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NOTE

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

Delegations will find below the Presidency note regarding the abovementioned file, in view of the JHA Counsellors meeting on 30 January 2026.

Building on the input received from delegations during the last JHA Counsellors meeting on 9 January 2026, and the written comments received from delegations, the Presidency continued the negotiations with the European Parliament at inter-institutional technical level.

Delegations will find below an update on the compromise proposals under Category B – Articles close to agreement based on the last exchanges with the European Parliament. In addition, delegations will find in annex a compromise package from the European Commission services (on articles 2 to 12).

1. **SECTION 1: Presidency's Category B – Articles close to agreement as discussed with delegations:**

In the ITM, the Presidency presented the articles discussed with and overall supported by delegations at the last JHA Counsellors meeting on 9 January (article 1 and accompanying recital, article 5a and accompanying recital 12, article 15, article 24, article 29, article 30, article 32a). The European Parliament overall welcomed the proposals from the Presidency and shared some feedback. Delegations will find below the compromise proposals for the articles, together with short explanatory comments on the European Parliament's position. Delegations will be invited to take the floor to provide their views in order to find a final compromise on these provisions.

Article 1 – Subject matter:

The Presidency presented its suggestion on article 1, including two options for recital 7, for both of which delegations previously expressed flexibility). The European Parliament welcomed the addition in the operative in article 1 and expressed a preference for the first option in recital 7 (see below).

Article 1

Subject matter

This Directive establishes minimum rules concerning the definition of criminal offences and penalties in the area of sexual abuse and sexual exploitation of children, child sexual abuse material and solicitation of children for sexual purposes, **including 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 are 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.

Article 5a - Offences concerning instructions to commit child sexual abuse, sexual exploitation or solicitation of children for sexual purposes:

In the ITM, the Presidency presented the compromise proposal for article 5a and two options for recital 12. The European Parliament welcomed the additions in the operative part and raised the following points:

a) The European Parliament indicated that the article should include the following additional conducts to mirror article 5 on CSAM: acquisition (article 5(2) in line 127) and knowingly obtaining access (article 5(3) in line 128).
b) The European Parliament also explained that each conduct should have a different penalty level to ensure proportionality. In response to these points (a and b), the Presidency replied that, the inclusion of additional conducts and differentiated penalty levels are not part of the Council's current mandate.
c) The European Parliament insisted to the Presidency to cover the prompts under the CSAM Regulation as raised during the second trilogue on 6 November 2025. The European Parliament also welcomed the proposals for the recital, expressing a preference to the one specifically mentioning prompts.

These points were also raised in the informal, and the Presidency replied that, the inclusion of additional conducts and differentiated penalty levels would first require discussion with the Council.

Against this backdrop, the European Parliament has tabled a compromise proposal based on the requests as explained above. In the spirit of compromise, the Presidency would like to hear from delegations to what extent these additional points from the Parliament could be accommodated.

Additionally, the European Commission has also tabled another compromise proposal, aiming at breaching the two mandates in a balanced manner (see Annex II).

Delegations will find below all three proposals: the Presidency's proposal (as included in the previous ST16920/25), and the European Parliament's:

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Presidency's proposal for article 5a:

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 **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.**

Presidency's proposal for *Recital 12*:

(12) ~~To prevent offences involving the sexual abuse of children, the definition of child sexual abuse material should include so-called 'paedophile paedophile~~ Handbook and manuals ~~Paedophile 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. **To encompass the various ways such manuals and instructions may appear, the provision pertains to any material, regardless of its form or method of creation, and could, for instance, include prompts.**

European Parliament's proposal for article 5a (changes are underlined in comparison to the Presidency proposal above):

Article 5a

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

1. Member States shall take the necessary measures to ensure that the following intentional conduct, when committed without right, referred to in paragraphs 2, 3 and 4 is punishable.

2. Acquisition or possession of material intended to provide advice, guidance or instructions for the commission of any of the offences referred to in Articles [3 to 8b], or knowingly obtaining access to such material, shall be punishable by a maximum term of imprisonment of at least [...] years.

3. Distribution, dissemination or transmission of material intended to provide advice, guidance or instructions for the commission of any of the offences referred to in Articles [3 to 8b], or offering, supplying or making available such material, shall be punishable by a maximum term of imprisonment of at least [...] years.

4 Production of material intended to provide advice, guidance or instructions for the commission of any of the offences referred to in Articles [3 to 8b], shall be punishable by a maximum term of imprisonment of at least [...] years.

