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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

Following the JHA Counsellors meeting on 28 April, the Presidency appreciates the efforts of the delegations, to provide valuable input on the different compromise proposals, despite the tight deadlines.

The coming weeks are crucial for the negotiations in this file. The Presidency counts on the delegations' support and cooperation and urges delegations to raise only their strong concerns (red lines) at this point in order to reach the target of political agreement in June.

Following the request of many delegations and as announced at the last JHA Counsellors meeting on 28 April, the Presidency has made an effort in this note to provide delegations with a full picture of the current status of negotiations

The note is structured around the following sections:

Section A presents the articles that have been provisionally agreed (either at technical or political trilogue level): articles 1, 10 (except for para 5 linked to consent), 12, 13, 15, 16, 24, 25a, 27, 29, 30, 32, 32a, 34, 36.

Section B includes the articles that are agreed upon at the technical level, but penalty levels or cross-references remain under discussion: articles 2, 3, 4, 5, 5a, 6a, 7, 8, 9, 14, 19. In this section the additional two new offences of articles 5b and 8a are added that include also penalty levels.

Section C provides the articles that are being discussed with JHA Counsellors and the European Parliament, and agreement is expected in the short term: articles 25, 28, 31. Within this section, some compromises relating to the references of EU Centre are included.

Section D presents the remaining articles, where further work is required to finalise them:

D.1 - Where further technical work is required: articles 11, 17(3) (see WK 6303/26 a proposal by Belgium, Germany and the Netherlands), 26, 33, 35. Victims' rights related provisions are not included in this Presidency note, as the Presidency will provide a revised draft once Member States' comments are received.

D.2 - Political points pending: articles 6, 16a, and consent (see WK 6369/26 a proposal by Germany, France, Romania and Sweden). The discussion on consent will also be linked to article 10(5) and article 28(1), where adjustments might be needed depending on the outcome of the discussion.

The intention of the Presidency for the next meeting on the 11th of May is to discuss the points in sections B, C and D, and delegations will be invited to indicate whether the compromise proposals are acceptable.

Delegations are invited to consider the whole text as a global compromise with the Parliament. The elements of this package are based on the approach that the penalty levels are kept the same or very close to the Council mandate (far apart from Parliament's mandate) and the same applies with article 6, where the Council mandate is kept (for the Parliament covering the children above the age of consent remains a political and an important point). On the other hand, a more ambitious provision on consent and on limitation periods are included (compared to the Council mandate), with the latter being the most important point for the Parliament.

New changes (compared to previous versions) are indicated in bold and underlined, while cross-references and penalty levels are highlighted in yellow.

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A. SECTION A – Articles agreed

Article 1 – Subject matter

Article 1

Subject matter

This Directive establishes minimum rules concerning the definition of criminal offences and penalties in the area of sexual abuse and sexual exploitation of children, child sexual abuse material and solicitation of children for sexual purposes**, including where those offences are committed by means of information and communication technology**. It also introduces provisions to strengthen the prevention of those criminal offences and the protection of the victims thereof.

Recital 7

(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.

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Article 10 – Consensual activities

This article was agreed in the previous trilogue, although para 4 and 5 are still pending. Para 4 is kept as in the General Approach, given that article 6 would remain as in Council's mandate. The discussion on para 5 is linked to horizontal discussion on consent.

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Article 10

Consensual sexual activities

1. It shall be within the discretion of Member States to decide whether **[**Articles 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, [including in a manipulated or altered version.]

[4. It shall be within the discretion of Member States to decide whether Article 6 applies to proposals, conversations, contacts or exchanges between peers, **in so far as the acts did not involve any abuse or exploitation, coercion or threat**].

[5. *Linked to the discussion on 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.~~

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. ~~Member States which avail themselves of the possibilities referred to~~ **Nothing** in this Directive ~~do so in the exercise of their competences. More particularly~~ **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 ~~be able to exempt from criminalisation~~ **ensure that its provisions are applied in a manner that clearly distinguishes abusive and exploitative conduct from** consensual ~~sexual~~ **and non-exploitative** activities ~~involving~~ **forming part of normal sexual development of** children ~~above the age of sexual consent, as well as~~**. Member States are encouraged to ensure that** consensual sexual activities ~~involving children and their peers. The amendments of this provision are intended to clarify the scope of the derogation. Risks associated with creating and sharing self-generated sexual content~~ between ~~children who have reached the age of sexual consent and adults or between children and their~~ peers ~~must be considered when applying this derogation~~ **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**.

