUBLIC

[Article 3(8) and (9)]

~~**(15c) All forms of sexual abuse of children are of serious nature and should be criminalised. Moreover, offences involving vaginal and anal penetration, as well as forms of oral penetration of a sexual nature, are particularly serious and must be linked to very high penalties.**~~

Presidency note: we propose to delete this recital. It appears redundant given that the penalty levels established in the operative text clearly establish a level of gravity in respect of the offences in this Directive. Moreover, it is perhaps inappropriate when considering the fact that a number of offences in this Directive are of a very serious nature.

[AGREED]

(15d) Engaging in sexual activities with children who have reached the age of sexual consent should be punishable if the child does not consent. The child's consent must be given voluntarily by the child, as a result of the child's freely formed will considered in the context of the surrounding circumstances. In cases in which the child is unable to form a free will, consent cannot be deemed to exist. Such situations could be considered when abuse is made of a recognised position of trust, authority or influence over the child. Persons upholding such a trust or authority could for example work in schools or as supervisors of the child in a work-related or sporting context or be close family members such as parents, stepparents and grandparents or foster care. It also includes situations where abuse is made of a particularly vulnerable situation of the child, for example where the child is in a situation of dependence or has a mental, intellectual, sensory or physical disability and the perpetrator takes advantage of a limited ability of the child to safeguard its sexual integrity, resulting from that disability. This also applies to situations where use is made of coercion, force or threats. Other relevant surrounding circumstances that should be taken into account include situations where the child is sleeping, unconscious, in a state of frozen fright or intoxicated, in a manner impacting its ability to form a free will as well as situations where the child is taken by surprise, or caught off guard, or the act is committed unexpectedly so that the child has no opportunity to make a decision on participation in the sexual act.

[AGREED]

(15e) Voluntary participation must be present at the time the sexual act is performed. Consent to participate can be withdrawn at any moment before or during the act. The fact that a person has indicated in advance that he or she wants to participate in a sexual act does not mean that a later sexual act should in any case be considered voluntary. Voluntary participation must be present throughout the sexual act.

[AGREED]

(15f) Consent cannot be inferred solely from the child's silence, verbal or physical non-resistance or past sexual conduct or by any past or present relations with the offender. A child who voluntarily participates in a sexual act expresses their willingness to participate in some way, e.g. words or deeds. The lack of such expression can be understood as meaning that the participation is not voluntary. Therefore, a child who, for example, is sleeping or unconscious cannot be considered to consent.

[AGREED]

(15g) Recitals [15**d**~~a~~ to 15f~~e~~] and Article 3(**10** ~~8~~) do not seek to limit the circumstances in which it can be considered that a child does not consent to a sexual act.

Presidency note: while agreed, cross-references have been updated here to reflect new numbering. The reference to recital 15d will be updated afterwards, once the recitals are stable.

[AGREED]

(15h) This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in respect of the sexual abuse and exploitation of children. As part of this, the Directive provides for certain forms of conduct committed against children below the age of sexual consent to be criminalised where the issue of consent is immaterial. The Directive does not preclude further offences being provided for in national law, which are predicated on an absence of consent, and which may be prosecuted in respect of child victims.

PUBLIC

[AGREED]

(16) The maximum term of imprisonment provided for in this Directive for the offences referred to therein should apply at least to the most serious forms of such offences.

[Articles 3 to 13]

(17) In order to reach the maximum term of imprisonment provided for in this Directive for offences concerning sexual abuse and sexual exploitation of children and child sexual abuse material, Member States may combine, taking into account their national law, the imprisonment terms provided for in national legislation in respect of those offences.

Presidency note: agreed. This is the Council and EP mandate.

[Articles 3 to 13]

~~(17a) Member States retain the possibility to provide for more severe penalties for individual offences other than those provided for in this Directive.~~

Presidency note: it is proposed to delete this recital as it is redundant. This is established in TFEU and it is unnecessary to repeat here.

[Articles 3 to 13]

(18) This Directive should oblige Member States to provide for criminal penalties in their national legislation in respect of the provisions of Union law on combating sexual abuse and sexual exploitation of children and child sexual abuse material. This Directive should not create any obligations regarding the application of such penalties, or any other available system of law enforcement, in individual cases.

Presidency note: agreed. This is the Council and EP mandate.

PUBLIC

[Article 13]

~~**(18a) The criminal law of all Member States includes provisions on incitement, aiding, abetting and attempt. Member States should be able to have recourse to such general provisions when transposing rules of the current Directive, to the extent these rules to be transposed cover acts that would fall under the national definition of incitement, aiding, abetting or attempt.**~~

Presidency note: this recital reiterates the principles of Article 288 of TFEU and is perhaps superfluous. We would welcome views from delegations as to whether this is required.

[AGREED]

(19) Especially for those cases where the offences referred to in this Directive are committed with the purpose of financial gain, Member States are invited to consider providing for the possibility to impose financial penalties in addition to imprisonment.

PUBLIC

[AGREED]

(20) In the context of child sexual abuse material and of instructions on how to commit offences covered by this Directive, the term not be considered to be committed 'without right' allows Member States to provide a defence in respect of conduct relating to material that could constitute child sexual abuse material or instructions having, for example, a medical, scientific, research, or similar purpose. It also allows activities carried out under domestic legal powers, such as the legitimate possession of child sexual abuse material by the authorities in order to conduct criminal proceedings or to prevent, detect or investigate crime, or activities, including research, carried out by organisations acting in the public interest against child sexual abuse, including when these organisations have been authorised by the competent authorities of the Member State in which they are established. This Directive does not entail any obligation for Member States to provide for or grant such authorisation. These activities include, in particular, the reception, analysis and creation of reports of suspected child sexual abuse material, including the determination of the location where the material referred to in the reports is hosted, submitted to them by online users or other organisations acting in the public interest against child sexual abuse, as well as carrying out searches to detect the dissemination of child sexual abuse material. Furthermore, the term 'without right' does not exclude legal defences or similar relevant principles that relieve a person of responsibility under specific circumstances.

PUBLIC

[Article 5(1), (7) and (8)]

Recital from EP mandate (also included in GA and Commission's initial proposal – see recital 45 below)

~~*(20a) Organisations acting in the public interest on the fight against child sexual abuse, such as the members of the INHOPE network of hotlines, have been active for years in several Member States, cooperating with law enforcement and providers to facilitate the process of removal and reporting of online child sexual abuse material. That work combats re-victimisation by limiting the spread of illegal material online, and can provide evidence to law enforcement of crimes committed. However, the legal framework in which they operate differs considerably from one Member State to another and is, in many cases, lacking in terms of the identification of the tasks that those organisations can lawfully undertake, as well as of the relevant conditions. Member States should be able to provide a legal framework for those organisations to carry out relevant tasks, and in particular the processing of child sexual abuse material, in which case the processing should not be considered to be "without right". Such authorisation legal framework is necessary as it increases legal certainty, maximise synergies between national authorities and other actors involved in the fight against child sexual abuse, and support victims' rights by removing child sexual abuse material from the public digital sphere.*~~

Presidency note: The Presidency proposes the deletion of this recital as it is no longer representative of the operative text and duplicates recital 45. Please see proposals in relation to recital 45 later in this document.

[AGREED]

(21) Knowingly obtaining access, by means of information and communication technology, to child sexual abuse material should be criminalised. To be liable, the person should both intend to access an online location where child sexual abuse material is available and know that such material can be found there. Penalties should not be applied to persons inadvertently accessing online locations containing child sexual abuse material. The intentional nature of the offence may notably be deduced from the fact that it is recurrent or that the offence was committed via a service in return for payment.

