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**NOTE**

From:	Presidency
To:	Delegations
Subject:	The draft Directive on combating the sexual abuse and sexual exploitation of children and child sexual abuse material – Presidency note

With a view to prepare the COPEN meeting of 4-5 September, and after reviewing the extensive comments submitted by delegations, as well as oral comments provided at the COPEN meeting of 9-10 July, the Presidency proposes the revised text included in the Annex. The amendments mostly pertain to the operative part. This document only refers to certain recitals that were under negotiation or required clarification. All the recitals will be reviewed at a later stage.

Modifications inserted in the text in relation to the Commission proposal have been indicated in **bold underline** or ~~strikethrough~~ and also highlighted with yellow. Furthermore, technical corrections have been added to the proposal, similarly highlighted in yellow.

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)**

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,

[...]

↓ 2011/93/EU (adapted)

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

*Subject matter*

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of sexual abuse and sexual exploitation of children, child ~~pornography~~ ☒ sexual abuse material <sup>1</sup> ☒ and solicitation of children for sexual purposes. It also introduces provisions to strengthen the prevention of those ~~crimes~~ ☒ criminal offences ☒ and the protection of the victims thereof.

<sup>1</sup> A further clarification of why the notion of child sexual abused material is used in this recast here will be added to the recitals. In particular, the following clarification will thereby be introduced: “*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.”

## Article 2

### Definitions

For the purposes of this Directive, the following definitions apply:

- (1) ‘child’ means any person below the age of 18 years;
- (2) ‘age of sexual consent’ means the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child;
- (3) ‘child ~~pornography~~ ☒ sexual abuse material - (a) any material that **visually** depicts a child engaged in real or simulated sexually explicit conduct;
- (b) **any**<sup>2</sup> depiction of the sexual organs of a child for primarily sexual purposes;
- (c) any material that **visually** depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appearing to be a child, for primarily sexual purposes; ~~or~~
- (d) realistic images  $\Rightarrow$  **reproductions or representations**<sup>3</sup>  $\Leftarrow$  of a child engaged in sexually explicit conduct or ~~realistic images~~ of the sexual organs of a child, for primarily sexual purposes;

<sup>2</sup> Rectification based on the original directive: the word ”any” is included in the Directive but was unintentionally left out of the text of the current proposal.

<sup>3</sup> A recital with a more detailed explanation of the limits of this notion will be added.

↓ new

~~(e) any material, regardless of its form, intended to provide advice, guidance or instructions on how to commit child sexual abuse or sexual exploitation or child solicitation;<sup>4</sup>~~

↓ 2011/93/EU (adapted)

- (4) ‘child ☒ exploitation in ☒ prostitution’ means the use of a child for sexual activities where money or any other form of remuneration or consideration is given or promised as payment in exchange for the child engaging in sexual activities, regardless of whether that payment, promise or consideration is made to the child or to a third party;
- (5) ‘~~pornographic~~ ☒ child sexual abuse ☒ performance’ means a live exhibition aimed at an audience, including by means of information and communication technology, of:
- (a) a child engaged in real or simulated sexually explicit conduct; or
  - (b) the sexual organs of a child for primarily sexual purposes;
- (6) ‘legal person’ means an entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations;<sup>5</sup>

↓ new

~~(7) ‘information society service’ means a service as defined in Article 1, point (b), of Directive (EU) 2015/1535<sup>5</sup>;~~

**(7) ‘Internet hotline’ means an organisation acting in the public interest to offer an online reporting service for suspected child sexual abuse material in its Member State of establishment;**

<sup>4</sup> See Article 5a below.

<sup>5</sup> Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification), OJ L 241, 17.9.2015, p. 1–15.

(8) ‘peers’ means persons who are close in age and degree of psychological and physical development or maturity<sup>6</sup>.

↓ 2011/93/EU

⇒ new

### Article 3

#### *Offences concerning sexual abuse*

1. Member States shall take the necessary measures to ensure that the intentional<sup>7</sup> conduct referred to in paragraphs 2 to ~~6~~ ⇒ 8 ⇐ is punishable.
2. Causing, for sexual purposes, a child who has not reached the age of sexual consent to witness sexual activities, even without having to participate, shall be punishable by a maximum term of imprisonment of at least 1 year.
3. Causing, for sexual purposes, a child who has not reached the age of sexual consent to witness sexual abuse, even without having to participate, shall be punishable by a maximum term of imprisonment of at least 2 years.
4. Engaging in sexual activities other than those provided for in paragraph 7 with a child who has not reached the age of sexual consent ⇒ or causing the child to engage in sexual activities with another a third person ⇐ shall be punishable by a maximum term of imprisonment of at least ⇒ 58 ⇐ years.

<sup>6</sup> A recital to further clarify the concept of “peer” may be considered.

<sup>7</sup> Rectification based on the original directive, given that the word “intentional” is part of the provision in force.

5. Engaging in sexual activities with a child, where:

- (a) abuse is made of a recognised position of trust, authority or influence over the child, shall be punishable by a maximum term of imprisonment of at least ~~8~~ ⇒ 10 ⇐ years if the child has not reached the age of sexual consent, and of at least ~~3~~ ⇒ **5** ⇐ years of imprisonment, if the child is over that age; or
- (b) abuse is made of a particularly vulnerable situation of the child, in particular because of a mental or physical disability or a situation of dependence, shall be punishable by a maximum term of imprisonment of at least ~~8~~ ⇒ 10 ⇐ years if the child has not reached the age of sexual consent, and of at least ~~3~~ ⇒ **5** ⇐ years of imprisonment if the child is over that age; or
- (c) use is made of coercion, force or threats shall be punishable by a maximum term of imprisonment of at least **10** ⇒ **12** ⇐ years if the child has not reached the age of sexual consent, and of at least **5** ⇒ **7** ⇐ years of imprisonment if the child is over that age.

6. Coercing, forcing or threatening a child into sexual activities with a third ~~party~~ **person** shall be punishable by a maximum term of imprisonment of at least **10** ⇒ **12** ⇐ years if the child has not reached the age of sexual consent, and of at least **5** ⇒ **7** ⇐ years of imprisonment if the child is over that age.

7. The following **intentional** conduct shall be punishable by a maximum term of imprisonment of at least **8<sup>8</sup> 12** years:

- (a) engaging with a child below the age of sexual consent in **sexual activities entailing any act of** vaginal, anal or oral penetration of a sexual nature, with any bodily part or object;
- (b) causing a child below the age of sexual consent to engage with **another a third** person in **sexual activities entailing any act of** vaginal, anal or oral penetration of a sexual nature, with any bodily part or object.

8. Where the child is above the age of sexual consent and does not consent to the act, the conduct referred to in paragraph 7 shall be punishable by a maximum term of imprisonment of at least **5 10**-years.

**When the circumstances provided in paragraphs 5 and 6 are present, the conduct described in the first subparagraph shall be punishable by a maximum term of imprisonment of at least 8 years.**

**8a. Engaging in sexual activities other than those those provided for in paragraph 8 with a child who has reached the age of sexual consent and does not consent or causing the child to engage in non-consensual sexual activities with a third person shall be punishable by a maximum term of imprisonment of at least 2 years.<sup>9</sup>**

<sup>8</sup> Some delegations consider that a less severe penalty for oral penetration with a non-sexual organ according to points (a) and (b) should be provided for or that a recital could clarify that concept of “sexual nature” with a view of excluding less serious acts from the highest penalty provided in this Directive

<sup>9</sup> The exact placement of this paragraph will be considered further.

9. For the purpose of paragraph **s 4 and** 8, Member States shall ensure that<sup>10</sup>:

- (a) a non-consensual act is understood as an act which is performed without the child's consent given voluntarily, as a result of the child's free will assessed in the context of the surrounding circumstances, or where the child is unable to form a free will due to the presence of circumstances referred to in paragraph 5, or due to other circumstances, including the child's physical or mental condition such as a state of unconsciousness, intoxication, freezing, illness or bodily injury;
- (b) the consent can be withdrawn at any moment before and during the act;
- (c) the absence of consent cannot be refuted exclusively by the child's silence, verbal or physical non-resistance or past sexual conduct.

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<sup>10</sup> Many delegations believe that paragraph 9 should be re-formulated in order to give Member States more flexibility to implement the rule, or even that the whole content of the paragraph should be moved to a recital.



