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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

Options for article 11

At the political trilogue on 3 March 2026, co-legislators agreed on the following:

The Council and the Parliament will work further at technical level to find a wording that will reflect the following principle:

"The aggravating circumstances to be included in Article 11 of this proposal will be optional (with the "one or more" wording) for the existing and new offences. The existing aggravating circumstances under the current directive will remain mandatory for the existing offences."

The aim now is to identify how to best reflect this commitment in a legally sound way into the wording of article 11.

Following section D.1 in ST08678, delegations will find below two options for article 11: option A prepared by the Presidency, and option B tabled by the European Parliament.

OPTION A (from Presidency):

Article 11

Aggravating circumstances

1. To the extent that the following circumstances do not already form part of the constituent elements of the offences, Member States shall take the necessary measures to ensure that, in relation to the criminal offences listed **in Annex IV** to this Directive, **one or more** of the following circumstances can, in accordance with the relevant provisions of national law, be regarded as aggravating circumstances:

   (a) the offence was committed against a child in a particularly vulnerable situation, such as a child with a 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.

2. To the extent that the circumstances referred to **in subparagraphs (a) to (g) of paragraph 1** do not already form part of the constituent elements of the offences, Member States shall take the necessary measures to ensure that, in relation to the criminal offences listed in **Annex V** to this Directive, such circumstances are regarded as aggravating circumstances in accordance with the relevant provisions of national law.

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3. To the extent that the following circumstances do not already form part of the constituent elements of the offences, Member States shall take the necessary measures to ensure that, in relation to the criminal offences listed in **Annexes IV and V** to this Directive, **one or more** of the following circumstances can, in accordance with the relevant provisions of national law, be regarded as aggravating circumstances:

(a) the offence was committed repeatedly;

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

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

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

(e) 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.

Annex IV

(a) Article 3(3a);
(b) Article 3(4), except for coercing, forcing or threatening a child to engage in sexual activities with a third person;
(c) Article 3(4a);
(d) Article 3(5), except for coercing, forcing or threatening a child to engage in sexual activities with a third person under point (c);
(e) Article 3(6)(b), except for coercing, forcing or threatening a child to engage in sexual activities with a third person;
(f) Article 3(7);
(g) Article 5a;
(h) [Article 5b];
(i) Article 6a;
(j) Article 7;
(k) Article 8;
(l) [Article 8a]; and
(m) Article 9 in relation to the offences listed in this Annex.

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Annex V

(a) Article 3(2);
(b) Article 3(3);
(c) Article 3(4), except for:

(i) causing a child to engage in sexual activities with a third person without coercing, forcing or threatening the child; and
(ii) causing a child to engage in sexual activities with themselves;

(d) Article 3(5), except for:

(i) causing a child to engage in sexual activities with a third person under points (a) and (b); and
(ii) causing a child to engage in sexual activities with themselves;

(e) Article 3(6)(b), except for:

(i) causing a child to engage in sexual activities with a third person without coercing, forcing or threatening the child; and
(ii) causing a child to engage in sexual activities with themselves;

(f) Article 4, except for the live exhibition of the breasts or anal area of a child for primarily sexual purposes;
(g) Article 5, except where the depiction or realistic images depict the breasts or anal area of a child for primarily sexual purposes;
(h) Article 6, except solicitation of a child who has reached the age of sexual consent where use is made of coercion or threats; and
(i) Article 9 in relation to the offences listed in this Annex.

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OPTION B (from Parliament)

Article 11

Aggravating circumstances

1. To the extent that the following circumstances do not already form part of the constituent elements of the offences, Member States shall take the necessary measures to ensure that, **in relation to the criminal offences in** Article 3(2); Article 3(3); Article 3(4) except for causing a child to engage in sexual activities with a third person without coercing, forcing or threatening the child, and except for causing a child to engage in sexual activities with themselves; Article 3(5) except for causing a child to engage in sexual activities with a third person under (a) and (b), and except for causing a child to engage in sexual activities with themselves; Article 3(6)(a) and (b), except for causing a child to engage in sexual activities with a third person without coercing, forcing or threatening the child, and except for causing a child to engage in sexual activities with themselves; Article 4; Article 5[; Article 6] and Article 9 in relation to these offences, **the following circumstances** can, in accordance with the relevant provisions of national law, be regarded as aggravating circumstances:

(a) the offence was committed against a child in a particularly vulnerable situation, such as a child with a 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

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2. To the extent that the following circumstances do not already form part of the constituent elements of the offences, Member States shall take the necessary measures to ensure that, **in relation to the criminal offences in** Article 3(3a); Article 3(4) except for coercing, forcing or threatening a child to engage in sexual activities with a third person; Article 3(4a); Article 3(5) except for coercing, forcing or threatening a child to engage in sexual activities with a third person under (c); Article 3(6)(b) except for coercing, forcing or threatening a child to engage in sexual activities with a third person; Article 3(7); Article 5a[; Article 5b]; Article 6a; Article 7; Article 8[; Article 8a] and Article 9 in relation to these offences, **one or more of the following circumstances** can, in accordance with the relevant provisions of national law, be regarded as aggravating circumstances:

(a) the offence was committed against a child in a particularly vulnerable situation, such as a child with a 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

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

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(a) the offence was committed repeatedly;

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

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

(d) (j) the offence was committed by causing the victim to take, use or be affected by drugs, alcohol or other intoxicating substances; [COM and EP text]] / 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** [CNS text]] or

(e) 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.

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