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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

Ahead of the JHA Counsellors meeting, delegations will find below for their information the Presidency note including the description of the progress of negotiations with the European Parliament at technical level, together with compromise proposals for a set of articles (article 5(10), article 10, article 16, article 17, article 19, article 25, article 27, article 28, article 31). Delegations will find the latest version of the four-column table in WK4297/26 for their convenience.

Article 5(10) and article 10

Based on the discussion at the previous JHA Counsellors meeting on 10 March 2026, the Presidency has proposed to delete article 5(10) from the operative part and to insert an addition in recital 10. Regarding article 10, the Presidency explained to the Parliament the lack of room for flexibility from the Council in the operative part. Therefore, the Presidency proposes only an addition in recital 24. The Presidency considers these proposals as a balanced compromise package, accommodating both the positions of the Parliament and Council.

Delegations will find below the compromise proposals for both recital 10 and recital 24.

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, breasts or anal area, 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. **It should not, however, cover any unrealistic images, reproductions or representations of a child engaged in sexually explicit conduct, or of the sexual organs, breasts or anal area of a child, such as doodles or sketches.**

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 as well as photographic images including films and videos, 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, or data that can be converted into a photograph. This recital is not an exhaustive list of what may constitute a visual representation.

Recital 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.

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Nothing in this Directive should be understood as requiring, or encouraging 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 are encouraged to guarantee that consensual sexual activities between peers are not subject to criminalisation or other punitive measures under national law, in so far as the acts did not involve any abuse or exploitation.**

Question to delegations:

Delegations are invited to indicate whether they could agree with this compromise package for recital 10 and recital 24.

Article 16 – Investigation and prosecution

As discussed with delegations during the JHA Counsellors meeting on 14 November (ST 15030/25), the Presidency took note of the Council's position regarding line 203, where the cross-reference as in the General Approach is preferred. The Parliament, however, insists that the cross-reference should also include articles 7 and 8. The Parliament flags that there is no reason to exclude these two articles from the scope of article 16 since both offences entail a direct or indirect harm to victims. Presidency wants to flag that the cross-references will be updated to take into account the new offences, such as the offence on sextortion under article 6a.

The Parliament insisted on their amendment in line 209 for the operative part. The Presidency explained that such wording is better fit for a recital and proposed to move the Parliament's amendment (without a reference to 'honeypots') to the recitals. There seems to be some openness to consider such compromise on the Parliament's side. Delegations will find below the wording from the provision 16(3), which would be moved to the recital part:

> **Where appropriate, those tools shall include special investigative tools, such as those which are used in countering organised crime or other serious crime cases, like the possibility to conduct undercover investigations**~~, the use of so called 'honeypots'~~**, the interception of communications, covert surveillance including electronic surveillance and the monitoring of bank accounts or other financial investigations in accordance with national law.**

Question to delegations:

Delegations are invited to share their position regarding:

a) The possibility to include in the cross-reference in article 16(1) (line 203) either article 7 or article 8, or both, and their related arguments to support their position.
b) The possibility to include a recital on investigative tools as per the Parliament's amendment in line 209, without a reference to honeypots.

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

Following the discussions with delegations held under the Danish Presidency, and particularly during the JHA Counsellors meeting on 14 November (ST 15030/25), the Presidency has taken note of the delegations' positions on the outstanding issues in this article.

In essence, the core issues under this article remain article 17(3), (4), (4a), and (5) – lines 215 to 217 (deleted from the General Approach). The Parliament remains committed to its mandate and advocates for a mandatory reporting provision. The Presidency has reiterated the concerns of the Council in relation to this provision, flagging the lack of mandate to accept such an approach. Against this background, the Presidency believes that a middle ground could be to explore a gradual reporting mechanism, a suggestion also presented in the past by some delegations. This would entail that professionals are guided by a clear mechanism, which will be included in the protocols or guidelines of Member States and could lead to reporting, instead of an automatic and mandatory reporting.

In addition to the above, the Presidency is confident that the Parliament will accept the amendment of the General Approach in line 213, and proposes to accept the wording from the Parliament in line 214 ("without prejudice to").

