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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 next JHA Counsellors meeting on 20 April 2026, delegations will find below the Presidency's note to be used as a basis for discussion.

Section A presents the compromise proposals for the following articles: article 5(9a) and article 10, article 16, article 19, article 25, article 25a, article 27, article 28, article 31.

Section B focuses on the penalty levels for the offences in the Directive.

Section C refers to the status of limitation.

Due to the fact that sections B and C are considered to be among the important and political points for both co-legislators, the Presidency wishes to have a clear mandate as to the maximum flexibility that the delegations can show.

SECTION A:

Article 5(9a):

Following the discussion at the last JHA Counsellors meeting, the Presidency proposed to the Parliament to re-introduce the derogation in article 5(9a) in a more limited scope as displayed below accompanied with a recital. The Parliament reacted negatively to this development and cannot agree with the derogation in the operative part, even in such a limited form as displayed below. The Parliament shared their concerns regarding this derogation, which sets a normative standard where the creation of CSAM material for private use is explicitly accepted. They also mentioned that article 2(3)(d) covers realistic depictions only when they are used for primarily sexual purposes and that in any case any realistic depictions used for private purposes but are not primarily sexual purposes are outside of the scope of the Directive. The Parliament regrets that the Council could not agree to the previous compromise package (recitals for article 5(9a) and article 10), but reiterated that package remain on the table as a valid proposal from the Parliament's side. In case the Council insists on this derogation, the Parliament has shared their preference to postpone the discussion to the next political trilogue.

Article 5(9a):

(9a) 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 child sexual abuse material as referred to in Article 2 (3)(d), is produced and possessed by the producer solely for his or her private use, in so far as such material exists exclusively in non-digital form, no child sexual abuse material as referred to in Article 2 (3)(a), (b), (c) has been used and no real child has been involved for the purpose of its production, and provided that there is no risk of dissemination nor reproduction of the material.

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Accompanying recital:

In certain narrowly defined circumstances, a limited derogation is justified for hand-made, non-digital material, such as paintings, drawings, or sketches, produced and kept exclusively for private use, where no real child has been involved and where there is no risk of dissemination or further use of the material. The derogation should not apply to any material created, generated, stored, reproduced or possessed by digital means, including by means of artificial intelligence, as such content is by nature easily reproducible, shareable, and capable of harmful circulation.

Recital 10 (proposed by the Commission):

(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 does not however cover unrealistic depictions, 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.

Article 10 remains as presented in ST 6992/26.

Recital 24:

(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, 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 ensure** 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:

In light of the above, delegations are invited to indicate whether they can accept reverting to the previous compromise package (only recital 10 and recital 24) or if keeping this derogation in the operative part, including in a limited form as proposed below, is a red line.

Article 16

Following the previous discussions and written comments provided to the Presidency, there was flexibility by the delegations to add the cross-references of articles 7 and 8.
Regarding the investigative tools, there is an agreement with the Parliament to work on a recital. Delegations will find below a proposal for a recital, which builds on the wording from EnviCrime Directive and from the Council mandate in recital 32 which refers to the example of undercover investigations. The proposed wording allows to find a middle ground with the Parliament, who wants to include the wording "honeypots" – to which the Presidency has already explained the reasons for the Council to oppose. The Presidency is confident that this compromise proposal could be acceptable to the Parliament.

Question to delegations:

Delegations are invited to indicate whether the compromise proposal tabled below could be acceptable.

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Article 16

Investigation and prosecution ~~and limitation periods~~

1. Member States shall take the necessary measures to ensure that investigations into or the prosecution of the offences referred to in **Articles 3 to 9** are not dependent on a report or accusation being made by the victim or by his or her representative, and that criminal proceedings may continue even if that person has withdrawn his or her statements.

~~2.~~

3. Member States shall take the necessary measures to ensure that effective and proportionate investigative tools are available to persons, units or services responsible for investigating or prosecuting offences referred to in **Articles 3 to** ~~6 and~~ **9**. Where appropriate, those tools shall include special investigative tools, such as those which are used in countering organised crime or other serious crime cases.
4. Member States shall ensure that persons, units or services investigating and prosecuting the offences referred to in Articles 3 to 9 have sufficient staff, and expertise ~~and effective investigative tools~~ to effectively investigate and prosecute such crimes, including those committed through the use of information and communication technology, in accordance with the applicable rules of Union and national law. ~~Where appropriate, these 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.~~
5. Member States shall take the necessary measures to enable investigative units or services to attempt to identify the victims of the offences referred to in **Articles 3 to 9**, in particular by analysing child sexual abuse material, such as photographs and audiovisual recordings transmitted or made available by means of information and communication technology.