On the question of consent, the Presidency proposes the following alternatives to the Commission proposal, which remains part of the discussion. The exact wording of is still subject to change, however, delegations are invited to clearly state their preference. Delegations are also asked to share if they are flexible on this question and willing to support more than one option, so that the Working Party can proceed further to find a common ground acceptable to all, or at least to a vast majority of Member States.

1. An approximation of the original proposal to Article 36(2) to the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence.

The Convention requires that the prosecution of sexual offences shall be based on a context-sensitive assessment of the evidence in order to establish, on a case-by-case basis, whether or not the victim has freely consented to the sexual act and therefore clearly sets out that the offender's use of force or threat, or proof of the victim's physical or verbal resistance are not required.

The Presidency proposes the wording of Article 3(9) to be in line with Article 36(2) of the Convention:

Consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances.

2. Moving the current Article 3(9) to the recitals.

#### Article 4

##### *Offences concerning sexual exploitation*

1. Member States shall take the necessary measures to ensure that the intentional conduct referred to in paragraphs 2 to 7 is punishable.
2. Causing or recruiting a child to participate in ~~pornographic~~ ☒ child sexual abuse ☒ performances, or profiting from or otherwise exploiting a child for such purposes shall be punishable by a maximum term of imprisonment of at least 5 years if the child has not reached the age of sexual consent and of at least 2 years of imprisonment if the child is over that age.
3. Coercing or forcing a child to participate in ~~pornographic~~ ☒ child sexual abuse ☒ performances, or threatening a child for such purposes shall be punishable by a maximum term of imprisonment of at least 8 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age.
4. Knowingly attending ~~pornographic~~ ☒ child sexual abuse ☒ performances involving the participation of a child shall be punishable by a maximum term of imprisonment of at least 2 years if the child has not reached the age of sexual consent, and of at least 1 year of imprisonment if the child is over that age.
5. Causing or recruiting a child to participate in ☒ exploitation in ☒ ~~child~~ prostitution, or profiting from or otherwise exploiting a child for such purposes shall be punishable by a maximum term of imprisonment of at least 8 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age.

6. Coercing or forcing a child into ☒ exploitation in ☒ ~~child~~ prostitution, or threatening a child for such purposes shall be punishable by a maximum term of imprisonment of at least 10 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age.
7. Engaging in sexual activities with a child, where recourse is made to ☒ exploitation in ☒ ~~child~~ prostitution shall be punishable by a maximum term of imprisonment of at least 5 ⇨ 8 ⇨ years if the child has not reached the age of sexual consent, and of at least 2 ⇨ 4 ⇨ years of imprisonment if the child is over that age.

↓ 2011/93/EU (adapted)

#### Article 5

##### *Offences concerning child ~~pornography~~ ☒ sexual abuse material ☒*

1. Member States shall take the necessary measures to ensure that the intentional conduct, when committed without right, referred to in paragraphs 2 to 6 is punishable.
2. Acquisition or possession of child ~~pornography~~ ☒ sexual abuse material ☒ shall be punishable by a maximum term of imprisonment of at least 1 year.
3. Knowingly obtaining access, by means of information and communication technology, to child ~~pornography~~ ☒ sexual abuse material ☒ shall be punishable by a maximum term of imprisonment of at least 1 year.
4. Distribution, dissemination or transmission of child ~~pornography~~ ☒ sexual abuse material ☒ shall be punishable by a maximum term of imprisonment of at least 2 years.
5. Offering, supplying or making available child ~~pornography~~ ☒ sexual abuse material ☒ shall be punishable by a maximum term of imprisonment of at least 2 years.
6. Production of child ~~pornography~~ ☒ sexual abuse material ☒ shall be punishable by a maximum term of imprisonment of at least 3 years.

7. For the purposes of paragraph 1, **Member States may decide that** the conducts referred to in paragraphs 2, 3 and 4 shall not be considered to be committed without right in particular where carried out by, or on behalf and under the responsibility of, an **internet hotline authorised by the Member State of establishment to perform activities as referred to in paragraph 8, when such conducts were carried out in accordance with the conditions set out in such authorisations.** ~~organisation established in a Member State acting in the public interest against child sexual abuse that has been authorised by competent authorities of that Member State when such actions were carried out in accordance with the conditions set out in such authorisation.~~

These **authorisations** ~~conditions~~ may include, **inter alia** the requirement that the ~~organisations~~ **internet hotlines** that receive ~~such authorisations~~ **them** have the necessary expertise and independence, that there are appropriate reporting and oversight mechanisms to ensure that **such internet hotlines** ~~the organisations~~ act expeditiously, diligently, and in the public interest, and that they ~~organisations~~ make use of secure channels of communication to carry out the actions covered by the authorisation.

8. Member States shall ensure that authorisations for **an organisation acting in the public interest against child sexual abuse internet hotline** referred to in paragraph 7 allow **such a hotline to perform** some or all of the following activities to:

- (a) receive and analyse reports of suspected child sexual abuse material, submitted to them by victims, online users or other organisations acting in the public interest against child sexual abuse;
- (b) promptly notify the relevant law enforcement authority of the Member State where the material is hosted of reported illegal content;
- (c) collaborate with organisations acting in the public interest against child sexual abuse and authorized to receive reports of suspected child sexual abuse material in accordance with point (a) in the Member State or third country where the material is hosted
- (d) carry out searches on publicly accessible material on hosting services to detect the dissemination of child sexual abuse material, using the reports of suspected child sexual abuse material referred to in letter (a) or on a request of a victim.

9. It shall be within the discretion of Member States to decide whether this Article applies to cases involving child ~~pornography~~ ☒ sexual abuse material ☒ as referred to in Article 2 ☒ point (3)(c) ☒ ~~(e)(iii)~~, where the person appearing to be a child was in fact 18 years of age or older at the time of depiction.
10. It shall be within the discretion of Member States to decide whether paragraphs 2 and 6 of this Article apply to cases where it is established that ~~pornographic~~ **child sexual abuse** material as referred to in Article 2 **(3) d)** ~~(e)(iv)~~, is produced and possessed by the producer solely for his or her private use in so far as no ~~pornographic~~ **child sexual abuse** material as referred to in Article 2 **(3) a), b), c)** ~~(e)(i), (ii) or (iii)~~ has been used for the purpose of its production and provided that the act involves no risk of dissemination of the material.<sup>11</sup>

#### Article 5a

#### Offenses concerning instructions to commit child sexual abuse or sexual exploitation or solicitation

1. **Member States shall take the necessary measures to ensure that the intentional conduct, when committed without right, referred to in letters (a) to (c) is punishable by a maximum term of imprisonment of at least 2 years.**
- (a) **Distribution, dissemination or transmission of any material, regardless of its form, intended to provide advice, guidance or instructions on how to commit child sexual abuse or sexual exploitation or child solicitation;**
- (b) **Offering, supplying or making available any material, regardless of its form, intended to provide advice, guidance or instructions on how to commit child sexual abuse or sexual exploitation or child solicitation;**

<sup>11</sup> Many delegations disagree with the Commission proposal for deletion, while some delegations oppose the reintroduction of the text of the former paragraph 10 in the text.

- (c) **Production of any material, regardless of its form, intended to provide advice, guidance or instructions on how to commit child sexual abuse or sexual exploitation or child solicitation.**

↓ 2011/93/EU (adapted)

⇒ new

*Article 6*

*Solicitation of children for sexual purposes*

1. Member States shall take the necessary measures to ensure that the following intentional conduct ☒ committed by an adult ☒ is punishable ☒ as follows ☒:
  - (a) ~~the proposal~~ ☒ proposing ☒, by means of information and communication technology, ~~by an adult~~ to meet a child **who has not reached the age of sexual consent**<sup>12</sup> ⇒ either online or in person ⇐, for the purpose of committing any of the offences referred to in Article 3(4) ⇒, **3(5), 3(6) and 3(7)** ⇐ and Article 5(6), where that proposal was followed by material acts leading to such a meeting, shall be punishable by a maximum term of imprisonment of at least 1 year;

<sup>12</sup> Some delegations wish to maintain the deletion of this phrase. Delegations are invited to indicate their position on this issue in COPEN on 4-5 September.

