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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 abuse material (recast) – Examination of the Presidency's compromise proposals

Following the discussions in the last JHA Counsellors' meeting on 30 January and the recent informal exchanges with the European Parliament, delegations will find below revised compromise proposals to be discussed at the next JHA Counsellors' meeting on 13 February 2026. The said Articles will form part of the package that the Presidency wishes to address at the next political trilogue on the 3rd of March.

With 3 March approaching, and recalling the extensive discussions on the articles on offences at the previous meetings and under the Danish Presidency, delegations are invited to consider the compromise proposals below as a package and to raise only major concerns at this stage.

Section A:

A Presidency compromise package proposal on **Articles 2–12** building upon the Commission's compromise package proposal presented at the meeting on 30th of January.

Section B:

Articles 1, 15, 24, 29, 30, 32a that have been already discussed at previous meetings and **13, 14 and 27** that have considered by the Parliament to be among those on which the positions of the co-legislators are not far apart.

Changes to the previous corresponding compromise proposals either presented by Presidency or by Commission are indicated in **bold and underlined** for delegations' conveninence.

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SECTION A

Article 2 - Definitions

The Presidency proposes some changes that will enable an agreement with the Parliament. In presenting their mandate the Parliament has explained that they are willing to drop their request to extend the scope beyond visual depiction with the expectation that the Council could show more flexibility in finding a middle ground on their request to cover intimate parts and not keep only 'sexual organs'. In particular, their concerns were that sexual organs will not include the anal region and breasts, which would exclude from the scope of this Directive cases where for example the breast of the child or the anal area is shown for primarily sexual purposes, which are quite a common phenomenon. The Presidency has reminded the Parliament that this issue was exhaustively discussed during the Danish Presidency and the phrase intimate parts has been rejected by the Council.

In addition, the Presidency proposes the introduction of a recital to clarify that the term "consideration or renumeration" also encompasses social benefits.

Finally, the notion of consent is kept in brackets both in articles 2 and 3, given that it is a matter to be discussed at a later stage.

Question to delegations:

In the spirit of compromise, the Presidency would like to ask delegations if they could accept to keep sexual organs in the operative part with an additional and explicit reference only to breast and anal area.

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;

[**(2a)** definition of consent]

(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, **breast and anal area** 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 of a child engaged in sexually explicit conduct or of the sexual organs of a child, for primarily sexual purposes;

~~(e) any material, regardless of its form, intended to provide advice, guidance or instructions on how to commit child sexual abuse or sexual exploitation or child solicitation;~~

(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;

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(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 conduct; or

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

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

(7) 'information society service' means a service as defined in Article 1, point (b), of Directive (EU) 2015/15351.

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

(9) [<u>'</u>artificial intelligence system' means an AI system as defined in Article 3, point (1), of Regulation (EU) 2024/1689.<u>]</u>[2]

(10) 'instruction to commit child sexual abuse' means any material, regardless of its form, intended to provide advice or instructions on how to commit any of the offences referred to in Articles [3, 4, 5, [<u>5b]</u> or 6].

<u>New Recital for "consideration or remuneration" in para 4:</u>

Consideration or remuneration should cover any type of benefit, material or immaterial, including social advantage.

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1 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.

2 Put between brackets depending on the outcome of Article 5b.

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Article 3 - Offences concerning child sexual abuse

For Article 3, the outcome reflects the results of the last political trilogue and as such it constitutes a delicate balance.

In addition, further to previous discussions under the Danish Presidency, the Parliament reminded the Presidency of its proposed recital that would clarify the scope of paragraph 3, which is added below.

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Article 3

*Offences concerning **child** sexual abuse*

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

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

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

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

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

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 a child to engage in sexual activities with ~~another~~ **a third person**[3] **or with themselves** shall be punishable by a maximum term of imprisonment of at least […] years.

4a. Engaging in sexual activities, other than those set out in paragraph 7, with a child who has reached the age of sexual consent and does not consent to the act, or causing a child to engage in non-consensual sexual activities with ~~another~~ **a third person or with themselves, shall be punishable by a maximum term of imprisonment of at least […] years.**

5. Engaging in sexual activities with a child, **or causing a child to engage in sexual activities with** ~~another~~ **a third person or with themselves, [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 […] years if the child has not reached the age of sexual consent, and of at least […] years of imprisonment, if the child is over that age; or

(b) abuse is made of a particularly vulnerable situation of the child, in particular because of a mental**, intellectual, sensory,** or physical disability or a situation of dependence, shall be punishable by a maximum term of imprisonment of at least […] years if the child has not reached the age of sexual consent, and of at least […] 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 […] years if the child has not reached the age of sexual consent, and of at least […] years of imprisonment if the child is over that age.

