Council of the European Union

Brussels, 29 November 2024
(OR. en)

16145/24

Interinstitutional File: 2024/0035(COD)

LIMITE

COPEN 518
DROIPEN 256
FREMP 446
CYBER 350
ENFOPOL 481
JAI 1747
CODEC 2211

PUBLIC

NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
Subject:	The draft of the 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) - General approach

INTRODUCTION

1. On 7 February 2024, the Commission submitted to the Council and the European Parliament a 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 proposal aims to expand the definitions of the offences of sexual abuse and sexual exploitation of children, to ensure more effective investigation and prosecution of these crimes and to strengthen the protection of victims.

2. The proposal for a Directive is based on Article 83(1) of the Treaty on the Functioning of the European Union (TFEU) (ordinary legislative procedure).

3. The European Economic and Social Committee (EESC) delivered its opinion on 10 July 2024.

4. In the European Parliament, the LIBE Committee has the lead responsibility. Jeroen LENAERS was appointed rapporteur.

PUBLIC

STATE OF PLAY AND MAIN ISSUES

5. The Working Party on Cooperation in criminal law (COPEN) as well as JHA Counsellors have examined the proposal and numerous Presidency compromise texts at a considerable number of meetings between April and November 2024. A broad agreement in principle on the text was found in the meeting of JHA Counsellors on 26 November 2024. Following a subsequent informal written consultation, the text in the annex to this note has been confirmed. `

6. A number of amendments have been introduced in the proposal throughout the negotiations during the Belgian and Hungarian presidencies, notably regarding:

   – The definition of "offences concerning sexual abuse" (Article 3), in particular as regards the definition of the concept of consent (Article 3(7) and the linked recital 15c);

   – The addition of a new offence concerning instructions to commit child sexual sexual abuse, sexual exploitation or solicitation of children for sexual purposes (Article 5a);

   – The definition of the offences concerning solicitation of children, solicitation of live streaming and operation of an online service (Articles 6-8);

   – Limitation periods (Article 16a);

   – Reporting obligations (Article 17); and

   – Data collection and research (Article 31).

Other amendments have aimed at bringing the text in line with the recent criminal law acquis, notably with regard to penalties on legal persons and the rights of victims. The proposed provisions pertaining to a future EU Centre to prevent and combat child sexual abuse material have also been provisionally deleted from the text, awaiting the adoption of a legal basis for the said Centre.

PUBLIC

CONCLUSION

The Permanent Representatives Committee is therefore invited to

– confirm agreement on the text of the general approach, as set out in the annex to this note, and

– recommend that the Council reach a general approach on this text, to enable the Presidency to conduct interinstitutional negotiations.

ANNEX

PUBLIC

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

[…]

Acting in accordance with the ordinary legislative procedure,

Whereas:

⇩ new

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

🡻 2011/93/EU recital 1 (adapted)

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

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

[2] OJ C 364, 18.12.2000, p. 1.

↓ 2011/93/EU recital 2 (adapted)
⇨ new

(3) In accordance with Article 6(1) of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union, in which Article 24(2) provides that in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. Moreover, the ~~Stockholm Programme — An Open and Secure Europe Serving and Protecting Citizens (4)~~ ⇨ EU Strategy for a more effective fight against child sexual abuse[3] ⇦ gives a clear priority to ⌦ stepping up the fight against ⌫ ~~combating~~ the sexual abuse and sexual exploitation of children and child ~~pornography~~ ⇨ sexual abuse material, including through actions aimed at ensuring the continued effectiveness of existing Union legislation, if needed through its updating. This is also supported by the EU Strategy on the rights of the child in its objective to fight violence against children and ensure child-friendly justice ⇦ .

↓ 2011/93/EU recital 3 (adapted)

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

[3] COM (2020) 607 of 24 July 2020.

🡻 2011/93/EU recital 4 (adapted)
⇨ new
➲ Council

(5) ~~Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography (5) approximates Member States' legislation to criminalise the most serious forms of child sexual abuse and sexual exploitation, to extend domestic jurisdiction, and to provide for a minimum level of assistance for victims. Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings establishes a set of victims' rights in criminal proceedings, including the right to protection and compensation.~~ ⇨ Directive 2012/29/EU of the European Parliament and of the Council[4] establishes a set of victims' rights for all victims of all crime, including for child victims of sexual abuse. These rights include the right to information, the rights to support and protection in accordance with victims' individual needs, a set of procedural rights and a right to a decision on compensation from the offender. The proposal for the revision of the Victims' Rights Directive further strengthens the rights of victims of crime in the EU, including strengthening of the right to support and protection for child victims of crime[5]. This Directive builds on and is applicable in addition to the Victims' Rights Directive. ⇦Moreover, the coordination of prosecution of cases of sexual abuse, sexual exploitation of children and child ~~pornography~~ ⌦ sexual abuse material ⌫ ~~will be~~ ⌦ is ⌫ facilitated by the implementation of Council Framework Decision 2009/948/JHA ~~of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings~~[6]. ⇨ Where prosecution of such cases falls within jurisdiction of more than one Member State, the Member States concerned should cooperate to determine which Member State is best placed to prosecute. Where the competent authorities of the Member States concerned decide, following cooperation or direct consultations under ➲ […] ➲ **Council Framework Decision 2009/948/JHA[7], to centralise criminal proceedings in a single Member State through the**

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

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

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

transfer of criminal proceedings, Regulation (EU) 2024/… of the European Parliament and of the Council of 27 November 2024 on the transfer of proceedings in criminal matters…/… [*adopted but not yet published*][8] ➲] should be used for such a transfer. ⇦

PUBLIC

[8] The text was adopted on 5 November and it was signed on 27 November. Publication – with number of the Regulation – will probably be somewhere in December.

🡻 2011/93/EU recital 5

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

🡻 2011/93/EU recital 6 (adapted) ⇨ new ➲ Council

(7) Serious criminal offences such as the sexual exploitation of children and ~~pornography~~ ⌦ sexual abuse material ⌫ require a comprehensive approach covering the prosecution of offenders, the protection of child victims, and prevention of the phenomenon ⇨ , including its recent and foreseeable evolutions and trends, increasingly involving the use of ➲ […] ➲ ➲ information and communication ➲ technologies. For that purpose, the current legal framework needs to be updated, in order to ensure it remains effective ⇦. The child's best interests must be a primary consideration when carrying out any measures to combat these offences in accordance with the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child. ~~Framework Decision 2004/68/JHA should be replaced by a new instrument providing such comprehensive legal framework to achieve that purpose.~~

PUBLIC

↓ 2011/93/EU recital 7 (adapted)
➲ Council

(8) This Directive should be fully complementary with Directive ➲ […] ➲ EU 2024/1712 of the European Parliament and of the Council of 13 June 2024 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims ➲ ~~of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA[9]~~, as some victims of human trafficking have also been child victims of sexual abuse or sexual exploitation.

↓ 2011/93/EU recital 8 (adapted)

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

PUBLIC

↓ 2011/93/EU recital 9 (adapted)
⇨ new
➲ Council

(10) Child ~~pornography~~ ⌦ sexual abuse material ⌫ frequently includes images recording the sexual abuse of children ➲ […] ➲ It may also include images of children involved in sexually explicit conduct, or of their sexual organs, 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 ~~pornography~~ ⌦ 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 ⇨ ➲ […] ➲ ⇦ .

