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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 aubse material (recast) - Preparation of the next steps in the negotiation

The Presidency will, at the meeting of JHA Counsellors on 19 November, discuss with delegations the way forward concerning the negotiations on the file. The Presidency will ask delegations for their guidance on a range of points exposed below.

1. Consent

The consent is one of the cornerstones of the negotiations. The Council has taken a significant step forward by introducing a definition of consent in article 3(7) in the General Approach (lines 109-111). The Parliament, on the other hand, proposes a wording in article 2(1)(2a) (line 85a), 3(9) (line 113-116), article 10(5) (line 163), article 28(1a) (line 298a) to define consent, which originates, according to the Parliament, from the Istanbul Convention and the GDPR Regulation. Moreover, the Parliament's definition aims to follow a "yes means yes" approach and seeks to cover the Directive as a whole, not just specific articles as in the Council's General Approach (the definition provided in article 3(7) is limited to paragraphs 4a and 6a). The Presidency has consistently insisted on including one clear definition only in the recast Directive.

The Presidency is assessing the possibility to rework the wording of consent to take a step towards the Parliament's position.

Delegations are invited to indicate whether they are open to consider a more ambitious wording on consent. Delegations are also invited to submit specific compromise proposals.

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2. Penalty levels

The Parliament wishes to increase the penalties across the offences to reflect their severity. As an outcome of the political trilogue, the Parliament has expressed openness to accept the distinction, provided the penalty levels are higher. In the spirit of compromise, the Presidency is exploring venues of compromise. For this exercise, delegations will find below an overview table of the penalties for the offences, displaying the penalty levels included in the Directive 2011/93, the Commission's proposal, the Parliament's mandate, and the General Approach.

Delegations are invited to indicate for which offences a higher penalty (compared to the General Approach) could be accepted, and which penalty level would be acceptable. Furthermore, delegations are invited to inform the Presidency about any possible red lines. If a higher penalty is not possible, delegations are invited to share their reasoning and arguments.

Penalty levels overview table

Article	Offence	Directive 2011/93	COM proposal	EP Mandate	GA Mandate	Compromise
Article 3 - Offences concerning sexual abuse						
Para. 2	Causing to witness **sexual activities**	1 year	1 year	1 year (all)	1 year (below)	
Para. 2a	Dissemination of online content without age verification tools to prevent access.			1 year	n/a	
Para. 3	Causing to witness **sexual abuse**	2 years	2 years	2 years (all)	2 years (below)	[1]
Para. 4	Engaging in sexual activities	5 years	8 years	10 years (below + above – included in the next line)	5 years (below)	
Para. 4a	Engaging in sexual activities			10 years (above)	2 years (above)	
Para. 5	Engaging in sexual activities when:					
Para. 5a	Abuse is made of a recognised **position of trust**, authority or influence	8 years (below) 3 years (above)	10 years (below) 6 years (above)	12 years (all)	10 years (below) 5 years (above)	
Para. 5b	Abuse is made of a particularly **vulnerable situation**	10 years (below) 5 years (above)	12 years (below) 7 years (above)	12 years (all)	10 years (below) 5 years (above)	
Para. 5c	Use is made of **coercion, force or threats**	10 years (below) 5 years (above)	12 years (below) 7 years (above)	14 years (all)	10 years (below) 5 years (above)	
Para. 6-8	Engaging in sexual activities (penetration)					
Para. 6	**Coercing, forcing, threatening** a child into	10 years (below) 5 years (above)	12 years (below) 7 years (above)	14 years (all)	n/a *(due to the amendment under para. 5)*	

[1] Penalty to be agreed for article 3(3) for children above the age of sexual consent, for the most severe cases, as outcome of the political trilogue (6 November 2025).