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Article 12 – Disqualification arising from convictions

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.

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**.

PUBLIC

Recital 50

(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.

PUBLIC

Article 13 - Liability of legal persons

Article 13

Liability of legal persons

1. Member States shall ensure that legal persons can be held liable for criminal offences referred to in [Articles 3 to 9] where such offences have been committed for 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 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 take the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission **of the** criminal offences referred to in [Articles 3 to 9] for the benefit of the legal person by a person under its authority.

3. Liability of legal persons under paragraphs 1 and 2 shall not preclude criminal proceedings against natural persons who commit, incite or are accessories to the criminal offences referred to in [Articles 3 to 9].

Article 15 – Non-prosecution or non-application of penalties to the victim

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), ~~and~~ (6)**, and (7)** and in Article 5 (4), (5) and (6)].

Article 16 – Investigation and prosecution

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 prosecutions 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, including 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, ~~. T~~to ensure effective investigation and prosecution, Member States' competent authorities should also cooperate where appropiate 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 24 – Competent authorities or equivalent entities

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 25a – International Cooperation

~~*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.*~~

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Recital:

Taking into account ~~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, **within their respective competences**.

Article 27 – Preventive intervention programmes or measures

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 health~~care~~ **and social** systems, Member States shall ~~ensure~~ **allow** that these programmes or measures are ~~provided~~ **implemented** ~~on an~~ anonymous**ly** ~~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**, where appropriate,** 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 **and social** systems and the applicable rules do not permit anonymity, Member States should not be required to ensure anonymous access.

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 dedicated **targeted** and effective 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.

PUBLIC

Recital 47

(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, specifically aimed at preventing the commission or repetition of the offences referred to in this Directive and targeted to the needs of persons subject to criminal proceedings** ~~or persons suspected of or~~ **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 and that they adequately address the risks associated with such offences. 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 websites containing or disseminating child sexual abuse material

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 ~~web~~ 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.

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Article 32 – Reporting

Article 32

Reporting

The Commission shall, by [5 years after the date of entry into application] and then every 5 years thereafter, submit a report to the European Parliament and the Council on the application of this Directive in the Member States and, if appropriate, propose amendments.

Article 32a - Freedom of the press and freedom of expression in other media

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 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.

Article 34 – Repeal

Article 34

Repeal

Directive 2011/93/EU is repealed with effect from [the day after the second date referred to in [Article 33], without prejudice to the obligations of the Member States relating to the time limit for the transposition into national law of the Directive set out in Annex I.

Article 36 – Addressees

Article 36

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

B. SECTION B – Articles agreed, but penalty levels or cross-references pending + Articles 5b and 8a

Article 2 – Definitions

In article 2, only the cross-references in para 10 remain open.

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]

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(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, **breasts 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, **breasts or anal area** of any person appearing to be a child, for primarily sexual purposes; ~~or~~

(d) **any** realistic images, reproductions or representations of a child engaged in sexually explicit conduct or of the sexual organs, **breasts 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, **breasts or anal area** 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) 2015/1535.

(8) 'peers' means persons who are close in age and degree of psychological and physical development or maturity.

(9) ['artificial intelligence system' means an AI system as defined in Article 3, point (1), of Regulation (EU) 2024/1689.]

(10) 'instructions on how to commit offences related to child sexual abuse, means any material, regardless of its form, or method of creation, intended to provide advice or instructions on how to commit the offences referred to in Articles [3, 4, 5, 5b, 6 or 6a] including any instruction for producing child sexual abuse material with the use of artificial intelligence systems.

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. **This Directive does not govern** ~~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 unrealistic 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 3 - Offences concerning child sexual abuse

Article 3 will be one of the difficult articles with regards to penalty levels, given the differences of the mandates between the two co-legislators. The approach of the Presidency in the global compromise is to keep the Council's mandate for penalty levels in this article, except for para 6 and 7, concerning the most serious offence of rape, where 12 and 8 years are proposed respectively. The Presidency considers the seriousness of the offence justifies deviating from the model provisions.