Question to delegations:

Delegations are invited to share their position on:

a) Whether the approach as suggested above of a gradual mechanism could be, in principle a way forward.
b) Whether the wording "without prejudice to" could be accepted in line 214.

Article 19 – Jurisdiction

For article 19, there are two open issues: a) the cross-references throughout the article, i.e. in line 231 and line 232, where Parliament stressed the importance to include article 7 in the cross-references; and b) the Parliament's amendments in lines 233 and 233a, regarding the cross-border cooperation, including with Eurojust and Europol. Regarding the latter point b, the Presidency explained that such an addition would be redundant and interfering with existing legal instruments. Following exchanges on the subject, the Parliament showed some openness to consider moving their amendment to a recital.

Question to delegations:

Delegations are invited to share their position regarding:

a) The possibility to include article 7 in the cross-reference in article 19(4) (line 231) and their related arguments to support their position.
b) The possibility to include either article 7 or article 8, or both in the cross-reference in article 19(5) (line 232) and their related arguments to support their position.
c) The possibility to include a recital accommodating the Parliament's amendments in line 233 and 233a.

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

In article 25 (line 289), the Parliament includes a specific reference to "hotlines and helplines", which is a strong point in their mandate. The Presidency would like to highlight that the wording "hotline" has already been accepted for article 5(7) (line 132), and that "helplines and hotlines" have been accepted to be referred in the operational part (article 50(2)(c) and article 54a) of CSAM Regulation:

> Article 50(2)(c): information resulting from research or other activities conducted by Member States' authorities, other Union institutions, bodies, offices and agencies, the competent authorities of third countries, international organisations, research centres, and civil society organisations, including **hotlines and helplines**.

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Article 54a: The EU Centre shall create, maintain and operate an online platform for the presentation of information about Member States **hotlines and helplines** ('Child Protection Platform'). That platform may also be used for the promotion of awareness-raising and prevention campaigns. The platform shall be accessible 24 hours a day and seven days a week in all Union languages and shall be child-friendly, age-appropriate and accessible.

Question to delegations:

Delegations are invited to indicate whether they could accept a reference to hotlines and helplines in the operative part in line 289 for the sake of legal coherence across instruments and in the spirit of compromise.

Article 27 – Preventive intervention programmes or measures

Article 27 is a sensitive and highly important provision for the Parliament. The Parliament insists on having anonymous access to the intervention programmes and the coverage of family members. The Presidency explained the reasons for the Council to reject this obligation for anonymity.

Question to delegations:

Delegations are invited to indicate whether they could show flexibility regarding the coverage of family members if the scope is limited to close members of the person at risk to commit the offence.

Article 28 – Prevention

Article 28 is a sensitive and highly important provision for the Parliament. The Presidency shared with the Parliament that delegations consider the Parliament's mandate as too detailed and intrusive regarding national educational systems. Therefore, the Presidency has requested the Parliament to share their priorities in this provision. The Parliament will communicate those at a later stage, but has preliminary indicated that lines 305 and 305a are of utmost importance.

Question to delegations:

Delegations are invited to share their position on:

a) Whether there is any room for compromise in article 28 in view of the Parliament's amendments?
b) Their priorities and red lines for this article.

Article 31 – Data collection and research

Article 31 was also flagged by the Parliament as one of the important provisions in their mandate. The Presidency notes the importance of the wording "existing data, available at central level" in the General Approach.

Question to delegations:

Delegations are invited to share their position on:

a) Whether there is any room for compromise in article 31 in view of the Parliament's amendments?
b) Their priorities and red lines for this article.

EU Centre references throughout the proposal

The EU Centre is mentioned across the directive, concretely in recital 40 – line 52, recital 54 – line 66, article 17(5) – line 217, article 21(9) – line 247-251, article 21(10) – line 252, article 25 first paragraph – line 289, article 25a – line 289a, article 28(5) – line 307-310a, article 28(5a) – line 310b, article 31(4) – line 332, article 31(5) – line 333, and article 31(6) – line 334.

In view of the parallel negotiations on CSAM Regulation, the Presidency proposes to request the Council Legal Service to reflect how to approach this horizontal element in a legally sound way.

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