⇩ new
➲ Council

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

↻ Council

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

⇩ new ➲ Council

(12) ➲ Handbooks and ⊂ ➲ […] ⊂ manuals, ➲ in any form, like hardcopy, digital or coded, ⊂ provide advice on how to find, groom and abuse children and avoid being identified and prosecuted. By lowering barriers and providing the necessary know-how, they contribute to inciting offenders and support the commission of sexual abuse. Their online dissemination has already led certain Member States to amend their criminal law and explicitly criminalise possession and distribution of such manuals. The lack of harmonisation creates an uneven level of protection across the EU. To prevent offences involving the sexual abuse of children, ➲ […] ⊂ ➲ intentionally producing, offering, disseminating, possessing instructions on how to commit child sexual abuse and sexual exploitation, in writing or in other form, such as (online) sessions in which information on how to commit sexual abuse is shared, should be punishable when committed without right. ⊂

↓ 2011/93/EU recital 10

(13) Disability, by itself, does not automatically constitute an impossibility to consent to sexual relations. However, the abuse of the existence of such a disability in order to engage in sexual activities with a child should be criminalised.

↓ 2011/93/EU recital 11 (adapted)

➲ Council

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

PUBLIC

↓ 2011/93/EU recital 12 (adapted)

⇨ new

➲ Council

(15) Serious forms of sexual abuse and sexual exploitation of children should be subject to effective, proportionate and dissuasive penalties. This includes, in particular, various forms of sexual abuse and sexual exploitation of children which are facilitated by the use of information and communication technology, such as the online solicitation of children for sexual purposes via social networking websites and chat rooms. The definition of child ~~pornography~~ ⌦ sexual abuse material ⌫ should also be clarified and brought closer to that contained in international instruments. ⇨ ➲ […] ➲ , The terminology used in this Directive should be brought into line with recognised international standards such as the Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse adopted by the Interagency Working Group in Luxembourg on 28 January 2016, ⇦ ➲ as well as the UN Committee on the Rights of the Child's Report "Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography". The said Terminology Guidelines point out that the term child sexual abuse material is increasingly being used to replace the term child pornography. This switch of terminology is based on the argument that sexualised material that depicts or otherwise represents children is indeed a representation and a form, of child sexual abuse, and should not be described as pornography. ➲

PUBLIC

Council

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

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

(15c) Engaging in sexual activities with children who have reached the age of sexual consent should be punishable if the child does not consent. When the child has reached the age of sexual consent and gives consent to a sexual act, it is necessary that this consent is given voluntarily, as a result of the child's freely formed will, considered in the context of the relevant surrounding circumstances.

In cases in which the child is unable to form a free will, consent cannot be deemed to exist. Such situations could be considered when abuse is made of a recognised position of trust, authority or influence over the child, abuse is made of a particularly vulnerable situation of the child, use is made of coercion, force or threats or the child is unconscious or intoxicated in a manner impacting their ability to form a free will. It is not required that the child indicates by words that it does not consent to the act. That the child does not consent to the act can also be derived from acts by the child or (other) circumstances revealing this, which may include freezing. Consent cannot be inferred solely from the child's physical non-resistance or past sexual conduct.

When determining what constitutes a child's free and voluntary consent, the Member States' judicial authorities should consider all the relevant circumstances of the case.

↓ 2011/93/EU recital 13

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

↓ 2011/93/EU recital 14 (adapted)

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

Council

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

PUBLIC

🡻 2011/93/EU recital 15 (adapted)

⇨ new

(18) This Directive ⇨ should ⇦ obliges Member States to provide for criminal penalties in their national legislation in respect of the provisions of Union law on combating sexual abuse ⌦ and ⌫ sexual exploitation of children and child ~~pornography~~ ⌦ sexual abuse material ⌫. This Directive ⇨ should not ⇦ creates ~~no~~ ⌦ any ⌫ obligations regarding the application of such penalties, or any other available system of law enforcement, in individual cases.

🡻 Council

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

🡻 2011/93/EU recital 16

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

PUBLIC

🡻 2011/93/EU recital 17 (adapted)

⇨ new

➲ Council

(20) In the context of child ~~pornography~~ ⌦ sexual abuse material ⌫, the term ⌦ not be considered to be committed ⌫ ~~'~~without right' allows Member States to provide a defence in respect of conduct relating to ~~pornographie~~ material ⇨ that could constitute child sexual abuse material ⇦ having, for example, a medical, scientific or similar purpose. It also allows activities carried out under domestic legal powers, such as the legitimate possession of child ~~pornography~~ ⌦ sexual abuse material ⌫ by the authorities in order to conduct criminal proceedings or to prevent, detect or investigate crime ⇨ , or activities carried out by organisations acting in the public interest against child sexual abuse. ➲ […] ➲ ➲ In the context of handbooks or manuals on how to commit offences covered by this Directive, the term "when committed without right" allows Member States to provide a defence for conduct relating to such handbooks when it serves a legitimate purpose, such as gathering evidence for reporting a crime, or medical, scientific, or similar defensible objectives. This may also cover for example other clearly justifiable actions, such as a concerned parent sharing a handbook with another parent. Member States decide in accordance with their national laws whether non-governmental organisations, semi-public or public institutions will be authorised to carry out such activities. It is also up to the Member States to determine whether the whole organisation as such or selected individuals working on behalf and under the responsibility of such organisations will be authorised to carry out the activities.

PUBLIC

When provided for in national law, the work of organisations acting in the public interest against child sexual abuse, that receive reports from the public on child sexual abuse materials or facilitate removal of such materials and the investigation of the offences, should be encouraged by the Member States and European bodies, agencies and institutions.Where these organisations, acting in the public interest, review and analyse or otherwise process material constituting child sexual abuse for the purposes of removal and investigation, such processing should not be criminalised. ⊂ These activities ⊃ may further ⊂ include, in particular, the reception, analysis and creation of reports of suspected child sexual abuse material, including the determination of the location where the material referred to in the reports is hosted, submitted to them by online users or other organisations acting in the public interest against child sexual abuse, as well as carrying out searches ⊃ 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, submitted to them by victims, online users or other organisations acting in the public interest against child sexual abuse. ⊂.

Furthermore, ~~it~~ ⌦ the term 'without right' ⌫does not exclude legal defences or similar relevant principles that relieve a person of responsibility under specific circumstances, for example where telephone or Internet hotlines carry out activities to report those cases.

↓ 2011/93/EU recital 18 (adapted)

➲ Council

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

PUBLIC

🡻 2011/93/EU recital 19
⇨ new
➲ Council

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

legal solution is chosen to criminalise ‘off-line grooming’, Member States should ensure that they prosecute the perpetrators of such offences.

PUBLIC

⇩ new

➲ Council

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

➲ Council

(23a) Live online child sexual abuse is also often transmitted to viewers through streaming over the Internet, with the help of social media platforms, or messaging applications. As a consequence of the development of world-wide connectivity and streaming devices, livestreaming of sexual abuse of children is also on the rise. Livestreaming can involve the "in-person" abuse of one or more children, transmitted online, or a child being forced to perform sexual acts in front of a webcam. This means the data are transmitted instantaneously to the viewer, who can watch and engage while the abuse is occurring. Such streaming leaves no trace on the device, because no file is downloaded. This increases the perception of impunity of the offender who proposes or gives money or other form of consideration and creates specific challenges for post-event investigation, particularly relating to the recovery of evidence and the identification of victims and offenders. Member States should criminalise this behaviour.