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Article	Offence	Directive 2011/93	COM proposal	EP Mandate	GA Mandate	Compromise
	sexual activities with a third party or themselves					
Para. 7a	**Engaging** with child below age of consent entailing penetration		12 years	16 years (below)	10 years (below) Para. 6(point a)	
Para. 7b	**Causing** a child below age of consent to engage in sexual activities entailing penetration with a **third person**		12 years	16 years (below)	10 years (below) Para. 6(point b)	
Para. 7ba	**Causing** a child below age of consent to engage in sexual activities entailing penetration **with themselves**		n/a	16 years (below)		[2]
Para. 8	Conduct referred to in para. 7 where child is **above age** of consent.		10 years	16 years (above)	5 years (above) Para. 6a(point a+b)	

Article	Offence	Directive 2011/93	COM proposal	EP Mandate	GA Mandate	Compromise
Article 4 – offences concerning sexual exploitation						
Para. 2	**Causing or recruiting** a child to participate in CSA performances, or profiting from or otherwise exploiting a child for such purposes.	5 years (below) 2 years (above)	5 years (below) 2 years (above)	6 years (all)	5 years (below) 2 years (above)	
Para. 3	**Coercing or forcing** a child to participate in **CSA performances**, or threatening for such purposes	8 years (below) 5 years (above)	8 years (below) 5 years (above)	9 years (all)	8 years (below) 5 years (above)	
Para. 4	**Knowingly attending** CSA **performances** involving the participation of a child	2 years (below) 1 year (above)	2 years (below) 1 year (above)	3 years (all)	2 years (below) 1 year (above)	

[2] Penalty to be agreed for self-rape provision for children below the age of sexual consent, as outcome of the political trilogue (6 November 2025).

Para. 5	**Causing or recruiting** a child to participate in exploitation in **prostitution**, or profiting from or otherwise exploiting a child for such purposes	8 years (below) 5 years (above)	8 years (below) 5 years (above)	12 years (all)	8 years (below) 5 years (above)	
Para. 6	**Coercing or forcing** a child into exploitation in **prostitution**, or threatening a child for such purposes	10 years (below) 5 years (above)	10 years (below) 5 years (above)	14 years (all)	10 years (below) 5 years (above)	
Para. 7	**Engaging in sexual activities** with a child, where recourse is made to **exploitation in prostitution**	5 years (below) 2 years (above)	8 years (below) 4 years (above)	12 years (all)	5 years (below) 2 years (above)	
Para. 7a	**Coercing or forcing** a child to **share material representing that child's intimate parts** without consent to obtain money/CSAM/other benefit			8 years (all)		[3]

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[3] Penalty to be agreed for sextortion provision for children below and above the age of sexual consent, as outcome of the political trilogue (6 November 2025).

Article	Offence	Directive 2011/93	COM proposal	EP Mandate	GA Mandate	Compromise
Article 5 – offences concerning CSA material						
Para. 2	**Acquisition or possession** of CSAM	1 year	1 year	2 years	1 year	
	Para. 2a: **Acquisition or possession** of **AI systems** for the purpose of enabling the creation of CSAM	*n/a*	*n/a*	1 year	*n/a*	
Para. 3	**Knowingly obtaining access** by means of information and communication technology to CSAM	1 year	1 year	2 years	1 year	
Para. 4	**Distribution, dissemination or transmission** of CSAM	2 years	2 years	4 years	2 years	
	Distribution, dissemination or transmission of AI systems for the purpose of enabling the creation of CSAM			2 years	*n/a*	
Para. 5	**Offering, supplying or making** available CSAM	2 years	2 years	4 years	2 years	
Para. 6	**Production** of CSAM	3 years	3 years	6 years	3 years	
	Creation of AI systems for the purpose of enabling the creation of CSAM			3 years	*n/a*	

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Offence	Directive 2011/93	COM proposal	EP Mandate	GA Mandate	Compromise
Paedophile Manuals					
Any material, intended to provide advice on how to commit one of the offences referred to in Art. 3, 4, 5, or 6.					
Distribution, dissemination or transmission:		2 years	4 years *Art. 5(4)*	1 year *Art. 5a(1)(a)*	
Offering, supplying or making available:		2 years	4 years *Art. 5(5)*	1 year *Art. 5a(1)(b)*	
Producing:		3 years	8 years *Art. 5(6)*	1 year *Art. 5a(1)(c)*	
Possessing:		1 year	2 years *Art. 5(2)*	1 year *Art. 5a(1)(d)*	

