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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) - Examination of Presidency's compromise proposals and preparation of the third political trilogue

Following the preparation during the JHA Counsellors meetings on the 14 November and 19 November, the Presidency is grateful for the excellent collaboration with the delegations. The input provided by delegations allowed the Presidency to progress with the Parliament in the negotiations.

Based on the exchanges with the delegations and discussions with the Parliament, the Presidency is preparing a set of provisions ahead of the third political trilogue (to be held on the 9 December). Delegations will find below the text proposals tabled by the Presidency, regarding Article 1-8b.

The changes indicated in **bold** and ~~strikethrough~~ are in comparison to the Commission's original proposal. Subsequent changes are in **bold and underlined**.

Article 1 – Subject matter (line 80-81)

Delegations will find below a compromise text proposal tabled by the Presidency on Article 1.

Delegations are invited to indicate whether they can agree with the Presidency's text proposal.

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Article 1

Subject matter

This Directive establishes minimum rules concerning the definition of criminal offences and **penalties** in the area of sexual abuse and sexual exploitation of children, child sexual abuse material and solicitation of children for sexual purposes, **including if committed by means of information and communication technology**. It also introduces provisions to strengthen the prevention of those criminal offences and the protection of the victims thereof.

Article 2 – Definitions (line 82-98)

Delegations will find below a compromise text proposal tabled by the Presidency on Article 2. The compromise text proposal has been adjusted based on the discussions in COPEN, during which delegations expressed whether to accommodate the proposed changes from the Parliament, as well discussions during inter-institutional meetings.

Delegations are invited to indicate whether they can agree with the Presidency's text proposal.

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 sexual abuse material' means:

(a) any material that visually depicts a child engaged in real or simulated sexually explicit conduct. **It may also include written or audio content**[1];

(b) **any** 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. **It may also include written or audio content**[2];

(d) **any** realistic images, reproductions or representations of a child engaged in sexually explicit conduct or of the sexual organs of a child, for primarily sexual purposes, **regardless of the method of creation**;

4) 'child exploitation in prostitution' means the use of a child for sexual activities where money or any other form of remuneration**, benefit** or consideration is given or promised 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) 'child sexual abuse performance' means a live exhibition aimed at an audience of **one or more persons**, including by means of information and communication technology, of:

(a) a child engaged in real or simulated sexually explicit **acts or** conduct; or

(b) the sexual organs of a child for primarily sexual purposes;

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1 Reference is made to the United Nations Convention against Cybercrime; Strengthening International Cooperation for Combating Certain Crimes Committed by Means of Information and Communications Technology Systems and for the Sharing of Evidence in Electronic Form of Serious Crimes, Article 14(2).

2 Reference is made to the United Nations Convention against Cybercrime; Strengthening International Cooperation for Combating Certain Crimes Committed by Means of Information and Communications Technology Systems and for the Sharing of Evidence in Electronic Form of Serious Crimes, Article 14(2).

(6) 'legal person' means ~~an entity having legal personality~~ **any legal entity having such status** under the applicable **national** law, except for States or public bodies ~~in the exercise of~~ **exercising** State authority and for public international organisations[3];

(7) 'information society service' means a service as defined in Article 1, point (b), of Directive (EU) 2015/1535[4].

(8) 'peers' means persons who are close in age and degree of psychological and physical development or maturity.

Article 2 would be accompanied by the following extended recital 10, explaining the term "images" (in order to address the EP's proposed amendments in line 90)

10) Child sexual abuse material frequently includes images recording the sexual abuse of children ~~by adults~~. It may also include images of children involved in sexually explicit conduct, or of their sexual organs, where such images are produced or used for primarily sexual purposes and exploited with or without the child's knowledge. Furthermore, the concept of child sexual abuse material also covers realistic images of a child, where a child is engaged or depicted as being engaged in sexually explicit conduct for primarily sexual purposes ~~as well as so called ´paedophile manuals´.~~

[3] The purpose of the proposed changes is to ensure alignment with the definition of a "legal person" according to directive (EU) 2024/1203 of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC, Article 2(2)(a). The line was endorsed by the co-legislators at the political trilogue, which took place on 6 November 2025.