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

↓ 2011/93/EU recital 20 (adapted)
⇨ new
➲ Council

(24) This Directive does not govern Member States' policies with regard to consensual sexual activities in which children may be involved and which can be regarded as the normal discovery of sexuality in the course of human development, taking account of the different cultural and legal traditions and of new forms of establishing and maintaining relations among children and adolescents, including through information and communication technologies. ~~These issues fall outside of the scope of this Directive.~~ Member States which avail themselves of the possibilities referred to in this Directive do so in the exercise of their competences. ⇨ More particularly, Member States should be able to exempt from criminalisation consensual sexual activities involving ➲ […] ⊂ children above the age of sexual consent, as well as consensual sexual activities involving ➲ children and their ⊂ peers. The amendments ➲ of this provision ⊂ ➲ **[…]** ⊂ are intended to clarify the scope of the derogation, ➲ […] ⊂ ⇦ ➲ Risks associated with creating and sharing self-generated sexual content between children who have reached the age of sexual consent and adults or between children and their peers must be considered when applying this derogation. ⊂

🡻 2011/93/EU recital 21

➲ Council

(25) Member States should provide for aggravating circumstances in their national law in accordance with the applicable rules established by their legal systems on aggravating circumstances. ➲ […] ⊂ ➲ The notion of aggravating circumstances should be understood either as facts allowing the judge to pronounce a higher sentence for the same offence than the one normally incurred without these facts, or as the possibility of retaining several offences cumulatively in order to increase the level of sanction. Therefore, Member States should not be obliged to provide for specific aggravating circumstances where national law provides for separate criminal offences and this may lead to more severe sanctions. ⊂

🡺 Council

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

🡻 2011/93/EU recital 22

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

PUBLIC

↓ 2011/93/EU recital 23 (adapted)
⇨ new
➲ Council

(27) In combating sexual exploitation of children, full use should be made of existing instruments on the seizure and confiscation of the proceeds of crime, such as the United Nations Convention against Transnational Organized Crime[10] and the Protocols thereto, the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Council Framework Decision 2001/500/JHA ~~of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime~~[11], ~~and~~ Council Framework Decision 2005/212/JHA ~~of 24 February 2005 on Confiscation of Crime Related Proceeds, Instrumentalities and Property~~[12] ⇨ , and Directive ➲ (EU) 2024/1260 ➲ of the European Parliament and of the Council[13] ⇦. The use of seized and confiscated instrumentalities and the proceeds from the offences referred to in this Directive to support victims' assistance and protection should be encouraged.

10 OJ L 261, 6.8.2004, p. 70

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

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

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

PUBLIC

🡻 2011/93/EU recital 24 (adapted)

⇨ new

➲ Council

(28) Secondary victimisation should be avoided for victims of offences referred to in this Directive. ⇨ For example, and without affecting the safeguards provided for in Directive (EU) 2016/800 of the European Parliament and of the Council[14], in ⇦ ~~In~~ Member States where prostitution or the appearance in pornography is punishable under national criminal law, it should be possible not to prosecute or impose penalties under those laws where the child concerned has committed those acts as a result of being victim of sexual exploitation or where the child was compelled to participate in child ~~pornography~~ ⇨ sexual abuse material. ➲ […] ➲ ⇦

🡻 2011/93/EU recital 25

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

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

Council

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

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

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

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

↓ 2011/93/EU recital 26

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

PUBLIC

⇩ new

➲ Council

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

PUBLIC

⇓ 2011/93/EU recital 27 (adapted) ⇨ new ➲ Council

(32) Effective investigatory tools should be made available to those responsible for the investigation and prosecutions of the offences referred to in this Directive. Those tools could include interception of communications, covert surveillance including electronic surveillance, monitoring of bank accounts or other financial investigations ➲ and, in accordance with applicable rules, access to retained subscriber, access and location data ⇦, taking into account, inter alia, the principle of proportionality and the nature and seriousness of the offences under investigation. ~~Where appropriate, and in~~ ⌦ In ⌫ accordance with national law, such tools should also include the possibility for law enforcement authorities to use a concealed identity on the Internet ⇨ ➲ […] ⇦ on issues encountered in investigations and prosecutions. ➲ Where appropriate, these tools should include special investigative tools, such as those which are used in countering organised crime or other serious crimes cases, like the possibility to conduct undercover investigations. ⇦ To ensure effective investigation and prosecution, Member States should consider providing frameworks for close cooperation between financial services and other relevant service providers such as providers of live streaming services. This would reduce impunity and ensure that all of the offences covered by this Directive can be investigated effectively, using targeted and appropriate tools and resources. ⇦

⇩ new ➲ Council

(33)➲ […] ⇦

🡻 2011/93/EU recital 28 ⇨ new ➲ Council

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

Council

(34a) In the case of child sexual abuse or sexual exploitation, especially where committed by close family members or intimate partners, victims might be under such duress from the offender that they fear to reach out to the competent authorities, even if their lives are in danger. Therefore, Member States should ensure that their confidentiality rules do not constitute an obstacle for professionals working in close contact with children to report to the competent authorities, where they have reasonable grounds to believe that the child is the victim or could become a victim under this Directive. Such reporting is justified because such acts might not be reported by those who experience or directly witness them. Similarly, offences against children are often only intercepted by third parties noticing irregular behavior or physical harm to the child. Children need to be effectively protected from such forms of violence and adequate measures promptly taken. Therefore, professionals who come into contact with child victims, including healthcare, social services or education professionals, should not be constrained by confidentiality rules where they have reasonable grounds to believe that serious harm has been or could be inflicted on a child. Where professionals report such instances of abuse or exploitation, Member States should ensure that they are not held liable for breach of confidentiality. However, legal professional privilege should be protected, in accordance with Article 7 of the Charter, as justified by the fundamental role assigned to lawyers in a democratic society.

↓ 2011/93/EU recital 29 (adapted)

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

PUBLIC

PUBLIC

↓ 2011/93/EU recital 30 ⇨ new ➲ Council

(36) Measures to protect child victims in a comprehensive manner should be adopted in their best interest, taking into account an assessment of their needs. Effective child protection requires a whole of society approach. With the child at the centre, all relevant authorities and services should work together to protect and support the child, in their best interests. ⇨ The "Barnahus" model of providing a child-friendly environment staffed with specialists from all relevant disciplines is ➲ […] ⊂ ➲ one of several ⊂ advanced ➲[…] ⊂ ➲ examples ⊂ of a child-friendly approach to justice and to avoiding revictimisation. The relevant provisions of this Directive are built on the principles of that model. That model aims to ensure that all children involved in child abuse or child sexual exploitation investigations benefit from a high-quality assessment in child-friendly settings, appropriate psychosocial support and child protective services. This Directive attempts to ensure that all Member States uphold these principles, although it does not require the Member States to follow the Barnahus model as such. Where medical examinations of the child are necessary for the purposes of the criminal investigations, for example to gather evidence of abuse, these should be ➲ carried out by professionals trained for this purpose in accordance with national standards for the medical profession. ⊂ ➲ […] ⊂ This obligation should not prevent other medical examinations necessary for the well-being of the child. ⇦ Child victims should have easy access to ⇨ child friendly justice, ⇦ legal remedies and measures to address conflicts of interest where sexual abuse or sexual exploitation of a child occurs within the family. When a special representative should be appointed for a child during a criminal investigation or proceeding, this role may be also carried out by a legal person, an institution or an authority. Moreover, child victims should be protected from penalties, for example under national legislation on prostitution, if they bring their case to the attention of competent authorities. Furthermore, participation in criminal proceedings by child victims should not cause additional trauma to the extent possible, as a result of interviews or visual contact with offenders. ⇨ All authorities involved in the proceedings should, ➲ where appropriate

and without prejudice to the judicial independence, ↶ be trained in child friendly justice. ⇦A good understanding of children and how they behave when faced with traumatic experiences will help to ensure a high quality of evidence-taking and also reduce the stress placed on children when carrying out the necessary measures. ⇨ Where child victims participate in criminal proceedings, the court should take ↷ […] ↶-account of their age and maturity in conducting the proceedings and should ensure that the proceedings are accessible and understandable to the child. ⇦

PUBLIC

PUBLIC

🡻 2011/93/EU recital 31 ⇨ new ➲ Council

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

⇩ new

➲ Council

(38) The trauma arising from sexual abuse and sexual exploitation of children often lasts well into adulthood, entailing long-term effects which often prevent victims from reporting the offence and from seeking assistance and support for years or even decades. Therefore, Member States should provide tailored and comprehensive short- and long-term assistance not only to child victims, but also to adult ➲[…]➲ ➲ victims➲ of child sexual abuse and sexual exploitation.