↓ new

- (b) The conduct referred to in **paragraph (a)** ~~the first subparagraph~~ shall be punishable by a maximum term of imprisonment of at least 2 years where use is made of coercion, force or threat.<sup>13</sup>

↓ 2011/93/EU (adapted)

⇒ new

2. Member States shall take the necessary measures to ensure that **the conduct, committed by an adult, of luring or enticing a child, an attempt,** by means of information and communication technology, to ~~commit~~ **produce or share** ~~the offences provided for in Article 5(2) and (3) by an adult soliciting a child to provide child pornography~~ ☒ child sexual abuse material ☒ ~~depicting that child~~ is punishable ☒ **by a maximum term of imprisonment 6 months** ☒.

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<sup>13</sup> Alternatively, the Presidency would consider the introduction of a separate provision on sexual extortion (possibly as Article 6a). *Member States shall take the necessary measures to ensure that **the following intentional conduct is punishable: coercing, forcing or threatening a child for the purposes of financial gain, sexual gain or other personal gain, either online or in person to do something or to abstain from doing something in order to evade the disclosure, transmission, or any other revelation to third persons or to the public of any representations of the child engaging in real or simulated sexually explicit conduct or of any representations of the sexual organs of the child for primarily sexual purposes, irrelevant of the origin and the circumstances of the production of such representations [sexual extortion]** is punishable by a maximum term of imprisonment of at least 1 year.*



↴ new

The conduct referred to in the first subparagraph shall be punishable by a maximum term of imprisonment of at least 1 year where use is made of coercion, force or threats.

#### Option 1

3. Member States shall take the necessary measures to ensure that an attempt, by means of information and communication technology, to commit the offences provided for in Article 4(2) and (5) by an adult causing a child to participate in child sexual abuse performances and exploitation in prostitution is punishable by a maximum term of imprisonment of at least 6 months.

The conduct referred to in the first subparagraph shall be punishable by a maximum term of imprisonment of at least 1 year where use is made of coercion, force or threats.

#### Option 2

Member States shall take the necessary measures to ensure that the conduct, committed by an adult, of luring or enticing a child by means of information and communication technology, to participate in child sexual abuse performances and exploitation in prostitution is punishable.

The conduct referred to in the first subparagraph shall be punishable by a maximum term of imprisonment of at least 1 year where use is made of coercion, force or threats.

↓ new

#### Article 7

Solicitation of **livestreaming of child** sexual abuse **or sexual exploitation**

Member States shall take the necessary measures to ensure that intentionally promising or giving **any third** persons money, or other form of remuneration or consideration, to cause them to commit any of the offences listed in Article 3(4), **3(5), 3(6), 3(7), and 3(8)**, Article 4(2) and **4(3)** and Article 5(6) **for the purpose of making available or accessible the commission of those offences in real time to the perpetrator, to further persons or to the public with the use of information and communication technologies**, is punishable by a maximum term of imprisonment of at least 3 years.

↓ new

#### Article 8

*Operation of an online service for the purpose of child sexual abuse or sexual exploitation*

Member States shall take the necessary measures to ensure that intentionally operating or administering an ~~information society service~~ **internet-based service whose access and availability is restricted by special technical precautions and whose purpose is** ~~which is conceived~~ to facilitate or encourage the commission of any of the offences referred to in Articles 3 to 7 is punishable by a maximum term of imprisonment of at least 1 year.<sup>14</sup>

<sup>14</sup> Compare with Directive 2015/1535. A reformulation and/or explanatory recitals are needed (await COM proposal).

↓ 2011/93/EU (adapted)

⇒ new

## Article 9

### *Incitement, aiding and abetting, and attempt*

1. Member States shall take the necessary measures to ensure that inciting or aiding and abetting to commit any of the offences referred to in Articles 3 to ~~6~~⇒ **8** ⇐ is punishable.
2. Member States shall take the necessary measures to ensure that an attempt to commit any of the offences referred to in Article 3(4), (5) ~~and~~ ☒ , ☒ (6), ⇐ (7) and (8), ⇐ Article 4(2), (3), (5), (6) and (7), ~~and~~ Article 5(4), (5) and (6) ⇐ , **Article 6(2) and (3).** ~~and Article 7 and Article 8~~ ⇐ is punishable.

↓ 2011/93/EU (adapted)

⇒ new

## Article 10

### *Consensual sexual activities*

1. It shall be within the discretion of Member States to decide whether Article 3(2), **and the first subparagraph of Article 3(4) as well as the first subparagraph of Article 3 (7)** apply to consensual sexual activities between peers, ~~who are close in age and degree of psychological and physical development or maturity~~, in so far as the acts did not involve any abuse **or exploitation**.

2. It shall be within the discretion of Member States to decide whether Article 4(4) applies to a ~~pornographic~~ performance that takes place in the context of a consensual relationship where the child has reached the age of sexual consent or between peers ~~who are close in age and degree of psychological and physical development or maturity~~, in so far as the acts did not involve any abuse or exploitation and no money or other form of remuneration or consideration is given as payment in exchange for the ~~pornographic~~ performance.

3. It shall be within the discretion of Member States to decide whether Article 5(2),  $\Rightarrow$  (3), (4)  $\Leftarrow$  and (6) apply to the production, acquisition or possession of  $\Rightarrow$  , or access to **material exclusively involving children and their peers**,  $\Leftarrow$  ~~material involving~~  $\Rightarrow$  ~~which exclusively involves:-~~  $\Leftarrow$

~~$\Rightarrow$  (a)  $\Leftarrow$  — children who have reached the age of sexual consent  $\Rightarrow$ , or  $\Leftarrow$~~

~~$\Rightarrow$  (b) children above the age of sexual consent and their peers,  $\Leftarrow$~~

where that material is produced, **acquired**, and possessed **or accessed exclusively by the persons involved, with their consent** and only for their private use ~~of the persons involved~~, in so far as the acts did not involve any abuse **or exploitation**.

$\Downarrow$  new

4. It shall be within the discretion of Member States to decide whether Article 6 applies to proposals, conversations, contacts or exchanges between peers, **in so far as the acts did not involve any abuse or exploitation**.

5. For the purpose of paragraphs 1 to 4, a child above the age of sexual consent can be considered as having consented to an activity only where the consent was given voluntarily, as result of the child's free will assessed in the context of the surrounding circumstances.

Consent can be withdrawn at any moment.

The absence of consent cannot be refuted exclusively by the child's silence, verbal or physical non-resistance or past conduct. <sup>15</sup>

6. Consensual sharing of one's intimate images or videos cannot be interpreted as consent to any further sharing or dissemination of that same image or video.

↓ 2011/93/EU (adapted)

⇒ new

### Article 11

#### Aggravating circumstances

**To the extent** ~~In so far as~~ the following circumstances do not ~~already~~ form part of the constituent elements of the offences referred to in Articles 3 to ~~⇒ 9 ⇐ 7~~, Member States shall take the necessary measures to ensure that **in relation to the relevant criminal offences referred to in those Articles, [one or more of]** the following circumstances ~~can~~<sup>may</sup>, in accordance with the relevant provisions of national law, be regarded as aggravating circumstances, ~~in relation to the relevant offences referred to in Articles 3 to ⇒ 9 ⇐ 7~~.<sup>16</sup>

- (a) the offence was committed against a child in a particularly vulnerable situation, such as a child with a mental or physical disability, in a situation of dependence or in a state of physical or mental incapacity;
- (b) the offence was committed by a member of the child's family, a person cohabiting with the child or a person who has abused a recognised position of trust ~~⊗~~ <sub>≡</sub> ~~⊗~~ ~~⊗~~ authority ~~⇒ or influence ⇐~~ on the child;

<sup>15</sup> The definitions in paragraphs 5 and 6 have been criticised; see Article 3.

<sup>16</sup> The change introduced to the chapeau is subject to discussions, considering that the list of already existing aggravating circumstances is already implemented in Member States. Delegations are invited to clarify whether, in light of this explanation, they would be able to accept the original text in the chapeau, notably: "the following circumstances can/may, in accordance with the relevant provisions of national law, be regarded as aggravating circumstances"

- (c) the offence was committed by ~~several~~ **two or more** persons acting together;
- (d) the offence was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA ~~of 24 October 2008 on the fight against organised crime~~<sup>17</sup>;
- (e) the offender has previously been convicted of offences of the same nature;
- (f) the offender has deliberately or recklessly endangered the life of the child; ~~or~~
- (g) the offence involved serious violence or caused serious harm to the child ☒ ; ☒ =

↓ new

- (h) the offence, **or another criminal offence of child sexual abuse or sexual exploitation** was committed repeatedly;
- (i) the offence was committed with the use or threat of using a weapon; or
- (j) the offence was committed by **intentionally taking advantage of the victim's intoxicated state or** by causing the victim to take, use or be affected by drugs, alcohol or other intoxicating substances **with the intent of taking advantage of the intoxicated state of the victim.**

<sup>17</sup> Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, OJ L 300, 11.11.2008, p. 42.