Recital 32:

(32) ~~Effective investigatory tools should be made available to those responsible for the~~ **To ensure the effective and proportionate** investigation and prosecution~~s~~ of the offences referred to in this Directive. **Member States should make available to competent authorities effective investigative tools such as those available under their national law for combatting organised crime or other serious crime cases, if and to the extent that the use of those tools is appropriate and proportionate to the nature and gravity of the criminal offences as provided for in national law**. ~~Those~~ **Such** tools could include **the** interception of communications, covert surveillance**,** including electronic surveillance, **the** monitoring of bank accounts ~~or~~ **and** other financial ~~investigations~~ **investigation tools.** ~~taking into account, inter alia, the principle of proportionality and the nature and seriousness of the offences under investigation. Where appropriate, and in.~~ **Those tools should be used in line** with ~~applicable ruless, access to retained subscriber, access and location data, taking into account, *inter alia*,~~ the principle of proportionality and ~~the nature and seriousness of the offences under investigation~~ **in full respect of the Charter. It is imperative that the right to the protection of personal data be respected**. In accordance with national law, such tools ~~should also~~ **could** include the possibility for law enforcement authorities to ~~use a concealed identity on the Internet~~ **conduct undercover online investigations using concealed identities, incluiding engaging with suspects and participating in online environments and distributing child sexual abuse material, [for the purpose of gathering evidence], subject to prior judicial authorization. These investigative techniques are essential to ensure the effective investigation and prosecution of offences involving sexual abuse and sexual exploitation of children. As those crimes are, in most cases, facilitated or enabled by online tools and are therefore intrinsically cross-border. To ensure effective investigation and prosecution, Member States' competent authorities should also cooperate through and with Europol and Eurojust, within their respective competences and in accordance with the applicable legal framework. These competent authorities should also share information among each other and with the Commission** on issues encountered in investigations and prosecutions. ~~Where appropriate, these tools should 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. To ensure effective investigation and prosecution, Member States should consider providing frameworks for close cooperation between financial services and other relevant service providers such as providers of live streaming services. This would reduce impunity and ensure that all of the offences covered by this Directive can be investigated effectively, using targeted and appropriate tools and resources.~~

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Article 19

Following the discussions in the last Counsellors meeting and informal exchanges with Parliament, the Presidency has explained that the Council wishes to maintain the deletion of the cross-reference to article 8 in article 19(4). The Parliament, however, considers this cross-reference of utmost importance and considers the Council's arguments not convincing enough. From their view, operating or administering an online service for the purpose of child sexual abuse should fall within the jurisdiction of Member States regardless the conduct is criminalised in the country where it takes place, given the inherently online nature of the offence and the fact that it may not yet be specifically addressed in the legislation of certain third countries. Accordingly, Member States should ensure and exercise extraterritorial jurisdiction in a uniform manner where such offences are committed by one of their nationals in a third country, without requiring dual criminality. Otherwise, jurisdiction would depend on the legislation of the third country concerned, allowing offenders to exploit differences between national legal systems and jurisdictional rules and thereby undermining effective investigation and prosecution.

Question to delegations:

Following the Presidency's request to drop other parts from their amendments if they wish to insist on this point (i.e. cross-reference to article 8), Parliament expressed readiness to fully drop their amendments in para 6 and para 6a (lines 233 and 233a respectively), provided that the cross-reference to article 8 is included in article 19(4). In light of this development, delegations are invited to indicate whether the inclusion of the cross-reference to article 8 in article 19(4) is a red line, and to provide their relevant arguments.

Article 19

Jurisdiction

1. Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Articles 3 to 9 where:

   (a) the offence is committed in whole or in part within their territory; or

   (b) the offender is one of their nationals.

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2. A Member State shall inform the Commission where it decides to establish further jurisdiction over an offence referred to in Articles 3 to 9 committed outside its territory, *inter alia*, where:

(a) the offence is committed against one of its nationals or a person who is an habitual resident in its territory;

(b) the offence is committed for the benefit of a legal person established in its territory; or

(c) the offender is an habitual resident in its territory.