[AGREED]

(21a) The designing and adaptation of artificial intelligence systems specifically to the purpose of enabling the production of child sexual abuse material as well as their distribution, dissemination and transmission, offering, supplying or making available, constitute a grave threat to the safety and fundamental rights of children protected under Article 24 of the EU Charter of Fundamental Rights. AI systems designed and adapted specifically to the purpose of enabling the production of such material pose a grave risk to human dignity and the rights of the child, including their right to private life, and risk normalising, amplifying and perpetuating sexual violence against children. The risks addressed by the criminalisation of the above-mentioned conducts do not arise from the mere existence or ordinary use of artificial intelligence systems, but from their intentional design or technical adaptation to enable the generation of child sexual abuse material. Therefore, this Directive does not seek to criminalise general-purpose or open artificial intelligence technologies that have not been specifically designed or adapted for such purposes. This approach is complementary, but distinct from the framework established under Regulation (EU) 2024/1689 [as amended] and it is without prejudice to the obligations that that Regulation sets out to lay down effective, proportionate and dissuasive penalties applicable to infringements by operators. To the extent that a breach of the provisions criminalising the designing and adaptation of artificial intelligence systems specifically to the purpose of enabling the production of child sexual abuse and the related offences under this Directive also infringe the prohibitions in Article 5(1) of Regulation (EU) 2024/1689 [as amended] that result in the imposition of penalties of a criminal nature pursuant to Article 99(1) of Regulation (EU) 2024/1689, Member States are required to ensure respect for the ne bis in idem principle in accordance with the Charter of Fundamental Rights. In the context of the criminal offences relating to AI systems designed or adapted specifically for the purpose of enabling the production of child sexual abuse material covered by this Directive, the term "when committed without right" allows Member States to provide a defence relating to such AI systems when they serve a legitimate purpose, such as activities carried out under domestic legal power, to prevent, detect or investigate a crime or for scientific or research purposes.

PUBLIC

[Articles 6 and 7]

A:

(22) Solicitation of children for sexual purposes is a threat with specific characteristics in the context of the Internet, as the latter provides unprecedented anonymity to users because they are able to conceal their real identity and personal characteristics, such as their age. In the last decade, the use of information and communication technologies has provided offenders with increasingly easy access to children, where the contact often starts with the offender **soliciting** the child, for example by pretending to be a peer or with other deceitful or flattering conduct, into compromising situations. This increased access to children has led to the rapid growth of phenomena such as **sexual extortion**. ~~'sextortion' (i.e. the conduct of threatening to share intimate material depicting the victim to obtain money, child sexual abuse material or any other benefit), affecting children both below and above the age of sexual consent.~~ There has been a surge in recent years of financially motivated **sexual extortion** ~~sextortion~~ by organised crime groups that target in particular teenage boys, which have led to multiple cases of those children taking their lives. It is therefore essential that all these phenomena are appropriately ~~covered~~ **addressed** in Member States's law. **This includes ~~sextortion~~ sexual extortion with the use of self-generated sexually explicit content and sexually explicit content produced with the consent of the child but without the child's intention of disclosure to third persons or to the public. ~~Online solicitation by an adult to meet a child who has not reached the age of sexual consent for the purpose of committing a sexual offence should be criminalized. In cases in which a peer proposes to meet for the purpose of consensual sexual activities, and this does not involve any abuse, exploitation, coercion or force, it shall be within the discretion of the Member States to decide if this should be punishable.~~** ~~At the same time,~~ Member States acknowledge the importance of ~~also~~ combating the solicitation of a child outside the context of the Internet, in particular where such solicitation is not carried out by using information and communication technology. Member States are encouraged to criminalise the conduct where the solicitation of a child to meet the offender for sexual purposes takes place ~~in the presence or proximity of the child~~, ~~for instance~~, **this may also occur** in the form of a particular preparatory offence, **or** attempt to commit the offences referred to in this Directive or as a particular form of sexual abuse. Whichever legal solution is chosen to criminalise 'off-line grooming', Member States ~~should ensure~~ **are encouraged to ensure** that ~~they prosecute the perpetrators of such offences.~~ **such** ~~offences~~ **conduct is** ~~are~~ prosecutable.

OR, B,

(22) Solicitation of children for sexual purposes by way of information and communication technology constitutes a significant threat both due to the level of anonymity afforded to users of these services as they are able to conceal their real identity and personal characteristics, such as their age, as well as the ease with which offenders can engage with children online.

This technology can be used to facilitate different forms of solicitation. Offenders can seek to solicit children, including by pretending to be a peer or engaging in deceitful, manipulative or flattering behaviour. The goal of the solicitation may be to meet a child, online or in-person for sexual purposes, or to solicit a child to produce or share child sexual abuse material.

Information and communication technologies can similarly be used to facilitate sexual extortion. There has been a surge in recent years of financially motivated sexual extortion by organised crime groups that target in particular teenage boys, which have led to multiple cases of children taking their lives. It is therefore essential that all these phenomena are appropriately addressed in Member States's law.

Member States acknowledge the importance of combating the solicitation of children that is not carried out through information and communication technology. Member States are encouraged to criminalise conduct where the solicitation of a child to meet the offender for sexual purposes takes place in-person. Such conduct can be addressed in the form of a particular preparatory offence, attempt to commit the offences referred to in this Directive, or as a particular form of sexual abuse. Irrespective of the legal solution chosen to criminalise 'off-line grooming', Member States are encouraged to ensure that such conduct is prosecutable.

Presidency note: the Presidency proposes two options in respect of this recital. Option A represents a minor re-draft to take account of changes to the operative text. However, the Presidency notes that this recital has become quite lengthy and perhaps overly complex, and therefore wishes to test delegations on Option B, which is significantly shortened. The EP notes the need to align this recital to the operative text and also highlighted that this recital had become quite long. A clear mandate from delegations will enable the Presidency to continue discussions on this recital.

[Article 6]

(23) In light of ~~recent~~ technological developments and, in particular, of the development of augmented, extended and virtual reality settings, the criminalisation of the solicitation of children **~~who have not reached the age of sexual consent~~** should not be limited to voice, text or mail conversations**~~,~~**, ~~but~~ **This** also include**s** contacts**,** ~~or~~ exchanges**, or meetings taking place in virtual worlds including** in augmented, extended or virtual reality settings, as well as large-scale solicitation of children through the use of **artificial intelligence, including** chat-bots trained for that purpose~~, as this phenomenon is itself expected to increase in light of the foreseeable evolution of artificial intelligence applications~~. Therefore "by means of information and communication technology" should be understood in a sufficiently broad way to cover all ~~those~~ **relevant** technological developments.

Presidency note: following negotiations with the EP, the Presidency suggests that the most straightforward approach in respect of this recital may be to delete "who have not reached the age of sexual consent" and to allow the operative text to set out the nuances between the circumstances in which children above the age of consent may be included here. The Presidency requests comments from delegations on this proposal. The Presidency has also defended the Council position that no reference to in-person solicitation should be made in this recital.

PUBLIC

[Article 7]

From EP mandate

~~*(23a) Artificial Intelligence systems are being used to sexually abuse children in a number of ways, including by using images of real children to create child sexual abuse material, or by using voices of real children in such material. This results in the victimisation of real children, which may include survivors of prior child sexual abuse. The use of technology also enables offenders to disguise their identity and more effectively groom and abuse children online, for example through grooming automation techniques. To tackle those phenomena, the acquisition or possession, distribution, dissemination or transmission, the creation or adaptation of such tools designed or adapted primarily for the purpose of enabling the creation of child sexual abuse material should be criminalised.*~~

Presidency note: we propose deleting this recital since we have now recital 21a accompanying new article 5b. This has been provisionally agreed with the EP.