PUBLIC

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 7 ~~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 [**5** ~~8~~] 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 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 [**5** ~~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 [**5** ~~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 [**5** ~~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~~.

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 [8 ~~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

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 [5] 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

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 [**3** ~~**4**~~] years.

5. Offering, supplying or making available child sexual abuse material shall be punishable by a maximum term of imprisonment of at least [**3** ~~**4**~~] years.

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

~~9a.~~

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

1. **Member States shall take the necessary measures to ensure that the intentional conduct when committed without right, referred to in paragraphs 2 to 5 is punishable.**

2. **Knowingly obtaining access, acquiring or possessing instructions on how to commit child sexual abuse as defined in article 2(10) shall be punishable by a maximum term of imprisonment of at least [1] year.**

3. **Distributing, disseminating or transmitting instructions on how to commit child sexual abuse as defined in article 2(10) shall be punishable by a maximum term of imprisonment of at least [2] years.**

4. **Offering, supplying or making available instructions on how to commit child sexual abuse as defined in article 2(10) shall be punishable by a maximum term of imprisonment of at least [2] years.**

5. **Producing instructions on how to commit child sexual abuse as defined in article 2(10) shall be punishable by a maximum term of imprisonment of at least [2] year.**

Article 5b

Offences concerning artificial intelligence systems[1] ***designed or adapted specifically*** *to ~~which~~ 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) Distributing, disseminating or transmitting 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 [**2**] year.

(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 [**2**] year.

(d) **Designing or adapting** ~~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 [**2**] years.

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1 A delegation has proposed to replace “artificial intelligence systems” by “digital tools”.

Accompanying recital:

The risks addressed by criminalisation do not arise from the mere existence or ordinary use of artificial intelligence systems, but from their intentional design or technical adaptation to enable the generation of child sexual abuse material. Therefore, this Directive does not seek to criminalise general-purpose or open artificial intelligence technologies that have not been specifically designed or adapted for such purposes.

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)**],** **[**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 [**2** ~~1~~] year.

Article 8a

Organisation of travel arrangements with the purpose of committing child sexual abuse and sexual exploitation

Member States shall take the necessary measures to ensure that intentionally organising ~~for others~~ travel arrangements for **another person for** the purpose of **enabling that other person to commit** ~~committing~~ any of the offences referred to in Articles 3, 4, and 5, **abroad**, irrespective whether or not it was in the course of a commercial activity, 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.

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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Article 9 – Incitement, aiding, abetting and attempt

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), **and** (7) and (8), Article 4(2), (3), (5), (6) and (7), Article 5(4), (5) and (6)**]**, **and where applicable in accordance with the national law to in [**Articles 7 and 8**]** is punishable.

Article 19 – Jurisdiction

The cross-reference to article 8 under article 19(4) is still pending.

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.

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)~~,~~ **and** 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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C. SECTION C – Articles still under discussion, close to agreement

References to EU Centre: One of the outstanding issues in articles 25, 28 and 31 is, among others, the reference to EU Centre. The Legal Services of the Council and the Parliament agree that it is not legally possible to refer to a body that has not yet been established. Given that the main provisions related to EU Centre have been provisionally agreed in the second political trilogue in the context of the Regulation, the EU Centre will be established once the Regulation is adopted. A possible way forward could be to introduce in the Directive a more general reference to 'Union agencies bodies with competences relevant to the offences of this Directive' in articles 25 and 31. The Parliament is still conducting their assessment as to where else it would be important to include the above mentioned general reference, and will revert with their final position soon.

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

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 **Union agencies and bodies with competences relevant to the offences of this Directive.**

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 28 – Prevention

Following the last discussion at JHA counsellors meeting on the Parliament's compromise text and further to recent informal exchanges with the Parliament, delegations will find below a new compromise text for their consideration. The compromise on this article is to keep 'may' in para 4 and add a stronger wording on hotlines in para 2 (linked with article 21 of the Directive that will be revised based on the comments from delegations). As for para 3, it is also revised for better alignment with VAW and the phrase '*Member States shall take appropriate measures'* from the Council mandate is re-introduced for further flexibility. The paragraph related to consent will be adjusted depending on the outcome of horizontal discussion on consent. Paragraph 5 remains in brackets, depending on the outcome of the Parliament's assessment regarding the EU Centre.