PUBLIC

↓ 2011/93/EU recital 32 (adapted) ⇨ new ➲ Council

(39) ~~Framework Decision 2001/220/JHA~~ ⌦ Directive 2012/29/EU ⌫ establishes a set of victims' rights in criminal proceedings, including the right to protection and ⇨ the right to receive a decision on ⇦ compensation ⇨ from the offender ⇦. ⇨ The proposal for the revision of the Victims' Rights Directive provides for targeted amendments ➲ […] ➲ to several victims' rights. ⇦ In addition ⌦ to the rights established under that Directive, ⌫ child victims of sexual abuse, sexual exploitation and child ~~pornography~~⌦ sexual abuse material ⌫ should be given access to legal counselling and, in accordance with the role of victims in the relevant justice systems, to legal representation, including for the purpose of claiming compensation ➲ […] ➲ from the offender. The purpose of legal counselling is to enable victims to be informed and receive advice about the various possibilities open to them ➲ […] ➲ The possibility of access to legal counsel for the victim should be without prejudice to the monopoly reserved in some Member States for certain categories of persons to provide such advice, in particular lawyers. Moreover, it is left to the Member States to determine, in accordance with their national law, the framework and place in which such advice is given.

⇩ new

➲ Council

(40) ➲ […] ➲

⇩ new

➲ Council

(41) Member States may choose to appoint existing bodies or entities, ➲ […] ➲ , as national authorities or equivalent mechanisms under this Directive, to the extent that this is compatible with the need to ensure that the tasks attributed to them under this Directive are performed effectively and in full.

PUBLIC

↓ 2011/93/EU recital 33 (adapted)

⇨ new

(42) Member States should undertake action to prevent or prohibit acts related to the promotion of child sexual abuse and ⌦ the sexual abuse and sexual exploitation of children in travel and tourism ⌫ ~~child sex tourism~~. Different preventative measures could be considered, such as the drawing up and reinforcement of a code of conduct and self-regulatory mechanisms in the tourism industry, the setting-up of a code of ethics or 'quality labels' ⇨ or establishing an explicit policy ⇦ for tourist organisations combating ⌦ the sexual abuse and sexual exploitation of children in travel and tourism ⌫ ~~child sex tourism~~. ⇨ Member States should leverage the tools at their disposal under EU law, national law, and international agreements, for the purpose of preventing the sexual abuse and sexual exploitation of children in travel and tourism through or towards their territory, most notably by taking appropriate action upon reception of relevant information from third countries, including conducting further checks or issuing a refusal of entry in the context of the Regulation (EU) 2018/1861 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks[15]. ⇦

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

PUBLIC

↓ 2011/93/EU recital 34 (adapted)
⇨ new

(43) Member States should establish ~~and/~~or strengthen policies to prevent sexual abuse and sexual exploitation of children, including measures to discourage and reduce the demand that fosters all forms of sexual exploitation of children, and measures to reduce the risk of children becoming victims, by means of, information and awareness-raising campaigns, ⇨ including for parents and carers and society at large, ⇦ and research and education programmes. In such initiatives, Member States should adopt a child-rights based approach. Care should be taken to ensure that awareness-raising campaigns aimed at children are appropriate and sufficiently easy to understand ⇨ , and tailored to the specific needs of children of different age groups, including pre-school children. Prevention measures should take a holistic approach to the phenomenon of child sexual abuse and sexual exploitation, by addressing its online and offline dimensions and mobilizing all relevant stakeholders. In particular for the online dimension, measures should include the development of digital literacy skills, including critical engagement with the digital world, to help users identify and address attempts of online child sexual abuse, seek support and prevent its perpetration. Particular attention should be paid to prevention of child sexual abuse and sexual exploitation of children that are cared for in a group facility rather than in the context of family-based care ⇦.⌦ Where not already in place, the ⌫ ~~The~~ establishment of ⇨ dedicated ⇦ help-lines or hotlines should be considered.

↓ 2011/93/EU recital 35 (adapted)

(44) Regarding the system of reporting sexual abuse and sexual exploitation of children and helping children in need, hotlines under the number 116 000 for missing children, 116 006 for victims of crime and 116 111 for helplines for children, as introduced by Commission Decision 2007/116/EC ~~of 15 February 2007 on reserving the national numbering beginning with 116 for harmonised numbers for harmonised services of social value~~[16], should be promoted and experience regarding their functioning should be taken into account.

⇩ new

➲ Council

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

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

↓ 2011/93/EU recital 36 (adapted)

⇨ new

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

↓ 2011/93/EU recital 37

➲ Council

(47) In order to prevent the sexual abuse and sexual exploitation of children, intervention programmes or measures targeting sex offenders should be proposed to them. Those intervention programmes or measures should meet a broad, flexible approach focusing on the medical and psycho-social aspects and have a non-obligatory character. Those intervention programmes or measures are without prejudice to intervention programmes or measures imposed by the competent judicial authorities. ➲ Member States are encouraged to ensure that the programmes and measures are accessible without undue restrictions in line with national standards. ➲

PUBLIC

⬇ 2011/93/EU recital 38 ⇨ new ➲ Council

(48) ~~Intervention programmes or measures are not provided as an automatic right.~~ It is for the Member State to decide which intervention programmes or measures are appropriate ➲ […] ⊂ ➲and they should ensure that these referred programmes or measures are accessible in line with national standards. In addition, individuals ⊂ who fear that they ➲ […] ⊂ ➲ may ⊂ offend ➲ should have access to ⊂ these programmes or measures ➲ without undue restrictions ⊂ ➲ […] ⊂

⬇ 2011/93/EU recital 39 (adapted) ⇨ new

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

🡻 2011/93/EU recital 40 (adapted)
⇨ new
➲ Council

(50) Where the danger posed by the offenders and the possible risks of repetition of the offences make it appropriate, convicted offenders should be temporarily or permanently prevented from exercising at least professional activities involving direct and regular contacts with children ⇨ or within organisations that work for children or organisations acting in the public interest on the fight against child sexual abuse ⇦ . Employers when recruiting for a post involving direct and regular contact with children ~~are entitled to be informed of~~ ⇨ should request information on ⇦ existing convictions for sexual offences against children entered in the criminal record, or of existing disqualifications. For the purposes of this Directive, the term 'employers' should ➲ in any case, cover employers working in the child protection, education, childcare and health care sectors and ➲ […] ➲ persons running an organisation that is active in volunteer work related to the supervision ~~and/~~or care of children involving direct and regular contact with children ➲ […] ➲ ➲ Member States may take appropriate measures, in accordance with national law, to actively promote screening persons working in direct and occasional contact with children. For the purpose of this Directive, the term ´regular contacts with children´ indicates that it only covers activities with children on a structural base. ➲ The way such information is delivered, such as for example access via the person concerned, and the precise content of the information, the meaning of organised voluntary activities and direct and regular contact with children should be laid down in accordance with national law. ⇨ However, the information transmitted from one competent authority to another should at least contain all relevant records stored by any Member State in their national criminal records registers, and all relevant records that can be easily obtained from third countries, such as information that can be obtained from the United Kingdom through the channel established in accordance with Title IX of Part Three of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of

the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part[17]. ⇦

PUBLIC

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

🡻 2011/93/EU recital 41

⇨ new

➲ Council

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

🡻 2011/93/EU recital 42

⇨ new

➲ Council

(52) ⇨ ➲ […] ➲ ⇦The aim of this Directive is not to harmonise rules concerning consent of the person concerned when exchanging information from the criminal registers, i.e. whether or not to require such consent. Whether the consent is required or not under national law, this Directive does not establish any new obligation to change the national law and national procedures in this respect.

