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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on combating the sexual abuse and sexual exploitation of children and child sexual abuse material and replacing Council Framework Decision 2004/68/JHA (recast)

{SEC(2024) 57} - {SWD(2024) 32} - {SWD(2024) 33} - {SWD(2024) 34}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

In July 2020, the Commission presented an EU Strategy for a more effective fight against child sexual abuse (hereinafter ‘the Strategy’). This Strategy set out eight initiatives aiming to ensure full implementation and, where needed, further development of the legal framework to combat child sexual abuse and exploitation. At the same time, it sought to strengthen the law enforcement response and to catalyse multistakeholder efforts in relation to prevention and investigation, and for assistance to victims and survivors.

In particular, the Strategy recognised the need to assess whether the current EU criminal law framework, namely Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography (hereinafter ‘the Directive’), is fit for purpose considering the societal and technological changes over the past decade. The Directive was adopted to establish minimum standards to prevent and fight these particularly serious forms of crime, which are directed against children, namely victims that have a right to special protection and care. It established minimum rules on the definition of criminal offences and sanctions in the area of sexual exploitation of children, as well as minimum standards on effective investigation and prosecution, assistance and support to victims, and prevention of child sexual abuse and exploitation.

In 2022, the Commission conducted an evaluation to assess the implementation of the Directive, assessing possible legislative gaps, best practices and priority actions at EU level. The study showed that the text presents opportunities for improvement: it highlighted the ambiguity of certain definitions set out in the Directive, and challenges concerning investigations and prosecution of offenders. The study raised concerns related to the exponential growth of online sharing of child sexual abuse material and to the increased possibilities for perpetrators to hide their identity (and conceal their illegal activities), most notably online, thereby escaping investigation and prosecution. In conclusion, the study found that both the increased online presence of children and the latest technological developments raise challenges for law enforcement while creating new possibilities for abuse that are not entirely covered by the current Directive.

The study also concluded that the various legal frameworks in place in Member States concerning investigation and prosecution do not provide for an effective fight against child sexual abuse and exploitation throughout the EU, notably due to insufficient criminalisation of child sexual abuse and exploitation offences committed through the use of new and emerging technologies. Finally, it highlighted that Member State efforts to prevent child sexual abuse and to assist victims are still limited, lack coordination and are of unclear effectiveness. To address shortcomings in implementation, the Commission followed up through enforcement measures, launching infringement procedures as necessary. At the same time, the evaluation showed clearly that a renewed legislative framework is needed at EU level.

Against this background, a targeted revision of the Directive is necessary:

- to ensure that all forms of child sexual abuse and exploitation, including those enabled or facilitated by technological developments, are criminalised;

- to ensure that national rules on investigation and prosecution provide for an effective fight against child sexual abuse and exploitation by taking into account recent technological developments;
 - to improve both prevention and assistance to victims; and
 - to promote better coordination in preventing and combatting child sexual abuse across Member States and, at national level, among all parties involved.
- **Consistency with existing policy provisions in the policy area**

This proposal further develops the existing provisions of the Directive and is presented in the framework of the 2020 EU Strategy for a more effective fight against child sexual abuse.

The proposal complements other EU initiatives that, directly or indirectly, address aspects of the challenges linked to child sexual abuse and exploitation offences. These initiatives include:

- Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime;
- Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims;
- Regulation (EU) 2021/1232 on a temporary derogation from certain provisions of Directive 2002/58/EC as regards the use of technologies by providers of number-independent interpersonal communications services for the processing of personal and other data for the purpose of combating online child sexual abuse, and the recently adopted proposal for a limited extension in time of the temporary derogation¹; and
- the Proposal for a Regulation laying down rules to prevent and combat child sexual abuse.

The latter would put in place obligations on online service providers to take responsibility for protecting children who use their services from online child sexual abuse. The proposed Regulation relies on the Directive for the definition of what is a criminal offence because it constitutes child sexual abuse material and solicitation. The Directive constitutes the criminal law pillar upon which the proposed Regulation stands.

The two instruments would reinforce each other to jointly provide a more comprehensive response to the crime of child sexual abuse and exploitation, both offline and online. In particular, the EU Centre to prevent and combat child sexual abuse, envisaged in the proposed Regulation, would also play an important role in supporting Member State actions on both prevention and assistance to victims under this proposal. While the EU Centre would support law enforcement and the judiciary in providing reports of higher quality, it leaves unaffected the current distribution of responsibilities among Europol, Eurojust, and national law enforcement and judiciary authorities.

¹ Proposal for a Regulation of the European Parliament and the Council amending Regulation (EU) 2021/1232 of the European Parliament and of the Council on a temporary derogation from certain provisions of Directive 2002/58/EC for the purpose of combating online child sexual abuse, COM(2023) 777 final of 30.11.2023.

- **Consistency with other Union policies**

This proposal is consistent with related Union policy, in particular the following:

- It complements the EU legal framework regulating digital services, most notably the recently adopted Digital Services Act². The latter addresses the responsibility of online service providers in relation to illegal content circulating on their services. This proposal ensures that the definition of a specific type of illegal content, namely online child sexual abuse, is updated and suitable to ensure effective action in today's and tomorrow's digital world, while also insisting on awareness raising and education. By doing so, the proposal is also fully complementary with the EU strategy for a Better Internet for Kids (BIK+).
- It is consistent with, and complementary to, the proposal for a Directive on combating violence against women and domestic violence. That proposal aims at establishing minimum standards in relation to: the definition of offences and sanctions for violence against women and domestic violence throughout the EU; the protection of victims of these crimes and access to justice; victim support and prevention; and coordination and cooperation between all relevant stakeholders.
- It is consistent with the proposal for the revision of the Victims' Rights Directive which provides for targeted amendments aiming to ensure that victims can fully rely on their rights in the EU.
- It is consistent, especially in its awareness-raising and education components, with the 2019-2027 EU Youth Strategy, which recognises that young people in the EU face specific challenges and that their empowerment, including through education, is crucial in helping them to face such challenges successfully.
- It is consistent also with the comprehensive EU Strategy on the Rights of the Child, the adoption of which in 2021 created an overarching EU policy framework for children's rights and child protection. The Commission plans to complement this by a Commission recommendation on integrated child protection systems.
- It is also consistent with the European Child Guarantee, which aims at preventing and combatting social exclusion by guaranteeing effective access of children in need (including those hailing from precarious, violent and abusive family backgrounds) to a set of key services, such as education, healthcare and housing.
- It is consistent with the “do no significant harm” principle on not supporting or carrying out economic activities that do significant harm to any environmental objective, where relevant, within the meaning of Article 17 of Regulation (EU) 2020/852³, as the Directive has no negative impact on these objectives. It is also consistent with the climate-neutrality objective set out in the European Climate Law⁴.

² Regulation (EU) 2022/2065 on a single market for digital services and amending Directive 2000/31/EC (Digital Services Act), OJ L 277, 27.10.2022, pp. 1–102.

³ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, OJ L 198, 22.6.2020, p. 13.

⁴ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'), OJ L 243, 9.7.2021, p. 1–17.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

This proposal recasts Directive 2011/93/EU. It is therefore based on Articles 82(2) and 83(1) of the Treaty on the Functioning of the European Union, which are the legal bases of Directive 2011/93/EU. The two legal bases allow the European Parliament and the Council to establish, by means of directives, minimum rules necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, and minimum rules on the definition of criminal offences and sanctions in the area of sexual exploitation of children, respectively.

• Variable geometry

As regards variable geometry, this proposal follows a similar approach as the current Directive.

In accordance with Article 3 of Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland may notify its wish to take part in the adoption and application of the Directive.

In accordance with Articles 1 and 2 of Protocol (No 22) on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this proposal and is not bound by it or subject to its application.

• Subsidiarity (for non-exclusive competence)

The cross-border nature of child sexual abuse and exploitation offences, which justified the adoption of the Directive, has become even more prominent in the last decade, with increased prevalence in the use of online technologies that enable, facilitate and amplify the impact of such offences. To provide for both effective prosecution of offenders and victim protection everywhere in the EU, this proposal sets out to establish common minimum standards on the definition of offences and levels of sanctions, an objective that Member States would not be able to reach individually and that can only be achieved by action at EU level. Moreover, given the online dimension of these crimes, which has become increasingly prominent, Member States would not, in the absence of common rules, be able effectively to: (i) prevent the commission of child sexual abuse offences in their territory; (ii) investigate and prosecute child sexual abuse crimes with a cross-border dimension; and (iii) identify victims and provide appropriate assistance to them. Hence, the proposal fully respects the principle of subsidiarity as set out in Article 5(3) of the Treaty on European Union.

• Proportionality

The changes to the Directive under this proposal are limited and targeted, aimed at effectively addressing the key shortcomings identified in the implementation and evaluation of that Directive. According to the impact assessment, the proposed changes are limited to those aspects that Member States cannot achieve satisfactorily on their own. In particular, the definitions of offences need to be adapted at EU level to achieve the objective of tackling cross-border child sexual abuse and exploitation. As to the amendments in relation to prevention, assistance to victims, investigations and prosecutions, those respond to specific gaps and challenges that have emerged during the monitoring of the implementation of Directive 2011/93 over the past decade. Any further administrative burden that might arise

from this update is considered proportionate in view of the long-term benefits, including cost benefits, that are linked to prevention and early detection of these types of offences for victims and society at large. In addition, the supportive role of the EU Centre in the fields of prevention and assistance to victims would keep any such administrative burden to a minimum. In light of the above, the proposal does not go beyond what is necessary to achieve the stated objectives.

- **Choice of the instrument**

This proposal is intended to provide for targeted changes to the Child Sexual Abuse Directive, which are intended to address the gaps, inconsistencies and shortcomings identified from the implementation and evaluation of the Directive. Since this proposal is to recast the Child Sexual Abuse Directive, the same legal instrument is the most appropriate.