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[3] As suggested by one delegation, the Presidency considers the change from "with another person" to "a third person" brings clarity to the text.

~~6. Coercing, forcing or threatening a child into sexual activities with a third party shall be punishable by a maximum term of imprisonment of at least […] years if the child has not reached the age of sexual consent, and of at least […] years of imprisonment if the child is over that age~~.

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

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

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

7. ~~Where the child is above the age of sexual consent and does not consent to the act, the conduct referred to in paragraph 7 shall be punishable by a maximum term of imprisonment of at least […] years~~.

The following intentional conduct shall be punishable by a maximum term of imprisonment of at least […] 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;

(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 or with themselves in sexual activities entailing vaginal or anal penetration with any bodily part or object, or oral penetration with a genital body part.

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~~6b~~

[9. Notion of consent]

Proposal by the Parliament on recital 10:

10) Child 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 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.

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

Article 4 - Offences concerning sexual exploitation

No additional changes are proposed in Article 4. The Parliament confirmed that the only pending matter on this article is the level of penalties, that will be addressed at a later stage.

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.

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

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

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

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

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

7. Engaging in sexual activities with a child, where recourse is made to exploitation in prostitution shall be punishable by a maximum term of imprisonment of at least […] years if the child has not reached the age of sexual consent, and of at least […] years of imprisonment if the child is over that age.

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Article 5 - Offences concerning child sexual abuse material

In Article 5, the 2 co-legislators agree on the principle meaning that the obligation to obtain an authorization applies only to the Member States that already have in place this system and does not impose an obligation to introduce it for Member states that do not have it. However, the Parliament also flagged that the standing of the hotlines is one of the most important points in this package for the Parliament, and that it wishes to ensure that they are given a stable basis to work on. The Parliament also wishes to ensure that all of the activities listed in paragraph 8 will apply to Member states that have these authorisations.

The Presidency, partly building upon an informal proposal that was received by the Parliament, proposes changes to paragraphs 7 and 8 concerning the authorisation of organisations to clarify that such authorisation is not mandatory for Member States. In order to meet the requests of the Parliament as regards the status of the relevant organisations, the second subparagraph of paragraph 7 has been redrafted, and the reference to authorisation has been moved to paragraph 8. In addition, in a spirit of compromise the delegations are invited to examine if they can accept deleting 'some or' from par.8.

Article 5

Offences concerning child 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 sexual abuse material shall be punishable by a maximum term of imprisonment of at least […] year.

3. Knowingly obtaining access, by means of information and communication technology, to child sexual abuse material shall be punishable by a maximum term of imprisonment of at least […] year.

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4. Distribution, dissemination or transmission of child sexual abuse material shall be punishable by a maximum term of imprisonment of at least […] years.

5. Offering, supplying or making available child sexual abuse material shall be punishable by a maximum term of imprisonment of at least […] years.

6. Production of child sexual abuse material shall be punishable by a maximum term of imprisonment of at least […] years.

7. For the purposes of paragraph 1, 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, **such as a hotline**, established in a Member State acting in the public interest against child sexual abuse**, for example when such organisation** ~~that~~ has been authorised by competent authorities of that Member State, and when such actions were carried out in accordance with the conditions set out in such authorisation.

   These conditions may include the requirement **that Member States shall strive to ensure that** the organisations that **acting in the public interest against a child sexual abuse referred to in the first subparagraph** have the necessary expertise and functional independence, that there are appropriate reporting and oversight mechanisms to ensure that the 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 the authorisation.

8. Member States **are encouraged to provide a legal framework for issuing** authorisations for ~~an~~ organisations acting in the public interest against child sexual abuse referred to in paragraph 7 **and shall ensure that, when issued, the authorisations allow** ~~some or~~ **all** of the following activities:

   a. receiving and analysing 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;

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b. promptly notifying the relevant law enforcement authority of the Member State where the material is hosted of reported illegal content;

c. collaborating with organisations acting in the public interest against child sexual abuse and authorized to receive reports of suspected child sexual abuse material in accordance with point (a) in the Member State or third country where the material is hosted;

d. 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 referred to in letter (a) or on a request of a victim.

da. cooperating directly with providers of information society services established in the Member State in which the organisations acting in the public interest against child sexual abuse are established, in notice and action mechanisms, including removal or disabling of access to content and in notifications of suspicions of criminal offences under Regulation (EU) 2022/2065 of the European Parliament and of the Council, with authorisation from the competent national law authority.

