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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) – Presidency's note

In view of the COPEN Working Party meeting on 18 March, delegations will find this Presidency note on the different elements for discussion.

A. Section A: AI systems enabling the production of child sexual abuse material

Following the political trilogue on 3 March, and the commitment on the side of the Council to include article 5b in the Directive provided there is sufficient evidence proving the existence of this threat that requires new criminalisation at EU level, the Presidency is inviting the Europol as third party to attend the COPEN Working Party on 18 March. Europol will be invited to provide a presentation on their expertise and experience on AI systems enabling the production of child sexual abuse material and delegations will be given the opportunity to address any possible questions to Europol, also taking into account any possible relevant experience from their national law enforcement authorities.

The Commission will also be invited to present their non-paper on this matter, which can be found in WK 3882/26.

Questions to delegations:

1. Delegations are invited to share their position regarding the possibility of criminalising this conduct in this Directive.
2. Delegations are invited to indicate their preference as to the scope of such possible offence.

B. Section B: Travel related provision (article 8a)

By way of background, the Parliament proposes to introduce a new offence criminalising travelling for the purpose of sexual abuse and sexual exploitation of children. This is a strong political point that the Parliament is insisting on. The Parliament draws the comparison with the Directive (EU) 2017/541 on combating terrorism, which criminalises outbound travelling for the purpose of terrorism (article 9).

As expressed at the political trilogue on 3 March by the Presidency, the Council does not put into question the heinous act of sexual tourism but raises questions regarding the proportionality and subsidiarity of such provision, its preparatory nature (and thus overlap with article 9 on attempt), and evidentiary difficulties. Given, on the one hand, the reservations of delegations regarding the introduction of article 8a, and on the other hand, Parliament's insistence to include it, the Presidency is exploring if there are any other ways to address this threat in this Directive. The aim of this discussion is not to decide now on a possible way forward, but rather to have a first discussion among delegations in view of the final compromise package in June.

Since some Member States already have such conduct criminalised under their national law, Italy will be invited to make a short presentation on the topic at the meeting.

The Presidency would like to draw delegations' attention to article 26 (b), which refers to a prevention provision against the organisation of travel arrangements with the purpose of committing any of the offences referred to in Articles 3, 4 and 5.

It is the Presidency's view that this provision could be used as a basis for discussion when exploring a possible way forward to cover travelling in this Directive.

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Question to delegations:

Against the above background, delegations are invited to indicate whether they agree to continue discussing this matter, with the possibility to include such a provision as proposed by the Parliament (criminalisation of traveling) but with a more restricted scope, or they are more open to address the issue of traveling in a different manner or scope compared to the proposal by the Parliament (alternative options could include for example: stress the link of this conduct with attempt under article 9, or convert the content under article 26 (b) into a criminal offence).

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