3. RESULTS OF *EX POST* EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- ***Ex post* evaluations/fitness checks of existing legislation**

In the course of 2022, in line with what had been announced in the 2020 Strategy, the Commission conducted an evaluation study to assess implementation of the Child Sexual Abuse Directive, identifying legislative gaps, best practices and priority actions at EU level. The evaluation study⁵ concluded that the Directive was not entirely capable of tackling the challenges arising from the significant societal and technological changes that have occurred in the past decades. It notably raised concerns in relation to the exponential growth of online sharing, increased possibilities for perpetrators to hide their identity (and conceal their illegal activities), and facilitation in conspiring between perpetrators to avoid accountability and to commit further crimes. The evaluation study also highlighted ambiguities in certain of the Directive's provisions and pointed to persistent challenges concerning investigations and prosecution of offenders. Moreover, it noticed that the very broad leeway left for national differentiation in the area of prevention and assistance to victims had led to implementation difficulties and unsatisfactory results in many Member States. It concluded that even full and conforming transposition of the Directive in its current form would neither serve to sufficiently address the challenges linked to the reporting, investigation and prosecution of child sexual abuse and exploitation offences nor lead to the adoption throughout the EU of sufficiently sound measures in relation to prevention and assistance to victims.

- **Stakeholder consultations**

A wide consultation was conducted in the context of the back-to-back evaluation of the Child Sexual Abuse Directive and impact assessment of potential initiatives to fill the gaps identified in such an evaluation. This included publication of the combined evaluation roadmap/inception impact assessment on the Commission's 'Have your say' portal from 28 September to 26 October 2021, which saw reactions from 17 stakeholders. Targeted consultations, asking more technical questions on the revision of the Directive, took place in the first half of 2022 and were carried out both by the Commission independently and in the context of a study commissioned to an external contractor. Key stakeholders consulted included:

⁵ Study supporting the evaluation and impact assessment of the EU Directive 2011/93 of 13th December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography and the impact assessment of the possible options for its amendment (finalised on 30 November 2022).

- Member State national authorities involved in the implementation of the Directive and in its transposition (e.g. law enforcement agencies; prison, detention and parole services; administrative, child protection and judicial authorities), and regional and local authorities;
- relevant EU agencies (including Europol, Eurojust and the Fundamental Rights Agency (FRA));
- relevant organisations in non-EU countries, including the US National Centre for Missing and Exploited Children (NCMEC), and the Canadian Centre for Child Protection (C3P);
- relevant international organisations, including the Council of Europe;
- relevant industry stakeholders;
- hotlines, including the EU-funded INHOPE network, and other civil society organisations focused on child protection, child rights, prevention, and privacy; and
- researchers and academics that work on child sexual abuse and exploitation.

The Commission also carried out an open public consultation targeting the general public with the aim of collecting information, evidence, and views on the issues at stake and to feed into the evaluation and impact assessment process. In the context of the study, a questionnaire in all EU official languages on the evaluation of the Child Sexual Abuse Directive was made available, and a preliminary discussion on the objectives of a policy initiative to review it was carried out via the Commission’s EU Survey tool between 20 April 2022 and 13 July 2022. Overall, 49 responses were received from stakeholders in 23 countries, including 18 Member States (AT, BE, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IT, MT, NL, PT, SE and SI). In this context, the Commission also received, in addition to the replies, 21 written contributions, including 11 contributions from civil society organisations, three from representatives of business organisations, four from ICT companies, one from a representative of a national ministry of justice, one from a legal expert and one from an EU citizen.

The consultation process showed, in general, that children are affected by the shortcomings of the current Directive in relation to emerging trends enabled or facilitated by technological development and the increased online presence of children and predators. It confirmed that these new trends come with new investigative challenges that need addressing. It also pointed to the need to better account for the specificities of child sexual abuse and exploitation offences, including the challenges encountered by victims in reporting, the need for targeted prevention and victim assistance, and to address the difficulties caused by phenomena such as that of travelling sex offenders.

All the main problems identified in the consultations have been taken into account and addressed in the proposal.

- **Collection and use of expertise**

The evaluation and impact assessment were supported by a study carried out by an external contractor. Furthermore, the Commission organised six expert workshops, from 17 January 2018 to 6 September 2019, to gather information on challenges and emerging issues in the field of child sexual abuse and exploitation, and to discuss the main difficulties encountered in the Directive’s implementation, as well as its relevance in light of new and expected trends and developments. As explained in detail in Annex 2 to the impact assessment accompanying the proposal for a Directive (Recast), additional external expertise was gathered through the

following stakeholder consultation methods: scoping interviews, desk research, online survey, public consultation, targeted interviews, case study interviews, and workshops.

- **Impact assessment**

The impact assessment carried out for the preparation of the proposal evaluated three policy options, presenting a range of increasingly ambitious policy measures intended to respond to three problem drivers:

- both the increased online presence of children and the latest technological developments raise challenges for law enforcement while creating new opportunities for abuse;
- the different legal frameworks in place in Member States concerning investigation and prosecution, which do not provide for an effective fight against child sexual abuse and exploitation; and
- the shortcomings of Member State efforts to prevent child sexual abuse and to assist victims, namely their limited nature, their unclear effectiveness, and the lack of coordination among relevant stakeholders.

The three policy options examined were as follows:

- Option A: Targeted legislative adjustments to clarify ambiguities of the current framework, ensure coherence with new instruments, and improve the quantity and quality of available information.
- Option B: Option A plus legislative amendments modifying definitions of crimes to take into account current and expected technological developments.
- Option C: Option B plus legislative amendments to ensure more effective prevention, assistance to victims, and investigation and prosecution, taking into account the cross-border dimension of the phenomenon.

Based on the assessment of the social and economic impacts, as well as effectiveness and efficiency, the preferred policy option is option C. The preferred option contains a larger set of policy measures from prevention to prosecution and assistance to victims, which would address both the original ambiguities and shortcomings identified in the Directive and the need to update it to keep up with new and emerging trends while ensuring more efficient cross-border cooperation. Option C further streamlines national rules on investigation and prosecution to ensure, among other things, the full mobilisation of existing tools to prevent sex offenders from committing crimes abroad and the availability of effective investigative methods in all Member States. Finally, it better specifies prevention and obligations for assistance to victims, and improves coordination among Member States, including through the work of a network of national authorities and reliance on the EU Centre to prevent and combat child sexual abuse.

The possible increase in the number of prosecutions and investigations concerning child sexual abuse that might derive from more effective investigative tools and better coordination within and among Member States might entail administrative costs for Member States. However, it should also bring significant benefits in terms of limiting the costs to society of child sexual abuse. In particular, the initiative is expected to significantly reduce costs associated with child sexual abuse, producing savings relating to: (i) offenders and victims (e.g. by preventing the offence from being committed and saving the costs linked to criminal

proceedings, as well as short and long-term assistance to victims); and (ii) society at large (e.g. by avoiding the productivity losses linked to child sexual abuse and the related trauma).

The initiative will have a positive impact on the fundamental rights of children, including their right to physical and mental health and their right to protection and care as is necessary for their well-being. The initiative will also have a positive impact on the rights of adult survivors of child sexual abuse, by improving compensation, assistance and support to victims.

On 13 December 2022, the impact assessment was submitted to the Regulatory Scrutiny Board, which held a meeting on 18 January 2023. The Board issued a positive opinion with reservations on 20 January 2023. The Board pointed to a number of aspects of the impact assessment that should be addressed. Specifically, the Board requested further clarification on the dynamic baseline described as a starting point to assess the various options and, in particular, on the role played in this baseline by the proposed Regulation laying down rules to prevent and combat child sexual abuse. It requested that more details be provided on the analytical method and assumptions underpinning the cost-benefit analysis, and on the role of national authorities for child sexual abuse under the proposal. Finally, it asked the Commission to include in the final version a more detailed explanation of the underlying trade-offs that frame the context for the policy options and a more systematic account of the views of the various categories of stakeholders.

These and other more detailed comments provided by the Board have been addressed in the final version of the impact assessment. In particular, it describes in a clearer manner the interplay with the proposed Regulation laying down rules to prevent and combat child sexual abuse, gives a better account of the methodology used to assess cost and benefits, and expands on the policy options and stakeholder views. The Board's comments have also been taken into account in the proposed recast Directive.

- **Regulatory fitness and simplification**

In compliance with the Commission's Regulatory Fitness and Performance Programme (REFIT), all initiatives aimed at revising existing EU legislation should seek to simplify and reduce administrative burden on Member States. The impact assessment concludes that the preferred option would indeed have an administrative burden but that this would be offset by the positive impact of the measures on the prevention of and fight against child abuse, and protection of the victims of this crime.

The targeted amendments to the Directive are aimed at improving Member State capacity to fight the crime efficiently, in relation to threats and trends that have emerged and evolved in recent years and with new technological developments. New rules applicable to Member States are expected to improve cross-border cooperation, both in terms of investigations and prosecutions, and for victim assistance and support.

The initiative improves the clarity of the legal landscape for fighting child sexual abuse across Member States. The regulatory burden related to the proposal is of limited scope, as it mostly consists in improvements to existing norms rather than in entirely new obligations. Member States already investigate, prosecute and punish offences related to child sexual abuse as they stand. The proposal merely introduces a limited number of definitions and stand-alone offences related to child sexual abuse, which will have a very significant impact on countering the crime; indeed some, but not all, Member States have already adopted them. Most of the regulatory and administrative burden on Member States would stem from

coordination obligations, the identification of clear benchmarks, and data collection modifications. However, even in this respect, Member States already collect data on child abuse, and the proposal is intended to ensure more consistency and transparency in existing processes, and better reporting.