## Article 12

### *Disqualification arising from convictions*

1. In order to avoid the risk of repetition of offences, Member States shall take the necessary measures to ensure that a natural person who has been convicted of any of the offences referred to in Articles 3 to ~~⇒ 9 ⇐ 7~~ may be temporarily or permanently prevented from exercising at least professional activities involving direct and regular contacts with children.
2. Member States shall take the necessary measures to ensure that **public institutions and internet hotlines referred to in Article 5(7)** ~~organisations acting in the public interest against child sexual abuse~~, when recruiting staff **for professional activities involving direct and regular contact with children**, ~~⇐ are entitled~~ **⇐ are required**, ~~⇐~~ to request information in accordance with national law by way of any appropriate means, such as access upon request or via the person concerned, of the existence of criminal convictions for any of the offences referred to in Articles 3 to ~~⇒ 9 ⇐ 7~~, entered in the criminal record or of the existence of any disqualification from exercising activities involving direct and regular contacts with children arising from those criminal convictions.

Member States shall take the necessary measures to ensure that other employers than those mentioned in paragraph 1 **are entitled to request the same information**, when recruiting a person for professional or organised voluntary activities involving direct and regular contacts with children<sup>18</sup>.

<sup>18</sup> The positions of those delegations that have expressed themselves on this provision diverge as regards the term "entitled" or "required". The Presidency tentatively suggests the current compromise as a basis for further discussions.

3. ⇒ **For the application of paragraphs 1 and 2 of this Article**<sup>19</sup>, ⇒ when requested by competent authorities, ⇐ Member States shall take the necessary measures to ensure, ~~that, for the application of paragraphs 1 and 2 of this Article~~ transmission of information concerning the existence of criminal convictions for any of the offences referred to in Articles 3 to 7 ⇒ 9 ⇐, or of any disqualification from exercising activities involving direct and regular contacts with children arising from those criminal convictions, ~~is transmitted in accordance with the procedures set out in Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (13) when requested under Article 6 of that Framework Decision with the consent of the person concerned.~~ ⇒ , and that the transmitted information is as complete as possible, comprising at least information on criminal convictions or disqualifications arising from criminal convictions kept by any Member State. **When possible** ~~For that purpose~~, such information shall be transmitted through ECRIS or the mechanism for the exchange of criminal record information established with third countries. ⇐

↓ 2011/93/EU

~~Article 11~~

~~Seizure and confiscation~~

~~Member States shall take the necessary measures to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in Articles 3, 4 and 5.~~

<sup>19</sup> Technical amendment: the phrase is an addition to the current text of the Directive, but was unintentionally left unmarked in the proposal.



### Article 13

#### *Liability of legal persons*

1. Member States shall take the necessary measures to ensure that legal persons may be held liable for any of the offences referred to in Articles 3 to ~~⇒ 9 ⇐ 7~~ **where such offences have been** committed for ~~their~~ **the** benefit **of those legal persons** by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on:
  - (a) a power of representation of the legal person;
  - (b) an authority to take decisions on behalf of the legal person; or
  - (c) an authority to exercise control within the legal person.
2. Member States shall also take the necessary measures to ensure that legal persons may be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission, by a person under its authority, of any of the offences referred to in Articles 3 to ~~⇒ 9 ⇐ 7~~ for the benefit of that legal person.
3. Liability of legal persons under paragraphs 1 and 2 shall be without prejudice to criminal proceedings against natural persons who are perpetrators, inciters or accessories to the offences referred to in Articles 3 to ~~⇒ 9 ⇐ 7~~.

## Article 14

### Sanctions on legal persons

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 13 ~~12(1)~~ is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other penalties or measures, such as:

**1a. Member States shall take the necessary measures to ensure that penalties or measures for legal persons held liable pursuant to Article 13(1) or (2) for the criminal offences referred to in Articles 3 to 9 shall include criminal or non-criminal fines and may include other criminal or non-criminal penalties or measures, such as:**

- (a) exclusion from entitlement to public benefits or aid;
- (b) ⇒ exclusion from access to public funding, including tender procedures, grants, and concessions **and licenses**; ⇐
- (c) temporary or permanent disqualification from the practice of **commercial business** activities;
- (d) placing under judicial supervision;
- (e) judicial winding-up; or
- (f) **temporary or permanent** closure of establishments which have been used for committing the offence.

2. ~~Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 12(2) is punishable by sanctions or measures which are effective, proportionate and dissuasive.~~

- Member States shall take the necessary measures to ensure that, **at least** for legal persons held liable pursuant to Article 13(1), **criminal** offences punishable by a maximum term of imprisonment of at least **2 1** years for natural persons are punishable by **criminal or non-criminal** fines, **the amount of which shall be proportionate to the gravity of the conduct and to the individual, financial and other circumstances of the legal person concerned. Member States shall take the necessary measures to ensure that the maximum level of such fines is** ~~whose maximum level should be~~ not less than:
- (i) 1 percent of the total worldwide turnover of the legal person, **either** in the business year preceding **that in which the offence was committed, or in the business year preceding that of the decision to impose the fine, or** ~~the fining decision~~
- (ii) **an amount corresponding to EUR 8 000 000.**
- Member States shall take the necessary measures to ensure that, **at least** for legal persons held liable pursuant to Article 13(1), **criminal** offences punishable by a maximum term of imprisonment of at least **3 5** years for natural persons are punishable by **criminal or non-criminal** fines, **the amount of which shall be proportionate to the gravity of the conduct and to the individual, financial and other circumstances of the legal person concerned. Member States shall take the necessary measures to ensure that the maximum level of such fines is** ~~whose maximum level should be~~ not less than:
- (i) 5 percent of the total worldwide turnover of the legal person, **either** in the business year preceding **that in which the offence was committed, or in the business year preceding that of the decision to impose the fine, or** ~~the fining decision~~
- (ii) **an amount corresponding to EUR 40 000 000.**

**3b. Member States may establish rules for cases where it is not possible to determine the amount of the fine on the basis of the total worldwide turnover of the legal person in the business year preceding that in which the offence was committed, or in the business year preceding the decision to impose the fine.**

↓ 2011/93/EU

⇒ new

### *Article 15*

#### *Non-prosecution or non-application of penalties to the victim*

Member States shall, in accordance with the basic principles of their legal systems take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on child victims of sexual abuse and sexual exploitation for their involvement in criminal activities, which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 4(2), (3), (5) **and** (6) **and (7)**, **and in** Article 5 ⇒ (4), (5) **and** ⇐ (6), **Article 6 and Article 7 and where appropriate, impose only non-criminal measures in line with the best interest of the child victims concerned.**

Article 16

*Investigation, ~~and~~ prosecution ⇒ and limitation periods ⇐*

1. Member States shall take the necessary measures to ensure that investigations into or the prosecution of the offences referred to in Articles 3 to ~~7 and~~ ⇒ 9 ⇐ are not dependent on a report or accusation being made by the victim or by his or her representative, and that criminal proceedings may continue even if that person has withdrawn his or her statements.
2. Member States shall take the necessary measures ~~to enable the prosecution~~ **to provide for a limitation period that enables the investigation, prosecution, trial and adjudications** ~~of any~~ of the offences referred to in Article 3, Article 4(2), (3), (5), (6) and (7) ~~and~~ ⇐, ⇐ of any serious offences referred to in Article 5(6) when child ~~pornography~~ ⇐ sexual abuse material ⇐ as referred to in Article 2 ⇐, points (3)(a) and (b) ⇐ (c)(i) and (ii) has been used, **⇒ and of any of the offences referred to in Articles 7 and 8 ⇐**, for a sufficient period of time after the victim has reached the age of majority<sup>20</sup> and which is commensurate with the gravity of the offence concerned.

This period of time referred to in the first subparagraph shall be:

- (a) ~~at least 20 years from the date the victim has reached the age of majority for the offences punishable under this Directive by a maximum penalty of at least 3 years of imprisonment;~~

<sup>20</sup> This formulation ("time after the time has reached the age of majority") may need to be adapted in order to allow MS that apply other models that also ensure a similarly long limitation period to keep their system.