PUBLIC

[Article 10]

(23a) **Live streaming of child sexual abuse refers to online real-time transmission of sexual abuse or sexual exploitation of a child. It allows offenders to watch, and in some cases control or otherwise influence, the abuse while it is taking place. Furthermore, it frequently involves the physical abuse of a child by persons present with the child in question. Such persons are often located in third countries and are acting at the request of offenders located in the Union, in exchange for payment or other forms of consideration. Unlike downloaded child sexual abuse material, live streamed abuse does not normally leave recorded images or other lasting evidence on the viewer's device, unless it is deliberately captured or recorded. This creates particular challenges for the investigation and prosecution of such offences, especially as regards the recovery of evidence and the identification of victims and offenders, thereby increasing the risk of impunity. To facilitate the effective investigation and prosecution of such offences, Member States should consider providing frameworks for close cooperation between financial services, as defined in Article 2, point (b), of Directive 2002/65/EC of the European Parliament and of the Council, and other relevant service providers, where appropriate and in accordance with applicable Union and national law. Such cooperation can be particularly important in identifying and tracing financial transactions connected with the commission of those offences and in supporting cross-border investigations.**

~~**Live online child sexual abuse is also often transmitted to viewers through streaming over the Internet, with the help of social media platforms, or messaging applications. As a consequence of the development of world-wide connectivity and streaming devices, livestreaming of sexual abuse of children is also on the rise. Livestreaming can involve the "in-person" abuse of one or more children, transmitted online, or a child being forced to perform sexual acts in front of a webcam. This means the data are transmitted instantaneously to the viewer, who can watch and engage while the abuse is occurring. Such streaming leaves no trace on the device, because no file is downloaded. This increases the perception of impunity of the offender who proposes or gives money or other form of consideration and creates specific challenges for post-event investigation, particularly relating to the recovery of evidence and the identification of victims and offenders. Member States should criminalise this behaviour.**~~

Presidency note: the Presidency proposes that this recital be merged with recital 33 given the significant overlaps, and welcomes views from delegations on this proposal.

[Article 11]

(23b) The intentional operation or administration of an information society service for the purpose of child sexual abuse or child sexual exploitation is an important driver for the ~~serious criminality~~ offences ~~falling~~ under this Directive. It should therefore be criminalised when it is intentionally designed or adapted to facilitate or promote the commission of offences ~~falling~~ under this Directive. Operating or administering an information society service includes the activities related to the management and organisation of such a service.

Presidency note: proposed amendments to align with operative part, along with one grammatical suggestion.

[AGREED]

(24) This Directive does not govern Member States' policies with regard to consensual sexual activities in which children may be involved and which can be regarded as the normal discovery of sexuality in the course of human development, taking account of the different cultural and legal traditions and of new forms of establishing and maintaining relations among children and adolescents, including through information and communication technologies. Nothing in this Directive should be understood as requiring, or encouraging directly or indirectly, Member States to criminalise, penalise or otherwise sanction such consensual activities, which remain outside the scope of this Directive. In implementing this Directive, Member States should ensure that its provisions are applied in a manner that clearly distinguishes abusive and exploitative conduct from consensual and non-exploitative activities forming part of normal sexual development of children . Member States are encouraged to ensure that consensual sexual activities between peers are not subject to criminalisation or other punitive measures under national law, in so far as the acts did not involve any abuse or exploitation.

PUBLIC

[AGREED]

(25) Member States should provide for aggravating circumstances in their national law in accordance with the applicable rules established by their legal systems on aggravating circumstances. The notion of aggravating circumstances should be understood either as facts allowing the judge to pronounce a higher sentence for the same offence than the one normally incurred without these facts, or as the possibility of retaining several offences cumulatively in order to increase the level of sanction. Therefore, Member States should not be obliged to provide for specific aggravating circumstances where national law provides for separate criminal offences and this may lead to more severe sanctions. The aggravating circumstances should not be provided for in Member States' law when irrelevant taking into account the nature of the specific offence. The relevance of the various aggravating circumstances provided for in this Directive should be evaluated at national level for each of the offences referred to in this Directive.

[Article 15]

~~**(25a) Member States should ensure that at least one of the aggravating circumstances provided for in this Directive is provided for as a possible aggravating circumstance in accordance with applicable rules in their legal system. In any case, it should remain within the discretion of the judge or the court to determine whether to increase or to decrease the sentence, taking into account the specific circumstances in each individual case.**~~

Presidency note: we propose deleting this recital since we have a clear article in the operative part and accompanying recital 25. Moreover, this recital no longer reflects the political agreement. This has been provisionally agreed with the EP.

PUBLIC

[Article 15 + consent]

~~(26) Physical or mental incapacity under this Directive should be understood as also including the state of physical or mental incapacity caused by the influence of drugs and alcohol.~~

Presidency note: We propose deleting this recital since we now have very detailed recitals on consent (in particular recital 15e), which also explain the cases where consent cannot be given. Article 3(10)(a) also deals with this issue comprehensively. There is also an aggravating circumstance on taking advantage of the victim's intoxicated state (article 11(1)(j)). This deletion has been provisionally agreed with the EP.

[AGREED]

(27) In combating sexual exploitation of children, full use should be made of existing instruments on the seizure and confiscation of the proceeds of crime, such as the United Nations Convention against Transnational Organized Crime[9] and the Protocols thereto, the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Council Framework Decision 2001/500/JHA [10], Council Framework Decision 2005/212/JHA [11], and Directive (EU) 2024/1260 of the European Parliament and of the Council[12]. The use of seized and confiscated instrumentalities and the proceeds from the offences referred to in this Directive to support victims' assistance and protection should be encouraged.

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9 OJ L 261, 6.8.2004, p. 70

10 Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (OJ L 182, 5.7.2001, p. 1, ELI: http://data.europa.eu/eli/dec_framw/2001/500/oj

11 Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime Related Proceeds, Instrumentalities and Property (OJ L 68, 15.3.2005, p. 49, ELI: http://data.europa.eu/eli/dec_framw/2005/212/oj).

12 Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation (OJ L 1260, 2.5.2024, p. 1).

[Article 19]

(28) Secondary victimisation should be avoided for victims of offences referred to in this Directive. For example, and without affecting the safeguards provided for in Directive (EU) 2016/800 of the European Parliament and of the Council[13], in Member States where prostitution or the appearance in pornography is punishable under national criminal law, it should be possible not to prosecute or impose penalties under those laws where the child concerned has committed those acts as a result of being victim of sexual exploitation or where the child was compelled to participate in **conduct concerning** child sexual abuse material. ~~**The term "compelled" should be understood in this case as covering also situations where the child has been lured to act, without having been forced or coerced, in addition to situations where the child was forced or coerced to act.**~~

Presidency note: we propose keeping the General Approach, and deleting the sentence explaining the word "compelled" since there might be different understandings across national legal frameworks. Member States do not wish to have a uniform definition applied to this term. Moreover, this does not appear to be an accurate description of what may constitute being 'compelled'. This has been provisionally agreed with the EP.

[13] Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1, ELI: http://data.europa.eu/eli/dir/2016/800/oj.

[AGREED]

(29) As an instrument of approximation of criminal law, this Directive provides for levels of penalties which should apply without prejudice to the specific criminal policies of the Member States concerning child offenders.

[AGREED]

(29**a** ~~e~~) To the extent that conduct constituting a criminal offence as defined in this Directive is attributable to legal persons, such legal persons should be held liable for such an offence. In order to achieve the objectives of this Directive, Member States whose law provides for the criminal liability of legal persons should ensure that their law provides for effective, dissuasive and proportionate types and levels of criminal penalties as laid down in this Directive. In order to achieve the objectives of this Directive, Member States whose law does not provide for the criminal liability of legal persons should ensure that their law provides for effective, dissuasive and proportionate types and levels of non-criminal penalties as laid down in this Directive. The maximum levels of fines provided for in this Directive for the criminal offences defined in it should apply at least to the most serious forms of such offences. The gravity of the conduct, as well as the individual, financial and other circumstances of the legal persons concerned, should be taken into account to ensure that the penalty imposed is effective, dissuasive and proportionate. Member States should be able to set the maximum levels of fines either as a percentage of the total worldwide turnover of the legal person concerned, or in fixed amounts. Member States should decide which of those two options they will use, when transposing this Directive.

Presidency note: the location of this recital has been moved to ensure chronological flow and to mirror the structure of recital 33 in EnviCrime. No content has been changed.