PUBLIC

↓ 2011/93/EU recital 43 (adapted)

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

↓ 2011/93/EU recital 44 (adapted)

⇨ new

➲ Council

(54) Member States ~~are encouraged~~ ⇨ should take the necessary measures ⇦ to create mechanisms for data collection ~~or focal points,~~ at the national, local or regional levels and in collaboration with civil society, for the purpose of observing and evaluating the phenomenon of sexual abuse and sexual exploitation of children ⇨ , building also on the broader data collection obligations set in the Directive […/…] [Victims rights Directive, Recast], and Regulation (EU) [Regulation to prevent and combat child sexual abuse] ⇦. In order to be able to properly evaluate the results of actions to combat sexual abuse and sexual exploitation of children and child ~~pornography~~ ⌦ sexual abuse material ⌫, the Union should continue to develop its work on methodologies and data collection methods to produce comparable statistics ➲ […] .➲

↓ 2011/93/EU recital 45

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

↓ 2011/93/EU recital 46 (adapted)

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

PUBLIC

⇩ new

(57) Member States' efforts to reduce the circulation of child sexual abuse material, including by cooperating with third countries under this Directive, should not affect Regulation (EU) 2022/2065, Regulation (EU) 2021/1232 and […/…/ Regulation laying down rules to prevent and combat child sexual abuse]. Online content constituting or facilitating criminal offences referred to in this Directive will be subject to measures pursuant to Regulation (EU) 2022/2065 of the European Parliament and of the Council[18] as regards illegal content.

🡻 2011/93/EU recital 47 (adapted)

⇨ new

(58) ~~However, despite~~⌦ Despite ⌫ such efforts ⌦ by Member States ⌫, the removal of child ~~pornography~~ ⌦ sexual abuse material ⌫ at its source is often not possible when the original materials are not located within the Union, either because the State where the servers are hosted is not willing to cooperate or because obtaining removal of the material from the State concerned proves to be particularly long. Mechanisms may also be put in place to block access from the Union's territory to Internet pages identified as containing or disseminating child ~~pornography~~ ⌦ sexual abuse material ⌫. The measures undertaken by Member States in accordance with this Directive in order to remove or, where appropriate, block websites containing child ~~pornography~~ ⌦ sexual abuse material ⌫ could be based on various types of public action, such as legislative, non-legislative, judicial or other. In that context, this Directive is without prejudice to voluntary action taken by the Internet industry to prevent the misuse of its services or to any support for such action by Member States. Whichever basis for action or method is chosen, Member States should ensure that it provides an adequate level of legal certainty and predictability to users and service providers. Both with a view to the removal and the blocking of child abuse content, cooperation between public authorities should be

[18] 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

established and strengthened, particularly in the interests of ensuring that national lists of websites containing child ~~pornography~~ ⌦ sexual abuse material ⌫ are as complete as possible and of avoiding duplication of work. Any such developments must take account of the rights of the end users and comply with existing legal and judicial procedures and the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union. ~~The Safer Internet Programme has set up a network of hotlines the goal of which is to collect information and to ensure coverage and exchange of reports on the major types of illegal content online.~~ ⇨ The EU co-funded network of hotlines[19] handles reports of alleged child sexual abuse material reported anonymously by the public and cooperates with law enforcement and industry at national, European and global level to ensure swift removal of this type of content. ⇦

[19] Currently under the Digital Europe Programme.

~~2011/93/EU recital 48~~

~~48. This Directive aims to amend and expand the provisions of Framework Decision 2004/68/JHA. Since the amendments to be made are of substantial number and nature, the Framework Decision should, in the interests of clarity, be replaced in its entirety in relation to Member States participating in the adoption of this Directive.~~

2011/93/EU recital 49 (adapted)

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

↓ 2011/93/EU recital 50

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

↓ 2011/93/EU recital 51

~~51. In accordance with Article 3 of the Protocol (No 21) on the position of United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Directive.~~

⇩ new

➲ Council

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

➲ […] ➲

🡻 2011/93/EU recital 52 (adapted)

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

⇩ new

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

⇩ new

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

PUBLIC

↓ 2011/93/EU ➲ Council

HAVE ADOPTED THIS DIRECTIVE:

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 ~~pornography~~ ⌦ sexual abuse material ⌫ 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.

↓ 2011/93/EU (adapted) ⇨ new ➲ Council

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 ⌫’ means:

(a) any material that visually depicts a child engaged in real or simulated sexually explicit conduct;

(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; ~~or~~

(d) realistic images ⇨ , reproductions or representations[20] ⇦ of a child engaged in sexually explicit conduct or ~~realistic images~~ of the sexual organs of a child, for primarily sexual purposes;

⇩ new
➲ Council

(e) ➲ […] ➲

🡻 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;

---

[20] A recital with a more detailed explanation of what this notion contains and excludes will be added, with reference to child-like sex robots and dolls. Some delegations still call for the addition of an individual provision criminalising child-like sex robots and dolls.

(5) '~~pornographie~~ ⌦ 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;~~.~~

⇩ new

(7) 'information society service' means a service as defined in Article 1, point (b), of Directive (EU) 2015/1535[21].

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

---

[21] 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.

PUBLIC

2011/93/EU
⇨ new
➲ Council

Article 3

Offences concerning sexual abuse

1. Member States shall take the necessary measures to ensure that the ➲ intentional ⊂ conduct referred to in paragraphs 2 to ➲ […] ⊂ ➲ 6a ⊂ 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 set out in paragraph 6 , ⊂ with a child who has not reached the age of sexual consent ⇨ or causing ➲ […] ⊂ ➲ that ⊂ child to engage in sexual activities with ➲ […] ⊂ ➲ a third ⊂ person ⇦ shall be punishable by a maximum term of imprisonment of at least ➲ […] ⊂ ➲ 5 ⊂ years.

PUBLIC

↻ Council

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, shall be punishable by a maximum term of imprisonment of at least 2 years.

🡻 2011/93/EU ➲ Council

5. Engaging in sexual activities with a child ➲ or causing that child to engage in sexual activities with a third person, 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 ~~8~~ ⇨ 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; or

(b) abuse is made of a particularly vulnerable situation of the child, in particular because of a ➲ […] ⊂ 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 ➲ […] ⊂ ➲ 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 ⊂ 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.

➲ […] ⊂

⇩ new

➲ Council

➲ […] ⊂ ➲ 6.⊂ The following intentional conduct shall be punishable by a maximum term of imprisonment of at least ➲ […] ⊂ ➲ 10⊂ 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[22], ⊂

(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. ⊂

🡻 Council

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

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

[22] Added to address the request to differentiate the penalty on conducts of oral penetration with an object or non-genital part. Wording 'of sexual nature' removed, since we are now referring to 'sexual activities' (instead of 'any act' in the previous formulation'), which make the specification superfluous.

(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.

Council

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.

---

new Council

7. For the purpose of […] paragraphs 4a and 6a, Member States shall ensure that:

Council

(a) consent shall be deemed to exist only where it is given voluntarily as the result of the child's free will assessed in the context of the surrounding circumstances;[23]

(b) the consent can be withdrawn at any moment before or during the act.

[23] This may be further elaborated in a recital, based on discussions.

⇩ new

➲ Council

8. ➲ […] ➲

9. ➲ […] ➲

🡻 2011/93/EU (adapted)

⇨ new

➲ Council

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 ~~pornographie~~ ⌦ 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 ~~pornographie~~ ⌦ 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.

PUBLIC

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 ⇨ ➲ […] ➲ ⇦ 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.

PUBLIC

↓ 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.

PUBLIC

⇩ new

➲ Council

7. ➲ […] ⇦ ➲ 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 organisation established in a Member State acting in the public interest against child sexual abuse, ➲[…] ⇦ ➲ for example when it ⇦ 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.