~~(b)~~—at least 25 years from the date the victim has reached the age of majority for the offences punishable under this Directive by a maximum penalty of at least 5 years of imprisonment;

~~(c)~~—at least 30 years from the date the victim has reached the age of majority for the offences punishable under this Directive by a maximum penalty of at least 8 years of imprisonment.

#### *ALTERNATIVE WORDING*

##### *option 1)*

This period of time referred to in the first subparagraph shall be:

(a) at least 20 years ~~from the date the victim has reached the age of majority~~ **including 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**, for the offences punishable under this Directive by a maximum penalty of at least ~~3~~ **2** years of imprisonment;

(b) at least 25 years ~~from the date the victim has reached the age of majority~~ **including 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** for the offences punishable under this Directive by a maximum penalty of at least 5 years of imprisonment;

(c) at least 30 years ~~from the date the victim has reached the age of majority~~ **including 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** for the offences punishable under this Directive by a maximum penalty of at least ~~8~~ **10** years of imprisonment.

**option 2)**

This period of time referred to in the first subparagraph shall be:

- (a) at least ~~20~~ **10** years from the date the victim has reached the age of majority for the offences punishable under this Directive by a maximum penalty of at least ~~3~~ **2** years of imprisonment;
- (b) at least ~~25~~ **15** years from the date the victim has reached the age of majority for the offences punishable under this Directive by a maximum penalty of at least 5 years of imprisonment;
- (c) at least ~~30~~ **20** years from the date the victim has reached the age of majority for the offences punishable under this Directive by a maximum penalty of at least ~~8~~ **10** years of imprisonment.

↓ 2011/93/EU

⇒ new

3. Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases are available to persons, units or services responsible for investigating or prosecuting offences referred to in Articles 3 to ~~7~~ ⇒ 9 ⇐.

↓ new

4. Member States shall ensure that persons, units or services investigating and prosecuting the offences referred to in Articles 3 to 9 have sufficient staff, expertise and effective investigative tools to effectively investigate and prosecute such crimes, including those committed through the use of information and communication technology, in accordance with the applicable rules of Union and national law. ~~Where appropriate, these tools shall include special investigative tools, such as those which are used in countering organised crime or other serious crime cases, like the possibility to conduct undercover investigations.~~ <sup>21</sup>

<sup>21</sup> The last sentence will be moved to the recitals.

↓ 2011/93/EU (adapted)

⇒ new

5. Member States shall take the necessary measures to enable investigative units or services to attempt to identify the victims of the offences referred to in Articles 3 to 7 ⇒ 9 ⇐, in particular by analysing child pornography ⇔ sexual abuse material ⇔, such as photographs and audiovisual recordings transmitted or made available by means of information and communication technology.

↓ 2011/93/EU

⇒ new

#### *Article 17*

##### *Reporting suspicion of child sexual abuse or sexual exploitation*

1. Member States shall take the necessary measures to ensure that the confidentiality rules imposed by national law on certain professionals whose main duty is to work with children do not constitute an obstacle to the possibility, for those professionals, of their reporting to the services responsible for child protection any situation where they have reasonable grounds for believing that a child is the victim of offences referred to in Articles 3 to 7 ⇒ 9 ⇐.



2. Member States shall take the necessary measures to encourage any person who knows about or suspects, in good faith, that any of the offences referred to in Articles 3 to 7 ⇨ 9 ⇨ have been committed, to report this to the competent services ⇨ , without affecting Article 18 of Regulation (EU) 2022/2065 of the European Parliament and of the Council<sup>22</sup> and Article 12 of Regulation (EU) .../...<sup>23</sup> [laying down rules to prevent and combat child sexual abuse]. ⇨

⇩ new

3. **Without prejudice to to professional secrecy obligations established under national law in accordance with paragraph 1,** Member States shall ensure that at least professionals working in close contact with children in the child protection, education, childcare and health care sectors, **with the exception of professionals working in the context of the programmes referred to in Articles 27 and 29,** are obliged to report to the competent authorities if they have reasonable grounds for believing that an offence punishable under this Directive has been committed or is likely to be committed.<sup>24</sup>

<sup>22</sup> 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, ELI: <http://data.europa.eu/eli/reg/2022/2065/oj>).

<sup>23</sup> Regulation (EU) ...

<sup>24</sup> The Presidency still reflects on the possibility to take inspiration from Articles 14(3)-(5) in the Violence against women Directive for the drafting of this provisions. Delegations are invited to also reflect on this idea. d

4. Member States shall exempt professionals working in the health care sectors in the context of programmes dedicated to persons who have been convicted of a criminal offence punishable under this Directive or persons who fear that they might commit any of the offences punishable under this Directive from the reporting obligation provided for in paragraph 3.

5. Member States, supported by the EU Centre once established, shall issue guidelines for the persons referred to in paragraph 3<sup>25</sup> on identifying whether an offence punishable under this Directive has been committed or is likely to be committed and on reporting to competent authorities. Such guidelines shall also indicate how to address the specific needs of victims.

↓ new

#### Article 18

##### *Reporting of child sexual abuse or sexual exploitation*

1. In addition to the rights of victims when making a complaint under Article 5 of Directive 2012/29/EU, and Article 5a under Directive (EU) .../... [proposed Directive amending Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crimes], Member States shall ensure that victims can report the offences referred to in Articles 3 to 9 of this Directive to the competent authorities **through easily accessible, user friendly information and communication technologies**. ~~in an easy and accessible manner. Such a possibility shall be without prejudice to national procedural rules regarding formalisation of online reporting and submission of evidence. This shall include the possibility of reporting those criminal offences, and submitting evidence where feasible, by means of easily accessible and user friendly information and communication technologies.~~

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25 The exact group of persons to whom these guidelines will be addressed should be clarified, probably in a recital.

2. Member States shall ensure that the reporting procedures referred to in paragraph 1 are safe, confidential and designed in a child friendly manner and language, in accordance with the age and maturity. Member States ~~shall~~ **are encouraged to** ensure **according to their national law that** reporting is not conditional upon ~~parental~~ consent **of the holder of parental responsibility**.
3. ~~Member States shall ensure that the competent authorities coming in contact with victims reporting child sexual abuse offences or sexual exploitation offences are prohibited from transferring personal data pertaining to the residence status of the victim to competent migration authorities, at least until completion of the first individual assessment of the victims' protection needs conducted in accordance with Article 22 of Directive 2012/29/EU.~~

↓ 2011/93/EU (adapted)

⇒ new

#### *Article 19*

##### *Jurisdiction and coordination of prosecution*

1. Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Articles 3 to **7 and** ⇒ 9 ⇐ where:
- (a) the offence is committed in whole or in part within their territory; or
  - (b) the offender is one of their nationals.
2. A Member State shall inform the Commission where it decides to establish further jurisdiction over an offence referred to in Articles 3 to ~~7~~ ⇒ 9 ⇐ committed outside its territory, inter alia, where:
- (a) the offence is committed against one of its nationals or a person who is an habitual resident in its territory;
  - (b) the offence is committed for the benefit of a legal person established in its territory; or
  - (c) the offender is an habitual resident in its territory.

3. Member States shall ensure that their jurisdiction includes situations where an offence referred to in Articles 5 ~~and~~ , 6 ~~⇒~~ and 8 ~~⇐~~ , and in so far as is relevant, in Articles 3 ~~and~~ ~~⇒~~ , 4, ~~⇐~~ 7 ~~⇒~~ and 9 ~~⇐~~ , is committed by means of information and communication technology accessed from their territory, whether or not it is based on their territory.
4. For the prosecution of any of the offences referred to in Article 3(4), (5) ~~⇐~~ , ~~⇐~~ (6), ~~⇒~~ (7), and (8), ~~⇐~~ Article 4(2), (3), (5), (6) and (7) ~~and~~ ~~⇐~~ , ~~⇐~~ Article 5(6) ~~⇒~~ , Article 7 ~~and~~ ~~⇐~~ Article 8 ~~⇐~~ committed outside the territory of the Member State concerned, as regards paragraph 1 ~~⇐~~ , point ~~⇐~~ (b) of this Article, each Member State shall take the necessary measures to ensure that its jurisdiction is not subordinated to the condition that the acts are a criminal offence at the place where they were performed.
5. For the prosecution of any of the offences referred to in Articles 3 to 7 ~~⇒~~ 9 ~~⇐~~ committed outside the territory of the Member State concerned, as regards paragraph 1 ~~⇐~~ , point ~~⇐~~ (b) of this Article, each Member State shall take the necessary measures to ensure that its jurisdiction is not subordinated to the condition that the prosecution can only be initiated following a report made by the victim in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed.