3. Member States shall ensure that their jurisdiction includes situations where an offence referred to in Articles 5, 6 and 8, and in so far as is relevant, in Articles 3, 4, 7 and 9, is committed by means of information and communication technology accessed from their territory, whether or not it is based on their territory.

4. For the prosecution of any of the offences referred to in Article 3(4), (5), ~~(6), (7), and (8)~~ (6), (4a), (6a), Article 4(2), (3), (5), (6) and (7), Article 5(6)~~,~~, Article 7 [and Article 8] committed outside the territory of the Member State concerned, as regards paragraph 1–, point– (b) of this Article, each Member State shall take the necessary measures to ensure that its jurisdiction is not subordinated to the condition that the acts are a criminal offence at the place where they were performed.

5. For the prosecution of any of the offences referred to in **Articles 3 to 9** committed outside the territory of the Member State concerned, as regards paragraph 1–, point– (b) of this Article, each Member State shall take the necessary measures to ensure that its jurisdiction is not subordinated to the condition that the prosecution can only be initiated following a report made by the victim in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed.

~~6.~~

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Article 25

Following previous discussions, the reference to hotlines and helplines will be kept in the text. Regarding the Parliament request to the reference of 'and other Union agencies and bodies', the Presidency explained to the Council rejects the wording in the operative part and proposes a recital instead. The Presidency is confident that this solution could be acceptable to the Parliament.

Question to delegations:

Delegations are invited to indicate whether they can accept the recital proposed, replacing the wording 'and other Union agencies and bodies' in the operative part.

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Article 25

Multi-agency and multi-stakeholder coordination and cooperation

Member States shall put in place appropriate mechanisms to ensure effective coordination and cooperation to develop and implement measures to ~~tackle~~ **combat** child sexual abuse and exploitation, both online and offline, at the national level, of relevant authorities, agencies and bodies, including local and regional authorities, law enforcement agencies, the judiciary, public prosecutors, support service providers as well as providers of information society services, non-governmental organisations, **including those operating hotlines and helplines**, social services, including child protection or welfare authorities, education and healthcare providers, social partners, without prejudice to their autonomy, and other relevant organisations and entities. These mechanisms shall also ensure effective coordination and cooperation with the [EU Centre] ~~and~~ the Commission ~~[and other Union agencies and bodies].~~

Proposed recital:

The mechanisms established by Member States to ensure effective coordination and cooperation between all the relevant actors at national level as provided by the Directive, should also ensure where appropriate, effective coordination and cooperation with other Union agencies and bodies, such as Eurojust and Europol.

Article 25a

Following previous discussions under the Danish Presidency, the Presidency proposes to entirely delete this provision and replace it with a recital. The Presidency explained the reasons why such provisions is not required in the operative part and that no such provision exists in other recent criminal law instruments. The Parliament expressed some preliminary openness to work on a recital to replace this article. Delegations can find below a first proposal for such recital.

Question to delegations:

Delegations are invited to indicate whether they can accept the recital proposed, replacing article 25a in the operative part.

~~*Article 25a*~~

~~*International Cooperation*~~

~~*Without prejudice to the rules on crossborder cooperation and mutual legal assistance in criminal matters, Member States' competent authorities, Europol, Eurojust and the EU Centre shall, within their respective competences and in the limits of their respective remit, cooperate with competent authorities of third countries in the fight against the criminal offences referred to in Articles 3 to 8b.*~~

Recital:

Without prejudice to the rules on cross- border cooperation and mutual legal assistance in criminal matters, Member States are encouraged, where appropriate and within their respective competences, cooperate with competent authorities of third countries in the fight against the criminal offences referred to in this Directive. Such cooperation should also involve, where appropriate, Union agencies and bodies such as Europol and Eurojust.

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Article 27

Further to informal exchanges with the Parliament, the Presidency has explained that the Council cannot accept the reference to the anonymity and to family members as it has been proposed by the Parliament. The Parliament understood the arguments related to the interference with the healthcare national systems and explained that their intention is not to interfere with them, which can be clarified in the operative part. The Commission has shared with the co-legislators a non-paper WK 5151/26 regarding this matter. It highlights that several existing interventions, such as helplines, are already anonymous. Furthermore, the non-paper demonstrates how anonymity enhances program effectiveness – an obligation under the Directive (to ensure the programmes' effectiveness).