➲ […]⇦ ➲ Member States are encouraged to ensure that the organisations acting in the public interest against a child sexual abuse referred to in the first subparagrah ⇦ have the necessary expertise ➲ […] ⇦, that there are appropriate reporting and oversight mechanisms to ensure that ➲ […] ⇦ ➲ such ⇦ organisations act expeditiously, diligently, and in the public interest, and that ➲ […] ⇦ ➲ they ⇦ make use of secure channels of communication to carry out the actions covered by ➲[…] ⇦ ➲ an ⇦ authorisation.

8. ➲ […] ⇦

2011/93/EU (adapted)

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) ⌫~~(c)(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 material as referred to in Article 2 (c)(iv), is produced and possessed by the producer solely for his or her private use in so far as no pornographic material as referred to in Article 2 (c)(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.~~

Council

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 child sexual abuse material as referred to in Article 2 (3)(d), is produced and possessed by the producer solely for his or her private use in so far as no child sexual abuse material as referred to in Article 2 (3)(a), (b), (c) has been used for the purpose of its production.

Council

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 1 years:

(a) distribution, dissemination or transmission of;

(b) offering, supplying or making available of;

(c) producing,

(d) possessing

any material, regardless of its form, intended to provide advice or instructions on how to commit one of the offences referred to in Articles 3, 4, 5 or 6 in this directive.

PUBLIC

PUBLIC

↓ 2011/93/EU (adapted) ⇨ new ➲ Council

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 ⇨ either online or in person ⇦, for the purpose of committing any of the offences referred to in Article 3(4) ⇨, (5), (6) ➲ […] ➲ ⇦ 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;

⇩ new ➲ Council

(b) 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, ➲ […] ➲ or threats.

PUBLIC

🡻 2011/93/EU (adapted)

⇨ new

➲ Council

2. Member States shall take the necessary measures to ensure that ➲ […] ⊂ ➲ the conduct, committed by an adult, of ⊂ soliciting a child, who has not reached the age of sexual consent by means of information and communication technology, to ➲ […] ⊂ ➲ produce or share child ⊂ ⌦ sexual abuse material ⌫ depicting that child is punishable. ⇨ ➲ […] ⊂ ⇦.

🕩 Council

Where the child has reached the age of sexual content, the conduct referred to in the first subparagraph shall be punishable where use is made of coercion or threats.

⇩ new

➲ Council

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 ➲ […] ⊂ or threats.

3. ➲ […] ⊂

⇩ new

➲ Council

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 ➲ […] ⊂ 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 Article 3(4), ➲ (4a), ⊂ (5),(6), ➲ […] ⊂➲ (6a) ⊂ Article 4(2) and (3) and Article 5(6)[24] is punishable by a maximum term of imprisonment of at least ➲ […] ⊂ ➲ 1 year .⊂

⇩ new

➲ Council

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 designed or adapted to facilitate ⊂ 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.

[24] The references here will be revisited when the text is close to finalisation.

PUBLIC

↓ 2011/93/EU (adapted)

⇨ new

➲ Council

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 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), ⇨ ➲ […] ➲ ⇦ ➲ (6a) ➲ , Article 4(2), (3), (5), (6) and (7), ~~and~~ Article 5(4), (5) and (6) ⇨ ➲ […] ➲ ⇦ is punishable.

PUBLIC

2011/93/EU (adapted)

⇨ new

➲ Council

Article 10

Consensual sexual activities

1. It shall be within the discretion of Member States to decide whether Article 3(2), ➲ […] ➲ (4) ➲ and (6)[25] ➲ 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.

[25] The inclusion of the references to Article 3 here will be discussed when the said provision is close to finalisation

3. It shall be within the discretion of Member States to decide whether Article 5(2), ⇨ (3), (4) ⇦and (6) apply to the production, acquisition or possession of ⇨ , or access to, ⇦ material involving ⇨ ➲ […] ➲ ⇦

⌦ (a) ⌫ children who have reached the age of sexual consent ⌦, or ⌫

⇨ (b) children ➲ […] ➲ and their peers, ⇦

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

---

❶ Council

When applying discretion referred to in the first subparagraph, Member States shall ensure that the consensual sharing of one's intimate images or videos are not to be considered as consent to any further sharing or dissemination of that same material.

⇩ new ➲ Council

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, coercion or threat. ➲

5. ➲ […] ➲

6. ➲ […] ➲

PUBLIC

↓ 2011/93/EU (adapted)
⇨ new
➲ Council

Article 11

Aggravating circumstances

➲ […] ⊂ ➲ To the extent that ⊂ the following circumstances do not ➲ […] ⊂ 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 ⊂ , in accordance with the relevant provisions of national law, be regarded as aggravating circumstances, ➲ […] ⊂

(a) the offence was committed against a child in a particularly vulnerable situation, such as a child with a ➲ […] ⊂ 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 ⌦ , ⌫ ~~or~~ authority ⇨ or influence ⇦ on the child;

(c) the offence was committed by several 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[26];~~

~~26~~ ~~Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, OJ L 300, 11.11.2008, p. 42.~~

(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

➲ Council

(h) ➲ […] ➲

(i) ➲ […] ➲

(j) the offence was committed by ➲ […] ➲ ➲ intentionally taking advantage of the victim's intoxicated state. ➲

PUBLIC

PUBLIC

↓ 2011/93/EU (adapted)
⇨ new
➲ Council

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 employers ➲, in at least the child protection, education, childcare, health care sectors ➲ when recruiting a person for professional or organised voluntary activities involving direct and regular contacts with children, ⇨ and organisations acting in the public interest against child sexual abuse, when recruiting staff, ⇦ are ~~entitled~~ ⇨ 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.

3. For the application of paragraphs 1 and 2 of this Article[27], ⇨ 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. For that purpose, such information shall be transmitted through ECRIS or the mechanism for the exchange of criminal record information established with third countries⇦➲**,** when such a mechanism exists ➲ .

🡻 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.~~

---

[27] Technical amendment: the phrase is an addition to the current text of the Directive, but was unintenionally left unmarked in the proposal.

PUBLIC

⇓ 2011/93/EU
⇨ new
➲ Council

Article 13

Liability of legal persons

1. Member States shall ➲ […] ⊂ ensure that legal persons ➲ […] ⊂ ➲ can ⊂ be held liable for ➲ […] ⊂ ➲ criminal ⊂ offences referred to in Articles 3 to ⇨ 9 ⇦ ~~7~~ ➲ where such offences have been ⊂ committed for ➲ […] ⊂ ➲ the ⊂ benefit ➲ of those legal persons ⊂ by any person ➲ who has a leading position within the legal person concerned ⊂ , acting either individually or as part of an organ of 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 ➲ […] ⊂ take the necessary measures to ensure that legal persons ➲ […] ⊂ ➲ can ⊂ be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission, ➲ […] ⊂ ➲ criminal ⊂ offences referred to in Articles 3 to ⇨ 9 ⇦ ~~7~~ for the benefit of ➲ […] ⊂ ➲ the ⊂ legal person, ➲ by a person under its authority. ⊂

3. Liability of legal persons under paragraphs 1 and 2 ➲ […] ⊂ shall ➲ […] ⊂ ➲ not preclude ⊂ criminal proceedings against natural persons who ➲ […] ⊂ ➲ commit, incite or are accessories ⊂ to the ➲ criminal ⊂ offences referred to in Articles 3 to ⇨ 9 ⇦ ~~7~~.

PUBLIC

2011/93/EU (adapted) Council

Article 14

Penalties for legal persons

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 13 (1) or (2) ~~12(1)~~ is punishable by effective, proportionate and dissuasive […] criminal or non-criminal penalties or measures […]

Council

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:

PUBLIC

↓ 2011/93/EU (adapted)
⇨ new
➲ Council

(a) exclusion from entitlement to public benefits or aid;

(b) ⇨ exclusion from access to public funding, including tender procedures, grants, ➲ […] ➲ concessions ⇦ ➲ and licences ➲ ;

(c) temporary or permanent disqualification from the practice of ➲ […] ➲ ➲ business ➲ activities;

(d) placing under judicial supervision;

(e) judicial winding-up; or

(f) ➲ […] ➲ closure of establishments ➲ […] ➲ 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.~~

⇩ new

➲ Council

2. 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 ➲ under this directive ⇦ by a maximum term of imprisonment of at least ➲ […] ⇦ ➲1 year ⇦ 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 ⇦ ➲ […] ⇦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 ⇦ ➲ […] ⇦ ~~.~~

🡻 Council

(ii) an amount corresponding to EUR 8 000 000.