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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~~ **comprehensive sexuality education** ~~focusing~~ **and on** ~~the notion of consent,~~ **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. **To further minimise that risk, Member States shall ensure that children have access to these hotlines and helplines through which they can obtain information and advice in relation to the offences referred to in Articles 3 to 8b.**

3. **Without prejudice to the judicial independence and differences in the organisation of the judiciary across the Union,** Member States shall **take appropriate measures to** ~~ensure~~ **promote** regular **and specialist**~~ed~~ training, including in child friendly justice ~~is promoted or offered to~~ for professionals, **prosecutors**, judges~~, without prejudice to the judicial indepedence~~ **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 **may** ~~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;

(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;

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(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.~~

Article 31 – Data collection and research

After further informal exchanges with the Parliament, they have showed openness to agree with keeping 'existing data available at central level', provided that some further points to the list of data are added and that inspiration is drawn from the VAW on the rest of the paragraphs of Article 31 (see new par.2(d), 4 and 5)

Article 31

Data collection and research

1. Member States shall ensure that a system is in place for the recording, production and provision of anonymised statistical data on the reporting, investigative and judicial stages in relation to the criminal offences referred to in Articles 3 to 9 in order to monitor the effectiveness of their measures to combat sexual abuse and sexual exploitation of children.

2. The statistics shall**, as a minimum,** include the following **existing data, available at central level, where possible**~~data~~ disaggregated by sex, age **or age group** of the victim and of the offender, **the type of the offence and, where possible and relevant** relationship between the victim and the offender ~~and type of offence~~

(a) the **annual** number of reported offences ~~and of convictions of offences~~ referred to in Articles 3 to 9, **including the number of victims involved in those offences**, **obtained from national administrative sources** ~~or~~;

(b) the annual number of persons prosecuted for and convicted of the offences referred to in Articles 3 to 9, obtained from national administrative sources;

(c) **the number of offenders and potential offenders having accessed prevention programmes under Articles 27, 28 and 29 and the percentage of these offenders and potential offenders who have used such programmes and have later been convicted for one of the offences in Articles 3 to 9;**

(d) **the number of calls to helplines provided by [article 21].**

3. Member States shall **endeavour to** conduct **population-based surveys at regular intervals to** assess the prevalence of, and trends **in**, all forms of abuse covered by this Directive. Member States shall transmit **statistical data resulting from** those **surveys** to the Commission (Eurostat) **as soon as they become available**.

4. **In order to ensure the comparability and standardisation of administrative data across the Union, Member States shall endeavour to collect administrative data on the basis of common disaggregations developed in accordance with appropriate standards referred to in paragraph 5.**

5. **European Union agencies and bodies with competences relevant to the offences covered in this Directive, support Member States in the data-gathering referred to in paragraph 2, including by establishing common standards taking into account the requirement set in paragraph 4.**

6. Member States shall transmit the ~~statistics to the EU Centre and~~**available statistical data to** the Commission and make the collected ~~statistics~~**statistical data** available to the public on an annual basis. The ~~EU Centre shall compile the statistics and make them publicly available. The statistics~~**statistical data** shall not contain personal data.

7. Member States shall ~~support~~**foster** research on root causes, effects, incidences, effective prevention measures, effective assistance to victims measures and conviction rates of the offences referred to in Articles 3 to 9 of this Directive.

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D. SECTION D – Articles under discussion

D.1. Section D.1: articles with technical points

Compromise solutions 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. The Legal Services of both co-legislators are currently working on a possible compromise proposal transposing such commitment into paper.

Article 17 (para 3) – Reporting suspicion of child sexual abuse or sexual exploitation (see WK 6303/26)

Delegations will find in WK 6303/26 a compromise proposal on article 17(3) tabled by Belgium, Germany and the Netherlands.

Article 26 – Measures against advertising abuse opportunities etc.

Article 26

Measures against advertising abuse opportunities and the sexual abuse and sexual exploitation of children in travel and tourism

Member States shall take appropriate measures to prevent or prohibit:

(a) the dissemination of material advertising the opportunity to commit any of the offences referred to in [Articles 3 to 8] ; and

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~~(b) the organisation for others, whether or not for commercial purposes, of travel arrangements with the purpose of committing any of the offences referred to in Articles 3 , 4 and 5.~~

Article 33 – Transposition

Question to delegations: Given that it is recast proposal would delegations be willing to accept a transposition period less than 3 years? The EP mandate and Commission proposal is 2 years.