[4] 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.

The term image includes any visual representation, regardless of the method of creation or manipulation, including by using artificial intelligence, deepfake technologies, or augmented, extended, or virtual reality settings. The term image includes e.g. images in printed publications, photographic images including film, video, videograms and digital representation. It also includes pseudo-photographs, i.e. an image made by computer graphics, or in any other way, that appears to be a photograph, tracings, derivatives of a photograph or data that can be converted into a photograph.

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Article 3 – Offences concerning sexual abuse (line 99-116)

Delegations will find below a compromise text proposal tabled by the Presidency on Article 3. The compromise text proposal has been adjusted based on the discussions in COPEN, during which delegations expressed whether to accommodate the proposed changes from the Parliament, as well discussions during inter-institutional meetings.

Since the last political trilogue on the 6 November, during which the Presidency expressed willingness to expand certain provisions to also cover situation where an offender causes a child to engage in sexual activities with themself (Article 3(4) and so-called "self-penetration"), the Parliament has expressed its wish to also cover children above the age of sexual consent. To reflect this, "with themself" has been inserted in Article 4a in brackets below, for delegations' consideration.

Delegations are invited to indicate whether they agree can with the Presidency's text proposal.

Furthermore, delegations are invited to indicate, if they have a preference and if they could accept the new draft proposal on the expansion of the scope in Article 3(3) as proposed by the Presidency, or rather the alternative proposal tabled by the Parliament.

Finally, delegations are invited to indicate whether they could accept an expansion of the scope of Article 3(4a) regarding children above the age of sexual consent to situations where an offender causes a child to engage in sexual activities with themselves. The same should be considered as to situations of so-called "self-penetration" (tabled in para. 6(c) below).

Article 3

Offences concerning **child** sexual abuse

1. Member States shall take the necessary measures to ensure that the **intentional** conduct referred to in [**paragraphs 2 to 6a/8**] a 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.

3a. Where the child has reached the age of sexual consent, the conduct referred to in the first subparagraph shall be punishable by a maximum term of imprisonment of at least [x] years, where:

Proposal tabled by the Presidency:

a) abuse is made of a recognised position of trust, authority or influence over the child; or

b) abuse is made of a particularly vulnerable situation of the child, in particular because of a physical, mental, intellectual or sensory disability or a situation of dependence; or

c) use is made of coercion, force or threats.

Alternatively, as proposed by the Parliament:

3a. Where the child has reached the age of sexual consent, the conduct referred to in the first subparagraph shall be punishable by a maximum term of imprisonment of at least [x] years, where such conduct is likely to cause serious psychological harm to that child.

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4. Engaging in sexual activities, **other than those set out in paragraph 6,** with a child who has not reached the age of sexual consent or causing ~~the~~ **that** child to engage in sexual activities with ~~another~~ **a third** person **or with themself** shall be punishable by a maximum term of imprisonment of at least [x years].

4a. Engaging in sexual activities, other than those set out in paragraphs 6a, with a child who has reached the age of sexual consent and does not consent to sexual activities, or causing that child to engage in non-consensual sexual activities with a third person [or with themself], shall be punishable by a maximum term of imprisonment of at least [x years].

5. Engaging in sexual activities with a child **or causing that child to engage in sexual activities ~~with a third person~~**[5]**, as provided for in paragraph 4 and 4a**, 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 [**x** years] if the child has not reached the age of sexual consent, and of at least [**x** 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~~ **physical, mental, intellectual or sensory**[6] disability or a situation of dependence, shall be punishable by a maximum term of imprisonment of at least [**x** years] if the child has not reached the age of sexual consent, and of at least [**x** years] of imprisonment if the child is over that age; or

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5 The reasoning behind the proposal to delete "with a third person" in paragraph 5 is that paragraph 4 and 4a, to which a reference is made, specifies whether "with a third person" (and "with themself") is covered by the scope of the single offence. Therefore, it could be seen as redundant and, potentially, confusing to including only one. So far, the Council has only accepted expanding the scope of the provision regarding "with themself" for children below the age of sexual consent.

