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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

Building on the discussions in the last JHA Counsellors' meeting on 13 February, delegations will find below revised compromise proposals to be discussed at the next JHA Counsellors' meeting on 24 February 2026. The compromise proposals tabled will form part of the package to be addressed at the next political trilogue on the 3rd of March.

Given that the meeting on the 24th of February is the last Counsellors meeting before the political trilogue 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., in order for the Presidency to have a clear understanding of its mandate.

Delegations will find thre sections: section A, presenting the compromise proposals for article 2 to 12; section B including the compromise proposals for recital 7, and articles 13, 15, 24, 27, 29, 30, and 32a; and section C displaying a compromise proposal for article 14.

Changes to the previous corresponding compromise proposals are indicated in **bold and underlined** for delegations' conveninence. Cross-references to articles are left between brackets and will be addressed once a stable version of the text is agreed.

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SECTION A

Article 2 - Definitions

Following the discussion at the last JHA Counsellors meeting on 13 February, delegations will find below a compromise proposal for article 2.

In addition, the Presidency proposes some changes in the recital clarifying the term "consideration or renumeration" along the input received from delegations.

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 or 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, **breast or anal area** 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, **breast or anal area** 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;

(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.

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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.

(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 <u>on how</u> to commit ~~child sexual abuse~~ offences' 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>Proposal on recital 10:</u>

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 **<u>sexual organs, breast or anal area</u>**, 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 **<u>as well as</u>** photographic images including film**<u>s</u>** **<u>and</u>** video**<u>s</u>**~~**, 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**~~. **<u>This recital is not an exhaustive list of what may constitute a visual representation.</u>**

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

New recital for "consideration or remuneration" in para 4:

Consideration or remuneration should cover any type of benefit, **monetary or non-monetary, including** material, ~~or~~ immaterial **or otherwise advantageous gains** ~~including social advantage~~ .

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.

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.

3a. Where the child has reached the age of sexual consent, the conduct referred to in the ~~first subparagraph~~ paragraph 3 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 **who has not reached the age of sexual consent** 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 who has not reached the age of sexual consent 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 **physical**, mental**, intellectual, or 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.

~~**6b**~~

[9. Notion of consent]

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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.

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Article 4

Offences concerning sexual exploitation

1. Member States shall take the necessary measures to ensure that the intentional conduct referred to in paragraphs 2 to 7 is punishable.

2. Causing or recruiting a child to participate in 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.

Article 5 - Offences concerning child sexual abuse material

The Presidency tabled a compromise proposal for article 5, based on the exchange with delegations during the last JHA Counsellors meeting.

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.

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.

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

   a. ~~receive and analyse~~ **reception and analysis of** 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;

   b. prompt~~ly notify~~ **notification to** the relevant law enforcement authority of the Member State where the material is hosted of reported illegal content;

   c. ~~collaborate~~ **collaboration** 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. 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.~~

   ~~da.~~

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.

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, the proposal for the accompanying recital has been amended based on the discussion during the previous JHA Counsellors meeting:

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(20) In the context of child sexual abuse material **and of instructions on how to commit offences covered by this Directive**, the term not be considered to be committed 'without right' allows Member States to provide a defence in respect of conduct relating to material that could constitute child sexual abuse material **or instructions** having, for example, a medical, scientific, **research,** or similar purpose. It also allows activities carried out under domestic legal powers, such as the legitimate possession of child sexual abuse material by the authorities in order to conduct criminal proceedings or to prevent, detect or investigate crime, or activities, **including research**, carried out by organisations acting in the public interest against child sexual abuse, **including** when these organisations have been authorised by the competent authorities of the Member State in which they are established. **This Directive does not entail any obligation for Member States to provide for or grant such authorisation.** These activities include, in particular, the reception, analysis and creation of reports of suspected child sexual abuse material, including the determination of the location where the material referred to in the reports is hosted, submitted to them by online users or other organisations acting in the public interest against child sexual abuse, as well as carrying out searches to detect the dissemination of child sexual abuse material. Furthermore, the term 'without right' does not exclude legal defences or similar relevant principles that relieve a person of responsibility under specific circumstances.