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Article	Offence	Directive 2011/93	COM proposal	EP Mandate	GA Mandate	Compromise
Article 6 – solicitation of children for sexual purposes (grooming)						
Para. 1	*Point 1a:* **Proposing to meet a child** for the purpose of committing any of the referred offences in Art. […] where that **proposal was followed by material acts** [….]		1 year (all)	1 year (all)	1 year (below)	
	Point 1b: Proposing to meet a child using **coercion, force or threats**		2 years (all)	2 years (all)	2 years (below)	
Para. 2	*Para 2(1):* **An attempt**, including by means of information and communication technology, to commit the offences Article 5(2) and (3) by an adult **soliciting a child to provide CSAM**.		6 months	1 year (all)	Punishable - MS can freely decide (below)	
	Para. 2(1a): **Use of coercion or threats** against children above the age of sexual consent, to provide CSAM		*n/a*	*n/a*	Punishable - MS can freely decide (above)	
	Para. 2(2): Use of coercion, force or threats against children to provide CSAM		1 year (all)	2 years (all)	1 year (below)	
Para. 3	*Para. 3(1):* An **attempt**, […]to commit the offences Article 4(2) and (5) by an adult **causing a child to participate in child sexual abuse performances and sexual exploitation**		6 months	3 years	*Deleted*	
	Para. 3(2): The conduct referred to in the first subparagraph [...] where use		1 year	6 years	*Deleted*	

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	is made of ***coercion[, force] or threats***					

Article	Offence	Directive 2011/93	COM proposal	EP Mandate	GA Mandate	Compromise
Article 7 – Solicitation of livestreaming of child sexual abuse or sexual exploitation						
Para. 1	Member States shall take the necessary measures to ensure that intentionally promising or giving money, or other form of remuneration or consideration **in order to gain access to a livestream of activities described in** any of the offences listed in Art. […]		3 years	5 years	1 year	

Article	Offence	Directive 2011/93	COM proposal	EP Mandate	GA Mandate	Compromise
Article 8 – Operation of an online service for the purpose of child sexual abuse or sexual exploitation						
Para. 1	**Intentionally operating or administering an information society service** which is **conceived to facilitate or encourage** the commission of any of the offences referred to in Article 3 to 7		1 year	10 years	1 year	

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3. Limitation periods

The Parliament has made the unprecedented proposal to abolish all limitation periods for the prosecution of the offences referred to in article 3 to 9 and article 23. During the second trilogue, the Presidency exposed the legal and technical reasons why a full abolishment is not acceptable for the Council. As an outcome of the discussion, the Parliament and the Presidency is assessing how to bridge the gap between the two positions. The Presidency is therefore considering the following options:

a. Extension of the limitation periods: introducing a suspension clause at least until the victim reaches the age of majority with higher limitation periods than the ones provided in the General Approach (i.e. currently proposed at 10 years and 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 5 years and 10 of imprisonment respectively).

b. Extension of the suspension clause: introducing a suspension clause at least until the victim reaches a certain age (e.g. 25 or 30 years old) with the current limitation scheme proposed in the General Approach.

c. Interruption of prescription: introducing specific grounds for interruption (e.g. new material evidence is discovered; the victim formally files a complaint) interrupting the limitation period and making it restart for the full duration.

d. High age cap: ensuring that the victims can report a crime until a certain age (e.g. 52 years old).

e. Partial imprescriptibly: abolishing the limitation periods for the most severe forms of child sexual abuse and exploitation.

f. Differential treatment and full civil imprescriptibly: distinguishing criminal limitation period from civil limitation period: extend the limit to ensure the offender can be prosecuted, while fully abolishing the limitation period for the civil claim (meaning the victim can seek financial compensation from the perpetrator at any point during their lifetime, regardless of whether criminal proceedings can still be brought).

Delegations are invited to indicate whether they could accept one or several of the options stated above. Delegations are also invited to propose other options they can think of.

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