↓ new

6. Where a criminal offence referred to in Articles 3 to 9 falls within the jurisdiction of more than one Member State, these Member States shall cooperate to determine which Member State is to conduct criminal proceedings. The matter shall, where appropriate and in accordance with Article 12 of Framework Decision 2009/948/JHA, be referred to Eurojust.

## Article 20

### *General provisions on assistance, support and protection measures for child victims*

1. Child victims of the offences referred to in Articles 3 to ~~7~~ ⇒ 9 ⇐ shall be provided assistance, support and protection in accordance with Articles ~~19 and 20~~ ☒ 21 and 22 ☒, taking into account the best interests of the child.
2. Member States shall take the necessary measures to ensure that a child is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that a child might have been subject to any of the offences referred to in Articles 3 to **7 and** ⇒ 9 ⇐ ~~7~~.
3. Member States shall ensure that, where the age of a person subject to any of the offences referred to in Articles 3 to **7 and** ⇒ 9 ⇐ is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles ~~19 and 20~~ ☒ 21 and 22 ☒.

↓ 2011/93/EU (adapted)

⇒ new

## Article 21

### *Assistance and support to victims*<sup>26</sup>

1. Member States shall take the necessary measures to ensure that assistance and ⇒ specialised and appropriate ⇐ support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in ~~Framework Decision 2001/220/JHA~~ ☒ Directive 2012/29/EU ☒, ⇒ Directive (EU) .../... [*proposed Directive amending Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crimes*] ⇐ and in this Directive. ⇒ Member States shall notably ensure that victims of offences referred to in Articles 3 to **7 and** 9 have access to targeted and integrated support services for children in accordance with Article 9a of Directive (EU) .../... [*proposed Directive amending Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crimes*]. ⇐ Member States shall, in particular, take the necessary steps to ensure protection for children who report cases of abuse within their family.

↓ new

2. Victims shall be provided with coordinated, age-appropriate medical care, emotional, psychosocial, psychological, **and** educational support **and legal counsel**, as well as any other appropriate support tailored in particular to situations of sexual abuse. <sup>27</sup>

<sup>26</sup> Delegations have noted that the provisions on victims' protection should be brought in line with the corresponding provisions in the horizontal Directive.

<sup>27</sup> It has been suggested that paragraph 2 should be moved to the recitals.

3. Where it is necessary to provide for interim accommodation, children shall, as **appropriatea priority**, be placed with other family members, where necessary in temporary or permanent housing, equipped with support services. **Member States shall take the necessary measures to ensure that the best interest of the child is decisive when assessing matters related to interim accomodation of children.**
4. Victims of offences punishable under this Directive shall have access to the referral centres established under Article ~~28~~ **26** of **Directive (EU) 2024/1385 on combating violence against women and domestic violence**<sup>28</sup>.

↓ 2011/93/EU (adapted)

⇒ new

5. ~~≡~~ Member States shall take the necessary measures to ensure that assistance and support for a child victim are not made conditional on the child victim's willingness to cooperate in the criminal investigation, prosecution or trial.
6. ~~≡~~ Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims in enjoying their rights under this Directive, are undertaken following an individual assessment of the special circumstances of each particular child victim, ⇒ conducted in accordance with Article 22 of Directive (EU) .../... [*proposed Directive amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crimes*] and ⇐ taking due account of the child's views, needs and concerns.

<sup>28</sup> Directive of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence, OJ L p. 1, 24.05.2024.

7. ~~4.~~ Child victims of any of the offences referred to in Articles 3 to **7 and** ~~=~~⇒ 9 ⇐ shall be considered as particularly vulnerable victims pursuant to ~~Article 2(2), Article 8(4) and Article 14(1) of Framework Decision 2001/220/JHA~~ ⇒ Article 22(2) of Directive 2012/29/EU and Directive (EU) .../... [*proposed Directive amending Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crimes*] ⇐.
8. ~~5.~~ Member States shall take measures, where appropriate and possible, to provide assistance and support to the family of the child victim in enjoying the rights under this Directive when the family is in the territory of the Member States. In particular, Member States shall, where appropriate and possible, apply Article 4 of ~~Framework Decision 2001/220/JHA~~ ⇔ Directive 2012/29/EU ⇔ ⇒ and Directive (EU) .../... [*proposed Directive amending Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crimes*] ⇐ to the family of the child victim.

⇓ new

9. The EU Centre, once established, shall proactively support Member States' efforts on assistance to victims by:
- (a) inviting other Union institutions, bodies, offices and agencies, as well as relevant authorities, bodies or agencies of the Member States, to share with the EU Centre information about assistance to victims of child sexual abuse and sexual exploitation whenever appropriate and at least once a year;
  - (b) collecting on its own initiative information on measures and programmes in the field of assistance to victims of child sexual abuse and sexual exploitation, including measures and programmes implemented in third countries;
  - (c) facilitating the exchange of best practices among Member States and between Member States and third countries, by keeping a public database of assistance to victims measures and programmes implemented in each Member States as well as in third countries; the database shall not contain any personal data.



(d) facilitating the preparation of the guidelines and protocols referred to in paragraph 10.

10. Member States, supported by the EU Centre once established, **may** ~~shall~~ issue guidelines for healthcare, education and social service professionals on providing appropriate support to victims of child sexual abuse or exploitation, including on referring victims to the relevant support services and clarifying roles and responsibilities. Such guidelines shall also indicate how to address the specific needs of victims.

↓ 2011/93/EU

⇒ new

#### Article 22

##### *Protection of child victims **and child witnesses** in criminal investigations and proceedings*

1. Member States shall take the necessary measures to ensure that in criminal investigations and proceedings, in accordance with the role of victims **and witnesses** in the relevant justice system, competent authorities appoint a special representative for the child victim **or the child witness** where, under national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim **or child witness**, or where the child is unaccompanied or separated from the family.
2. Member States shall ensure that child victims **and where appropriate, child witnesses** have, without delay, access to legal counselling and, in accordance with the role of victims **and witnesses** in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim **or the witness** does not have sufficient financial resources.

3. Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal investigations relating to any of the offences referred to in Articles 3 to **6 and** ⇒ 9 ⇐:

- (a) interviews with the child victim **and where appropriate, with a child witness**, take place without unjustified delay after the facts have been reported to the competent authorities;
- (b) interviews with the child victim **and where appropriate, with a child witness**, take place, **where necessary**<sup>29</sup>, in premises designed or adapted for this purpose;
- (c) interviews with the child victim **and where appropriate, with a child witness**, are carried out by or through professionals trained for this purpose;
- (d) the same persons, if possible and where appropriate, conduct all interviews with the child victim **and where appropriate, with a child witness**;
- (e) the number of interviews is as limited as possible and interviews are carried out only where strictly necessary for the purpose of criminal investigations and proceedings;
- (f) the child victim **and where appropriate, the child witness**, may be accompanied by his or her legal representative or, where appropriate, by an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.

⇒ (g) medical examinations of the child victim for the purposes of the criminal proceedings are **kept to a minimum and carried out, only where strictly necessary for the purposes of criminal proceedings**, ~~as limited as possible and are carried out by~~ professionals trained for this purpose. ⇐

<sup>29</sup> Technical amendment: the term „where necessary” is included in the text of the Directive, but was unintentionally left out of the proposal.

4. Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 3 to **6 and**  $\Rightarrow$  9  $\Leftarrow$  all interviews with the child victim or, where appropriate, with a child witness, ~~may be~~ **are** audio-visually recorded and that such audio-visually recorded interviews may be used as evidence in criminal court proceedings, in accordance with the rules under their national law.
5. Member States shall take the necessary measures to ensure that in criminal court proceedings relating to any of the offences referred to in Articles 3 to **6 and**  $\Rightarrow$  9  $\Leftarrow$ , that it may be ordered that:
- (a) the hearing take place without the presence of the public;
  - (b) the child victim **or where appropriate, the child witness** be heard in the courtroom without being present, in particular through the use of appropriate **information and** communication technologies.
6. Member States shall take the necessary measures, where in the interest of child victims **or child witnesses**, and taking into account other overriding interests, to protect the privacy, identity and image of child victims **and child witnesses**, and to prevent the public dissemination of any information that could lead to their identification.