Question to delegations:

Against this background, the Parliament tabled a compromise proposal. Building upon it, the Presidency prepared the proposal below. Delegations are invited to indicate if they can support such compromise proposal.

Article 27

Preventive intervention programmes or measures

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 access to effective and targeted intervention programmes or measures designed to evaluate and prevent the risk of such offences being committed.

   Without prejudice to procedural rules of national healthcare systems, Member States shall ensure that these programmes or measures are provided on an anonymous basis, when anonymity is necessary to ensure their effectiveness.

2. **Member States shall ensure that family members of persons who fear that they might commit any of the offences referred to in Articles 3 to 9 can participate in such programmes or measures as referred to in para 1, for the purpose of seeking advice and guidance on how to support those persons in preventing them committing any of those offences.**

Accompanying recital:

Anonymity is an essential requirement for the effectiveness of some preventive intervention prevention intervention programmes or measures, such as helplines or on-line chats, given that the identity disclosure could discourage persons fearing that they might commit an offence from participating in those programmes or measures. Therefore, where appropriate and necessary for the effectiveness of preventive programmes or measures, Member States should ensure that such programmes or measures are provided on an anonymous basis. However, where, under national law, access to such programmes or measures falls within the national healthcare system and the applicable rules do not permit anonymity, Member States should not be required to ensure anonymous access.

Article 28

The Parliament tabled the compromise proposal below and has asked for the Council to consider it. The Presidency has already explained to the Parliament that the Council will not accept to replace 'may' with 'shall' in para 4, but they mentioned that precisely this is one of the most important points for them in that article given that the measures in the list are drafted in a broad way and the list is limited only to the most important and necessary measures.

Question to delegations:

Can delegations show some flexibility on the rest of the points proposed by the Parliament in this article, provided that 'may' is kept in para 4?

Article 28

Prevention

1. To discourage and reduce the demand that fosters all forms of sexual exploitation of children, Member States shall take appropriate measures, such as education and training, information and awareness raising campaigns on the lifelong consequences of child sexual abuse and exploitation, its illegal nature, and the possibility for persons who fear that they might commit related offences to have access to dedicated and effective intervention programmes or measures ~~to discourage and reduce the demand that fosters all forms of sexual exploitation of children.~~

~~Member States shall develop a communication strategy, national action plans, and promote dialogue and cooperation with civil society organisations, hotlines, helplines, public authorities and relevant informations society services.~~

The measures referred to in paragraph 1 shall also aim to increase knowledge of the fact that non-consensual sex is a criminal offence and to promote the understanding that consent must be given voluntarily as a result of a person's free will, mutual respect, and the right to sexual integrity and bodily autonomy. Such measures shall be adapted to the evolving capacity of the persons to whom they are addressed

2. Member States shall take appropriate action, including through the Internet, such as information and awareness-raising campaigns, research, ~~and~~ education and training programmes, or **material, including on** ~~digital literacy, on~~ **age-appropriate sexuality education** ~~focusing~~ **and on** ~~the notion of consent, on~~ **safe** ~~online and offline practices, as well as on the proper~~ **use of the internet and new technologies,** where appropriate in cooperation with relevant civil society organisations, **hotline, helplines** and other stakeholders, aimed at raising awareness and reducing the risk of children, becoming victims of sexual abuse or sexual exploitation.

3. Member States shall ~~ensure~~ **promote** regular **and specialised** training, including in child friendly justice ~~is promoted or offered to~~ for professionals, judges, **without prejudice to the judicial independence, and** ~~for~~ officials likely to come into contact with child victims of sexual abuse or sexual exploitation, ~~including, but not limited to, child protection professionals, legal professionals, teachers, staff in child care, healthcare professionals, and, educators, volunteers and coaches, family court judges and front-line police officers~~, aimed at enabling them to ~~detect early signs of abuse or potential abuse or sexual exploitation,~~ identify and deal with child victims and potential child victims of sexual abuse or sexual exploitation.