No impact is expected on SMEs and competitiveness. All the policy options under consideration would result in costs for public authorities in Member States, rather than costs for EU citizens and business.

- **Fundamental rights**

This initiative is consistent with the EU Charter of Fundamental Rights of the European Union. It contributes also to strengthening specific fundamental rights, in particular: the right to human dignity (Article 1); the right to the integrity of the person (Article 3); the prohibition of inhuman or degrading treatment or punishment (Article 4); and the rights of the child (Article 24).

4. BUDGETARY IMPLICATIONS

There is no implication for the European Union budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will check the correct and effective transposition of the recast Directive into the national laws of all participating Member States. Throughout the implementation phase, the Commission will organise regular contact committee meetings with all Member States. Periodically, the Commission will present to the European Parliament and the Council a report evaluating the implementation, functioning and impact of the recast Directive.

In order to monitor and evaluate the phenomenon of sexual abuse and sexual exploitation of children, it is necessary for Member States to have mechanisms for data collection or focal points in place. For these reasons, Article 31 is included, which obliges Member States to have a system in place for the collection, development, production and dissemination of statistics on offences referred to in Articles 3 to 9. Every 3 years, Member States are required to conduct a population-based survey using the harmonised methodology of the Commission (Eurostat) to gather data on the number of victims of offences under the Directive. On this basis, they must assess the prevalence of and trends for all offences covered by this Directive. Member States are to transmit the data to the Commission (Eurostat). In order to ensure administrative data comparability across the EU, Member States are required to collect administrative data on the basis of common disaggregations developed in cooperation with the EU Centre and are to transmit these data to the EU Centre on a yearly basis. The EU Centre would support Member States in the data gathering for offences under Articles 3 to 9, including by establishing common standards on counting units, counting rules, common disaggregations, reporting formats, and on the classification of criminal offences. The statistics gathered by Member States are to be transmitted to the EU Centre and the Commission, and the collected statistics are to be made available to the public on an annual basis. Lastly, Member States are required to support research on root causes, effects, incidences, effective prevention measures, effective victim assistance measures, and conviction rates for the forms of offences covered by the proposal.

- **Explanatory documents (for directives)**

Given that the proposal contains a larger number of legal obligations compared with the existing Directive, it will be necessary that explanatory documents, including a correlation table between national provisions and the Directive, accompany the notification of transposition measures. This is to ensure that the transposition measures that Member States have added to existing legislation are clearly identifiable.

The measures adopted to transpose this proposal are unlikely to be limited to one single legal text. For this reason, it is necessary that Member States provide an explanatory document communicating to the Commission the text of the provisions adopted in transposing this Directive. It should also show how such provisions interact with the provisions that had already been adopted to transpose Directive 2011/93/EU and with provisions covered by other relevant EU policies.

The Commission is preparing guidelines for implementing the prevention and victim assistance obligations and these will be made available to Member States in due time. To support EU Member States and other countries more broadly to put in place effective prevention initiatives for persons who fear that they might offend against children, the European Commission's Joint Research Centre has recently published the report 'Help Seeker and Perpetrator Prevention Initiatives – Child Sexual Abuse and Exploitation'⁶. This work provides the basis for steps towards developing an EU IT platform compiling child sexual abuse prevention initiatives, which will support EU Member States and other stakeholders in designing and in implementing tailor-made prevention policies according to their respective cultural and societal environments and needs.

- **Detailed explanation of the specific provisions of the proposal**

Throughout the Directive, the terminology used has been brought into line with recognised international standards such as the Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse adopted by the Interagency Working Group in Luxembourg on 28 January 2016⁷.

The following changes are being proposed:

Article 2: Accessing child sexual abuse material is often the first step towards hands-on abuse, regardless of whether it depicts real or realistic abuse and exploitation⁸. The development of augmented, extended and virtual reality settings and the possibility of misusing artificial intelligence to create "deepfakes", i.e. synthetically created lifelike child sexual abuse material, has already stretched the definition of "image", as such materials may make use of avatars including sensory feedback, e.g. through devices providing a perception of touch. The amendments to Article 2(3)(d) are meant to ensure that the definition of child sexual abuse material covers these technological developments in a sufficiently technology-neutral and hence future-proof way. In addition, there are manuals in circulation that provide advice on how to find, groom and abuse children; on how to avoid being identified, investigated and prosecuted; and on how best to hide materials. By lowering barriers and

⁶ [Help seeker and Perpetrator Prevention Initiatives - Child Sexual Abuse and Exploitation](#), ISBN 978-92-76-60601-7, doi:10.2760/600662, JRC131323, 2023

⁷ [Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse](#), 2016

⁸ Protect Children, CSAM Users in the Dark Web: Protecting Children Through Prevention, 2021.

providing the necessary know-how, these manuals, known as “paedophile handbooks”, contribute to inciting offenders and support the commission of sexual abuse, and should therefore also be criminalised. Article 2 also includes a definition of peers, as persons, including both children and adults, who are close in age and degree of psychological and physical development or maturity.

Article 3: the amendments to Article 3 are intended to ensure consistency between the level of penalties provided for by the proposal and that provided for in relation to analogous offences, in the Directive (EU) .../... [*proposed Directive on combating violence against women and domestic violence*]. This includes an amendment to cover also the act of causing a child who has not reached the age of sexual consent to engage in sexual activities with another person in situations outside the context of coercing, forcing or threatening.

Article 4: The level of penalties for engaging in sexual activities with a child where recourse is made to child prostitution (Article 4(7)) is increased to 8 years when relating to a child below the age of sexual consent, and 4 years where the child is above the age of sexual consent. This increase is necessary to ensure consistency with recent acquis, including the Directive (EU) .../... [*proposed Directive on combating violence against women and domestic violence*].

Article 5: There is a public interest in supporting the work of organisations acting in the public interest against child sexual abuse, such as the INHOPE hotlines, that receive reports from the public on child sexual abuse materials and facilitate removal of such materials and the investigation of the offence. Where these organisations, acting in the public interest, review and analyse or otherwise process material constituting child sexual abuse images or videos for the purposes of removal or investigation, such processing should not be criminalised. Therefore, it is necessary to limit the definition of the corresponding offences accordingly, by clarifying that such processing is not considered to be “without right” when these organisations have been authorised by competent authorities of the Member State in which they are established.

Article 6: the changes to Article 6 ensure that all forms of online solicitation, including solicitation aimed at committing child sexual abuse and exploitation offences in an online context, are criminalised in all Member States.

Article 7: the new Article 7 is intended to ensure that all Member States criminalise, and provide for an effective investigation and prosecution of the offence of live-streaming child sexual abuse. This has seen a considerable increase in recent years and has raised specific investigative challenges, linked to the impermanence of the streamed abuse and the consequent lack of evidence available to investigative bodies.

Article 8: the new Article 8, by criminalising the conduct of running an online infrastructure for the purpose of enabling or encouraging child sexual abuse or exploitation, is intended to tackle the role played by the dark web in the creation of communities of offenders or potential offenders and in the dissemination of child sexual abuse material.

Article 10: the amendments to Article 10 are intended to clarify current ambiguities in the Directive’s text, including by ensuring that the exemption from criminalisation for consensual sexual activities is correctly understood as applying only to material produced and possessed between children or between peers, rather than between a child over the age of sexual consent and an adult of any age.

Article 12: the amendments to Article 12 are intended to tackle the risks that offenders might regain access to children through employment or voluntary activities. They put in place a requirement for employers recruiting for professional and voluntary activities involving close contact with children and recruiting for organisations acting in the public interest against child sexual abuse, to request the criminal records of persons to be recruited. It also obliges Member States to provide criminal records as complete as possible in response to such requests, using the European Criminal Record Information System whenever relevant and any other appropriate source of information.

Article 14: this article governing sanctions that can be imposed on legal persons was modified to align it with recent *acquis*, by expanding the list of examples of possible sanctions to include an explicit reference to exclusion from access to public funding and by including a harmonised methodology for the calculation of minimum fines. Specifically, Member States should take the necessary measures to ensure that legal persons that benefit from the commission by others of offences in violation of Union restrictive measures are punishable by fines, the maximum limit of which should be set in correlation with the severity of the offence as defined by its minimum level of maximum penalty, to be no less than 1, respectively 5, per cent of the total worldwide turnover of the legal person in the business year preceding the fining decision. The liability of legal persons does not exclude the possibility of criminal proceedings against natural persons who are the perpetrators of criminal offences specified in this Directive.

Article 15: the amendments introduced complete and clarify the situations in which Member States 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, covering also the distribution, offering, supplying or making available child sexual abuse material. The corresponding recital has been amended to clarify that the term “compelled” should also be understood as also covering luring, without force or coercion.

Article 16: the amendments to Article 16(2) are meant to ensure that statutes of limitations cannot start running before the victim has reached the age of majority and to set minimum statutes of limitations to effectively allow the victim to seek justice. The amendments impose the following minimum standards in relation to the length of statutes of limitations:

- For offences punishable under this Directive with a maximum penalty of at least 3 years, the limitation period is to be of at least 20 years. Starting from the age of majority, this means that the statute of limitations does not expire until the victim is at least 38 years old.
- For offences punishable under this Directive with a maximum penalty of at least 5 years, the limitation period is to be of at least 25 years. Starting from the age of majority, this means that the statute of limitations does not expire until the victim is at least 43 years old.
- For offences punishable under this Directive with a maximum penalty of at least 8 years the limitation period is to be of at least 30 years. Starting from the age of majority, this means that the statute of limitations does not expire until the victim is at least 48 years old.