↓ new

~~7. Member States shall take the necessary measures to ensure that, where the participation of a child is necessary in criminal court proceedings relating to any of the offences referred to in Articles 3 to 9, the court takes into account the child's age and maturity in the relevant court proceedings.~~

## Article 23

### *Victim's right to compensation*

1. Member States shall ensure that victims of offences referred to in Articles 3 to 9 of this Directive have a **have the** right to **claim, in accordance with national law, full compensation from offenders for damages resulting from offences under this Directive.** compensation for any damage suffered. Member States shall ensure that compensation can be requested from perpetrators of any of the offences referred to in Articles 3 to 9 from legal persons liable for such offences under Articles 13 and 14 and, where appropriate, from national compensation schemes established for the benefits of victims of crime.

2. **Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.**

~~In addition to their rights under Article 16a of Directive (EU) .../... [proposed Directive amending Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crimes], victims shall be allowed to request compensation in the context of criminal and civil proceedings for any damage caused to them by any of the offences punishable under this Directive, for a sufficient period of time, commensurate with the gravity of the offence, after reaching the age of majority.~~

3. The period referred to in the first subparagraph shall be:

- (a) ~~at least 20 years from the date the victim has reached the age of majority for the offences punishable under this Directive by a maximum penalty of at least 3 years;~~
- (b) ~~at least 25 years from the date the victim has reached the age of majority for the offences punishable under this Directive by a maximum penalty of at least 5 years;~~
- (c) ~~at least 30 years from the date the victim has reached the age of majority for the offences punishable under this Directive by a maximum penalty of at least 8 years.~~

4. Member States shall ensure that, in order to ensure sufficient compensation to victims of offences punishable under this Directive, all relevant elements are taken into account, including:

- (a) any physical or mental pain and suffering caused by the offence, including the pain and suffering linked to the online circulation of child sexual abuse material concerning the victim in question;
- (b) any cost of care in relation to the recovery from such pain and suffering, including expenses related to mental and physical health and treatment and travelling costs that might have been incurred to access such care; and
- (c) any loss of income caused by the offence.

↓ new

#### Article 24

##### *National authorities or equivalent entities*

Member States shall **ensure that competent** establish national authorities or equivalent entities **exist and are enabled** to carry out the following activities:

- (1) facilitate and, where needed, coordinate efforts at national level on prevention and assistance to victims;
- (2) carry out assessments of trends in child sexual abuse, online and offline;
- (3) evaluate the results of preventive programmes and measures, as well as of programmes and measures intended to assist and support victims, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field;
- (4) report on such trends, results and statistics.

In particular, national authorities shall be responsible for the data collection, research and reporting obligations referred to in Article 31.

↓ new

## Article 25

### *Multi-agency and multi-stakeholder coordination and cooperation*

Member States shall put in place appropriate mechanisms to ensure effective coordination and cooperation to develop and implement measures to tackle child sexual abuse and exploitation, both online and offline, at the national level, of relevant authorities, agencies and bodies, including local and regional authorities, law enforcement agencies, the judiciary, public prosecutors, support service providers as well as providers of information society services, non-governmental organisations, social services, including child protection or welfare authorities, education and healthcare providers, social partners, without prejudice to their autonomy, and other relevant organisations and entities. These mechanisms shall also ensure effective coordination and cooperation with the EU Centre<sup>30</sup> and the Commission.

↓ 2011/93/EU (adapted)

⇒ new

## Article 26

*Measures against advertising abuse opportunities and ~~the~~ the sexual abuse and sexual exploitation of children in travel and tourism ~~child sex tourism~~*

Member States shall take appropriate measures to prevent or prohibit:

- (a) the dissemination of material advertising the opportunity to commit any of the offences referred to in Articles 3 to ~~8~~ 8; and

<sup>30</sup> The reference to the Centre has been questioned by several delegations. Provisions of the operative part of the proposal as well as of the accompanying recitals on the EU Centre are left unchanged and will be subject to negotiations following the adoption of the CSA regulation.

- (b) the organisation for others, whether or not for commercial purposes, of travel arrangements with the purpose of committing any of the offences referred to in Articles 3 ~~to~~ ☒ , 4 and ☒ 5.

↓ 2011/93/EU (adapted)

⇒ new

#### Article 27

##### *Preventive intervention programmes or measures*

☒ 1. ☒ Member States shall take the necessary measures to ensure that persons who fear that they might commit any of the offences referred to in Articles 3 to ~~7~~ ☒ 9 ☒ have access, ~~where appropriate,~~ ☒ to ☒ dedicated and ☒ effective intervention programmes or measures designed to evaluate and prevent the risk of such offences being committed.

↓ new

2. Member States shall ensure that the programmes or measures referred to in paragraph 1 are accessible without undue restrictions in line with national standards concerning healthcare.

*Article 28*

*Prevention*

1. ⇒ To discourage and reduce the demand that fosters all forms of sexual exploitation of children, ⇐ Member States shall take appropriate measures, such as education and training, ⇒ information and awareness raising campaigns on the lifelong consequences of child sexual abuse and exploitation, its illegal nature, and the possibility for persons who fear that they might commit related offences to have access to dedicated and effective intervention programmes or measures ⇐ ~~to discourage and reduce the demand that fosters all forms of sexual exploitation of children.~~
2. Member States shall take appropriate action, including through the Internet, such as information and awareness-raising campaigns, research, ~~and~~ education ⇒ and training ⇐ programmes ⇒ or material ⇐, where appropriate in cooperation with relevant civil society organisations and other stakeholders, aimed at raising awareness and reducing the risk of children, becoming victims of sexual abuse or ⇒ sexual ⇐ exploitation.
3. Member States shall **take appropriate measures, in accordance with national law, to** promote regular training ⇒, including in child friendly justice for professionals, judges, **without prejudice to the judicial independence,** and ⇐ ~~for~~ officials likely to come into contact with child victims of sexual abuse or sexual exploitation, including ⇒, **but not limited to, child protection professionals, legal professionals, teachers and educators, family court judges<sup>31</sup>** ~~and~~ ⇐ front-line police officers, aimed at enabling them to identify and deal with child victims and potential child victims of sexual abuse or sexual exploitation.

<sup>31</sup> This part of the sentence will be moved to the recitals and explained there.



4. Member States shall **promote** ~~take~~ appropriate measures to enhance the prevention of child sexual abuse in community settings, including schools, hospitals, social care services, sports clubs or religious communities.

Those measures **may** ~~shall~~ include:

- (a) dedicated<sup>32</sup> training and awareness raising activities for staff working in such settings;
- (b) dedicated guidelines, internal protocols and standards identifying good practices, such as the establishment of mechanisms of supervision and accountability for staff working in close contact with children in such settings;
- (c) the creation of safe spaces, run by dedicated and appropriately trained personnel, where children, parents, carers and members of the community can report inappropriate behaviour.

Prevention measures shall devote particular attention to the need to protect children who are particularly vulnerable, including children with mental or physical disabilities.

5. The EU Centre, once established, shall **proactively** support Member States' prevention efforts by<sup>33</sup>:

- (a) inviting other Union institutions, bodies, offices and agencies, as well as relevant authorities, bodies or agencies of the Member States, to share information about prevention measures and programmes in the field of child sexual abuse and sexual exploitation whenever appropriate and at least once a year;

<sup>32</sup> Many delegations have argued that the notion of “dedicated”, as used in Articles 29 and 30, need to be clarified, at least in a recital.

<sup>33</sup> Paragraph 5 has been strongly questioned by some; it has in particular been argued that this provision would rather belong in the Regulation.

- (b) collecting information on prevention measures and programmes in the field of child sexual abuse and **sexual** exploitation, including measures and programmes implemented in third countries;
- (c) facilitating the exchange of best practices among Member States and third countries by keeping a public database of prevention measures and programmes implemented in each Member State as well as in third countries.