PUBLIC

[AGREED]

(29**b** ~~a~~) Where Member States, in the determination of fines to be imposed on legal persons, opt to implement the criterion of the total worldwide turnover of a legal person, they should decide whether to calculate that turnover based on the business year preceding that in which the criminal offence was committed, or on the business year preceding that of the decision to impose the fine. They should also consider providing for rules for cases where it is not possible to determine the amount of a fine on the basis of the total worldwide turnover of the legal person in the business year preceding that in which the criminal offence was committed, or in the business year preceding that of the decision to impose the fine. In such cases, Member States should be able to take into account other criteria, such as total worldwide turnover in a different business year. Where those rules include the setting of fixed amounts of fines, it should not be necessary for the maximum levels of those amounts to reach the levels established in this Directive as the minimum requirement for the maximum level of fines set in fixed amounts.

[AGREED]

(29**c** ~~b~~) Where Member States opt for a maximum level of fines set in fixed amounts, such levels should be laid down in national law. The highest levels of such fines should apply to the most serious forms of criminal offences defined in this Directive committed by legal persons of financial strength. Member States should be able to determine the method of calculation of those highest levels of fines, including specific conditions therefore. Member States are invited to regularly review the levels of fines set in fixed amounts having regard to rates of inflation and other fluctuations in monetary value, in accordance with procedures laid down in their national law. Member States that do not have the euro as their currency should provide for maximum levels of fines in their currency that correspond to the levels determined in this Directive in euro on the date of its entry into force. Those Member States are invited to regularly review the levels of fines also with regard to the development of the exchange rate.

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[AGREED]

(29d) The establishment of the maximum level of fines is without prejudice to the discretion of judges or courts in criminal proceedings to impose appropriate penalties in individual cases. As this Directive does not establish any minimum levels of fines, the judges or courts should, in any case, impose appropriate penalties taking into account the individual, financial and other circumstances of the legal person concerned and the gravity of the conduct.

[Article 21]

(30) Investigating offences and bringing charges in criminal proceedings should be facilitated, to ~~take into~~ account **for** the difficulty ~~for~~ **faced by** child victims ~~of~~ **in** ~~denouncing~~ **reporting** sexual abuse and the anonymity of offenders in cyberspace. To ensure successful investigations and prosecutions of the offences referred to in this Directive, their initiation should not depend, in principle, on a report or accusation made by the victim or by his or her representative. ~~**The length of the sufficient period of time for prosecution should be determined in accordance with national law.**~~

Presidency note: we propose deleting this addition in the recital since it is covered by recital 31 accompanying article 16a. This has been provisionally agreed with the EP.

PUBLIC

[AGREED]

(31) Victims of sexual abuse and sexual exploitation of children are often unable to report the crime for years and even decades after its commission due to the shame, guilt and self-blame, which can be related, among others, to the social and cultural stigma that still surround sexual abuse, the secrecy in which the abuse takes place, threatening or blaming conduct by the perpetrator, and/or trauma. Perpetrators of sexual abuse and sexual exploitation of children, unlike perpetrators of other violent crimes, tend to remain active until old age, continuing to pose a threat to children. In light of this, effective investigation and prosecution of offences involving sexual abuse and sexual exploitation of children, as well as appropriate victims' assistance and support, can only be provided if statutes of limitations allow victims to report the crime for a significantly extended period of time. Member States should take the necessary measures to ensure that statutes of limitation**s** for initiating proceedings do not expire until the victim reaches the age of majority plus an adequate number of years in accordance with this Directive, without prejudice to national rules that do not set limitation periods for investigation, prosecution and enforcement. As long as this result is achieved, Member States are free to determine the specific modalities governing limitation periods, including their starting point, and length of their statutes of limitations, applicable rules on suspension or interruption, in accordance with their national legal system. For example, the time for which the limitation period is suspended or does not start following the commission of the crime until the victim reaches a certain age according to national law can be considered.

PUBLIC

[AGREED]

(32) To ensure the effective and proportionate investigation and prosecution of the offences referred to in this Directive. Member States should make available to competent authorities effective investigative tools such as those available under their national law for combatting organised crime or other serious crime cases, if and to the extent that the use of those tools is appropriate and proportionate to the nature and gravity of the criminal offences as provided for in national law. Such tools could include the interception of communications, covert surveillance, including electronic surveillance, the monitoring of bank accounts and other financial investigation tools. Those tools should be used in line with the principle of proportionality and in full respect of the Charter. It is imperative that the right to the protection of personal data be respected. In accordance with national law, such tools should include the possibility for law enforcement authorities to conduct undercover online investigations As those crimes are, in most cases, facilitated or enabled by online tools and are therefore intrinsically cross-border to ensure effective investigation and prosecution, Member States' competent authorities should also cooperate where appropriate through and with Europol and Eurojust, within their respective competences and in accordance with the applicable legal framework.

PUBLIC

[Article 20]

~~(33) Some forms of online child sexual abuse, such as the live streaming of abuse of children, often committed physically by persons present in third countries at the request of paying perpetrators in the EU, create particular investigative challenges, as the streamed abuse does not usually leave images or recorded traces behind. Cooperation with financial services defined in Article 2, point (b), of Directive 2002/65/EC of the European Parliament and of the Council[14] and other relevant service providers can be crucial to overcome challenges in investigating and prosecuting such offences. Hence, to ensure effective investigation and prosecution, Member States should consider providing frameworks for close cooperation between financial services and other relevant service providers such as providers of live streaming services. This would reduce impunity and ensure that all of the offences covered by this Directive can be investigated effectively, using targeted and appropriate tools and resources.~~

Presidency note: we propose to discuss this recital, and merge its content with that of recital 23a.

~~[14] Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ L 271, 9.10.2002, p. 16, ELI: http://data.europa.eu/eli/dir/2002/65/oj).~~

(34-a) **In order to ensure the effective detection, investigation and prosecution of offences referred to in this Directive, professionals working in close contact with children should be able to report situations where they have reasonable grounds to believe that a child is a victim, or could become a victim, of such offences. To that end, national rules on confidentiality and professional secrecy should not prevent such reporting where it is necessary to protect children from such offences. Legal professional privilege should be protected, in accordance with Article 7 of the Charter, as justified by the fundamental role assigned to lawyers in a democratic society.**

Presidency note: the Presidency notes that the addition of a sentence relating to legal professional privilege was agreed at trilogue, see line 46b. However, the location of this sentence was not agreed at trilogue. The Presidency proposes to include this in a new recital 34-a given that recital 34 pertains to Article 17(2) alone. The EP has requested that this addition be prefaced with an explanation pertaining to professional secrecy and confidentiality rules. The Presidency considers this to be acceptable given that this aligns with the operative text in Art. 17(1).

[Articles 22, 23]

(34) Member States should encourage any person who has knowledge or suspicion of the sexual abuse or sexual exploitation of a child to report **this** to the competent ~~services~~ **authorities**. In particular, Member States should make available information to children about the possibility to report the abuse~~, including to helplines~~. It is the responsibility of each Member State to determine the competent authorities to which such suspicions may be reported. Those competent authorities should not be limited to child protection services or relevant social services**, but can also include for example youth welfare offices**. The requirement of suspicion 'in good faith' should be aimed at preventing the provision being invoked to authorise the denunciation of purely imaginary or untrue facts carried out with malicious intent.

Presidency note: The sentence encouraging Member States to make information available to helplines is moved to this new recital on helplines (see below – new recital 36b). Secondly, 'services' is replaced by 'authorities' to align with the operative text.

[AGREED]

(34a) The best interests of the child as provided by Article 3 of the UN Convention on the rights of the child and Article 24, section 2, of the European Charter of Fundamental Rights must be the guiding principle for professionals working in close contact with children in the child protection, education, childcare and health care sectors when reporting suspicion that an offence punishable under this Directive has been committed or is likely to be committed to the competent authorities. Article **22** ~~17~~ para. 3 therefore provides for an obligation to report at least in cases where the professionals in question have substantial grounds to believe that the wellbeing of the child is in serious and imminent danger. Each Member State should determine the competent authorities to which such suspicion should be reported. Those competent authorities are in particular not limited to law enforcement agencies but can also include for example youth welfare offices.