The rationale behind the proposed approach to statutes of limitations is as follows:

- Research has shown that victims of child sexual abuse and exploitation are often unable to report the crime for several decades after the abuse took place. The need to overcome 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, results in most victims being unable to speak about, let alone report, the crime to an authority for decades⁹.
- A current study shows that, on average, it takes between 17.2 and 21.4 years before survivors of child sexual abuse tell someone about their experiences. Around 60-70% of survivors do not disclose anything until they are adults, and 27.8% of survivors do not tell anyone¹⁰. Age and gender are strong predictors for delaying disclosure or withholding disclosure, with trends showing fewer disclosures by younger children and boys¹¹.
- Currently, the statutes of limitations differ widely among Member States. Some of them have abolished criminal statutes of limitations entirely for all or most of the offences covered by the Directive. Some others have very short statutes of limitations, which expire before the victim reaches the age of 40 for all or most of the offences covered by the Directive. Yet another group of Member States maintains statutes of limitations that expire after the victim has reached the age of 40 for all or most of the offences covered by the Directive.
- These differences among Member States lead to unequal access to justice for victims throughout the EU, in relation to the possibility of seeing the relevant offences prosecuted, and of obtaining compensation. In addition, perpetrators might take advantage of the system and escape prosecution by relocating to somewhere where statutes of limitations are shorter and have, therefore, expired. This situation creates the risk that potential offenders are able to escape prosecution and continue posing a danger to children for several decades.
- In light of the above, it seems clear that effective investigation and prosecution of child sexual abuse and exploitation crimes, and appropriate victim assistance and support, can only be provided if statutes of limitations allow victims to report the crime, without being barred from seeing an investigation launched, until sufficiently late in life.

The amendments to Articles 16(3) to (5) are intended to address investigative challenges, in particular, linked to the use of online technologies, that have emerged in the context of the Directive's evaluation and related stakeholder consultations. They require Member States to ensure that persons, units or services investigating and prosecuting the offences referred to in Articles 3 to 9 have sufficient staff, expertise and effective investigative tools, including the possibility to conduct undercover investigations on the dark web.

⁹ See for example: McElvaney et al., Child sexual abuse disclosures: Does age make a difference?, *Child Abuse & Neglect*, 2020, Vol. 99 (2020), p. 6; Australian Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report Volume 4 - Identifying and disclosing child sexual abuse*, 2017, p. 77.

¹⁰ J.E. Halvorsen, E. Tvedt Solberg & S. Hjelen Stige, 'To say it out loud is to kill your own childhood.' – An exploration of the first person perspective of barriers to disclosing child sexual abuse, *Children and Youth Services Review* Vol. 113 (2020), p. 2.

¹¹ R. Alaggia, D. Collin-Vézin & R. Lateef, Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000--2016), *Trauma, Violence & Abuse* 2019, Vol. 2 (2020), p 276.

Article 17: underreporting of child sexual abuse still constitutes a major challenge in the efforts to stop child sexual abuse and prevent further sexual abuse from taking place, inter alia because educators and health care providers, as well as other professionals working in close contact with children, may hesitate to allege that anyone – potentially a colleague or a peer – has committed child sexual abuse. Article 17(3) was amended to institute a reporting obligation, in order to provide legal certainty to such professionals, while Article 17(4) ensures that professionals in the health care sector working with offenders or people who fear that they might offend are excluded from such reporting obligation.

Article 18: this article builds on the rights of victims under Articles 5 and 5a of Directive (EU) 2012/29/EU establishing minimum standards on the rights, support and protection of victims (Victims Rights Directive) [as amended by the proposed Directive amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims] when it comes to reporting of offences, to ensure that easily accessible and child-friendly reporting channels are available.

Article 21: this article expands the availability of assistance and support to victims in line with the Victims Rights Directive [as amended by the proposed Directive amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims] to ensure that children receive the necessary and age-appropriate care. In order to support the development and expansion of best practices across Member States, the EU Centre, once established, would support Member States' efforts by gathering information on available measures and programmes and making such information widely available.

Article 22: this article is amended to ensure that medical examinations of a child victim for the purposes of the criminal proceeding, which can retraumatise a child, are limited to the strictly necessary and performed by appropriately trained professionals.

Article 23: this new article strengthens the position of victims and survivors of child sexual abuse by reinforcing their right to claim compensation for any damage suffered in connection with child sexual abuse and exploitation offences, including damages caused by the online dissemination of material concerning the abuse. It strengthens the EU minimum standards in relation to both the timeframe to request compensation and the elements to be taken into account when determining the compensation amount. It also broadens, in relation to the EU minimum standards under the Victims' Rights Directive, the number of people and entities that must be considered responsible for granting such compensation, including legal persons and, where appropriate, from national compensation schemes established for the benefits of victims of crime.

Article 24: this new article addresses the challenges linked to the lack of coordination of national efforts to prevent and fight child sexual abuse and exploitation, by requiring Member States to establish national authorities in charge of such coordination, and of data collection in each Member State.

Article 25: this new article obliges Member States to put in place the necessary mechanisms to ensure a multi-agency and multistakeholder cooperation and coordination at national level among all the relevant parties involved in the development and implementation of measures to prevent and combat child sexual abuse, both online and offline.

Article 26: the title of this article and the recitals accompanying this article have been updated to use the terminology recommended in the Terminology Guidelines for the Protection of

Children from Sexual Exploitation and Sexual Abuse¹² in relation to the previously used term “child sex tourism”.

Article 27: the amendments made in the first paragraph clarify that the prevention programmes for persons who fear that they might offend should be dedicated to that group of persons and that Member States should provide access to them. A new paragraph 2 aims to ensure the accessibility of these programmes and in particular that is in line with national standards concerning healthcare.

Article 28: the amendments made aim to further clarify the types of prevention programmes that could be considered to reduce the likelihood that a child becomes a victim (paragraph 1) and that a person offends (paragraph 2). Additional examples have been added to the corresponding recitals. The article requires Member States to promote regular training not only for front-line police officers likely to come into contact with child victims of sexual abuse or exploitation, but also for judges and other relevant professionals, to ensure child-friendly justice. It obliges Member States to work on prevention of both online and offline child sexual abuse and requires them to adopt specific prevention programmes dedicated to children in community settings, given their particular vulnerability. Finally, the amendments attribute a crucial coordination and knowledge hub role in this respect to the future EU Centre.

Article 31: this new article obliges Member States to collect periodically statistics on the offences included in the Directive following a common methodology developed in cooperation with the EU Centre, share those statistics with the EU Centre and the Commission and make them publicly available. The EU Centre in turn should compile all statistics received and make the compilation publicly available.

Article 32: this new article on reporting replaces the previous one and sets out reporting requirements for the Commission every 5 years to the European Parliament and to the Council of the EU on the application of the Directive.

Article 33: the amendments in this article clarify the provisions that need to be transposed by Member States, i.e. those that have been amended by comparison with Directive 2011/93.

Article 34: this new article repeals Directive 2011/93/EU and clarifies the transposition obligations of the proposed Directive versus Directive 2011/93/EU.

Article 35: this new article sets out the dates of entry into force of the Directive. It also sets out the date of entry into application for the majority of the Directive, and the date of entry into application of the provisions that refer to the EU Centre, which depend on the date of establishment of the EU Centre currently being discussed in the inter-institutional negotiations of the proposal for a Regulation laying down rules to prevent and combat child sexual abuse.

Article 36: the amendment in this article is limited to leave open the place and date of adoption, to be specified at a later stage.

¹² [Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse](#), adopted by the Interagency Working Group in Luxembourg, 28 January 2016.

↓ 2011/93/EU (adapted)

⇒ new

2024/0035 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on combating the sexual abuse and sexual exploitation of children and child sexual abuse material and replacing Council Framework Decision 2004/68/JHA (recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2) and Article 83(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

↓ new

- (1) A number of amendments are to be made to Directive 2011/93/EU of the European Parliament and of the Council¹³. In the interests of clarity, that Directive should be recast.

↓ 2011/93/EU recital 1 (adapted)

- (2) Sexual abuse and sexual exploitation of children, including child ~~pornography~~ ⇒ sexual abuse material ⇐, constitute serious violations of fundamental rights, in particular of the rights of children to the protection and care necessary for their well-being, as provided for by the 1989 United Nations Convention on the Rights of the Child and by the Charter of Fundamental Rights of the European Union¹⁴.

¹³ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1, ELI: <http://data.europa.eu/eli/dir/2011/93/oj1>, ELI: <http://data.europa.eu/eli/dir/2011/93/oj>).

¹⁴ OJ C 364, 18.12.2000, p. 1.

↓ 2011/93/EU recital 2 (adapted)
⇒ new

- (3) In accordance with Article 6(1) of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union, in which Article 24(2) provides that in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. Moreover, the ~~Stockholm Programme — An Open and Secure Europe Serving and Protecting Citizens (4)~~ ⇒ EU Strategy for a more effective fight against child sexual abuse¹⁵ ⇐ gives a clear priority to ⇒ stepping up the fight against ⇐ ~~combating~~ the sexual abuse and sexual exploitation of children and child ~~pornography~~ ⇒ sexual abuse material, including through actions aimed at ensuring the continued effectiveness of existing Union legislation, if needed through its updating. This is also supported by the EU Strategy on the rights of the child in its objective to fight violence against children and ensure child-friendly justice ⇐ .

↓ 2011/93/EU recital 3 (adapted)

- (4) Child ~~pornography~~ ⇒ sexual abuse material ⇐ and other particularly serious forms of sexual abuse and sexual exploitation of children are increasing and spreading through the use of new technologies and the Internet.

↓ 2011/93/EU recital 4 (adapted)

- (5) ~~Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography (5) approximates Member States' legislation to criminalise the most serious forms of child sexual abuse and sexual exploitation, to extend domestic jurisdiction, and to provide for a minimum level of assistance for victims. Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings establishes a set of victims' rights in criminal proceedings, including the right to protection and compensation.~~ ⇒ Directive 2012/29/EU of the European Parliament and of the Council¹⁶ establishes a set of victims' rights for all victims of all crime, including for child victims of sexual abuse. These rights include the right to information, the rights to support and protection in accordance with victims' individual needs, a set of procedural rights and a right to a decision on compensation from the offender. The proposal for the revision of the Victims' Rights Directive further strengthens the rights of victims of crime in the EU, including strengthening of the right to support and protection for child victims of crime¹⁷. This Directive builds on and is applicable in

¹⁵ COM (2020) 607 of 24 July 2020.