6 To align with the United Nations Convention on the Rights of Persons with Disabilities, Article 1.

(c) use is made of coercion, force or threats[7] shall be punishable by a maximum term of imprisonment of at least [**x** years] if the child has not reached the age of sexual consent, and of at least [**x** years] of imprisonment if the child is over that age.

6. **The following intentional conduct** shall be punishable by a maximum term of imprisonment of at least [**x** years]:

(a) engaging with a child who has not reached the age of sexual consent in sexual activities entailing vaginal, or anal penetration, with any bodily part or object;, or oral penetration with a genital bodily part,

(b) **causing a child who has not reached the age of sexual consent to engage with a third person in sexual activities entailing vaginal, or anal penetration with any bodily part or object, or oral penetration with a genital bodily part.**

6a. **The following intentional conduct shall be punishable by a maximum term of imprisonment of at least [5/x years]:**

(a) engaging with a child who has reached the age of sexual consent and does not consent in sexual activities entailing vaginal, or anal penetration, with any bodily part or object; or oral penetration with a genital bodily part;

(b) causing a child who has reached the age of sexual consent and does not consent to sexual activities, to engage with a third person in sexual activities entailing vaginal or anal penetration with any bodily part or object, or oral penetration with a genital body part.

6b. Member States may take the necessary measures to ensure that conducts described in paragraph 5 also apply to the offences referred to in paragraphs 6 and 6a, providing for more severe penalties.

[7] A recital could be envisaged explaining that coercion, force or threats include physical or psychological violence, and blackmail to meet the Parliament.

6c. Causing, for sexual purposes, a child [who has not reached the age of sexual consent] to engage themselves in sexual activities entailing vaginal, or anal penetration with any bodily part or object, or oral penetration with a genital bodily part shall be punishable by a maximum term of imprisonment of at least [x] years.[8]

7. *[Text on consent is to be determined.]*

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Article 4 – Offences concerning sexual exploitation (line 117—124a)

Delegations will find below a compromise text proposal tabled by the Presidency on Article 4. The compromise text proposal has been adjusted based on the discussions in COPEN, during which delegations have expressed whether to accommodate the proposed changes from the Parliament, as well discussions during inter-institutional meetings. The proposed text from the Parliament in line 124a on so-called "sextortion" has been revised and moved to Article 6(3), as per Commission's proposal inserted below.

Delegations are invited to indicate whether they can agree with the Presidency's text proposal.

Article 4

Offences concerning **child** 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 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 [x] years if the child has not reached the age of sexual consent and of at least [x] years of imprisonment if the child is over that age.

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8 Text proposal tabled by the Presidency to welcome the Parliament's proposal to introduce as a criminal offence so-called "self-penetration" (line 111a).

3. Coercing or forcing a child to participate in child sexual abuse performances, or threatening a child for such purposes shall be punishable by a maximum term of imprisonment of at least [x] years if the child has not reached the age of sexual consent, and of at least [x] years of imprisonment if the child is over that age.

4. Knowingly attending child sexual abuse performances involving the participation of a child shall be punishable by a maximum term of imprisonment of at least [x] years if the child has not reached the age of sexual consent, and of at least [x] year of imprisonment if the child is over that age.

5. Causing or recruiting a child to participate in exploitation in prostitution, or profiting from or otherwise exploiting a child for such purposes shall be punishable by a maximum term of imprisonment of at least [x] years if the child has not reached the age of sexual consent, and of at least [x] years of imprisonment if the child is over that age.