[Articles 22, 23]

From EP mandate

~~*(34a) All professionals, whether staff or contractuals, and volunteers in close contact with children should undergo mandatory training to recognise abuses and the steps to be taken to ensure the safety of a child. That training should focus on what constitutes online and offline child sexual abuse, help recognising indicators of abuse such as physical injuries, emotional distress, behavioural changes, and help identifying available reporting procedures.*~~

Presidency note: we propose deleting this article since recital 46 (training) and article 28 already cover this. The EP has provisionally agreed with this deletion.

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[Articles 22, 23]

From EP mandate

~~*(34b) Member States should ensure that existing and new reporting mechanisms, including through information and communication technologies, are easily accessible, safe, child-appropriate, confidential, and free of charge. Third party reporting should be offered as an option to victims to facilitate their access to justice, in particular when they fear repercussions in case they reported the crime in person or when they face other barriers to contacting the competent authorities directly. Adequate resources and staff should be made available to ensure correct support and care, and reporting mechanisms should be inserted within specialised interagency structures to combat child sexual abuse.*~~

Presidency note: the relevant operative part was deleted as the outcome of the negotiations (see article 18) due to the overlap with VRD (recast). Therefore, we propose the deletion with this recital. The EP has provisionally agreed with this deletion.

PUBLIC

[Article 24]

(35) Rules on jurisdiction should be amended to ensure that sexual abusers or sexual exploiters of children from the Union face prosecution even if they commit their crimes outside the Union~~,~~ **through the sexual exploitation of children while travelling or engaging in tourism** ~~in particular via so-called sex tourism~~. The sexual exploitation of children in travel **or** ~~and~~ tourism should be understood as the sexual exploitation of children by a person or persons who travel from their usual environment to a destination abroad where they have sexual contact with children **and** ~~partake~~ **commit** ~~in~~ **offences as described in this Directive**. Where the sexual exploitation of children in travel **or** ~~and~~ tourism takes place outside the Union, Member States are encouraged to seek to increase, through the available national and international instruments including bilateral or multilateral treaties on extradition, mutual assistance or a transfer of the proceedings, cooperation with third countries and international organisations with a view to combating ~~sex tourism~~ **sexual exploitation of children abroad**. Member States should foster open dialogue and communication with countries outside the Union in order to be able to prosecute perpetrators, under the relevant national legislation, who travel outside the Union borders for the purposes of the sexual exploitation of children in travel ~~and~~ **or** tourism.

Presidency note: Some elements of the EP proposal are accepted in this amended recital. The Presidency also proposes removing the reference to 'sex tourism' and replacing this with reference to 'sexual exploitation of children during travel or tourism' as this language is more appropriate. Some other minor linguistic changes are suggested by the Presidency.

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[AGREED]

(36) Measures to protect child victims in a comprehensive manner should be adopted in their best interest, taking into account an assessment of their needs. Effective child protection requires a comprehensive approach. With the child at the centre, all relevant authorities and services should work together to protect and support the child, in their best interests, as soon as they receive credible indication that a child has been subject of sexual abuse or exploitation. Filing of a formal complaint should not be a precondition for accessing support and protection measures. The "Barnahus" model of providing a child-friendly environment staffed with specialists from all relevant disciplines is one of several advanced examples of a child-friendly approach to justice and to avoiding revictimisation. The relevant provisions of this Directive are built on the principles of that model. That model aims to ensure that all children involved in child abuse or child sexual exploitation investigations benefit from a high-quality assessment in child-friendly settings, appropriate psychosocial support and child protective services. This Directive attempts to ensure that all Member States uphold these principles, although it does not require the Member States to follow the Barnahus model as such. Where the targeted and integrated support services are not provided within the same premises, the objective of ensuring child-friendly, age-appropriate and coordinated support could be achieved through appropriate organisational and procedural measures, to ensure that the coordinated multi-agency mechanism remains effective in practice. In this context, services could, where feasible, be organised in close geographical proximity, together with other measures that facilitate structured coordination between the relevant services, clear and fast-tracked procedures, accessibility and continuity of support and appropriate communication with the child at each stage of the process. Where medical examinations of the child are necessary for the purposes of the criminal investigations, for example to gather evidence of abuse, these should be carried out by professionals trained for this purpose. This obligation should not prevent other medical examinations necessary for the well-being of the child. Child victims should have easy access to child friendly justice, legal remedies and measures to address conflicts of interest where sexual abuse or sexual exploitation of a child occurs within the family. When a special representative should be appointed for a child during a criminal investigation or proceeding, this role may be also carried out by a legal person, an institution or an authority. Moreover, child victims should be protected from penalties, for example under national legislation on prostitution, if they bring their case to the attention of competent authorities. Furthermore, participation in criminal proceedings by child

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victims should not cause additional trauma to the extent possible, as a result of interviews or visual contact with offenders. All authorities involved in the proceedings should, where appropriate and without prejudice to the judicial independence, be trained in child friendly justice. A good understanding of children and how they behave when faced with traumatic experiences will help to ensure a high quality of evidence-taking and also reduce the stress placed on children when carrying out the necessary measures. Where child victims participate in criminal proceedings, the court should take account of their age and maturity in conducting the proceedings and should ensure that the proceedings are accessible and understandable to the child.

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[Articles 25, 26]

From EP mandate

~~*(36a) It is essential for Member States to establish multidisciplinary structures to integrate expertise from law enforcement, child protection agencies, healthcare professionals, educators and mental health specialists. Those structures should be tailored to addressing the complexities of online exploitation and should encompass swift and coordinated responses to identify, investigate and prosecute offenders while safeguarding the well-being of victims. Those structures, which should be based on the Barnahus model, should be supported by the extensive training, education and professional development of staff and should facilitate the establishment of physical support centres. They should enable victims to receive treatment and participate in criminal proceedings available in one place without the risk of repeated re-traumatisation. Those structures are the most efficient approach for supporting child victims of abuse due to their holistic, child-centred, and multidisciplinary nature. Promoting the standards of the Barnahus model is essential for ensuring the well-being and rights of child victims. To ensure better reporting, Member States should be encouraged to diversify reporting mechanisms, taking into account the diverse and evolving manifestations of the crimes and the child's needs and specific vulnerabilities.*~~

Presidency note: we propose deleting this recital since it is already covered in recital 36 accompanying article 26. This has been provisionally agreed with the EP.

PUBLIC

New Recital related to helplines (article 26(2)):

(36b) The provision of helplines does not require Member States to establish a new helpline, but could be implemented in conjunction with an existing helpline at national level. These helplines should be available during adequate operating hours that will allow for easy access by children. **Moreover, Member States should make information available to children about the possibility of seeking advice and support from helplines.**

Presidency note: the Presidency proposes the above addition to align with the operative text. To note, the original recital 34 Commission proposal contained the line: "In particular, Member States should make available information to children about the possibility to report the abuse, including to helplines." This was retained in the Council General Approach and EP Mandate. However, the Presidency does not propose to retain this element. It does not reflect the operative text and helplines are not the appropriate outlet for formally reporting abuse. The EP has provisionally agreed with the proposed recital above.

[Articles 25, 26]

(37) Member States ~~**may**~~ **should** provide tailored and comprehensive short-and long-term assistance to child victims. Any harm caused by the sexual abuse and sexual exploitation of a child is significant and should be addressed as soon as possible after the first contact of the victim with the authorities. Immediate assistance to victims before and during criminal investigations and proceedings is essential to limit the long-term trauma linked to the abuse suffered. To facilitate the swift provision of assistance, including the identification of the relevant support services, Member States should **ensure that** ~~**base their assistance on**~~ guidelines and protocols for healthcare, education and social service professionals~~,~~ **are issued,** including **for** ~~the~~ staff at helplines. Because of the nature of the harm caused by sexual abuse and sexual exploitation, such assistance should continue for as long as necessary for the child's physical and psychological recovery and may last into adulthood if necessary. **Member States can consider extending** ~~A~~**a**ssistance and advice ~~should be considered to be extended~~ to parents, carers or guardians of the ~~child~~ victims where they are not involved as suspects in relation to the offence concerned, in order to help them to assist ~~child~~ victims throughout the proceedings**,** ~~**even**~~ **including when they have reached adulthood**.