¹⁶ Directive 2012/29 EU of the European Parliament and of the Council of 25 October 2012, establishing minimum standards on the rights, support and protection of victims of crime (OJ L 315, 14.11.2012, p. 57).

¹⁷ COM(2023) 424 final of 12 July 2023.

addition to the Victims' Rights Directive. ⇐ Moreover, the coordination of prosecution of cases of sexual abuse, sexual exploitation of children and child pornography ⇐ sexual abuse material ⇐ ~~will be~~ ⇐ is ⇐ facilitated by the implementation of Council Framework Decision 2009/948/JHA of 30 November 2009 ~~on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings~~¹⁸. ⇐ Where prosecution of such cases falls within jurisdiction of more than one Member State, the Member States concerned should cooperate to determine which Member State is best placed to prosecute. Where the competent authorities of the Member States concerned decide, following cooperation or direct consultations under Council Framework Decision 2009/948/JHA¹⁹, to centralise criminal proceedings in a single Member State through the transfer of criminal proceedings, the Regulation (EU) .../... [proposed Regulation on the transfer of proceedings in criminal matters]²⁰ should be used for such a transfer. ⇐

↓ 2011/93/EU recital 5 (adapted)

- (6) In accordance with Article 34 of the United Nations Convention on the Rights of the Child, States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. The 2000 United Nations Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and, in particular, the 2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse are crucial steps in the process of enhancing international cooperation in this field.
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↓ 2011/93/EU recital 6 (adapted)
⇐ new

- (7) Serious criminal offences such as the sexual exploitation of children and pornography ⇐ 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 online technologies. For that purpose, the current legal framework needs to be updated, in order to ensure it remains effective ⇐. 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. ~~Framework Decision 2004/68/JHA should be replaced by a new instrument providing such comprehensive legal framework to achieve that purpose.~~

¹⁸ Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42, ELI: http://data.europa.eu/eli/dec_framw/2009/948/oj.

¹⁹ Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42, ELI: http://data.europa.eu/eli/dec_framw/2009/948/oj.

²⁰ COM(2023) 185 final.

↓ 2011/93/EU recital 7 (adapted)
⇒ new

- (8) This Directive should be fully complementary with Directive 2011/36/EU of the European Parliament and of the Council ~~of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA~~²¹, as some victims of human trafficking have also been child victims of sexual abuse or sexual exploitation.

↓ 2011/93/EU recital 8 (adapted)

- (9) In the context of criminalising acts related to ~~pornographic~~ ⇒ child sexual abuse ⇐ performance, this Directive refers to such acts which consist of an organised live exhibition, aimed at an audience, thereby excluding personal face-to-face communication between consenting peers, as well as children over the age of sexual consent and their partners from the definition.

↓ 2011/93/EU recital 9 (adapted)
⇒ new

- (10) Child ~~pornography~~ ⇒ sexual abuse material ⇐ frequently includes images recording the sexual abuse of children by adults. It may also include images of children involved in sexually explicit conduct, or of their sexual organs, 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 ~~pornography~~ ⇒ 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 ⇒, as well as so-called 'paedophile manuals' ⇐ .

⇓ new

- (11) Research has shown that limiting the dissemination of child sexual abuse material is not only crucial to avoid the re-victimisation linked to the circulation of images and videos of the abuse but is also essential as a form of offender-side prevention, as accessing child sexual abuse material is often the first step towards hands-on abuse, regardless of whether it depicts real or simply realistic abuse and exploitation. The ongoing development of artificial intelligence applications capable of creating realistic images that are indistinguishable from real images, the number of so-called 'deep-fake' images and videos depicting child sexual abuse is expected to grow exponentially in the coming years. In addition, the development of augmented, extended and virtual reality settings making use of avatars including sensory feedback, e.g. through devices providing a perception of touch are not fully covered by the

²¹ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1, ELI: <http://data.europa.eu/eli/dir/2011/36/oj>)

existing definition. The inclusion of an explicit reference to ‘reproductions and representations’ should ensure that the definition of child sexual abuse material covers these and future technological developments in a sufficiently technology-neutral and hence future-proof way.

- (12) To prevent offences involving the sexual abuse of children, the definition of child sexual abuse material should include so-called ‘paedophile manuals’. Paedophile manuals provide advice on how to find, groom and abuse children and avoid being identified and prosecuted. By lowering barriers and providing the necessary know-how, they contribute to inciting offenders and support the commission of sexual abuse. Their online dissemination has already led certain Member States to amend their criminal law and explicitly criminalise possession and distribution of such manuals. The lack of harmonisation creates an uneven level of protection across the EU.

↓ 2011/93/EU recital 10

- (13) Disability, by itself, does not automatically constitute an impossibility to consent to sexual relations. However, the abuse of the existence of such a disability in order to engage in sexual activities with a child should be criminalised.

↓ 2011/93/EU recital 11
(adapted)

- (14) In adopting legislation on substantive criminal law, the Union should ensure consistency of such legislation in particular with regard to the level of penalties. ~~The Council conclusions of 24 and 25 April 2002 on the approach to apply regarding approximation of penalties, which indicate four levels of penalties, should be kept in mind in the light of the Lisbon Treaty.~~ This Directive, because it contains an exceptionally high number of different offences, requires, in order to reflect the various degrees of seriousness, a differentiation in the level of penalties which goes further than what should usually be provided in Union legal instruments.

↓ 2011/93/EU recital 12
(adapted)
⇒ new

- (15) Serious forms of sexual abuse and sexual exploitation of children should be subject to effective, proportionate and dissuasive penalties. This includes, in particular, various forms of sexual abuse and sexual exploitation of children which are facilitated by the use of information and communication technology, such as the online solicitation of children for sexual purposes via social networking websites and chat rooms. The definition of child ~~pornography~~ ⇒ sexual abuse material ⇐ should also be clarified and brought closer to that contained in international instruments. ⇒ More broadly, the terminology used in this Directive should be brought into line with recognised international standards such as the Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse adopted by the Interagency Working Group in Luxembourg on 28 January 2016. ⇐

↓ 2011/93/EU recital 13

- (16) The maximum term of imprisonment provided for in this Directive for the offences referred to therein should apply at least to the most serious forms of such offences.

↓ 2011/93/EU recital 14
(adapted)

- (17) In order to reach the maximum term of imprisonment provided for in this Directive for offences concerning sexual abuse and sexual exploitation of children and child ~~pornography~~ ⇒ sexual abuse material ⇐, Member States may combine, taking into account their national law, the imprisonment terms provided for in national legislation in respect of those offences.

↓ 2011/93/EU recital 15
(adapted)

- (18) This Directive ⇒ should ⇐ ~~oblige~~ Member States to provide for criminal penalties in their national legislation in respect of the provisions of Union law on combating sexual abuse ⇒ and ⇐ ~~sexual exploitation of children and child pornography~~ ⇒ sexual abuse material ⇐. This Directive ⇒ should not ⇐ ~~create~~ ⇐ any ⇐ obligations regarding the application of such penalties, or any other available system of law enforcement, in individual cases.

↓ 2011/93/EU recital 16

- (19) Especially for those cases where the offences referred to in this Directive are committed with the purpose of financial gain, Member States are invited to consider providing for the possibility to impose financial penalties in addition to imprisonment.

↓ 2011/93/EU recital 17
(adapted)

- (20) In the context of child ~~pornography~~ ⇒ sexual abuse material ⇐, the term ⇒ ‘not be considered to be committed ⇐ ‘without right’ allows Member States to provide a defence in respect of conduct relating to ~~pornographic~~ material ⇒ that could constitute child sexual abuse material ⇐ having, for example, a medical, scientific or similar purpose. It also allows activities carried out under domestic legal powers, such as the legitimate possession of child ~~pornography~~ ⇒ sexual abuse material ⇐ by the authorities in order to conduct criminal proceedings or to prevent, detect or investigate crime ⇒, or activities carried out by organisations acting in the public interest against child sexual abuse, when these organisations have been authorised by the competent authorities of the Member State in which they are established. These activities include, in particular, the reception, analysis and creation of reports of suspected child sexual abuse material, including the determination of the location where the material referred

to in the reports is hosted, submitted to them by online users or other organisations acting in the public interest against child sexual abuse, as well as carrying out searches to detect the dissemination of child sexual abuse material \Leftarrow . Furthermore, \Rightarrow the term ‘without right’ \Leftarrow does not exclude legal defences or similar relevant principles that relieve a person of responsibility under specific circumstances, ~~for example where telephone or Internet hotlines carry out activities to report those cases.~~

↓ 2011/93/EU recital 18
(adapted)

- (21) Knowingly obtaining access, by means of information and communication technology, to child ~~pornography~~ \Rightarrow sexual abuse material \Leftarrow should be criminalised. To be liable, the person should both intend to enter \Rightarrow an online location \Leftarrow ~~a site where child pornography~~ \Rightarrow sexual abuse material \Leftarrow is available and know that such \Rightarrow material \Leftarrow ~~images~~ can be found there. Penalties should not be applied to persons inadvertently accessing ~~sites~~ \Rightarrow online locations \Leftarrow containing child ~~pornography~~ \Rightarrow sexual abuse material \Leftarrow . The intentional nature of the offence may notably be deduced from the fact that it is recurrent or that the offence was committed via a service in return for payment.
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↓ 2011/93/EU recital 19
(adapted)
 \Rightarrow new

- (22) Solicitation of children for sexual purposes is a threat with specific characteristics in the context of the Internet, as the latter provides unprecedented anonymity to users because they are able to conceal their real identity and personal characteristics, such as their age. \Rightarrow In the last decade, the use of information and communication technologies has provided offenders with increasingly easy access to children, where the contact often starts with the offender luring the child, for example by pretending to be a peer or with other deceitful or flattering conduct, into compromising situations. This increased access to children has led to the rapid growth of phenomena such as ‘sextortion’ (i.e. the conduct of threatening to share intimate material depicting the victim to obtain money, child sexual abuse material or any other benefit), affecting children both below and above the age of sexual consent. There has been a surge in recent years of financially motivated sextortion by organised crime groups that target in particular teenage boys, which have led to multiple cases of those children taking their lives. It is therefore essential that all these phenomena are appropriately covered in Member States’s law. \Leftarrow At the same time, Member States acknowledge the importance of also combating the solicitation of a child outside the context of the Internet, in particular where such solicitation is not carried out by using information and communication technology. Member States are encouraged to criminalise the conduct where the solicitation of a child to meet the offender for sexual purposes takes place in the presence or proximity of the child, for instance in the form of a particular preparatory offence, attempt to commit the offences referred to in this Directive or as a particular form of sexual abuse. Whichever legal solution is chosen to criminalise ‘off-line grooming’, Member States should ensure that they prosecute the perpetrators of such offences.