4. Member States shall take appropriate measures to ~~ensure~~ **enhance** the prevention of child sexual abuse in community settings, including schools, hospitals, social care services, **foster care**, sports clubs or religious communities ~~by equipping children and adults, including parents and educators, with adequate skills for detecting potential malicious behaviour.~~

Those measures **shall** include:

(a) dedicated training and awareness raising activities for ~~staff, consultants and volunteers~~ **personnel** working in **close contact with children, including on how to prevent, identify and provide an age-appropriate, gender-sensitive and trauma-informed response to child sexual abuse and exploitation** ~~such settings~~;

(b) **mandatory child safeguarding policies,** dedicated guidelines, internal protocols and standards identifying good practices, such as the establishment of mechanisms of supervision and accountability for staff working in close contact with children in such settings;

(c) the creation of safe ~~and accessible~~ spaces, run by dedicated and appropriately trained personnel, where children, parents, carers and members of the community can report inappropriate behaviour.

(ca) **the creation of helplines, online chats or other readily available channels run by appropriately trained personnel, where children can obtain information and advice regarding the offences referred to in Articles [3 to 8b].**

Prevention measures shall devote particular attention to the need to protect children who are particularly vulnerable, including children with ~~mental, intellectual, sensory or physical~~ disabilities.

[5. **For the purpose of this Directive,** ~~the EU Centre, once established~~, **Member States** shall **be** proactively supported **by the EU Centre, once established** ~~Member States' prevention efforts~~ by:

(a) inviting other Union institutions, bodies, offices and agencies, as well as relevant authorities, bodies or agencies of the Member States, to share information about prevention measures and programmes in the field of child sexual abuse and sexual exploitation whenever appropriate and at least once a year;

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(b) collecting information on prevention measures and programmes in the field of child sexual abuse and exploitation, including measures and programmes implemented in third countries;

(c) facilitating the ~~generation and~~ exchange of ~~knowledge, guidelines for front-line professionals,~~ best practices **and expertise** among Member States, ~~Union institutions, bodies, offices, and agencies,~~ and third countries by keeping a public database of prevention measures and programmes implemented in each Member State as well as in third countries;

(ca) supporting the development of national awareness-raising and prevention campaigns, educational and intervention programmes, tools and materials as well as guidelines for professionals working in close contact with children.]

~~5a. Member States shall ensure that the actions listed in paragraph 5 are evidence-based and that those actions take into account the evolving manifestations of the offences listed in the Directive, including online.~~

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Recital 43

(43) Member States should establish or strengthen policies to prevent sexual abuse and sexual exploitation of children, including measures to discourage and reduce the demand that fosters all forms of sexual exploitation of children, and measures to reduce the risk of children becoming victims, by means of, information and awareness-raising campaigns, including for parents ~~and~~, **volunteers**, carers**, teachers, educators, child protection professionals, social and foster care professionals, trainers coaches, legal professionals, family court judges, front-line police officers, healthcare professionals, religious community leaders** and society at large. **For the same reasons, Member States should strengthen** ~~and~~ research **on the topic as well as** ~~and~~ education programmes, **including sexual education**. In such initiatives, Member States should adopt a child-rights based approach. Care should be taken to ensure that awareness-raising campaigns aimed at children are appropriate and sufficiently easy to understand, and tailored to the specific needs of children of different age groups, including pre-school children **as well as children who are particularly vulnerable, including children with** ~~mental, intellectual, sensory or physical~~ **disabilities children in contexts of migration,** ~~both unaccompanied or accompanied,~~ **or children who do not conform to conventional norms relating to sexual orientation, gender identity and expression or sex characteristics .** Prevention measures should take a holistic approach to the phenomenon of child sexual abuse and sexual exploitation, by addressing its online and offline dimensions and mobilizing all relevant stakeholders. In particular for the online dimension, measures should include the development of digital literacy skills, including critical engagement with the digital world, to help users identify and address attempts of online child sexual abuse, seek support and prevent its perpetration. Particular attention should be paid to prevention of child sexual abuse and sexual exploitation of children that are cared for in a group facility rather than in the context of family-based care. Where not already in place, the establishment of dedicated help-lines or hotlines should be considered. **Children should be able to obtain information and advice regarding the offences referred to in Articles [3 to 8~~a~~ab] through those channels.**