Presidency note: The above proposal is provisionally agreed with the EP, with the exemption of the final sentence. In the first sentence, 'may' has been changed to 'should' to reflect the now-mandatory nature of the operative text. Further, it is proposed to change 'base their assistance on' to 'ensure that' given that these guidelines are now mandatory. The final sentence stems from the Commission proposal and was included in the General Approach, with the addition of the text in bold relating to adulthood. This goes beyond the scope of the operative text but was agreed in the original mandates. The Presidency proposes that the use of 'can' in this sentence is more appropriate than 'should' given that this text cannot place any obligation on Member States. The Presidency has also proposed some linguistic improvements to this text. The EP and Presidency provisionally came to the conclusion that it may be appropriate to remove 'child' preceding 'victim' given that this provision is intended to apply onwards into adulthood. Both sides have agreed to reflect further on this proposal. The Presidency therefore welcomes comments from delegations.

[AGREED]

(38) Persons who have suffered from child sexual abuse and sexual exploitation, some of whom prefer to be referred to as survivors, often experience trauma that lasts well into adulthood, entailing long-term effects which often prevent victims from reporting the offence and from seeking assistance and support for years or even decades. Therefore, Member States should provide tailored and comprehensive short- and long-term assistance to victims of child sexual abuse and sexual exploitation, including during their adulthood where necessary.

PUBLIC

[Article 27]

~~(39) Directive 2012/29/EU establishes a set of victims' rights in criminal proceedings, including the right to protection and the right to receive a decision on compensation from the offender . The proposal for the revision of the Victims' Rights Directive provides for targeted amendments to **several** victims' rights. In addition to the rights established under that Directive, child victims of sexual abuse, sexual exploitation and child sexual abuse material should be given access to legal counselling and, in accordance with the role of victims in the relevant justice systems, to legal representation, including for the purpose of claiming compensation from the **offender**. The purpose of legal counselling is to enable victims to be informed and receive advice about the various possibilities open to them. **The possibility of access to** legal **counsel for the victim** should be without **prejudice to the monopoly reserved in some Member States for certain categories of persons to provide such advice, in particular lawyers. Moreover, it is left to the Member States to determine**, in accordance with **their national law, the framework and place in which such advice is given**.~~

(39c) In addition to the rights established under Directive 2012/29/EU, child victims should be given access to legal counselling and, in accordance with the role of victims in the relevant justice systems, to legal representation, including for the purpose of claiming compensation. Such legal counselling and legal representation could also be provided by the competent authorities for the purpose of claiming compensation from the State. The purpose of legal counselling is to enable victims to be informed and receive advice about the various possibilities open to them. Legal counselling should be provided by a person having received appropriate legal training without necessarily being a lawyer. Legal counselling and, in accordance with the role of victims in the relevant justice systems, legal representation should be provided free of charge, at least when the victim does not have sufficient financial resources, in a manner consistent with the internal procedures of Member States.

Presidency note: we propose deleting this recital as much as is already covered in recital 39a. However, some elements, such as 'legal counselling' are required elsewhere. The EP has been firm on this point. Therefore, the Presidency propose that this recital is remodelled based on recital 39 on the 2011 Directive. The Presidency welcomes comments from delegations on draft compromise.

[AGREED]

(39a) Directive 2012/29/EU establishes a set of victims' rights, which include the right to access support services, the right to protection, the right to legal aid or to receive a decision on compensation and Directive 2024/1385 sets minimum standards of support for victims of violence against women and domestic violence, which both cover also child victims. Building on the requirements set out in Directive 2012/29/EU and Directive 2024/1385, the legal framework needs to be supplemented in order to ensure that victims of child sexual abuse and exploitation can access their rights and be supported accordingly to their specific needs.

[AGREED]

(39b) Victims of offences covered by this Directive should be able to claim full compensation from offenders for the damages suffered. These may include, for example, the specific and often long-lasting harm caused by the online circulation of child sexual abuse material depicting the victim, which may result in ongoing and repeated victimisation. Taking due account of such elements may contribute to ensuring that the right to compensation is effective in practice.

[AGREED]

~~(40)~~

[AGREED]

(40a) The mechanisms established by Member States to ensure effective coordination and cooperation between all the relevant actors at national level as provided by the Directive, should also ensure where appropriate and where applicable, effective coordination and cooperation with Union agencies and bodies, such as Eurojust and Europol, and with any other Union agency or body if and once established specifically to address issues related to child sexual abuse within their respective competences.

[AGREED]

(40b) Taking into account the rules on cross-border cooperation and mutual legal assistance in criminal matters, Member States are encouraged, where appropriate and within their respective competences, to cooperate with competent authorities of third countries in the fight against the criminal offences referred to in this Directive. Such cooperation should also involve, where appropriate, Union agencies and bodies such as Europol and Eurojust, within their respective competences.

~~(41) Member States may choose to appoint existing bodies or entities, such as national Coordinating Authorities already designated in accordance with Regulation […/…/EU Proposed CSA regulation], as national authorities or equivalent mechanisms under this Directive, to the extent that this is compatible with the need to ensure that the tasks attributed to them under this Directive are performed effectively and in full.~~

Presidency note: the Presidency proposes to delete this recital, and EP agrees with such deletion.

PUBLIC

[Article 31]

(42) ~~Member States should undertake action to prevent or prohibit acts related to the promotion of child sexual abuse and the sexual abuse and sexual exploitation of children in travel and tourism. Different preventative measures could be considered, such as the drawing up and reinforcement of a code of conduct and self-regulatory mechanisms in the tourism industry, the setting-up of a code of ethics or 'quality labels' or establishing an explicit policy for tourist organisations combating the sexual abuse and sexual exploitation of children in travel and tourism.~~ Member States should leverage the tools at their disposal under EU law, national law, and international agreements, for the purpose of preventing the sexual abuse and sexual exploitation of children in travel ~~and~~ **or** tourism through or towards their territory, most notably by taking appropriate action upon reception of relevant information from third countries, including conducting further checks ~~or issuing a refusal~~ of entry in the context of the Regulation (EU) 2018/1861 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks[15]. **Member States can also make use of Regulation (EU) 2016/399 (Schengen Borders Code), or other equivalent provisions in national law in respect of Member States not bound by this Regulation, to issue refusals of entry when a person is travelling to a Member State for the purpose of engaging in sexual abuse or sexual exploitation of children. Where the person travelling is a Union citizen, Member States can consider taking action to prevent this travel in accordance with Directive 2004/38/EC. This is not an exhaustive list of the measures which can be undertaken by Member States to prevent travel for the purpose of sexual abuse or exploitation of children.**

[15] Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006, OJ L 312, 7.12.2018, p. 14–55, ELI: http://data.europa.eu/eli/reg/2018/1861/oj.

Presidency note: the EP and Council have agreed on a new offence on travel arrangements for sexual purposes (article 12), and the self-regulatory measures (quality labels, code of ethics) listed in this recital lower the level of ambition of the text and could be classified as soft measures. These are unnecessary in the context of having a robust criminal offence. Therefore, the Presidency proposes the deletion of the beginning of this recital. The Presidency notes that the second part of this proposal, relating to measures that Member States can take to prevent travel for the purpose of sexual exploitation and abuse of children is not correctly framed. The reference to SIS should refer to Regulation (EU) 2016/399 (Schengen Borders Code) as this is the legal basis for issuing refusals of entry rather than SIS itself which hosts such information. This can be used where a third country national is entering the Schengen zone. The Presidency also proposes making reference to equivalent national law provisions in recognition of the fact that not all Member States are members of the Schengen zone. The Presidency notes that it may be possible, in certain circumstances, to refuse entry to Union citizens travelling to a member state other than that of their residence on public policy grounds in accordance with Directive 2004/38. Member States can consider making use of this instrument where there is reason to believe that the Union citizen is travelling to their Member State for the purpose of engaging in sexual abuse or sexual exploitation of children. The Presidency proposes this re-draft to address the underlying issues in the Commission's original proposal, and will subsequently test it with the EP.