Article 33

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with **[**Article 2, paragraphs **(3) (a),(c) and (d)**, (4), (5), **(7)**, (8), Article 3 paragraphs (1), (4), to **(6a)**; Article 4 paragraphs (4) to (7); Article 5 paragraphs (2) to (10); Articles **5a** to 10; Article 11, introductory wording and letters (b), (h), (i); Article 12; Article 13; Article 14 paragraph (1), introductory wording and letter (b), and paragraphs (2) and (3); Article 15 to 20; Article 21 paragraphs (1) to (4), and (6) to (10); Article 22 paragraph (3), introductory wording and letter (g), and paragraphs (4), (5); Articles 23 to 28; Article 29 paragraphs (1), (3) and (4); Articles 30 to 32 of this Directive **by** [~~]~~years after entry into force] They shall immediately communicate the text of those measures to the Commission.**]**

2. When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication.

3. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive**.**

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Article 35 – Entry into force and application

Article 35

Entry into force and application

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

The obligations referred to in paragraph 1 of Article 33 shall apply from [… day after transposition deadline referred to in Article 33(1)].

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D.2. Section D.2: articles with political points

Article 6 – Solicitation of children for sexual purposes

Article 6 will remain as in the General Approach, which will be a major concession from the Parliament, as including children above the age of sexual consent is from the beginning a very strong point for them. The only difference is that the Presidency suggests adding a penalty of 6 months in para 2, as in Commission proposal.

Article 6

Solicitation of children for sexual purposes

1. Member States shall take the necessary measures to ensure that the following intentional conduct committed by an adult is punishable as follows:

   a. proposing , by means of information and communication technology, to meet a child **who has not reached the age of sexual consent** either online or in person , for the purpose of committing any of the offences referred to in Article 3(4), (5), (6) ~~and (7)~~ and Article 5(6), where that proposal was followed by material acts leading to such a meeting, shall be punishable by a maximum term of imprisonment of at least [1 year];

   b. The conduct referred to in the first subparagraph shall be punishable by a maximum term of imprisonment of at least [2 years] where use is made of coercion, ~~force~~ or threats

2. Member States shall take the necessary measures to ensure that **the conduct, committed by an adult, of soliciting a child, who has not reached the age of sexual consent,** ~~an attempt,~~ by means of information and communication technology, to ~~commit the offences provided for in Article 5(2) and (3) by an adult soliciting a~~ **produce or share** child ~~to provide child~~ sexual abuse material is punishable **by a maximum term of imprisonment of at least 6 months.**

Where the child has reached the age of sexual consent, the conduct referred to in the first subparagraph shall be punishable where use is made of coercion or threats.

The conduct referred to in the first subparagraph shall be punishable by a maximum term of imprisonment of at least 1 year where use is made of coercion, ~~force~~ **or threats.**

3. ~~Member States shall take the necessary measures to ensure that an attempt, by means of information and communication technology, to commit the offences provided for in Article 4(2) and (5) by an adult causing a child to participate in child sexual abuse performances and exploitation in prostitution is punishable by a maximum term of imprisonment of at least 6 months.~~

~~The conduct referred to in the first subparagraph shall be punishable by a maximum term of imprisonment of at least 1 year where use is made of coercion, force or threats.~~

Article 16a - Limitation Periods

Article 16a is expected to be one of the most challenging issues in the forthcoming negotiations. Delegations are aware that the Parliament's initial position, namely the complete abolition of limitation periods, is not acceptable to the Council. At the same time, it is equally difficult for the Parliament to accept the Council's mandate, in particular the derogation provided for in paragraph 3. From the Parliament's perspective, such derogation, if kept, undermines the effectiveness of the rules and Article 16a as a whole, irrespective of how ambitious the limitation periods are in paragraphs 1 and 2.

The Presidency has taken note of the positions expressed by several Member States in previous meetings in favour of maintaining the derogation, for different reasons. It should be recalled that similar derogations exist in model law provisions and in the Directives on Environmental Crime and Corruption.