8a. Member States are encouraged to authorise organisations acting in the public interest against child sexual abuse referred to in paragraph 7 to carry 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 referred to in letter (a) or on a request of a victim.

9. It shall be within the discretion of Member States to decide whether this Article applies to cases involving child sexual abuse material as referred to in Article 2, point (3)(c) where the person appearing to be a child was in fact 18 years of age or older at the time of depiction.

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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.

Additionally, a recital inspired by first sentence of recital 58 of the environmental crime directive should confirm that:

„This Directive does not require Member States to authorise any organisation acting in the public interest against a child sexual abuse to carry out actions which would otherwise constitute offences concerning child sexual abuse material.“

Article 5a - Offences concerning instructions

Given the preference of delegations to the Presidency's proposal, the Presidency suggests working on that basis, with a few amendments, in order to reach an agreement with the Parliament, taking into account that this article is an essential part of the package for them. We have also revised recital 12 to address the concerns of some delegations.

Article 5a

Offences concerning instructions on how to commit offences related to child sexual abuse, sexual exploitation, child sexual abuse material, 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 [ ]:

(a) knowingly obtaining access, acquiring, distributing, disseminating or transmitting 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.

Recital (12)

~~To prevent offences involving the sexual abuse of children, the definition of child sexual abuse material should include so-called 'paedophile paedophile~~ ***Handbooks 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 to be given to artificial intelligence systems to receive instructions on how to generate child sexual abuse material.***

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Article 5b - Offences concerning artificial intelligence systems to enable the production of child sexual abuse material

During the informal exchanges with the Parliament, the Presidency explained the concerns of the majority of delegations to criminalize this type of offence. On their side, the Parliament emphasized that for them it would be a lost opportunity not to address this existing and evolving threat. Based on our request to provide further evidence of the need to regulate this, which are not coming only from an NGO, they also have asked further evidence from Europol, which the Parliament will share with the Council. They pointed out that deleting entirely this provision as well as deleting Article 8a which is equally important for them, would render the package very unbalanced and will not be in a position to accept it.

Question to delegations:

Therefore, in an attempt to satisfy to a certain extent, the request of the Parliament delegations are invited to consider if in the spirit of compromise, they could accept a provision of a more limited scope that might entail less difficulties with regard to proving such an offence before a court. Moreover, the Presidency also proposes to accompany this with a recital, to clarify that open artificial intelligence systems are not within the scope of this provision.

Article 5b

Offences concerning artificial intelligence systems to enable the production of child sexual abuse material

Member States shall take the necessary measures to ensure that the following intentional conduct, when committed without right, is punishable:

(a) Acquisition or possession of artificial intelligence systems designed or adapted ~~primarily~~ specifically for the purpose of enabling the production of child sexual abuse material shall be punishable by a maximum term of imprisonment of at least […] year.

~~(b) Distribution, dissemination or transmission of artificial intelligence systems designed or adapted primarily specifically for the purpose of enabling the production of child sexual abuse material shall be punishable by a maximum term of imprisonment of at least […] years.~~

~~**(c) Offering, supplying or making available artificial intelligence systems designed or adapted primarily specifically for the purpose of enabling the production of child sexual abuse material shall be punishable by a maximum term of imprisonment of at least […] years.**~~

(d) Creation or adaptation of artificial intelligence systems designed or adapted ~~primarily~~ specifically for the purpose of enabling the production shall be punishable by a maximum term of imprisonment of at least […] years.

Article 6 - Solicitation of children for sexual purposes

For Article 6(4) on sextortion, the Presidency taking into account the more favourable approach of the delegations to previous wording, rather than the Commission proposal, proposes the following new wording:

Article 6

Solicitation of children for sexual purposes

4. Member States shall take the necessary measures to ensure that the intentional conduct, committed by an adult, of coercing or threatening a child to disclose to one or more third parties child sexual abuse material depicting that child, or a child with close relations to that child~~close to that child~~, with the aim of obtaining any other form of remuneration or consideration ~~money or any form of benefit remuneration, benefit or consideration~~ in exchange, shall be punishable by a maximum term of imprisonment of at least [x months/x years] if the child has not reached the age of sexual consent, and of at least [x months/x years] of imprisonment, if the child is over that age.