[AGREED]

(42a) Anonymity is an essential requirement for the effectiveness of some preventive intervention programmes or measures, such as helplines or on-line chats, given that the identity disclosure could discourage persons fearing that they might commit an offence from participating in those programmes or measures. Therefore, where appropriate and necessary for the effectiveness of preventive programmes or measures, Member States should allow that such programmes or measures are provided on an anonymous basis. However, where, under national law, access to such programmes or measures falls within the national health and social systems and the applicable rules do not permit anonymity, Member States should not be required to allow anonymous access.

[AGREED]

(43) Member States should establish or strengthen policies to prevent sexual abuse and sexual exploitation of children, including measures to discourage and reduce the demand that fosters all forms of sexual exploitation of children, and measures to reduce the risk of children becoming victims, by means of, information and awareness-raising campaigns, including for parents, volunteers, carers, teachers, educators, child protection professionals, social and foster care professionals, trainers, coaches, legal professionals, front-line police officers, healthcare professionals, religious community leaders and society at large. For the same reasons, Member States should strengthen research on the topic as well as education programmes. In such initiatives, Member States should adopt a child-rights based approach. Care should be taken to ensure that awareness-raising campaigns aimed at children are appropriate and sufficiently easy to understand, and tailored to the specific needs of children of different age groups, including pre-school children as well as children who are particularly vulnerable, including children with disabilities children in contexts of migration, or children who do not conform to conventional norms. Prevention measures should take a holistic approach to the phenomenon of child sexual abuse and sexual exploitation, by addressing its online and offline dimensions and mobilizing all relevant stakeholders. In particular for the online dimension, measures should include the development of digital literacy skills, including critical engagement with the digital world, to help users identify and address attempts of online child sexual abuse, seek support and prevent its perpetration. Particular attention should be paid to prevention of child sexual abuse and sexual exploitation of children that are cared for in a group facility rather than in the context of family-based care.

PUBLIC

[Articles 32, 33, 34]

From EP mandate

~~*(43a) Member States should ensure that law enforcement authorities investigate without undue delay attempts to solicit children for sexual purposes and that child victims of such solicitation attempts are effectively referred to relevant support services for assistance and protection.*~~

Presidency note: we propose deleting this recital since it is not up to this criminal law instrument to dictate the priorities of the law enforcement authorities. All offences under this Directive are serious and should be investigated accordingly. The provisions on assistance and protection under this Directive are comprehensive and there is no need to highlight a specific offence. The EP has provisionally agreed with the deletion of this recital.

The Presidency proposes instead the following compromise, aiming at addressing the EP's mandate in recital 9a (proposed to be deleted – see above). The Presidency noted to the EP that recital 9a (see above) had a number of issues, including that the source of these studies was not made clear, and that it was uncertain whether these were reputable studies that represented the situation in all Member States. The EP provisionally agreed to delete this recital, provided that a short recital outlining the need for gender-sensitive measures in accordance with Art. 33(5) of this Directive is included in the place of recital 43a. The Presidency therefore proposes a short recital to reach this objective and welcomes views from delegations on this proposal.

Presidency proposal:

Girls are disproportionately affected by CSA offences committed in online environments. Children are increasingly exposed to such online environments at younger ages. In addressing these phenomena, employing a gender-sensitive approach is important.

PUBLIC

[AGREED]

(44) Regarding the system of reporting sexual abuse and sexual exploitation of children and helping children in need, **such as INHOPE** hotlines **and helplines** under the number 116 000 for missing children, 116 006 for victims of crime and 116 111 for helplines for children, as introduced by Commission Decision 2007/116/EC [16], should be promoted and experience regarding their functioning should be taken into account.

Presidency note: the Presidency proposes a minor adjustment to the recital, already agreed at the last trilogue, to avoid any confusion between hotlines and helplines.

[Article 5(1), (7) and (8)]

(45) Organisations acting in the public interest on the fight against child sexual abuse, such as the members of the INHOPE network of hotlines, have been active for years in several Member States, cooperating with law enforcement and providers to facilitate the process of removal and reporting of online child sexual abuse material. This work combats re-victimisation by limiting the spread of illegal material online, and can provide evidence to law enforcement of crimes committed. However, the legal framework in which they operate differs considerably from one Member State to another and is, in many cases, lacking in terms of the identification of the tasks that these organisations can lawfully undertake, as well as of the relevant conditions. Member States **are encouraged** to provide an authorisation for these organisations to carry out relevant tasks, and in particular the processing of child sexual abuse material, in which case the processing should not be considered to be "without right". Such authorisations are encouraged as they increase legal certainty, maximise synergies between national authorities and other actors involved in the fight against child sexual abuse, and support victims' rights by removing child sexual abuse material from the public digital sphere.

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16 Commission Decision 2007/116/EC of 15 February 2007 on reserving the national numbering beginning with 116 for harmonised numbers for harmonised services of social value (OJ L 49, 17.2.2007, p. 30, ELI: http://data.europa.eu/eli/dec/2007/116(1)/oj).

Presidency note: same recital as recital 20a under the EP mandate (see above). We propose keeping the wording from Commission and General Approach (as included here) as well as this placement here – since this recital is related to article 25 and 28.

[AGREED]

(46) Professionals likely to come into contact with child victims of sexual abuse and sexual exploitation should be adequately trained to identify and deal with such victims. To ensure child-friendly justice throughout the investigation and prosecution of child sexual abuse and sexual exploitation cases, that training should be promoted for members of the following categories when they are likely to come into contact with child victims: police officers, public prosecutors, lawyers, members of the judiciary and court officials, child and health care personnel, professionals in the education sector, including in early childhood education and care, social services, providers of victim support and restorative justice services, but could also involve other groups of persons who are likely to encounter child victims of sexual abuse and sexual exploitation in their work.

[AGREED]

(47) Intervention programmes or measures, specifically aimed at preventing the commission or repetition of the offences referred to in this Directive and targeted to the needs of persons subject to criminal proceedings or convicted for committing any of the offences covered by the Directive should be available in Member States. Those intervention programmes or measures are without prejudice to intervention programmes or measures imposed by the competent judicial authorities. Member States are not obliged to create new intervention programmes or measures provided that effective and targeted ones are already available in the context of the fight against child sexual abuse and that they adequately address the risks associated with such offences. Those intervention programmes or measures should meet a broad, flexible approach focusing on the medical and psycho-social aspects and have a non-obligatory character. Member States are encouraged to ensure that the programmes and measures are accessible without undue restrictions in line with national standards.

PUBLIC

[Articles 32, 33, 34]

(48) ~~It is for the Member State to decide which intervention programmes or measures are appropriate **and they should ensure that** these **referred** programmes or measures **are** accessible in line with national standards**. In addition, i**~~ **Individuals who fear that they** ~~may~~ **might offend should have access to** ~~**these**~~ intervention **programmes or measures without undue restrictions**.

Presidency note: we propose deleting most of this recital as it is already covered in recital 47. We propose retaining the final sentence as recital 47 relates only to persons subject to criminal proceedings or those who have been convicted.

[AGREED]

(49) To prevent and minimise recidivism, offenders should be subject to an assessment of the danger posed by the offenders and the possible risks of repetition of sexual offences against children. Arrangements for such assessment, such as the type of authority competent to order and carry out the assessment or the moment in or after the criminal proceedings when that assessment should take place as well as arrangements for effective intervention programmes or measures offered following that assessment should be consistent with the internal procedures of Member States. For the same objective of preventing and minimising recidivism, offenders should also have access to effective intervention programmes or measures on a voluntary basis. Those intervention programmes or measures should not interfere with national schemes set up to deal with the treatment of persons suffering from mental health issues and should be accessible and affordable in line with national standards concerning healthcare, for example with regard to their eligibility for reimbursement under the health schemes of the Member States.