Recital 46

(46) Professionals likely to come into contact with child victims of sexual abuse and sexual exploitation should be adequately trained to identify and deal with such victims. To ensure child-friendly justice throughout the investigation and prosecution of child sexual abuse and sexual exploitation cases, that ~~That~~ training should be promoted for members of the following categories when they are likely to come into contact with child victims: police officers, public prosecutors, lawyers **and other legal professionals**, members of the judiciary **including family court judges,** ~~and~~ court officials, child and health care personnel, **child protection professionals**, professionals in the education sector, including in early childhood education and care, social services, providers of victim support and restorative justice services, but could also involve other groups of persons who are likely to encounter child victims of sexual abuse and sexual exploitation in their work.

Article 31

The Presidency has strongly insisted on the wording "existing data, available at central level" to the Parliament and stated that the Council is not willing to enter into negotiations for the rest of the article, if the said wording is not accepted by the Parliament. If such was to be accepted by the Parliament, some of the elements from the Parliament mandate will have to be retained. The Parliament after internal consultation expressed some openness to accept the solution that was agreed in VAW and thus to keep wording "existing data, available at a central level" if the Council shows some flexibility on other articles in this package (e.g. articles 5(9a), 27, 28).

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SECTION B - Package of penalty levels and limitation periods.

Penalty levels proposal:

Delegations will find below a first proposal from the Presidency on penalty levels, building on the previous discussion under the Danish Presidency. The Presidency has taken note of the delegations' position and took them into account to prepare the compromise proposal displayed below. This is the first attempt from the Presidency to prepare a compromise proposal on penalty levels, which still needs to be discussed and tested with the Parliament.

There are three articles where the Parliament's and Council's position are considerably far apart: article 5a, article 7 and article 8. For their convenience, delegations will find a recap articles on these three articles:

Article	Offence	Directive 2011/93	COM proposal	EP Mandate	GA Mandate
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					
Any material, intended to provide advice on how to commit one of the offences referred to in Art. 3, 4, 5, or 6.					
Point a	**Knowingly obtaining access, acquiring or possessing**	*N/A*	1 year *Art. 5(2) - line 127* *Art. 5(3) - line 128*	1 year *Art. 5(2) - line 127* 2 years *Art. 5(3) - line 128*	1 year *Art. 5a(1)(d)*
Point b	**Distributing, disseminating or transmitting of**	*N/A*	2 years *Art. 5(4) - line 129*	4 years *Art. 5(4) - line 129*	1 year *Art. 5a(1)(a)*
Point c	**Offering, supplying, or making available of**	*N/A*	2 years *Art. 5(5) – line 130*	4 years *Art. 5(5) - line 130*	1 year *Art. 5a(1)(b)*
Point d	**Producing**	*N/A*	3 years *Art. 5(6) – line 131*	8 years *Art. 5(6) – line 131*	1 year *Art. 5a(1)(c)*

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Article	Offence	Directive 2011/93	COM proposal	EP Mandate	GA Mandate
Article 7 – Solicitation of livestreaming of child sexual abuse or sexual exploitation					
Para. 1	Member States shall take the necessary measures to ensure that intentionally promising or giving money, or other form of remuneration or consideration **in order to gain access to a livestream of activities described in** any of the offences listed in Art. […]		3 years	5 years	1 year

Article	Offence	Directive 2011/93	COM proposal	EP Mandate	GA Mandate
Article 8 – Operation of an online service for the purpose of child sexual abuse or sexual exploitation					
Para. 1	**Intentionally operating or administering an information society service** which is **conceived to facilitate or encourage** the commission of any of the offences referred to in Article 3 to 7		1 year	10 years	1 year

Question:

The Presidency intends to defend the position expressed by delegations on the penalty levels, and would like to understand where delegations are willing to provide further flexibility on these 3 articles, especially in light of the explanation provided above. In addition, delegations are invited to indicate if they can accept the penalty levels as proposed 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 [1] 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 [2] 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 [2] 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 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 or with themselves** shall be punishable by a maximum term of imprisonment of at least [8] years.

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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 reached the age of sexual consent and does not 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 [5 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 [10] years if the child has not reached the age of sexual consent, and of at least [6] 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 or physical~~ disability or a situation of dependence, shall be punishable by a maximum term of imprisonment of at least [10] years if the child has not reached the age of sexual consent, and of at least [7] 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 [10] years if the child has not reached the age of sexual consent, and of at least [7] years of imprisonment if the child is over that age.