⇩ new

➲ Council

(3) 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 ➲ under this directive ⇦ by a maximum term of imprisonment of at least ➲ […] ⇦ ➲ 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 ⇦ ➲ […] ⇦ not less than ➲ […] ⇦ :

➲ i ⇦ ➲ […] ⇦ 3 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

🡻 Council

(ii) an amount corresponding to EUR 24 000 000.[28]

(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.

[28] A recital similar to recital 34 in the Envicrime Directive should be added in this context. Some delegations have proposed to reduce the sum of the fine provided for in this paragraph and in paragraph 2 (ii).

2011/93/EU ⇨ new ➲ Council

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), ➲ […] ➲ (6), ➲ and (7), ➲ and in Article 5 ⇨ (4), (5) and ⇦ (6).

2011/93/EU (adapted) ⇨ new ➲ Council

Article 16

Investigation and prosecution ➲ […] ➲

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 ➲ 6 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. ➲ […] ➲

⇩ new

➲ […] ➲

🡻 2011/93/EU

⇨ new

➲ Council

➲ […] ➲ ➲ 2 ➲ .Member States shall take the necessary measures to ensure that effective ➲ and proportionate ➲ investigative tools ➲ are available,➲ ➲ […] ➲ for investigating or prosecuting offences referred to in Articles 3 to ➲ 6 and ➲ ⇨ 9 ⇦. ➲ Where appropriate, those tools shall include special investigative tools, ➲ such as those which are used in ➲ combatting ➲ organised crime or other serious crime cases.

⇩ new

➲ Council

➲ […] ➲ ➲ 3. ➲ Member States shall ensure that persons, units or services investigating and prosecuting the offences referred to in Articles 3 to 9 have sufficient staff, ➲ and ➲ expertise ➲ […] ➲ 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. ➲ […] ➲

PUBLIC

PUBLIC

2011/93/EU (adapted) ⇨ new ➲ Council

➲ […] ➲ 4. ➲ 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 ➲ 6 and ➲ ⇨ 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 (adapted) ⇨ new ➲ Council

➲ *Article 16a*

Limitation periods ➲

➲ 1 ➲ . Member States shall take the necessary measures to enable the ➲ investigation ➲ , prosecution, ➲ trial and adjudication ➲ ➲ […] ➲ 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, ⇨ ➲ […] ➲ ⇦, for a sufficient period of time after the victim has reached the age of majority and which is commensurate with the gravity of the offence concerned.

⇩ new

➲ Council

2. ➲ […] ⇦ ➲ The ⇦ period ➲ […] ⇦ referred to in ➲ paragraph 1 ⇦ ➲ […] ⇦ shall be:

(a) at least ➲ 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 ➲ 5 ⇦ ➲ […] ⇦ years of imprisonment;

(b) ➲ […] ⇦

➲ […] ⇦ ➲ (b) ⇦ 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 ➲ 10 ⇦➲ […] ⇦ years of imprisonment.

🡻 Council

3. By way of derogation from paragraph 2, Member States may establish a period that is shorter than 10 years, with regard to point (a), or 20 years, with regard to point (b), but not shorter than, respectively five years and 10 years provided that such period may be interrupted or suspended in the event of specified acts.

PUBLIC

↓ 2011/93/EU ⇨ new ➲ Council

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, ➲ as well as the rules on professional secrecy, ⊂ imposed by national law on certain professionals ➲ […] ⊂ ➲ working in close contact ⊂ with children do not constitute an obstacle to the possibility, for those professionals, ➲ […] ⊂ ➲ to report ⊂ to the ➲ competent authorities ⊂ ➲ […] ⊂ any situation where they have reasonable grounds for believing that a child is the victim or ➲ could become a victim ⊂ of offences referred to in Articles 3 to ~~7~~ ➲ 6 and ⊂ ⇨ 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[29] and Article 12 of Regulation (EU) …/…[30] [*laying down rules to prevent and combat child sexual abuse*].⇦

[29] 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).

[30] Regulation (EU)

⇩ new

3. ➲ […] ➲

4. ➲ […] ➲

5. ➲ […] ➲

⇩ new

➲ Council

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 ➲6 and ➲ 9 of this Directive to the competent authorities ➲ […] ➲ ➲ through ➲ ➲ […] ➲ accessible ➲ […] ➲ ➲ easy to use, safe and readily available channels. That shall, where appropriate, include the possibility of reporting online or through other accessible and secure ➲ ➲ […] ➲ information and communication technologies ➲ , without prejudice to national procedural rules regarding formalising online reporting.➲

PUBLIC

PUBLIC

↻ Council

Member States shall ensure that the possibility to report online or through other accessible and secure information and communication technologies includes the possibility to submit evidence by the means set out in subparagraph 1, without prejudice to national procedural rules regarding formalising the submission of evidence.

⇩ new ➲ Council

2. Member States shall ensure that the ➲ […] ➲ procedures ➲ for reporting ➲ referred to in paragraph 1 are safe ➲ […] ➲ ➲ and are carried in a confidential manner in accordance with national law, are ➲ designed in a child-friendly manner and ➲ use ➲ language, in accordance with ➲ […] ➲ ➲ the ➲ age and maturity ➲ of the child. ➲

➲ Member States shall ensure that professionals in contact with children during the reporting procedure are properly trained on the issue of sexual abuse or sexual exploitation of children. ➲

Member States shall ensure ➲ […] ➲ ➲ that the ability of a child to report the act ➲ is not conditional upon ➲ […] ➲ ➲ the ➲ consent ➲ of the holder of parental responsibility and that the measures necessary to protect the safety of the child are taken by the competent authorities before that person is informed about the reporting ➲.

3. ➲ […] ➲

PUBLIC

↓ 2011/93/EU (adapted)
⇨ new
➲ Council

Article 19

Jurisdiction ➲ […] ➲

1. Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Articles 3 to ➲ […] ➲ ⇨ 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), ➲ (4a) (6a) ➲ […] ➲ Article 4(2), (3), (5), (6) and (7) ~~and~~ ⊠ , ⌫ Article 5(6) ⇨, Article 7 ➲ […] ➲ ⇦ 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 ➲ 6 and ➲ ⇨ 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

➲ Council

6. ➲ […] ➲

PUBLIC

PUBLIC

2011/93/EU (adapted)
⇨ new
➲ Council

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 ➲ and ➲ ⇨ 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 ⇦

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 ⌫.

PUBLIC

⇓ 2011/93/EU (adapted)
⇨ new
➲ Council

Article 21

Assistance and support to victims

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

➲ Council

2. Victims shall be provided with coordinated, age-appropriate medical care, emotional, psychosocial, psychological, ➲ […] ➲ educational support ➲ and legal counsel in accordance with national law ➲, as well as any other appropriate support tailored in particular to situations of sexual abuse.

3. Where it is necessary to provide for interim accommodation, children shall, as ➲ […] ➲ ➲ appropriate and in accordance with national law ➲ , 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 a primary consideration 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 ➲ […] ➲ ➲ 26➲ of Directive ➲ […] ➲ ➲ (EU) 2024/1385 on combating violence against women and domestic violence. ➲

PUBLIC

PUBLIC

🡻 2011/93/EU (adapted)
⇨ new
➲ Council

5. ~~2.~~ 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. ~~3.~~ 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.

