Council of the European Union

Brussels, 22 December 2025
(OR. en)

16920/25

Interinstitutional File:
2024/0035 (COD)

LIMITE

COPEN 423
DROIPEN 166
FREMP 392
CYBER 386
ENFOPOL 481
JAI 1920
CODEC 2155

PUBLIC

NOTE

From:	Presidency
To:	Delegations
Subject:	Proposal for a Directive on combating sexual abuse and sexual exploitation of children and child sexual aubse material (recast) - Examination of the incoming Presidency's note and compromise proposals

Delegations will find below a Presidency note regarding the abovementioned file, in view of the JHA Counsellors meeting on 9 January 2026.

The negotiations in trilogues on the draft Child Sexual Abuse Directive have been going on under the Danish Presidency since July last year, following the kick-off political trilogue in June under the Polish Presidency. In total, 12 inter-institutional technical meetings (ITMs) have been held under the Danish Presidency, and the second political trilogue took place on 6 November 2025. Delegations have been diligently informed by the Danish Presidency on the progress made in the negotiations. Last, the Danish Presidency also explained to delegations its reasons for not holding the third political trilogue during the COPEN General matters on 15 December 2025.

Drawing on the discussions during recent Counsellors' meetings and bilateral speed dates with delegations, the Cyprus Presidency intends to devote this first meeting to take stock of the current state of play and reflecting on the way forward. At the same time, building on the solid work of the Danish Presidency, the Cyprus Presidency aims to maintain the momentum and continue the Council's efforts to advance the negotiations, with the objective of approaching a political agreement with the European Parliament by the end of the Presidency term.

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1. State of play of the negotiations

Under the Danish Presidency, the draft directive has been discussed in its entirety with the European Parliament at the inter-institutional technical meetings. The latest version of the four-column table has been circulated ahead of this meeting (WK 17549/2025), where the latest status of the provisions negotiated with the European Parliament can be found.

With due consideration to the principle that "nothing is agreed until everything is agreed", the Cyprus Presidency has grouped the different provisions based on the progress achieved for each of these in the negotiations.

A. Provisionally agreed lines and proposed for endorsement at political level

The following lines, covering different parts across the text of the draft Directive, have been provisionally agreed and are identical in the mandates of both co-legislators:

– Lines 1-16, 18, 25, 28, 31, 41, 56, 65, 67, 69, 71, 72, 76-80, 82-85, 86, 97, 125-126, 139, 140-141, 150, 152, 155, 159, 167, 170-175, 179, 183, 185-187, 200, 202, 204-208, 210, 211a, 212, 223-230, 288, 294, 297, 311, 313-319, 321, 336, 338, 342, 344-345, 348-354, 366.

The following lines, covering other parts of the draft Directive have also been provisionally agreed:

– Lines 73-75 of Recital 63 and line 96 of Article 2(1)(6) on definition of legal entities

– Line 81 of Article 1 (compromise text presented in ST 16102/25).

– Line 99, Title of Article 3

– Line 117, Title of Article 4

– Line 320, Article 29(5)(b)

– Line 337, Article 32(1)

– Line 343, Article 34(1)

B. Articles close to agreement

Based on the discussions to date and against the background of the lines identified under Category A (see above), the Presidency considers that a provisional agreement with the European Parliament can be reached for the following Articles:

– Article 5a – Offences concerning instructions to commit child sexual abuse, sexual exploitation or solicitation of children for sexual purposes (lines 139b-139h)

– Article 15 – Non-prosecution or non-application of penalties to the victim (line 201)

– Article 24 – Competent authorities or equivalent entities (lines 281-287)

– Article 29 – Intervention programmes or measures on a voluntary basis in the course of or after criminal proceedings (lines 311-321) – only open line is 312

– Article 30 – Measures against online interfaces containing or disseminating child sexual abuse material (lines 322-324)

– Article 32a – Freedom of the press and freedom of expression in other media (lines 337a-337b)

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C. Articles for further discussion

For the remaining Articles and other parts of the draft Directive, the Presidency understands that further negotiations are needed with the European Parliament. Considering recent exchanges among and with delegations on some of these issues, the Presidency considers that further discussion also within the Council would be welcome at this stage.

