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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 the recent discussion in the Council, where delegations asked for a simpler and easier to transpose solution, the Presidency proposes below 2 options.

Regardless of the option chosen, Presidency proposes to accompany this article with recital 21 of the existing Directive.

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OPTION A

In this option, the one or more approach applies only to entirely new offences that do not exist under current directive and Member States may choose to apply one or more from the complete list of aggravating circumstances that also include the new circumstances.

The obligation to apply the list of aggravating circumstances as in the existing directive covers articles that contain existing offences, regardless that new elements have been added therein and apply one or more of the new circumstances added by the EP.

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Article 11

Aggravating circumstances

1. To the extent that the following circumstances do not already form part of the constituent elements of the offences referred to **in Articles 5a, 5b, 6a, 7, 8 and 8a** Member States shall take the necessary measures to ensure that, in relation to the relevant criminal offences referred to in those Articles, **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 ~~mental or physical~~ 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;

(h) the offence was committed repeatedly;

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

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

(j) 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.

(ja) 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.

2. To the extent that the circumstances in sub paragraphs a to ja of par 1 do not already form part of the constituent elements of the offences referred **to in Articles 3, 4, 5 and 6** Member States shall take the necessary measures to ensure that:

(a) in relation to the relevant criminal offences referred to in those Articles, the circumstances referred to in **subparagraphs (a) to (g) of paragraph 1** can, in accordance with the relevant provisions of national law, be regarded as aggravating circumstances and

(b) in relation to the relevant criminal offences referred to in those Articles**, one or more of the circumstances referred to in sub par (h) to (ja) of paragraph 1** can, in accordance with the relevant provisions of national law, be regarded as aggravating circumstances

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OPTION B (the previous option A from Presidency presented in ST 8678/26 – ADD 2):

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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Recital to accompany article 5b

The designing and adaptation of artificial intelligence systems specifically to the purpose of enabling the production of child sexual abuse material as well as their distribution, dissemination and transmission, offering, supplying or making available, constitute a grave threat to the safety and fundamental rights of children protected under Article 24 of the EU Charter of Fundamental Rights.

AI systems designed and adapted specifically to the purpose of enabling the production of such material pose a grave risk to human dignity and the rights of the child, including their right to private life, and risk normalising, amplifying and perpetuating sexual violence against children.

The risks addressed by the criminalisation of the above-mentioned conducts 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.

This approach is complementary, but distinct from the framework established under Regulation (EU) 2024/1689 [as amended] and it is without prejudice to the obligations that that Regulation sets out to lay down effective, proportionate and dissuasive penalties applicable to infringements by operators. To the extent that a breach of the provisions criminalising the designing and adaptation of artificial intelligence systems specifically to the purpose of enabling the production of child sexual abuse and the related offences under this Directive also infringe the prohibitions in Article xx xx of Regulation EU) 2024/1689 [as amended] that result in the imposition of penalties of a criminal nature pursuant to Article 99(1) of Regulation (EU) 2024/1689, Member States are required to ensure respect for the ne bis in idem principle in accordance with the Charter of Fundamental Rights.

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