6. Coercing or forcing a child into exploitation in prostitution, or threatening a child for such purposes shall be punishable by a maximum term of imprisonment of at least [x] years if the child has not reached the age of sexual consent, and of at least [x] 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 prostitution shall be punishable by a maximum term of imprisonment of at least [x] years if the child has not reached the age of sexual consent, and of at least [x] years of imprisonment if the child is over that age.

Article 5 – Offences concerning child sexual abuse material (line 125-139a)

Compromises are still to be found on Article 5 and, therefore, a compromise text proposal has not been included at this stage.

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Article 5a – Offences concerning instructions to commit offences (line139b-139h)

Delegations will find below a compromise text proposal tabled by the Presidency on Article 5a. The compromise text proposal has been adjusted based on the discussions during inter-institutional meetings and the political trilogue which took place on the 6 November. The addition "including any instruction for artificial intelligence systems" has been added by the Parliament as their price for accepting a self-standing provision on instructions/manuals (in the previous briefings from the Presidency regarding the second trilogue and following inter-institutional meetings, this has been referred to as "ensuring that AI-prompts are included in the scope"). If not supported, delegations may propose alternative drafting solution as to meet Parliament's standpoint.

Delegations are invited to indicate whether they can agree with the Presidency's text proposal.

Article 5a

Offences concerning instructions to commit child sexual abuse, sexual exploitation or solicitation of children for sexual purposes

Member States shall take the necessary measures to ensure that the following intentional conduct, when committed without right, is punishable by a maximum term of imprisonment of at least [x] year:

(a) distribution, dissemination or transmission of;

(b) offering, supplying or making available of;

(c) producing,

(d) possessing

any material, regardless of its form or method of creation, intended to provide advice or instructions on how to commit one of the offences referred to in Articles 3, 4, 5, 6 or 7 in this directive, including any instruction for artificial intelligence systems.

Article 6 – Solicitation of children for sexual purposes (line 140-147)

Delegations will find below the compromise proposal tabled by the Commission on article 6.

Delegations are invited to indicate whether they can agree with the text proposal.

PUBLIC

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) Proposing, **including** by means of information and communication technology, to meet a child **who has not reached the age of sexual consent** either online or in person, for the purpose of committing any of the offences referred to in Article 3(4), (5), (6) **and (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;

   b) The conduct referred to in the first subparagraph committed against a child who has reached the age of sexual consent shall be punishable by a maximum term of imprisonment of at least 1 year where[9]:

      i. abuse is made of a recognised position of trust, authority or influence over the child;

      ii. abuse is made of a particularly vulnerable situation of the child.

      iii. use is made of coercion, force, threats, or deceit;

   c) The conduct referred to in 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 threats.

[9] The order of point i, ii and iii has been adjusted compared to the text proposal, circulated during the JHA COPEN councillors meeting on 19 November, to align with Article 3(5).

2. Member States shall take the necessary measures to ensure that **the <u>following intentional</u> conduct, committed by an adult, <u>is punishable as follows:</u>**

(a) **soliciting a child who has not reached the age of sexual consent, including** by means of information and communication technology, **to produce<u>, distribute, disseminate, transmit, or make available</u>** child sexual abuse material is punishable **<u>by a maximum term of imprisonment of at least 6 months</u>**.

(b) **<u>The conduct referred to in the first subparagraph committed against a child who has reached the age of sexual consent shall be punishable by a maximum term of imprisonment of at least 6 months where use is made of coercion, force, threats, or deceit.</u>**

(c) 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.

3. <u>Member States shall take the necessary measures to ensure that threatening a child to disclose to one or more third parties child sexual abuse material in order to obtain child sexual abuse material, money, or any other form of remuneration, benefit or consideration in exchange, shall be punishable by a maximum term of imprisonment of at least 8 years.</u>

<u>Article 7 – Solicitation of sexual abuse (line 148-149)</u>

Delegations will find below the compromise proposal tabled by the Commission on article 7.

Delegations are invited to indicate whether they can agree with the text proposal.