↓ new

- (23) In light of recent technological developments and, in particular, of the development of augmented, extended and virtual reality settings, the criminalisation of the solicitation of children should not be limited to voice, text or mail conversations, but also include contacts or exchanges in augmented, extended or virtual reality settings, as well as large-scale solicitation of children through the use of chat-bots trained for that purpose, as this phenomenon is itself expected to increase in light of the foreseeable evolution of artificial intelligence applications. Therefore “by means of information and communication technology” should be understood in a sufficiently broad way to cover all those technological developments.
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↓ 2011/93/EU recital 20
(adapted)
⇒ new

- (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. ~~These issues fall outside of the scope of this Directive.~~ Member States which avail themselves of the possibilities referred to in this Directive do so in the exercise of their competences. ⇒ More particularly, Member States should be able to exempt from criminalisation consensual sexual activities involving exclusively children above the age of sexual consent, as well as consensual sexual activities involving peers. The amendments to that Article are intended to clarify the scope of the derogation, in light of the fact that some Member States appear to have interpreted its original wording too broadly (e.g. by exempting from criminalisation consensual activities between minors above the age of consent and adults of any age, considered to be ‘peers’ despite a significant age difference). ⇐
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↓ 2011/93/EU recital 21

- (25) Member States should provide for aggravating circumstances in their national law in accordance with the applicable rules established by their legal systems on aggravating circumstances. They should ensure that those aggravating circumstances are available for judges to consider when sentencing offenders, although there is no obligation on judges to apply those aggravating circumstances. The aggravating circumstances should not be provided for in Member States’ law when irrelevant taking into account the nature of the specific offence. The relevance of the various aggravating circumstances provided for in this Directive should be evaluated at national level for each of the offences referred to in this Directive.

↓ 2011/93/EU recital 22

- (26) Physical or mental incapacity under this Directive should be understood as also including the state of physical or mental incapacity caused by the influence of drugs and alcohol.
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↓ 2011/93/EU recital 23
(adapted)
⇒ new

- (27) In combating sexual exploitation of children, full use should be made of existing instruments on the seizure and confiscation of the proceeds of crime, such as the United Nations Convention against Transnational Organized Crime²² and the Protocols thereto, the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime²³, and Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime Related Proceeds, Instrumentalities and Property²⁴ ⇒ , and Directive [.../.../...] of the European Parliament and of the Council²⁵ ⇐. The use of seized and confiscated instrumentalities and the proceeds from the offences referred to in this Directive to support victims' assistance and protection should be encouraged.
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↓ 2011/93/EU recital 24
(adapted)
⇒ new

- (28) Secondary victimisation should be avoided for victims of offences referred to in this Directive. ⇒ For example, and without affecting the safeguards provided for in Directive (EU) 2016/800 of the European Parliament and of the Council²⁶, in ⇐ ~~In~~ Member States where prostitution or the appearance in pornography is punishable under national criminal law, it should be possible not to prosecute or impose penalties under those laws where the child concerned has committed those acts as a result of being victim of sexual exploitation or where the child was compelled to participate in child ~~pornography~~ ⇒ sexual abuse material. The term “compelled” should be

²² OJ L 261, 6.8.2004, p. 70

²³ Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (OJ L 182, 5.7.2001, p. 1, ELI: http://data.europa.eu/eli/dec_framw/2001/500/oj)

²⁴ Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime Related Proceeds, Instrumentalities and Property (OJ L 68, 15.3.2005, p. 49, ELI: http://data.europa.eu/eli/dec_framw/2005/212/oj).

²⁵ COM(2022) 245 of 25.5.2022.

²⁶ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1, ELI: <http://data.europa.eu/eli/dir/2016/800/oj>).

understood in this case as covering also situations where the child has been lured to act, without having been forced or coerced, in addition to situations where the child was forced or coerced to act. ↩

↓ 2011/93/EU recital 25

- (29) As an instrument of approximation of criminal law, this Directive provides for levels of penalties which should apply without prejudice to the specific criminal policies of the Member States concerning child offenders.
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↓ 2011/93/EU recital 26
(adapted)

- (30) Investigating offences and bringing charges in criminal proceedings should be facilitated, to take into account the difficulty for child victims of denouncing sexual abuse and the anonymity of offenders in cyberspace. To ensure successful investigations and prosecutions of the offences referred to in this Directive, their initiation should not depend, in principle, on a report or accusation made by the victim or by his or her representative. ~~The length of the sufficient period of time for prosecution should be determined in accordance with national law.~~
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↓ new

- (31) Victims of sexual abuse and sexual exploitation of children are often unable to report the crime for several 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.
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↓ 2011/93/EU recital 27
(adapted)
⇒ new

- (32) Effective investigatory tools should be made available to those responsible for the investigation and prosecutions of the offences referred to in this Directive. Those tools could include interception of communications, covert surveillance including electronic surveillance, monitoring of bank accounts or other financial investigations, taking into account, inter alia, the principle of proportionality and the nature and seriousness of the offences under investigation. ~~Where appropriate, and in~~ ⇒ In ↩ accordance with national law, such tools should also include the possibility for law enforcement

authorities to use a concealed identity on the Internet ⇨ and to distribute, under judicial supervision, child sexual abuse material. Requiring Member States to enable the use of these investigative techniques is essential to ensure the effective investigation and prosecution of offences involving sexual abuse and sexual exploitation of children. As those are, in most cases, facilitated or enabled by online tools and are therefore intrinsically cross-border, undercover operations and the use of so-called ‘honeypots’ have proven to be particularly effective investigative tools in relation to child sexual abuse and child sexual exploitation offences. To ensure effective investigation and prosecution, Member States’ competent authorities should also cooperate through and with Europol and Eurojust, within their respective competences and in accordance with the applicable legal framework. These competent authorities should also share information among each other and with the Commission on issues encountered in investigations and prosecutions. ⇨

⇩ new

- (33) Some forms of online child sexual abuse, such as the live streaming of abuse of children, often committed physically by persons present in third countries at the request of paying perpetrators in the EU, create particular investigative challenges, as the streamed abuse does not usually leave images or recorded traces behind. Cooperation with financial services defined in Article 2, point (b), of Directive 2002/65/EC of the European Parliament and of the Council²⁷ and other relevant service providers can be crucial to overcome challenges in investigating and prosecuting such offences. Hence, 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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⇩ 2011/93/EU recital 28
(adapted)
⇨ new

- (34) Member States should encourage any person who has knowledge or suspicion of the sexual abuse or sexual exploitation of a child to report to the competent services. ⇨ In particular, Member States should make available information to children about the possibility to report the abuse, including to helplines. ⇨ It is the responsibility of each Member State to determine the competent authorities to which such suspicions may be reported. Those competent authorities should not be limited to child protection services or relevant social services. The requirement of suspicion ‘in good faith’

²⁷ Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC (OJ L 271, 9.10.2002, p. 16, ELI: <http://data.europa.eu/eli/dir/2002/65/oj>).

should be aimed at preventing the provision being invoked to authorise the denunciation of purely imaginary or untrue facts carried out with malicious intent.