5. The material referred to in paragraphs 2, 3 and 4 of this Article shall include any material, regardless of its form or method of creation, including any instructions on how to commit the offences referred to in Articles [3 to 8b] with the use of artificial intelligence systems, as well as instructions provided to artificial intelligence systems to commit such offences.

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European Parliament's proposal for *Recital 12* (changes are underlined in comparison to the Presidency proposal above):

(12) Handbooks, manuals and instructions in any form, including hardcopy, digital or coded formats, provide advice on how to find, groom and abuse children, how to create child sexual abuse material and avoid being identified and prosecuted. By lowering barriers and providing the necessary know-how, such material contributes to the incitement of offenders and facilitates the commission of child sexual abuse. Their online dissemination has already led certain Member States to amend their criminal law in order to explicitly criminalise the possession and distribution of such handbooks, manuals and instructions. The lack of harmonisation creates an uneven level of protection across the Union. To prevent offences involving the sexual abuse and sexual exploitation of children, the intentional production, offering, dissemination or possession of instructions on how to commit such offences, whether in writing or in any other form, such as sessions, including online sessions, in which information on how to commit sexual abuse is shared, should be punishable when committed without right. In order to include the various ways in which such handbooks, manuals and instructions may appear, this Directive covers any material, regardless of its form or method of creation, including instructions on how to use artificial intelligence systems for that purpose, as well as instructions provided to artificial intelligence systems, such as prompts.

Article 15 – Non-prosecution or non-application of penalties to the victim:

The European Parliament provisionally agreed to keep article 15 as in the General Approach. As indicated above, cross-references are currently placed between brackets and to be reviewed at a later stage once a stable text for the offences is reached.

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)**]**.

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Article 24 – Competent authorities or equivalent entities:

The European Parliament agreed to keep article 24 as in the General Approach but insisted on the specific reference to the EU Centre as in their mandate (see line 287). The Presidency noted that this is a horizontal issue. It was agreed to keep such reference between brackets for now until it is discussed and agreed (also internally within the Council) how the CSAM Regulation and the CSA Directive recast would interact on this point.

The Presidency will assess how to target this horizontal issue and consult delegations at a later stage.

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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. **[In carrying out the activities listed in paragraph 1, Member States shall be supported by the EU Centre, once established.]**

Article 29 – Intervention programmes or measures on a voluntary basis in the course of or after criminal proceedings:

The European Parliament, supported by the Commission, asked for the term "dedicated" to be added in addition to "effective" in relation to intervention programmes (in article 29(1), line 312) noting that this is a sensitive point of their mandate and have no mandate to drop it. The European Parliament stressed that its intention is not to require Member States to design and implement new programmes, but rather targeted ones are available. In view of finding a compromise, the Presidency proposes an alternative wording for article 29(1), and proposes to explain in recitals that Member States will not be required to establish new targeted programmes or measures if these are already part of their broader actions to address child sexual abuse.

The Presidency would also like to draw the delegations' attention to a change that was not duly reflected in ST16920/25, namely the replacement of the word "consent" with "agree" in paragraph 5 (b), as provisionally discussed and agreed under the Danish Presidency.

Question to delegations: The Presidency invites delegations to share their views on the wording proposed in article 29(1), together with an accompanying recital as per the explanations above.

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 **and targeted** 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, 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~~ **agree** to their participation in the programmes or measures with full knowledge of the facts;

(c) may refuse and, in the case of convicted persons, are made aware of the possible consequences of such a refusal.

Article 30 – Measures against online interfaces containing or disseminating child sexual abuse material:

The European Parliament welcomed the addition of "promptly" in article 30(3), which would allow a full alignment with article 30(1) and with the DSA.

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Article 30

Measures against online interfaces containing or disseminating child sexual abuse material

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

The European Parliament has a preference to keep the wording "protected" in the provision to ensure alignment with Directive 2024/1385 on violence against women and domestic violence.

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~~ **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.

2. SECTION 2: Compromise package from the European Commission services

Delegations will find in Annex II the compromise package proposed by the European Commission services. The European Commission consider such package to constitute a balanced compromised in the frame of subsequent global agreement on the directive. The said annex was prepared and shared by the services of the European Commission on Monday 26 January.

Question to delegations:

a) Delegations are invited to indicate whether the compromise package tabled by the European Commission could be acceptable as a way forward.