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

The Presidency proposes replacing "another person" with "a third person" to improve clarity. Cross-references to other articles are placed in brackets.

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 any person money, or other form of remuneration or consideration, ~~to cause them to commit~~ **for the purpose of accessing, or making accessible to** ~~another~~ **a third person, a livestream of the activities described in** any of the offences listed in **[**Article 3(4), (5), (6), (7), and (8)**], [**Article 4(2) and (3) and Article 5(6)**]** is punishable by a maximum term of imprisonment of at least […] years.

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

In Article 8, the Presidency explained to the Parliament the concerns of the delegations with the term "encourage" and asked them to provide more examples on what they wish to cover, which is not covered by Article 9. The European Parliament replied that the conduct which is criminalised here is different from that of inciting a specific crime as provided in Article 9. Rather, it refers to a situation of mutual reinforcement for the purpose of perpetrate child sexual abuse, in an online environment. Article 8 they as they explained it targets environments such as dark web forums where abuse is normalised (eg. offenders telling to others to "go for it.") and this in not covered by Article 9.

Article 8

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

Member States shall take the necessary measures to ensure that intentionally operating or administering an information society service which is ~~conceived~~ **designed or adapted** to facilitate **or promote** ~~**or encourage**~~ 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 […] year.

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Article 8a

For Parliament this is one of the most important political points in the package and they consider its deletion a major step backwards. They understand that it will not be an easy task for the prosecution to prove the elements of this offence, but they do not consider it as enough justification to entirely leave it out from criminlisation, given that there is evidence showing this offence to be committed by a large scale of people. The Presidency explained that there is no room for flexibility in the Council for this article.

~~*Article 8a*~~

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

Article 8b

The Parliament has informed that they are willing to drop their request to add this article subject to the overall package that will be agreed.

~~*Article 8b*~~

~~*Other offences related to sexual abuse and sexual exploitation of children*~~

Article 9

In Article 9, the Presidency has updated the cross-references but has kept them in square brackets, pending further review.

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 8**]** 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), **(4a),** (5), (6), (7) and (8)**], [**Article 4(2), (3), (5), (6) and (7), Article 5(4), (5) and (6), Article 7 and Article 8**]** is punishable.

Article 10

In Article 10, the Presidency has updated the cross-references, but has kept them in square brackets, pending further review. The Parliament has suggested to replace par.1 with the following phrase "*Article 3(2) and (4)* ***shall not*** *apply to consensual sexual activities between peers, in so far as the acts did not involve any abuse."*

Article 10

Consensual sexual activities

1. It shall be within the discretion of Member States to decide whether **[**Article 3(2)**,** ~~and~~ (4), **(6)**, **and Article 4(6)]** apply to consensual sexual activities between peers, 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 performance that takes place in the context of a consensual relationship where the child has reached the age of sexual consent or between peers, 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 performance.

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 ~~which exclusively involves~~ **involving**:

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

   (b) children ~~above the age of sexual consent~~ and their peers,

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where that material is produced**, acquired,** ~~and~~ possessed **or accessed by the persons involved with their** ~~with the consent~~[4] **mutual agreement** ~~of~~ ~~the children involved~~ and only for ~~the~~ **their** private use ~~of the persons involved~~, in so far as the acts did not involve any abuse **or exploitation**.

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

[4. Linked with Art 6].

[5. Notion of consent].

~~6. Consensual sharing of one's intimate images or videos cannot be interpreted as consent to any further sharing or dissemination of that same image or video.~~

Article 11

In Article 11, there was a unanimous request by delegations to keep 'one or more' in the chapeau, in line with the recently adopted conclusions on the so called "model provisions". The Parlaiment cannot accept such a request since they believe that: **a)** it is a step backwards compared to the current legislation of the Member States, which already includes most of the below aggravated circumstances and **b)** only one additional circumstance was included in the text and if we keep the phrase 'one or more', then Mmeber States would not be obliged to take it into account. The assessment of the Presidency is that the Parliament will continue to insist on this point.