These are set out below:

– Article 2 – Definitions

– Article 3 – Offences concerning child sexual abuse

– Article 4 – Offences concerning child sexual exploitation (only penalty levels)

– Article 5 – Offences concerning child sexual abuse material

– Article 5b – Offences concerning advertising abuse opportunities *(which would replace article 26)*

– Article 6 – Solicitation of children for sexual purposes

– Article 7 – Solicitation of livestreaming of child sexual abuse or sexual exploitation

– Article 8 – Operation of an online service for the purpose of child sexual abuse or sexual exploitation

– Article 9 – Incitement, aiding and abetting, and attempt

– Article 10 – Consensual sexual activities

– Article 11 – Aggravating circumstances

– Article 12 – Disqualification arising from convictions

– Article 13 – Liability of legal persons

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– Article 14 – Penalties for legal persons

– Article 16 – Investigation and prosecution

– Article 16a – Limitation Periods

– Article 17 – Reporting suspicion of child sexual abuse or sexual exploitation

– Article 18 and 20-23 related to victims' rights

– Article 19 – Jurisdiction

– Article 25 – Multi-agency and multi-stakeholder coordination and cooperation

– Article 27 – Preventive intervention programmes or measures

– Article 28 – Prevention

– Article 31 – Data collection and research

– Article 33 – Transposition

– Article 35 – Entry into force and application

As regards Article 2, while the Presidency recognises that some outstanding issues remain, it considers it important to build on the progress achieved during the discussions in the last Counsellors meetings and the most recent ITM during the Danish Presidency. The Cyprus Presidency has therefore prepared a compromise proposal for Article 2, complemented by an additional paragraph in Article 5, which is set out in the Annex.

For the rest, the Presidency will negotiate based on the current Council mandate (General Approach), while at the same time working on revised compromise proposals to be presented to delegations at the next Counsellors meeting on 30 January, also taking into account the outcome of the ITMs.

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2. Next steps

Building on the exchange with delegations, and in light of the state of play described above, the Presidency will continue its work to find a compromise on Article 2, and reach an agreement on the Group B articles in the upcoming ITMs. Furthermore, the Presidency will seek to clarify and agree with the European Parliament on the offences to be included within the scope of the Directive (Articles 3 to 8b), along with the applicable penalties, which it considers a priority in the negotiations.

Questions to Member States:

In light of the state of play and the proposed way forward, as well as the text in the Annex, the Presidency invites delegations to provide their feedback on to the following questions during the meeting on 9 January:

a. Do Member States share the Presidency's understanding on where do we stand based on the different categorisation of the provisions?

b. Can Member States support the compromise proposal of **Article 2 and the inclusion of a new paragraph of Article 5** as set out in the Annex?

c. Can Member States support the wording of Articles 1(including recital 7), 5a, 15, 24, 29, 30, 32a as presented in the Annex?

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ANNEX

Article 1

Subject matter[1]

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

The following is proposed for *Recital 7*:

Serious criminal offences such as the sexual exploitation of children and sexual abuse material require a comprehensive approach covering the prosecution of offenders, the protection of child victims, and prevention of the phenomenon, including its recent and foreseeable evolutions and trends, increasingly involving the use of information and communication technologies. For that purpose, the current legal framework needs to be updated, in order to ensure it remains effective **and to ensure, where appropriate, that offences committed by means of information and communication technology is covered by the definition of the criminal offences.** 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.

[1] The wording of the article was agreed with the European Parliament.

Article 2

Definitions[2]

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

(1) 'child' means any person below the age of 18 years;

(2) 'age of sexual consent' means the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child;

(3) 'child sexual abuse material ' means:

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

(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;

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

[2] Delegations are referred to the Presidency note providing an explanation on Article 2.