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

➲ Council

9. ➲ […] ➲

10. Member States ➲ […] ➲ ➲ may ➲ 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 (adapted)

⇨ new

➲ Council

Article 22

Protection of child victims 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 in the relevant justice system, competent authorities appoint a special representative for the child victim 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 where the child is unaccompanied or separated from the family.

2. Member States shall ensure that child victims have, without delay, access to legal counselling and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation ➲ from the offender ➲. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources.

PUBLIC

3. Without prejudice to the rights of the defence ➲ and in accordance with rules of judicial discretion, ➲ Member States shall take the necessary measures to ensure ➲ , unless operational or practical constraints make this impossible, or where there is an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of proceedings ➲, that in criminal investigations relating to any of the offences referred to in Articles 3 to ~~7~~ ➲ 6 and ➲ ⇨ 9 ⇦:

(a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;

(b) interviews with the child victim take place**,** ➲ where necessary ➲ , in premises designed or adapted for this purpose;

(c) interviews with the child victim 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;

(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 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 ➲ […] ➲ ➲ carried out, only where strictly necessary for the purpose of criminal proceedings, ➲ by professionals trained for this purpose ➲ in accordance with national standards for the medical profession ➲ ⇦

PUBLIC

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 ~~7~~ ➲ 6 and ➲ ⇨ 9 ⇦ all interviews with the child victim or, where appropriate, with a child witness, may be 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 ~~7~~ ➲ 6 and ➲ ⇨ 9 ⇦, that it may be ordered that:

   (a) the hearing take place without the presence of the public;

   (b) the child victim 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 and taking into account other overriding interests, to protect the privacy, identity and image of child victims, and to prevent the public dissemination of any information that could lead to their identification.

PUBLIC

⇩ new

➲ Council

7. ➲ […] ➲

⇩ new

➲ Council

Article 23

Victim's right to compensation

1. Member States shall ensure that victims ➲ […] ➲ have ➲ […] ➲ ➲ the ➲ right to ➲ claim, in accordance with national law, compensation from offenders for damages resulting from offences under this Directive. ➲ ➲ […] ➲

2.➲ […] ➲

3.➲ […] ➲

4.➲ […] ➲

PUBLIC

⇩ new

➲ Council

Article 24

➲ […] ⊂ ➲ *Competent* ⊂ *authorities or equivalent entities*

Member States shall ➲ […] ⊂ ➲ ensure that competent ⊂ authorities or equivalent entities ➲ exist and are enabled ⊂ to carry out the following activities:

➲ […] ⊂ ➲ (a) ⊂ ➲ […] ⊂ ➲ facilitating ⊂ and, where needed, ➲ […] ⊂ ➲ coordinating ⊂ efforts at national ➲ or regional ⊂ level on prevention and assistance to victims;

➲ […] ⊂ ➲ (b) ⊂ ➲ […] ⊂ ➲ carrying ⊂ out ➲ of ⊂ assessments of trends in child sexual abuse, online and offline;

➲ […] ⊂ ➲ (c) ⊂➲ […] ⊂ ➲ evaluating ⊂ 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;

➲ […] ⊂ ➲ (d) ⊂➲ […] ⊂ ➲ reporting ⊂ on such trends, results and statistics.

In particular, ➲ […] ⊂ ➲ the competent ⊂ authorities shall be responsible for the data collection, research and reporting obligations referred to in Article 31.

PUBLIC

⇩ new

➲ Council

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 ➲ […] ➲ the Commission.

PUBLIC

PUBLIC

2011/93/EU (adapted)

⇨ new

Article 26

Measures against advertising abuse opportunities and ⌦ 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 ⇦ ~~6~~; and

(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.

PUBLIC

↓ 2011/93/EU (adapted)
⇨ new
➲ Council

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, to effective, where appropriate, ⇨ dedicated ➲ […] ➲ ⇦ intervention programmes or measures designed to evaluate and prevent the risk of such offences being committed.

⇩ new
➲ Council

2. ➲ […] ➲

PUBLIC

↓ 2011/93/EU (adapted)
⇨ new
➲ Council

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 appropiate 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 ➲ […] ➲ 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.

⇩ new

➲ Council

4. Member States shall ➲ […] ➲ ➲ promote ➲ 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 ➲ include:

(a) dedicated 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. ➲ […] ➲

PUBLIC

PUBLIC

2011/93/EU

⇨ new

➲ Council

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 ➲ […] ➲ 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.

PUBLIC

↓ 2011/93/EU (adapted)

➲ Council

Article 30

Measures against ➲ […] ⊂ ➲ online interfaces ⊂ containing or disseminating child ~~pornography~~ ⌦ sexual abuse material ⌫

1. Member States shall take the necessary measures to ensure the prompt removal of ➲ […] ⊂ ➲ specific items of ⊂ child ~~pornography~~ ⌦ sexual abuse material ⌫ hosted in their territory and to endeavour to obtain the removal of such ➲ […] ⊂ ➲ items ⊂ hosted outside of their territory.

2. Member States may take measures to block access to ➲ […] ⊂ ➲ specific items of ⊂ 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.

PUBLIC

⇩ new

➲ Council

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, where possible ⊂ disaggregated by sex, age ➲ or age group ⊂ of the victim and of the offender, ➲ the type of the offence and, where possible and relevant ⊂ relationship between the victim and the offender ➲ […] ⊂

   (a) ➲ […] ⊂ ➲ the annual number of reported offences and of convictions of offences⊂ referred to in Articles 3 to 9 ➲ […] obtained from national administrative sources ⊂ , or;

   (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) ➲ […] ⊂

3. Member States shall ➲ endeavour to ⊂ conduct ➲ […] ⊂ ➲ surveys at regular intervals to⊂ assess the prevalence of, and trends ➲ […] ⊂ ➲ in,⊂ all offences referred to in Articles 3 to 9 of this Directive. ➲ […] ⊂ Member States shall transmit ➲ […] ⊂ ➲ statistical ⊂ data ➲ resulting from surveys as referred to in paragraph 1 ⊂ ➲ […] ⊂ to the Commission (Eurostat) ➲ as soon as they become available ⊂ ➲ […] ⊂

4. ➲ […] ⊂

[5. ➲ […] ➲

6. Member States shall transmit the ➲ available statistical data ➲ to➲ […] ➲ the Commission and make the collected ➲ […] ➲ ➲ statistical data ➲ available to the public on an annual basis. ➲ […] ➲ The ➲ […] ➲ ➲ statistical data ➲ shall not contain personal data.

7. Member States shall ➲ […] ➲ ➲ foster ➲ 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.~~

PUBLIC

⇩ 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.~~

🡹 Council

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 the 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.

PUBLIC

2011/93/EU (adapted)

⇨ new

➲ Council

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), ➲ […] ➲ ➲ (7) ➲, (8), ➲ […] ➲ Article 3 paragraphs (1), (4), to ➲ […] ➲ ➲ (6a) ➲; Article 4 paragraphs (4) to (7); Article 5 paragraphs (2) to (10); Articles➲ […] ➲ ➲ 5a ➲ to 10; Article 11, introductory wording and letters (b), (h), (i), ➲ […] ➲ ; 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), (5) ➲ […] ➲; Articles 23 to 28; Article 29 paragraphs (1), (3) and (4); Articles 30 to 32 of this Directive ⇦ by ⇨ [three 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. ➲ […] ➲ ~~The methods of making such reference shall be laid down by the Member States.~~

⇩ new

➲ Council

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 ➲ […] ➲

⇩ new

➲ Council

Article 34

Repeal

Directive 2011/93/EU is repealed with effect from [the day after the second date referred to in Article ➲ […] ➲ ➲ 33 ➲, 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.

PUBLIC

PUBLIC

🡻 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*.

⇩ new

➲ Council

The obligations referred to in paragraph 1 of Article 33 shall apply from *[... day after transposition deadline referred to in Article 33(1)*], ➲ […] ➲

🡻 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