Option A (preliminary rejected by the Parliament)

To keep 'one or more' accompanied with the following new Article (introducing a non-regression clause similar to the ones in Article 48 of the VAW) ensuring that all agrrevating circumstances will remain in the national legislation. Such a clause could also be accompanied with a recital explaining this issue clearly.

[4] It could be clarified in a recital that for children below the age of sexual consent this rather refers to "agreement"

Option B (preferable solution for the Parliament)

Have a mandatory list with the existing circumstances of the current Directive and a non-mandatory list with the word 'one or more' where we include some additional new circumstances

Option C

Revert to the existing Directive without 'one or more' but only with the existing aggravated circumstances (i.e. Article 9 in the the 2011 Directive would in principle be recycled unchanged).

Article 12

Given the difficulties of some delegations to accept the Commission proposal, the Presidency, asked the Parliament if they could accept going back to the General Approach for par.2. The Parliament replied that they are willing to consider the General Approach text provided that the list of the sectors mentioned in par.2 would be extended to cover sports, scouting, camps and religious sector, which they consider very important. A mere reference to guidelines or similar would not be acceptable to the Parliament.

The Presidency considers that it would defeat the purpose to limit the scope to some sectors but on the other hand list a big number of sectors that would at the end cover most of the cases. Therefore, the Presidency would propose to limit the scope of par.2 to professional/structured voluteering clubs, meaning that the provision would not cover informal, once-off, occasional or ad hoc activities of volunteers. The provision could be accompanied with a recital to clarify this. However, it is to be noted that this proposal has not yet been tested with the Parliament.

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 may be temporarily or permanently prevented from exercising at least professional **and organised voluntary** activities involving direct and regular contacts with children.

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2. Member States shall take the necessary measures to ensure that employers, when recruiting a person for professional **activities** or **structured volunteering activities within clubs** ~~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 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, 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, when requested by competent authorities, Member States shall take the necessary measures to ensure, the transmission of information concerning the existence of criminal convictions for any of the offences referred to in Articles 3 to 9, or of any disqualification from exercising activities involving direct and regular contacts with children arising from those criminal convictions, 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**.

Proposed recital

The obligations laid down in this Directive regarding the verification of criminal convictions are intended to apply only to professional activities and structured volunteering activities taking place within clubs that carried out on a regular basis and involving direct contact with children. Occasional, one-time, incidental or spontaneous volunteering activities, including activities carried out on an exceptional basis, should not be considered structured volunteering activities for the purposes of this Directive.

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SECTION B

Recital 7 - corresponding to Article 1

As already inticated article 1 has been provisionally agreed between the two co-legislators. As regards the accompanying Recital 7, as announced at the last JHA Counsellors' meeting on 30 January, the European Parliament proposes a minor change, based on which the CLS has suggested the following wording. The remaining parts of the recital, as proposed by the Presidency, are acceptable to the European Parliament.

(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*~~ ***fall within the scope of this Directive*** ~~*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 15 – Non-prosecution or non-application of penalties to the victim *(provisionally agreed)*

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

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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)**]**.

Article 24 – Competent authorities or equivalent entities *(provisionally agreed)*

As already indicated, the European Parliament agreed to keep article 24 as in the General Approach.

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.

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Article 30 – Measures against online interfaces containing or disseminating child sexual abuse material (provisionally agreed)

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 29

For Article 29, the Presidency proposes some modifications in recital 47 to further clarify the wording "targeted intervention programmes or measures" and to mitigate the concerns of some delegations. The Parliament has informed us that they are willing to accept the word 'targeted' instead of 'dedicated', accompanied with the recital proposed by the Presidency with some minor changes.

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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:

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(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.

(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.~~ **Intervention programmes or measures, targeted to the needs of persons subject to criminal proceedings or persons suspected of or convicted for committing any of the offences covered by the Directive should be available in Member States.** ~~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 not obliged to create new intervention programmes or measures provided that effective and targeted ones are already available in the context of the fight against child sexual abuse. 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. Member States are encouraged to ensure that the programmes and measures are accessible without undue restrictions in line with national standards.**

Article 32a - Freedom of the press and freedom of expression in other media

Further to the reactions of some delegations, and based on the fact that previous examples of legislation in the field of criminal law have been agreed without the word 'protected', the Presidency proposes to delete the word "protected" and does not see the need for a full alignment with VAW.