Article 7

<u>Procurement of child sexual abuse</u>

<u>Member States shall take the necessary measures to ensure that the intentional conduct referred to in paragraphs 2 and 3 is punishable.</u>

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1. **Promising or giving any person money, or other form of remuneration or consideration, with the use of information and communication technologies, to cause them or another person to commit any of the offences listed in Article 3(4), (5), (6), (7), and (8), Article 4(2) and (3) and Article 5(6) shall be ~~is~~ punishable by a maximum term of imprisonment of at least 3 years.**

2. **Promising or giving any person money, or other form of remuneration or consideration, for the purpose of obtaining access to, or making available to another person with the use of information and communication technologies the child sexual abuse material corresponding to the activities described in any of the offences listed in Article 3(4), (4a), (5), (6), (6a), (7), and (8), Article 4(2) and (3) and Article 5(6) shall be punishable by a maximum term of imprisonment of at least 1 year.**

Article 8 – Operation of an online service for the purpose of child sexual abuse or sexual abuse exploitation (line 150-151)

While the Parliament has accepted to replace "conceived" with "designed and adapted", it stands strongly on retaining "or encourage" in the wording.

In the light of the Commission's explanation that Article 8 constitutes an autonomous criminal offence with a distinct penalty framework and, therefore, does not overlap with Article 9 (and in the spirit of compromise), the Presidency proposes to accept maintaining "or encourage". Alternatively, the Presidency suggest to replace "or encourage" with "advance" as suggested by a Council Member during the JHA Counsellors meetings on the 23 October.

Delegations are invited to indicate whether they agree with the Presidency's proposal for the way forward.

Article 8 would read as follows:

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 which is ~~conceived~~ **designed or adapted** to facilitate or [encourage/**advance**] 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 [X] year**s.**

Article 8a – Travelling for the purpose of sexual abuse and sexual exploitation of children (line 151a-151b)

Delegations will find below a new proposal tabled by the Parliament for article 8a. The main change proposed by the Parliament refers to the geographical scope (intra-EU and international travel, i.e. “Member State” instead of “Member States”).

The Parliament has during previous exchanges at the inter-institutional meetings highlighted Article 9 of directive (EU) 2017/541 of 15 March 2017 on combating terrorism as a reference.

Article 8a

Travelling for the purpose of sexual abuse and sexual exploitation of children

Member States shall take the necessary measures to ensure that travelling to a country other than that Member State ~~Member States~~ **for the purpose of committing, or contributing to the commission of, any of the offences referred to in Articles 3 to 8b, is punishable as a criminal act when committed intentionally.**

Article 8b – Other offences related to sexual abuse and sexual exploitation of children (line 151c-151d)

Delegations will find below a new proposal tabled by the Parliament on article 8b. The Parliament has accepted to remove letter (b), but continues to defend its position regarding letter (a) and (c) in the operative part. Letter (a) is already part of the Council's General Approach in article 26 (line 292), though with a different chapeau. Defending the position on keeping letter (c), the Parliament has shared some examples (such as: a children brought in from abroad under a false document for the purpose of child sexual abuse, e.g. falsely attesting to the mature age of the child; using false documents to act as if married to the child victim when that is not the case; using a false document for travelling to commit child sexual abuse offences; using a false document of criminal record to prove eligibility to work with children).

The Presidency proposes to accept letter (a) as an offence as proposed by the Parliament, while opposing to the inclusion of letter (c), since national legal frameworks already cover the situations listed by the Parliament, and to cover it in a recital instead.

Delegations are invited to indicate whether they agree with the Presidency's proposal for the way forward.

Article 8b would read as follows:

Article 8b

Other offences related to sexual abuse and sexual exploitation of children

Member States shall take the necessary measures to ensure that offences related to sexual abuse and sexual exploitation of children include the following intentional acts:

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

~~(b) extortion with a view to committing one of the offences listed in Articles 3 to 8; and~~

~~(c) drawing up or using false administrative documents with a view to committing one of the offences referred to in Articles 3 to 8a.~~