↓ 2011/93/EU recital 29
(adapted)
⇒ new

- (35) Rules on jurisdiction should be amended to ensure that sexual abusers or sexual exploiters of children from the Union face prosecution even if they commit their crimes outside the Union, in particular via so-called sex tourism. ⇒ The sexual exploitation of children in travel and tourism ⇐ ~~Child sex tourism~~ should be understood as the sexual exploitation of children by a person or persons who travel from their usual environment to a destination abroad where they have sexual contact with children. Where ~~child sex tourism~~ ⇐ the sexual exploitation of children in travel and tourism ⇐ takes place outside the Union, Member States are encouraged to seek to increase, through the available national and international instruments including bilateral or multilateral treaties on extradition, mutual assistance or a transfer of the proceedings, cooperation with third countries and international organisations with a view to combating sex tourism. Member States should foster open dialogue and communication with countries outside the Union in order to be able to prosecute perpetrators, under the relevant national legislation, who travel outside the Union borders for the purposes of ⇐ the sexual exploitation of children in travel and tourism ⇐ ~~child sex tourism~~.
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↓ 2011/93/EU recital 30
⇒ new

- (36) Measures to protect child victims in a comprehensive manner should be adopted in their best interest, taking into account an assessment of their needs. Effective child protection requires a whole of society approach. With the child at the centre, all relevant authorities and services should work together to protect and support the child, in their best interests. ⇒ The “Barnahus” model of providing a child-friendly environment staffed with specialists from all relevant disciplines is currently the most advanced example of a child-friendly approach to justice and to avoiding revictimisation. The relevant provisions of this Directive are built on the principles of that model. That model aims to ensure that all children involved in child abuse or child sexual exploitation investigations benefit from a high-quality assessment in child-friendly settings, appropriate psychosocial support and child protective services. This Directive attempts to ensure that all Member States uphold these principles, although it does not require the Member States to follow the Barnahus model as such. Where medical examinations of the child are necessary for the purposes of the criminal investigations, for example to gather evidence of abuse, these should be limited to the strictly necessary in order to limit retraumatisation. This obligation should not prevent other medical examinations necessary for the well-being of the child. ⇐ Child victims should have easy access to ⇐ child friendly justice, ⇐ legal remedies and measures to address conflicts of interest where sexual abuse or sexual exploitation of a child occurs within the family. When a special representative should be appointed for a child during a criminal investigation or proceeding, this role may be also carried out by a

legal person, an institution or an authority. Moreover, child victims should be protected from penalties, for example under national legislation on prostitution, if they bring their case to the attention of competent authorities. Furthermore, participation in criminal proceedings by child victims should not cause additional trauma to the extent possible, as a result of interviews or visual contact with offenders. ⇒ All authorities involved in the proceedings should be trained in child friendly justice. ⇐ A good understanding of children and how they behave when faced with traumatic experiences will help to ensure a high quality of evidence-taking and also reduce the stress placed on children when carrying out the necessary measures. ⇒ Where child victims participate in criminal proceedings, the court should take full account of their age and maturity in conducting the proceedings and should ensure that the proceedings are accessible and understandable to the child. ⇐

↓ 2011/93/EU recital 31

⇒ new

- (37) Member States should ~~consider giving~~ ⇒ provide tailored and comprehensive ⇐ short- and long-term assistance to child victims. Any harm caused by the sexual abuse and sexual exploitation of a child is significant and should be addressed ⇒ as soon as possible after the first contact of the victim with the authorities. Immediate assistance to victims before and during criminal investigations and proceedings is essential to limit the long-term trauma linked to the abuse suffered. To facilitate the swift provision of assistance, including the identification of the relevant support services, Member States should issue guidelines and protocols for healthcare, education and social service professionals, including the staff at helplines ⇐. Because of the nature of the harm caused by sexual abuse and sexual exploitation, such assistance should continue for as long as necessary for the child's physical and psychological recovery and may last into adulthood if necessary. Assistance and advice should be considered to be extended to parents ⇒, carers ⇐ or guardians of the child victims where they are not involved as suspects in relation to the offence concerned, in order to help them to assist child victims throughout the proceedings.
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↓ new

- (38) The trauma arising from sexual abuse and sexual exploitation of children often lasts well into adulthood, entailing long-term effects which often prevent victims from reporting the offence and from seeking assistance and support for years or even decades. Therefore, Member States should provide tailored and comprehensive short- and long-term assistance not only to child victims, but also to adult survivors of child sexual abuse and sexual exploitation.

↓ 2011/93/EU recital 32
(adapted)
⇒ new

- (39) ~~Framework Decision 2001/220/JHA~~ ⇒ Directive 2012/29/EU establishes a set of victims' rights in criminal proceedings, including the right to protection and the right to receive a decision on compensation from the offender. The proposal for the revision of the Victims' Rights Directive provides for targeted amendments to all victims' rights. ⇐ In addition ⇒ to the rights established under that Directive, ⇐ child victims of sexual abuse, sexual exploitation and child pornography ⇒ sexual abuse material ⇐ should be given access to legal counselling and, in accordance with the role of victims in the relevant justice systems, to legal representation, including for the purpose of claiming compensation. Such legal counselling and legal representation could also be provided by the competent authorities for the purpose of claiming compensation from the State. The purpose of legal counselling is to enable victims to be informed and receive advice about the various possibilities open to them. Legal counselling should be provided by a person having received appropriate legal training without necessarily being a lawyer. Legal counselling and, in accordance with the role of victims in the relevant justice systems, legal representation should be provided free of charge, at least when the victim does not have sufficient financial resources, in a manner consistent with the internal procedures of Member States.

↓ new

- (40) The EU Centre to prevent and combat child sexual abuse ('EU Centre'), established by Regulation [.../.../EU laying down rules to prevent and combat child sexual abuse]²⁸, should support Member States' prevention and assistance to victims' efforts and obligations under this Directive. It should facilitate the exchange of best practices in the Union and beyond. The EU Centre should encourage dialogue between all relevant stakeholders to help the development of state-of-the-art prevention programmes. Moreover, by cooperating with Member States and contributing to the standardisation of data collection concerning child sexual abuse and sexual exploitation throughout the Union, the EU Centre should be an asset in supporting evidence-based policy on both prevention and assistance to victims. Member States should establish national authorities or equivalent entities as they consider most appropriate according to their internal organisation, taking into account the need for a minimal structure with identified tasks, capable of carrying out assessments of trends in child sexual abuse, of gathering statistics, of measuring the results of actions to prevent and combat child sexual abuse, and of regularly reporting on such trends, statistics and results. Such national authorities should serve as a national contact point and should take an integrative multistakeholder approach in their work. In addition, Member States should establish the necessary mechanisms at national level to ensure effective coordination and cooperation in the development and implementation of measures to prevent and combat child sexual abuse and child sexual exploitation, both online and

²⁸ COM (2022) 209 of 11.5.2022.

offline, among all relevant public and private actors, as well as facilitate cooperation with the EU Centre and the Commission.

- (41) Member States may choose to appoint existing bodies or entities, such as national Coordinating Authorities already designated in accordance with Regulation [.../.../EU *Proposed CSA regulation*], as national authorities or equivalent mechanisms under this Directive, to the extent that this is compatible with the need to ensure that the tasks attributed to them under this Directive are performed effectively and in full.

↓ 2011/93/EU recital 33
(adapted)
⇒ new

- (42) Member States should undertake action to prevent or prohibit acts related to the promotion of child sexual abuse and ⇒ the sexual abuse and sexual exploitation of children in travel and tourism ⇐ ~~child sex tourism~~. Different preventative measures could be considered, such as the drawing up and reinforcement of a code of conduct and self-regulatory mechanisms in the tourism industry, the setting-up of a code of ethics or ‘quality labels’ ⇒ or establishing an explicit policy ⇐ for tourist organisations combating ⇒ the sexual abuse and sexual exploitation of children in travel and tourism ⇐ ~~child sex tourism~~. ⇒ Member States should leverage the tools at their disposal under EU law, national law, and international agreements, for the purpose of preventing the sexual abuse and sexual exploitation of children in travel and tourism through or towards their territory, most notably by taking appropriate action upon reception of relevant information from third countries, including conducting further checks or issuing a refusal of entry in the context of the Regulation (EU) 2018/1861 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks²⁹. ⇐

↓ 2011/93/EU recital 34
(adapted)
⇒ new

- (43) Member States should establish ~~and/or~~ strengthen policies to prevent sexual abuse and sexual exploitation of children, including measures to discourage and reduce the demand that fosters all forms of sexual exploitation of children, and measures to reduce the risk of children becoming victims, by means of, information and awareness-raising campaigns, ⇒ including for parents and carers and society at large, ⇐ and research and education programmes. In such initiatives, Member States should adopt a child-rights based approach. Care should be taken to ensure that awareness-raising campaigns aimed at children are appropriate and sufficiently easy to

²⁹ Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006, OJ L 312, 7.12.2018, p. 14–55, ELI: <http://data.europa.eu/eli/reg/2018/1861/oj>.

understand ⇒ , and tailored to the specific needs of children of different age groups, including pre-school children. Prevention measures should take a holistic approach to the phenomenon of child sexual abuse and sexual exploitation, by addressing its online and offline dimensions and mobilizing all relevant stakeholders. In particular for the online dimension, measures should include the development of digital literacy skills, including critical engagement with the digital world, to help users identify and address attempts of online child sexual abuse, seek support and prevent its perpetration. Particular attention should be paid to prevention of child sexual abuse and sexual exploitation of children that are cared for in a group facility rather than in the context of family-based care. ⇒ Where not already in place, the ⇐ The establishment of ⇒ dedicated ⇐ help-lines or hotlines should be considered.

↓ 2011/93/EU recital 35
(adapted)

- (44) Regarding the system of reporting sexual abuse and sexual exploitation of children and helping children in need, hotlines under the number 116 000 for missing children, 116 006 for victims of crime and 116 111 for helplines for children, as introduced by Commission Decision 2007/116/EC ~~of 15 February 2007 on reserving the national numbering beginning with 116 for harmonised numbers for harmonised services of social value~~³⁰, should be promoted and experience regarding their functioning should be taken into account.
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↓ new

- (45) Organisations acting in the public interest on the fight against child sexual abuse, such as the members of the INHOPE network of hotlines, have been active for years in several Member States, cooperating with law enforcement and providers to facilitate the process of removal and reporting of online child sexual abuse material. This work combats re-victimisation by limiting the spread of illegal material online, and can provide evidence to law enforcement of crimes committed. However, the legal framework in which they operate differs considerably from one Member State to another and is, in many cases, lacking in terms of the identification of the tasks that these organisations can lawfully undertake, as well as of the relevant conditions. Member States should be able to provide an authorisation for these organisations to carry out relevant tasks, and in particular the processing of child sexual abuse material, in which case the processing should not be considered to be “without right”. Such authorisations are encouraged as they increase legal certainty, maximise synergies between national authorities and other actors involved in the fight against child sexual abuse, and support victims’ rights by removing child sexual abuse material from the public digital sphere.