Article 5a - Offences concerning instructions

Taking into account the discussion at the last Counsellors meeting, the Presidency intends to keep the below version of article 5a for the political trilogue.

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) <u>acquiring or</u> 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, **<u>may</u>** 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

Given the discussion during the last JHA Counsellors meeting, the Presidency will suggest to the Parliament putting aside article 5b to allow for more in-depth discussions after the trilogue on 3rd March. Given the political importance of such article by the Parliament, the Presidency expects though the Parliament to insist on this article at the trilogue.

PUBLIC

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

The following compromise proposal was tabled by a delegation:

[Article 5b

Offences concerning artificial intelligence models intentionally adapted to generate child sexual abuse material

(a) The intentional acquisition or possession of an artificial-intelligence model or model component that has been specifically designed or technically adapted for the primary purpose of generating child sexual abuse material shall be punishable …

(d) The intentional creation, training, fine-tuning, modification or technical adaptation of an artificial-intelligence model or model component for the primary purpose of generating child sexual abuse material shall be punishable …]

Article 6a - Solicitation of children for sexual purposes

For the offence on sextortion, the Presidency proposes a separate article, with some minor adjustments for clarity reasons, compared to the previous version (presented as article 6(4) at the last JHA Counsellors meeting).

Article 6a

Solicitation of children for sexual purposes

Member States shall take the necessary measures to ensure that intentionally threatening a child with the disclosure of child sexual abuse material depicting that child or a child having a close personal relationship with that child to one or more persons in order to obtain money, further child sexual abuse material, or any other form of remuneration or consideration in exchange, 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 7 - Solicitation of livestreaming of child sexual abuse or sexual exploitation

No further adjustments are proposed to article 7.

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

No further adjustments are proposed to article 8.

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.

Article 8a

As explained by the Presidency at the last JHA Counsellors meeting, this article is of crucial political importance for the Parliament. Nevertheless, the Presidency has taken note of the Council's mandate, and has conveyed it to the Parliament.

Question to delegations: Given that the Parliament is expected to insist on this article at political level, delegations are invited to indicate whether they could accept a discretionary clause.

~~***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

The Presidency proposes some minor adjustments in article 9.

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), **and** Article 7 ~~and Article 8~~**]** is punishable.

Article 10

No further adjustments are proposed for the operative part, but only for the accompanying recital 24.

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Article 10

Consensual sexual activities

1. It shall be within the discretion of Member States to decide whether **[**Article 3(2)**, ~~and~~** (4), **and (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,

   where that material is produced**, acquired,** ~~and~~ possessed **or accessed by the persons involved with their** ~~with the consent~~ **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.~~

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(24) This Directive does not govern Member States' policies with regard to consensual sexual activities in which children may be involved and which can be regarded as the normal discovery of sexuality in the course of human development, taking account of the different cultural and legal traditions and of new forms of establishing and maintaining relations among children and adolescents, including through information and communication technologies. **Nothing in this Directive should be understood as requiring, directly or indirectly, Member States to criminalise, penalise or otherwise sanction such consensual activities, which remain outside the scope of this Directive. In implementing this Directive, Member States should ensure that its provisions are applied in a manner that clearly distinguishes abusive and exploitative conduct from consensual and non-exploitative activities forming part of normal sexual development of children**. ~~Member States which avail themselves of the possibilities referred to in this Directive do so in the exercise of their competences. More particularly, Member States should be able to exempt from criminalisation consensual sexual activities involving exclusively children above the age of sexual consent, as well as consensual sexual activities involving peers. The amendments to that Article are intended to clarify the scope of the derogation, in light of the fact that some Member States appear to have interpreted its original wording too broadly (e.g. by exempting from criminalisation consensual activities between minors above the age of consent and adults of any age, considered to be 'peers' despite a significant age difference)~~.

Article 11 – Aggravating circumstances

In Article 11, there was a clear preference by the delegations for option A (to keep 'one or more' accompanied with a non- regression clause) The Parliament has already shared their objection to this option. In order to find a venue of compromise, the Presidency proposes to keep 'one or more' together with some new aggravating circumstances and a non-regression clause. The Presidency expects this article to be one of the key points at the trilogue.