↓ 2011/93/EU

⇒ new

#### *Article 29*

#### *Intervention programmes or measures on a voluntary basis in the course of or after criminal proceedings*

1. Without prejudice to intervention programmes or measures imposed by the competent judicial authorities under national law, Member States shall take the necessary measures to ensure that ⇒ dedicated and ⇐ effective intervention programmes or measures are made available to prevent and minimise the risks of repeated offences of a sexual nature against children. Such programmes or measures shall be accessible at any time during the criminal proceedings, ⇒ and shall be available both ⇐ inside and outside prison, in accordance with national law.
2. The intervention programmes or measures, referred to in paragraph 1 shall meet the specific developmental needs of children who sexually offend.

3. Member States shall take the necessary measures to ensure that the following persons may have access to the intervention programmes or measures referred to in paragraph 1:
- (a) persons subject to criminal proceedings for any of the offences referred to in Articles 3 to ~~⇒ 9 ⇐ 7~~, under conditions which are neither detrimental nor contrary to the rights of the defence or to the requirements of a fair and impartial trial, and, in particular, in compliance with the principle of the presumption of innocence; and
  - (b) persons convicted of any of the offences referred to in Articles 3 to ~~⇒ 9 ⇐ 7~~.
4. Member States shall take the necessary measures to ensure that the persons referred to in paragraph 3 are subject to an assessment of the danger that they present and the possible risks of repetition of any of the offences referred to in Articles 3 to ~~⇒ 9 ⇐ 7~~, with the aim of identifying appropriate intervention programmes or measures.
5. Member States shall take the necessary measures to ensure that the persons referred to in paragraph 3 to whom intervention programmes or measures in accordance with paragraph 4 have been proposed:
- (a) are fully informed of the reasons for the proposal;
  - (b) consent to their participation in the programmes or measures with full knowledge of the facts;
  - (c) may refuse and, in the case of convicted persons, are made aware of the possible consequences of such a refusal.

Article 30

*Measures against websites containing or disseminating child ~~pornography~~ ☒ sexual abuse material ☒*

1. Member States shall take the necessary measures to ensure the prompt removal of web pages containing or disseminating child ~~pornography~~ ☒ sexual abuse material ☒ hosted in their territory and to endeavour to obtain the removal of such pages hosted outside of their territory.
2. Member States may take measures to block access to web pages containing or disseminating child ~~pornography~~ ☒ sexual abuse material ☒ towards the Internet users within their territory. These measures must be set by transparent procedures and provide adequate safeguards, in particular to ensure that the restriction is limited to what is necessary and proportionate, and that users are informed of the reason for the restriction. Those safeguards shall also include the possibility of judicial redress.

Article 31

*Data collection **and research***

1. Member States shall have a system in place for the collection, development, production and dissemination of public statistics on offences referred to in Articles 3 to 9.
2. The statistics shall, **as a minimum,** include the following **existing** data, **available at central level,** disaggregated by sex, age of the victim and of the offender, **the type of the offence and, where possible and relevant,** relationship between the victim and the offender **and type of offence:**

- (a) ~~the number of victims who experienced one of the offences~~ **the annual number of reported offences and of convictions of offences** referred to in Articles 3 to 9 **obtained from national administrative sources** during the last 12 months, last five years and lifetime;
- (b) the annual number of persons prosecuted for and convicted of the offences referred to in Articles 3 to 9, obtained from national administrative sources;
- c) the annual number of victims of offences referred to in Articles 3 to 9 in the context of prosecutions and convictions, obtained from national administrative sources.**
- ~~(c) the results of their prevention initiatives under Articles 27, 28 and 29 in terms of the number of offenders and potential offenders having accessed prevention programmes and the percentage of these offenders and potential offenders who has been convicted for one of the offences in Articles 3 to 9 after having participated in such programmes.~~

3. Member States shall **endeavour to** conduct a population-based surveys **at regular intervals** every 3 years using the harmonised methodology of the Commission (Eurostat) ~~to contribute to gather the data referred to in paragraph 2, point (a), and on that basis to~~ assess the prevalence of, and trends **in, for** all offences referred to in Articles 3 to 9 of this Directive. For the first time, Member States shall transmit those data to the Commission (Eurostat) by [3 years after the entry into force of the directive] at the latest.
4. **In order to ensure the comparability and standardisation of administrative data across the Union,** Member States shall **endeavour to** collect administrative data pursuant to paragraph 2 on the basis of common disaggregations developed in cooperation with the EU Centre. They shall transmit that data to the EU Centre on a yearly basis. The transmitted data shall not contain personal data.

5. The EU Centre shall support Member States in the data gathering referred to in paragraph 2, including by promoting the development of common voluntary standards on counting units, counting rules, common disaggregations, reporting formats, and on the classification of criminal offences.
6. Member States shall transmit the **available** statistics to the EU Centre and the Commission and make the collected statistics available to the public on an annual basis. The EU Centre shall compile the statistics and make them publicly available. The statistics shall not contain personal data.
7. Member States shall **foster support** research on root causes, effects, incidences, effective prevention measures, effective assistance to victims measures and conviction rates of the offences referred to in Articles 3 to 9 of this Directive.

↓ 2011/93/EU (adapted)

#### *Article 32*

#### *Reporting*

- ~~1. The Commission shall, by 18 December 2015, submit a report to the European Parliament and the Council assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by a legislative proposal.~~
- ~~2. The Commission shall, by 18 December 2015, submit a report to the European Parliament and the Council assessing the implementation of the measures referred to in Article 25.~~

↴ new

The Commission shall, by [5 years after date of entry into application] and then every 5 years thereafter, submit a report to the European Parliament and the Council on the application of this Directive [in the Member States] and, if appropriate, propose amendments.

↓ 2011/93/EU

#### ~~Article 26~~

#### ~~Replacement of Framework Decision 2004/68/JHA~~

~~Framework Decision 2004/68/JHA is hereby replaced in relation to Member States participating in the adoption of this Directive without prejudice to the obligations of those Member States relating to the time limits for transposition of the Framework Decision into national law.~~

~~In relation to Member States participating in the adoption of this Directive, references to Framework Decision 2004/68/JHA shall be construed as references to this Directive.~~

#### Article 32a

#### *Freedom of the press and freedom of expression in other media*

**This Directive shall not affect special liability regimes relating to fundamental principles on the freedom of the press and the freedom of expression in protected media which exist in Member States as of [the date of entry into force of this Directive], provided that such regimes can be applied in full compliance with the Charter.**

# Article 33

## Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ~~this Directive~~ ⇒ Article 2, paragraphs (3)(a), (c) and (d), (4), (5), (6) and (8), (9); Article 3 paragraphs (1) and (4) to (9); Article 4 paragraphs (4) to (7); Article 5 paragraphs (2) to (10); Articles 5a-6 to 10; Article 11, introductory wording and letters (b), (h), (i), (j); Article 12; Article 13; Article 14 paragraph (1), introductory wording and letter (b), and paragraphs (2) and (3); Article 15 to 20; Article 21 paragraphs (1) to (4), and (6) to (10); Article 22 paragraph (3), introductory wording and letter (g), and paragraphs (4) and (5) and (7); Articles 23 to 28; Article 29 paragraphs (1), (3) and (4); Articles 30 to 32 of this Directive ⇐ by ⇒ [two years after entry into force] ⇐ ~~18 December 2013~~. ⇒ They shall immediately communicate the text of those measures to the Commission. ⇐
- ~~2. Member States shall transmit to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive.~~
2. ~~3.~~ When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. ⇒ They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated. ⇐ ~~The methods of making such reference shall be laid down by the Member States.~~



↕ new

3. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive, ~~including a correlation table between such national measures and the corresponding obligations in this Directive.~~

↕ new

#### Article 34

##### *Repeal*

Directive 2011/93/EU is repealed with effect from [the day after the second date referred to in Article ~~33~~<sup>34</sup>32, first subparagraph], 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.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

↓ 2011/93/EU

⇒ new

#### Article 35

##### *Entry into force ⇒ and application ⇐*

This Directive shall enter into force on the ⇐ twentieth ⇐ day ⇐ following that ⇐ of its publication in the *Official Journal of the European Union*.

<sup>34</sup> Technical amendment: reference added.

↕ new

The obligations referred to in paragraph 1 of Article 33 shall apply from [... day after transposition deadline referred to in Article 33(1)], except Article 21 paragraph (9), Article 28 paragraph (5); Article 31 paragraphs (4), (5) and (6) which shall apply from [ date to be aligned with the CSA Regulation].

↓ 2011/93/EU

*Article 36*

*Addressees*

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg,

*For the European Parliament  
The President*

*For the Council  
The President*