Given the divergent positions of the two co-legislators from the outset of the negotiations, it appears that, for the Parliament, the Commission's initial proposal, or a similar approach, could represent a possible middle ground.

That said, the Presidency considers that **paragraph 1** of the Commission proposal is overly broad, as it applies to all offences covered by the Directive. By contrast, paragraph 1 of the Council mandate is limited to the most serious offences. The Presidency considers this more targeted approach should be maintained.

As regards **paragraph 2**, the Presidency notes a certain openness among delegations in previous discussions to consider longer limitation periods. The Commission proposal is 20/25/30 years for offences of 3/5/8 of maximum years of imprisonment. The Parliament in their arguments for asking longer periods, they are referring to existing strong evidence proving that the majority of victims usually report the crime after a long period of time, around the age of 50.

Regarding **paragraph 3,** the Presidency recalls the particular seriousness of the offences concerned and the evidence showing that victims often report such offences only after a significant lapse of time, due to factors such as trauma, fear, dependency, or stigma. These elements arguably place such offences in a distinct category compared to areas such as corruption or environmental crime. This raises now the question of whether a deviation from the model provisions in paragraph 3 would be justified (i.e. deleting par.3). Should such an approach be acceptable to delegations as included below: new elements could be added to provide clarifications/reassurance that Member States will be allowed to take into account *among others* the rules on the suspension or interruption of statutes of limitations, provided that they fulfil the objective of enabling the prosecution of these offences for a sufficient period, at least until the victim has reached a certain age as per par.1 and 2 of Article 16a. Further examples of such cases of interruption or suspension could also be added.

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Question to delegations:

At the same time, it is acknowledged that some delegations consider a degree of flexibility necessary in light of their national legal systems. In order to facilitate progress, **delegations are invited to clarify:**

- Whether they can accept in the spirit of compromise deleting par.3 accompanied with additional elements as mentioned above in recital 31, or if this approach could not be acceptable, Member States are invited to state the reasons thereof and specify what limitations or safeguards (e.g. a more restricted scope for paragraph 3 or specific justification requirements) could be envisaged in par.3 to ensure that the derogation remains exceptional, and should be applied only in duly justified circumstances, without undermining the overall effectiveness of the Directive.

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** years of imprisonment;

   (b) at least 25 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** years of imprisonment**;**

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(c) **at least 30 years** from the date the victim has reached the age of majority **[for the offences 7 punishable under article 3 paragraph 6 and 7 of this Directive] OR** [by a maximum penalty of at **least 10 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.~~

Keep the text of Council mandate in recital 31 with further elements to be added:

(31) Victims of sexual abuse and sexual exploitation of children are often unable to report the crime for years and even decades after its commission due to the shame, guilt and self-blame, which can be related, among others, to the social and cultural stigma that still surround sexual abuse, the secrecy in which the abuse takes place, threatening or blaming conduct by the perpetrator, and/or trauma. Perpetrators of sexual abuse and sexual exploitation of children, unlike perpetrators of other violent crimes, tend to remain active until old age, continuing to pose a threat to children. In light of this, effective investigation and prosecution of offences involving sexual abuse and sexual exploitation of children, as well as appropriate victims' assistance and support, can only be provided if statutes of limitations allow victims to report the crime for a significantly extended period of time. Member States should take the necessary measures to ensure that statutes of limitation**s** for initiating proceedings do not expire until the victim reaches the age of majority plus an adequate number of years in accordance with this Directive, without prejudice to national rules that do not set limitation periods for investigation, prosecution and enforcement. As long as this ~~is guaranteed~~ **result is achieved**, Member States are free to determine **the specific modalities governing limitation periods, including** the**ir** start**ing point,** ~~and~~ length ~~of their statutes of limitations~~, **applicable rules on suspension or interruption,** in accordance with their national legal system. For example, the time for which the limitation period is suspended or does not start following the commission of the crime until the victim reaches a certain age according to national law can be considered. ~~Member States are permitted under this Directive to establish limitation periods shorter than those laid down in this Directive, provided that in their legal systems it is possible to interrupt or suspend such shorter limitation periods in the event of acts which can be specified in accordance with national law.~~

Consent

Delegations will find in WK 6369/26 a compromise proposal on consent tabled by Germany, France, Romania and Sweden.

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