Article 11

Aggravating circumstances

[~~In so far as~~ **To the extent that** the following circumstances do not already form part of the constituent elements of the offences referred to in Articles 3 to 9 Member States shall take the necessary measures to ensure that**, in relation to the relevant criminal offences referred to in those Articles, one or more of** the following circumstances ~~may~~ **can**, in accordance with the relevant provisions of national law, be regarded as aggravating circumstances~~, in relation to the relevant offences referred to in Articles 3 to 9~~:

(a) the offence was committed against a child in a particularly vulnerable situation, such as a child with a ~~mental or physical~~ disability, in a situation of dependence or in a state of physical or mental incapacity;

(b) the offence was committed by a member of the child's family, a person cohabiting with the child or a person who has abused a recognised position of trust, authority or influence on the child;

(c) the offence was committed by several persons acting together;

(d) the offence was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA

(e) the offender has previously been convicted of offences of the same nature;

(f) the offender has deliberately or recklessly endangered the life of the child;

(g) the offence involved serious violence or caused serious harm to the child;

(h) the offence was committed repeatedly;

(ha) the offender posed as a minor or a peer;

(i) the offence was committed with the use or threat of using a weapon; or

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(j) the offence was committed by causing **intentionally taking advantage of** the victim to take, use or be affected by drugs, alcohol or other intoxicating substances**'s intoxicated state**.

(ja) the offence was motivated by one or more of the grounds protected under Article 21 of the Charter of Fundamental Rights of the European Union.

New Article 11b - Non-regression clause

The implementation of this Directive shall not constitute grounds for justifying a reduction in the level of protection of victims. That prohibition of such a reduction in the level of protection shall be without prejudice to the right of Member States to lay down, in light of changing circumstances, legislative or regulatory arrangements other than those in force on [*date of entry into force*], provided that the minimum requirements laid down in this Directive are complied with.]

Article 12

The Presidency proposes a new compromise proposal for para 2, as tabled by one delegation, and the accompanying recital.

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~~ **properly** 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**.

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Proposed recital

(50) Where the danger posed by the offenders and the possible risks of repetition of the offences make it appropriate, convicted offenders should be temporarily or permanently prevented from exercising at least professional activities **and organised voluntary activities** involving direct and regular contacts with children or within organisations that work for children or organisations acting in the public interest on the fight against child sexual abuse. Employers when recruiting for a post involving direct and regular contact with children should request information on existing convictions for sexual offences against children entered in the criminal record, or of existing disqualifications**.** For the purposes of this Directive, the term 'employers' should also cover persons running an organisation that is active in volunteer work related to the supervision or care of children involving direct and regular contact with children, including community settings such as schools, hospitals, social care services, sports clubs or religious communities. **For the purpose of this Directive, "direct and regular contact" refers to activities where an individual interacts with children in a structured, ongoing capacity, and does not include occasional activities, such as sporadic, short-term, or one-off events with limited or unpredictable contact.** The way such information is delivered, such as for example access via the person concerned, and the precise content of the information, the meaning of organised voluntary activities and direct and regular contact with children should be laid down in accordance with national law. However, the information transmitted from one competent authority to another should at least contain all relevant records stored by any Member State in their national criminal records registers, and all relevant records that can be easily obtained from third countries, such as information that can be obtained from the United Kingdom through the channel established in accordance with Title IX of Part Three of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part.

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SECTION B

Recital 7 - corresponding to Article 1 (provisionally agreed)

(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 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**.

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

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)

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.

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

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 wit

(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 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 32a - Freedom of the press and freedom of expression in other media (provisionally agreed)

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.

SECTION C

Delegations will find below a compromise proposal for Article 14 from the Commission reflecting the oral presentation by the Commission at the last JHA Counsellors meeting.

Article 14

~~Sanctions on~~ ***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) ~~temporary or permanent~~ closure of establishments ~~which have been~~ 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.

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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.

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 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.

3a. Member States may establish rules for cases where it is not possible to determine the amount of the fine on the basis of the total worldwide turnover of the legal person in the business year preceding that in which the offence was committed, or in the business year preceding the decision to impose the fine.

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