(4) 'child exploitation in prostitution' means the use of a child for sexual activities where ~~money or~~ any ~~other~~ form of **financial or material benefit** ~~remuneration or consideration~~[3] is given or promised as payment in exchange for the child engaging in sexual activities, regardless of whether that **financial or material benefit** ~~payment, promise or consideration~~ is made to the child or to a third party;

(5) 'child sexual abuse performance' means a live exhibition aimed at an audience **of one or more persons**, including by means of information and communication technology, of:

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

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

(6) 'legal person' means ~~an entity having legal personality~~ **any legal entity having such status** under the applicable **national** law, except for States or public bodies ~~in the exercise of~~ **exercising** State authority and for public international organisations[4];

(7) 'information society service' means a service as defined in Article 1, point (b), of Directive (EU) 2015/1535[5].

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

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3 The Presidency proposes this wording, aligned with the latest proposal of Migrants' smuggling. The wording will be adjusted throughout the proposal for coherence purposes (also included at this moment in Article 7 and Article 10)

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

5 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.

A new paragraph is proposed for Article 5:

In an attempt to satisfy the position of the European Parliament as regards the extension of the definition of the visual material in order to include written or audio content, a discretional provision to the Member States is proposed to be included in Article 5 to specify that Member States in transposing the directive may decide to extend definition. Below is the proposed additional paragraph:

It shall be within the discretion of Member State to decide whether for the purposes of this Article, the term "child sexual abuse material" in Article 2 (3) may include written or audio content, that describes or represents a child engaged in real or simulated sexually explicit conduct.

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Article 5a

Offences concerning instructions to commit child sexual abuse, sexual exploitation or solicitation of children for sexual purposes[6]

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 **or method of creation**, **including, but not limited to the use of artificial intelligence systems, or other new or emerging technologies,** intended to provide advice or instructions on how to commit one of the offences referred to in Articles 3, 4, 5**,** ~~or~~ 6 **or 7** in this directive.

[6] The following proposal was tabled from a delegation: "any material, regardless of its form or method of creation, intended to provide advice or instructions on how to commit one of the offences referred to in Articles 3, 4, 5, or 6 in this directive, including any instruction for producing child sexual abuse material with the use of artificial intelligence systems."

Article 15

Non-prosecution or non-application of penalties to the victim[7]

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).

Article 24

Competent authorities or equivalent entities[8]

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;

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7 On Article 15, the European Parliament will revert to the Presidency concerning the possibility to accept the cross-reference to Article 4(7) as proposed in the General Approach.

8 As indicated in the four-column table, the European Parliament prefers the wording "national" in relation to the competent authorities. The Presidency will insist on the wording from the General Approach ("competent") and will inform delegations on the progress of the negotiations in due course. The reference to the EU Centre in the European Parliament's mandate (line 287) is of horizontal nature, and will be dealt at a later stage.

(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.

Article 29

Intervention programmes or measures on a voluntary basis in the course of or after criminal proceedings[9]

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.

[9] As indicated in the four-column table, the European Parliament insists on the qualifier "dedicated" in relation to the intervention programmes. The Presidency will insist on the wording from the General Approach and will inform delegations on the progress of the negotiations in due course.

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, 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 .

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, 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.

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Article 30

Measures against online interfaces containing or disseminating child sexual abuse material[10]

1. Member States shall take the necessary measures to ensure the prompt removal of specific items of child 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 **promptly** block access to specific items of child sexual abuse material towards the Internet users within their territory. These measures must be set by transparent procedures and provide adequate safeguards, in particular to ensure that the restriction is limited to what is necessary and proportionate, and that users are informed of the reason for the restriction. Those safeguards shall also include the possibility of judicial redress.

Article 32a

Freedom of the press and freedom of expression in other media[11]

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~~ **protected** media which exist in Member States as of [the date of entry into force of this Directive], provided that such regimes can be applied in full compliance with the Charter.

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10 The Presidency considers the European Parliament's proposal in the second paragraphs ("promptly") to be acceptable. The Presidency would also like to highlight that the measures against child sexual abuse material online are subject to the CSAM Regulation.

11 The minor adjustment allows for a full alignment with article 47 of Directive (EU) 2024/1385 on combating violence against women and domestic violence.