~~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~~.

PUBLIC

6. The following intentional conduct shall be punishable by a maximum term of imprisonment of at least [12] 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 [10] 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]

PUBLIC

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 [6] years if the child has not reached the age of sexual consent and of at least [2] 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 [8] years if the child has not reached the age of sexual consent, and of at least [5] 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 [3] years if the child has not reached the age of sexual consent, and of at least [1] 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 [8] years if the child has not reached the age of sexual consent, and of at least [5] 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 [10] years if the child has not reached the age of sexual consent, and of at least [5] years of imprisonment if the child is over that age.

PUBLIC

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 [8] years if the child has not reached the age of sexual consent, and of at least [4] years of imprisonment if the child is over that age.

~~**7a**~~

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 [2] years.

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 [2] years.

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

5. Offering, supplying or making available child sexual abuse material shall be punishable by a maximum term of imprisonment of at least [4] years.

6. Production of child sexual abuse material shall be punishable by a maximum term of imprisonment of at least [5] years.

PUBLIC

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~~ **including organisations that have** 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.

~~Member States are encouraged to ensure that the organisations 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 the organisations they make use of secure channels of communication to carry out the actions covered by the authorisation.~~

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

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.~~

Member States shall strive to ensure that organisations acting in the public interest against child sexual abuse referred to in the paragraph 7 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 ~~the organisations~~ they make use of secure channels of communication to carry out the actions covered by the authorisation.

8a. Member States ~~are encouraged~~ shall strive to allow 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.

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 [1] year:

(a) knowingly obtaining access, acquiring or possessing

(b) distributing, disseminating or transmitting of;

(c) offering, supplying or making available of;

(d) producing;

~~any material, regardless of its form or method of creation, intended to provide advice or~~ **instructions on how to commit offences** **related to child sexual abuse, as defined in Article 2(10)** ~~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.~~

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.]]

Article 6a

Sexual extortion

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 [5] years if the threatened child has not reached the age of sexual consent, and of at least [2] years of imprisonment, if the threatened child is over that age.

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), **(4a)**, (5), (6), **and** (7), ~~and (8)~~**],** **[**Article 4(2) and (3) and Article 5(6)**]** is punishable by a maximum term of imprisonment of at least [3] years.

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 [1] year.

~~*Article 8b*~~

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

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.

SECTION C: Limitation periods

At the JHA Counsellors meeting on 19 Novembers, delegations were presented with the different possible options (ST 15204/25) regarding the status of limitation. Based on the discussion, the preferred way forward was to extend the limitation periods. Building on this exchange, the Presidency prepared the compromise below, which combines some elements of the Commission's original proposal and the extension of the limitation periods. If this compromise proposal is to be retained, the Presidency foresees that the derogation in para 3 will be a major concern for the Parliament in the negotiations regarding this article.

Article 16a

Limitation periods

1. Member States shall take the necessary measures to enable the investigation, prosecution, trial and adjudication of the offences referred to in Article 3, Article 4(2), (3), (5), (6) and (7), of any serious offences referred to in Article 5(6) when child sexual abuse material as referred to in Article 2, points (3)(a) and (b) has been used, for a sufficient period of time after the victim has reached the age of majority and which is commensurate with the gravity of the offence concerned.

2. The period referred to in paragraph 1 shall be:

   (a) at least 10 years from the date the victim has reached the age of majority for the offences punishable under this Directive by a maximum penalty of at least **3** ~~5~~ years of imprisonment;

(b) at least 20 years from the date the victim has reached the age of majority for the offences punishable under this Directive by a maximum penalty of at least **5** ~~10~~ years of imprisonment**;** ~~.~~

(c) **at least 30 years from the date the victim has reached the age of majority for the offences punishable under this Directive by a maximum penalty of at least 8 years of imprisonment.**

3. By way of derogation from paragraph 2, Member States may establish a period that is shorter than 10 years, with regard to point (a), ~~or~~ 20 years, with regard to point (b), **or 30 years, with regard to point (c),** but not shorter than, respectively five years, ~~and~~ 10 years, **and 15 years,** provided that such period may be interrupted or suspended in the event of specified acts.

PUBLIC