PUBLIC

[AGREED]

(50) Where the danger posed by the offenders and the possible risks of repetition of the offences make it appropriate, convicted offenders should be temporarily or permanently prevented from exercising at least professional activities and organised voluntary activities involving direct and regular contacts with children or within organisations that work for children or organisations acting in the public interest on the fight against child sexual abuse . Employers when recruiting for a post involving direct and regular contact with children should request information on existing convictions for sexual offences against children entered in the criminal record, or of existing disqualifications. For the purposes of this Directive, the term 'employers' should also cover persons running an organisation that is active in volunteer work related to the supervision or care of children involving direct and regular contact with children , including community settings such as schools, hospitals, social care services, sports clubs or religious communities. For the purpose of this Directive, "direct and regular contact" refers to activities where an individual interacts with children in a structured, ongoing capacity, and does not include occasional activities, such as sporadic, short-term, or one-off events with limited or unpredictable contact. The way such information is delivered, such as for example access via the person concerned, and the precise content of the information, the meaning of organised voluntary activities and direct and regular contact with children should be laid down in accordance with national law. However, the information transmitted from one competent authority to another should at least contain all relevant records stored by any Member State in their national criminal records registers, and all relevant records that can be easily obtained from third countries, such as information that can be obtained from the United Kingdom through the channel established in accordance with Title IX of Part Three of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part[17].

[17] OJ L 149, 30.4.2021, p. 10, ELI: http://data.europa.eu/eli/agree_internation/2021/689(1)/ojhttp://data.europa.eu/eli/agree_internation/2021/689(1)/oj.

[AGREED]

(51) In the area of child sexual abuse, the phenomenon of offenders that regain access to children after a conviction or disqualification by moving to another jurisdiction is particularly widespread and worrisome. It is therefore crucial to take all necessary measures to prevent this phenomenon. With due regard to the different legal traditions of the Member States, this Directive takes into account the fact that access to criminal records is allowed only either by the competent authorities or by the person concerned. This Directive does not establish an obligation to modify the national systems governing criminal records or the means of access to those records.

[Article 16]

(52) **For information not or not yet available in ECRIS, ~~for example information concerning offending third country nationals until the time Regulation 2019/816 of the European Parliament and of the Council[1] is fully implemented,~~ Member States should make use of other channels to provide all relevant information to employers that recruit for a post involving direct and regular contact with children.** The aim of this Directive is not to harmonise rules concerning consent of the person concerned when exchanging information from the criminal registers, i.e. whether or not to require such consent. Whether the consent is required or not under national law, this Directive does not establish any new obligation to change the national law and national procedures in this respect.

Presidency note: We suggest that reference to ECRIS-TCN is not required, and propose keeping this as in the Council General Approach. Data pertaining to third country nationals can already be exchanged between the Member States via ECRIS. The operational status of ECRIS-TCN is not a prerequisite for such exchanges, since ECRIS-TCN's primary function will be to centralise this data and streamline existing processes.

[AGREED]

(53) Member States may consider adopting additional administrative measures in relation to perpetrators, such as the registration in sex offender registers of persons convicted of offences referred to in this Directive. Access to those registers should be subject to limitation in accordance with national constitutional principles and applicable data protection standards, for instance by limiting access to the judiciary or law enforcement authorities.

[AGREED]

(54) Member States should take the necessary measures to create mechanisms for data collection at the national, local or regional levels and in collaboration with civil society, for the purpose of observing and evaluating the phenomenon of sexual abuse and sexual exploitation of children, building also on the broader data collection obligations set in ~~the Directive […/…] [Victims rights Directive, Recast], and Regulation (EU) [Regulation to prevent and combat child sexual abuse]~~**Directive 2026/1472 of the European Parliament and of the Council**[18], **and other EU legal instruments**. In order to be able to properly evaluate the results of actions to combat sexual abuse and sexual exploitation of children and child sexual abuse material, the Union should continue to develop its work on methodologies and data collection methods to produce comparable statistics.

[18] **Directive (EU) 2026/1472 of the European Parliament and of the Council of 17 June 2026 amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA**

[AGREED]

(55) Member States should take appropriate action for setting up information services to provide information on how to recognise the signs of sexual abuse and sexual exploitation.

[Article 35]

(56) Child sexual abuse material is a specific type of content which cannot be construed as the expression of an opinion. ~~To combat it, it is necessary to reduce the circulation of child sexual abuse material by making it more difficult for offenders to upload such content onto the publicly accessible web.~~ Action is therefore necessary to remove the content and apprehend those guilty of making, distributing or downloading child sexual abuse material. With a view to supporting the Union's efforts to combat child sexual abuse material, Member States should use their best endeavours to cooperate with third countries in seeking to secure the removal of such content from servers within their territory.

Presidency note: we propose deleting the above line which goes beyond the operative part (article 35). The purpose of the article is not to make it difficult for offenders to upload CSAM but to ensure that Member States remove CSAM promptly from platforms hosted in their territory and endeavour to get CSAM removed from platforms which are not hosted in their territory,

[AGREED]

(57) Member States' efforts to reduce the circulation of child sexual abuse material, including by cooperating with third countries under this Directive, should not affect Regulation (EU) 2022/2065, **and other relevant EU instruments** ~~Regulation (EU) 2021/1232 and […/…/ Regulation laying down rules to prevent and combat child sexual abuse]~~. Online content constituting or facilitating criminal offences referred to in this Directive will be subject to measures pursuant to Regulation (EU) 2022/2065 of the European Parliament and of the Council[19] as regards illegal content.

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[19] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1

[Article 35]

(58) Despite such efforts by Member States , the removal of child sexual abuse material at its source is often not possible when the original materials are not located within the Union, either because the State where the servers are hosted is not willing to cooperate or because obtaining removal of the material from the State concerned proves to be particularly long. Mechanisms may also be put in place to block access from the Union's territory to ~~Internet pages identified as containing or disseminating~~ child sexual abuse material . The measures undertaken by Member States in accordance with this Directive in order to remove or, where appropriate, block ~~websites containing~~ **access to** child sexual abuse material could be based on various types of public action, such as legislative, non-legislative, judicial or other. In that context, this Directive is without prejudice to voluntary action taken by the Internet industry to prevent the misuse of its services or to any support for such action by Member States. Whichever basis for action or method is chosen, Member States should ensure that ~~it~~ **such measures** provide~~s~~ an adequate level of legal certainty and predictability to users and service providers. Both with a view to the removal and the blocking of child **sexual** abuse content, cooperation between public authorities should be established and strengthened, particularly in the interests of ensuring that national lists of websites containing child sexual abuse material are as complete as possible and of avoiding duplication of work. Any such developments must take account of the rights of the end users and comply with existing legal and judicial procedures and the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union. The EU co-funded network of hotlines[20] handles reports of alleged child sexual abuse material reported anonymously by the public and cooperates with law enforcement and industry at national, European and global level to ensure swift removal of this type of content.

Presidency's note: we propose some linguistic changes for clarity. The Presidency welcomes any comments from delegations

[20] Currently under the Digital Europe Programme.

[AGREED]

(58a) This Directive establishes minimum rules and Member States are therefore free to adopt or maintain more stringent criminal law rules concerning the definition of criminal offences and penalties in the area of child sexual abuse. As regards the provisions of this Directive, on the rights of child victims, Member States can introduce or maintain provisions with higher standards, including those which provide a higher level of protection and support for victims.

[AGREED]

(59) Since the objective of this Directive, namely to combat child sexual abuse, sexual exploitation of children and child sexual abuse material , cannot be sufficiently achieved by the Member States but can rather , by reason of the scale and effects of the action , be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

[AGREED]

(60) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and in particular the right to the protection of human dignity, the prohibition of torture and inhuman or degrading treatment or punishment, the rights of the child, the right to liberty and security, the right to freedom of expression and information, the right to the protection of personal data, the right to an effective remedy and to a fair trial and the principles of legality and proportionality of criminal offences and penalties. This Directive seeks to ensure full respect for those rights and principles and must be implemented accordingly.

PUBLIC

[AGREED]

(61) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified, by letter of 12 June 2024, its wish to take part in the adoption and application of this Directive.

[AGREED]

(62) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

[AGREED]

(63) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.

[AGREED]

(64) This Directive should be without prejudice to the obligations of the Member States relating to the time-limit for the transposition into national law of the Directive set out in Annex I.

PUBLIC