PUBLIC

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.

Article 13 (provisionally agreed)

The European Parliament has accepted the Council's General Approach for article 13.

Article 13

Liability of legal persons

1. Member States shall ~~take the necessary measures to~~ ensure that legal persons ~~may~~ **can** be held liable for ~~any of the~~ **criminal** offences referred to in **Articles [3 to 9] where such offences have been** ~~3 to 9~~ committed for ~~their~~ **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 ~~, and having a leading position within 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 ~~also~~ take the necessary measures to ensure that legal persons ~~may~~ **can** be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission, ~~by a person under its authority, of any of the~~ **criminal** offences referred to in **[**Articles 3 to 9**]** for the benefit of ~~that~~ **the** legal person, **by a person under its authority**.

3. Liability of legal persons under paragraphs 1 and 2 shall ~~be without prejudice to~~ **not preclude** criminal proceedings against natural persons who ~~are per~~petrators, ~~inciters or~~ **commit, incite or are** accessories to the **criminal** offences referred to in **[**Articles 3 to 9**]**.

Article 14- Penalties for legal persons

The Parliament considers that this article is also one of those on which the positions of the legislators are not far apart, and has suggested it to be included in the package with articles to be provisionally agreed. However, when the Parliament presented their compromise proposal which includes the addition of 'whichever is higher' in par.2 and 3 as stated below, the Presidency explained that such a proposal would be very difficult to accept for delegations, both for reasons of substance and for reasons of coherence with previous legal instruments and the model provisions in criminal law. Parliament took note of the concerns but also underlined that it considers it necessary to provide for sufficiently strong penalties, and suggested that the Council should at least consider the introduction of higher penalties in par.3. The Presidency suggests to leave this matter for discussion at a later stage together with the rest of the penalties.

Parliament proposal:

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)** is punishable by effective, proportionate and dissuasive ~~sanctions, which shall include~~ criminal or non-criminal ~~fines and may include other sanctions, such as:~~**penalties or measures**

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:

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

(b) exclusion from access to public funding, including tender procedures, grants ~~and~~**,** concessions **and licences**;

(c) temporary or permanent disqualification from the practice of ~~commercial~~**business** activities;

(d) placing under judicial supervision;

(e) judicial winding-up; or

(f) closure of establishments used for committing the offence.

(fa) where there is a public interest, the publication of all or part of the judicial decision relating to the criminal offence committed and the penalties or measures imposed, without prejudice to rules on privacy and the protection of personal data.

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 ~~2 years~~**1 year** for natural persons are punishable by **criminal or non-criminal** fines ~~whose maximum level should be not less than 1 percent~~**, the amount of which shall be proportionate to the gravity** of the ~~total worldwide turnover~~**conduct and to the individual, financial and other circumstances** of the legal person ~~in the business year preceding the fining decision.~~**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

(ii) an amount corresponding to EUR 8 000 000, whichever is higher.

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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 ~~3~~**5** years for natural persons are punishable by **criminal or non-criminal** fines, ~~whose maximum level should be not less than 5 percent~~**the amount of which shall be proportionate to the gravity** of the ~~total worldwide turnover~~**conduct and to the individual, financial and other circumstances** of the legal person ~~in the business year preceding the fining decision.~~**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

(ii) an amount corresponding to EUR 24 000 000, whichever is higher.

3a. Member States may establish rules for cases in which 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 the year in which the offence was committed or in the business year preceding the decision to impose the fine.

Article 27 - Preventive intervention programmes or measures

During the informal exchange with the Parliament, three important elements were raised in order to achieve a compromise: **a)** the application of those programs to family members **b)** the need to align it with what will be agreed in art.29m *ie* if we add 'targeted' to art.29 the same has to be done also in art. 27here and **c)** to keep the word 'anonymous' in par.1.

Delegations are invited to examine if they can accept the below revised proposal which is based on the Council mandate, with the inclusion of only the point mentioned above and rejecting remaining elements included in the EP mandate.

PUBLIC

Article 27

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 9 have **anonymous** access, to effective, **and targeted** ~~where appropriate, dedicated~~ intervention programmes or measures designed to evaluate and prevent the risk of such offences being committed.

2. **Member States shall take the necessary measures to ensure that the programmes referred to in par.1 apply also to close family members of a person who they fear might commit any of the offences referred to in Articles 3 to 9.**

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