³⁰ Commission Decision 2007/116/EC of 15 February 2007 on reserving the national numbering beginning with 116 for harmonised numbers for harmonised services of social value (OJ L 49, 17.2.2007, p. 30, ELI: [http://data.europa.eu/eli/dec/2007/116\(1\)/oj](http://data.europa.eu/eli/dec/2007/116(1)/oj)).

↓ 2011/93/EU recital 36
(adapted)
⇒ new

- (46) Professionals likely to come into contact with child victims of sexual abuse and sexual exploitation should be adequately trained to identify and deal with such victims. ⇒ To ensure child-friendly justice throughout the investigation and prosecution of child sexual abuse and sexual exploitation cases, that ⇐ ~~The~~ training should be promoted for members of the following categories when they are likely to come into contact with child victims: police officers, public prosecutors, lawyers, members of the judiciary and court officials, child and health care personnel, ⇒ professionals in the education sector, including in early childhood education and care, social services, providers of victim support and restorative justice services, ⇐ but could also involve other groups of persons who are likely to encounter child victims of sexual abuse and sexual exploitation in their work.
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↓ 2011/93/EU recital 37

- (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. 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.
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↓ 2011/93/EU recital 38
(adapted)
⇒ new

- (48) ~~Intervention programmes or measures are not provided as an automatic right.~~ It is for the Member State to decide which intervention programmes or measures are appropriate. ⇒ In the case of persons who fear that they might offend, these programmes or measures should be accessible in line with national standards concerning healthcare. ⇐
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↓ 2011/93/EU recital 39
(adapted)
⇒ new

- (49) To prevent and minimise recidivism, offenders should be subject to an assessment of the danger posed by the offenders and the possible risks of repetition of sexual offences against children. Arrangements for such assessment, such as the type of authority competent to order and carry out the assessment or the moment in or after the criminal proceedings when that assessment should take place as well as arrangements for effective intervention programmes or measures offered following

that assessment should be consistent with the internal procedures of Member States. For the same objective of preventing and minimising recidivism, offenders should also have access to effective intervention programmes or measures on a voluntary basis. Those intervention programmes or measures should not interfere with national schemes set up to deal with the treatment of persons suffering from mental disorders ⇒ health issues and should be accessible and affordable in line with national standards concerning healthcare, for example with regard to their eligibility for reimbursement under the health schemes of the Member States ⇐ .

↓ 2011/93/EU recital 40
(adapted)
⇒ new

- (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 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 ~~are entitled to be informed of~~ ⇒ 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 ~~and/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 ⇐ . 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 part³¹. ⇐

³¹ OJ L 149, 30.4.2021, p. 10,
ELI: [http://data.europa.eu/eli/agree_internation/2021/689\(1\)/oj](http://data.europa.eu/eli/agree_internation/2021/689(1)/oj)
[http://data.europa.eu/eli/agree_internation/2021/689\(1\)/oj](http://data.europa.eu/eli/agree_internation/2021/689(1)/oj).

↓ 2011/93/EU recital 41
(adapted)
⇒ new

- (51) ⇒ In the area of child sexual abuse, the phenomenon of offenders that regain access to children after a conviction or disqualification by moving to another jurisdiction is particularly widespread and worrisome. It is therefore crucial to take all necessary measures to prevent it. ⇐ With due regard to the different legal traditions of the Member States, this Directive takes into account the fact that access to criminal records is allowed only either by the competent authorities or by the person concerned. This Directive does not establish an obligation to modify the national systems governing criminal records or the means of access to those records.

↓ 2011/93/EU recital 42
(adapted)
⇒ new

- (52) ⇒ For information not or not yet available in ECRIS, for example information concerning offending third country nationals until the time Regulation 2019/816 of the European Parliament and of the Council³² is fully implemented, Member States should make use of other channels to provide all relevant information to employers that recruit for a post involving direct and regular contact with children. ⇐ The aim of this Directive is not to harmonise rules concerning consent of the person concerned when exchanging information from the criminal registers, i.e. whether or not to require such consent. Whether the consent is required or not under national law, this Directive does not establish any new obligation to change the national law and national procedures in this respect.

↓ 2011/93/EU recital 43
(adapted)

- (53) Member States may consider adopting additional administrative measures in relation to perpetrators, such as the registration in sex offender registers of persons convicted of offences referred to in this Directive. Access to those registers should be subject to limitation in accordance with national constitutional principles and applicable data protection standards, for instance by limiting access to the judiciary ~~and~~ or law enforcement authorities.

³² Regulation (EU) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System amending Regulation (EU) 2018/1726 (OJ L 135, 22.5.2019, p. 1, ELI: <http://data.europa.eu/eli/reg/2019/816/oj>).

↓ 2011/93/EU recital 44
(adapted)
⇒ new

- (54) Member States ~~are encouraged~~ ⇒ should take the necessary measures ⇐ to create mechanisms for data collection ~~or focal points~~, at the national, local or regional levels and in collaboration with civil society, for the purpose of observing and evaluating the phenomenon of sexual abuse and sexual exploitation of children ⇒, building also on the broader data collection obligations set in the Directive [.../...] [Victims rights Directive, Recast], and Regulation (EU) [Regulation to prevent and combat child sexual abuse] ⇐ In order to be able to properly evaluate the results of actions to combat sexual abuse and sexual exploitation of children and child ~~pornography~~ ⇒ sexual abuse material ⇐, the Union should continue to develop its work on methodologies and data collection methods to produce comparable statistics. ⇒ The EU Centre, as a central knowledge hub on child sexual abuse in the Union, should play a key role in this respect. ⇐

↓ 2011/93/EU recital 45

- (55) Member States should take appropriate action for setting up information services to provide information on how to recognise the signs of sexual abuse and sexual exploitation.

↓ 2011/93/EU recital 46
(adapted)
⇒ new

- (56) Child ~~pornography, which constitutes child sexual abuse images~~, ⇒ sexual abuse material ⇐ is a specific type of content which cannot be construed as the expression of an opinion. To combat it, it is necessary to reduce the circulation of child sexual abuse material by making it more difficult for offenders to upload such content onto the publicly accessible web. Action is therefore necessary to remove the content and apprehend those guilty of making, distributing or downloading child sexual abuse ~~images~~ ⇒ material ⇐. With a view to supporting the Union's efforts to combat child ~~pornography~~ ⇒ sexual abuse material ⇐, Member States should use their best endeavours to cooperate with third countries in seeking to secure the removal of such content from servers within their territory.

↓ new

- (57) Member States' efforts to reduce the circulation of child sexual abuse material, including by cooperating with third countries under this Directive, should not affect Regulation (EU) 2022/2065, Regulation (EU) 2021/1232 and [.../.../ Regulation laying down rules to prevent and combat child sexual abuse]. Online content constituting or facilitating criminal offences referred to in this Directive will be subject

to measures pursuant to Regulation (EU) 2022/2065 of the European Parliament and of the Council³³ as regards illegal content.

↓ 2011/93/EU recital 47
(adapted)
⇒ new

- (58) ~~However, despite~~ ⇒ Despite ⇐ such efforts ⇒ by Member States ⇐ , the removal of child ~~pornography~~ ⇒ sexual abuse material ⇐ at its source is often not possible when the original materials are not located within the Union, either because the State where the servers are hosted is not willing to cooperate or because obtaining removal of the material from the State concerned proves to be particularly long. Mechanisms may also be put in place to block access from the Union's territory to Internet pages identified as containing or disseminating child ~~pornography~~ ⇒ sexual abuse material ⇐ . The measures undertaken by Member States in accordance with this Directive in order to remove or, where appropriate, block websites containing child ~~pornography~~ ⇒ sexual abuse material ⇐ could be based on various types of public action, such as legislative, non-legislative, judicial or other. In that context, this Directive is without prejudice to voluntary action taken by the Internet industry to prevent the misuse of its services or to any support for such action by Member States. Whichever basis for action or method is chosen, Member States should ensure that it provides an adequate level of legal certainty and predictability to users and service providers. Both with a view to the removal and the blocking of child abuse content, cooperation between public authorities should be established and strengthened, particularly in the interests of ensuring that national lists of websites containing child ~~pornography~~ ⇒ sexual abuse material ⇐ are as complete as possible and of avoiding duplication of work. Any such developments must take account of the rights of the end users and comply with existing legal and judicial procedures and the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union. ~~The Safer Internet Programme has set up a network of hotlines the goal of which is to collect information and to ensure coverage and exchange of reports on the major types of illegal content online.~~ ⇒ The EU co-funded network of hotlines³⁴ handles reports of alleged child sexual abuse material reported anonymously by the public and cooperates with law enforcement and industry at national, European and global level to ensure swift removal of this type of content. ⇐

³³ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1

³⁴ Currently under the Digital Europe Programme.

↓ 2011/93/EU recital 48
(adapted)
⇒ new

~~48. This Directive aims to amend and expand the provisions of Framework Decision 2004/68/JHA. Since the amendments to be made are of substantial number and nature, the Framework Decision should, in the interests of clarity, be replaced in its entirety in relation to Member States participating in the adoption of this Directive.~~

↓ 2011/93/EU recital 49
(adapted)
⇒ new

(59) Since the objective of this Directive, namely to combat child sexual abuse, sexual exploitation of children and child ~~pornography~~ ⇒ sexual abuse material ⇐, cannot be sufficiently achieved by the Member States ~~alone and~~ ⇒ but ⇐ can ⇒ rather ⇐ ~~therefore~~, by reasons of the scale and effects ⇒ of the action ⇐, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality³ as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

↓ 2011/93/EU recital 50

(60) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and in particular the right to the protection of human dignity, the prohibition of torture and inhuman or degrading treatment or punishment, the rights of the child, the right to liberty and security, the right to freedom of expression and information, the right to the protection of personal data, the right to an effective remedy and to a fair trial and the principles of legality and proportionality of criminal offences and penalties. This Directive seeks to ensure full respect for those rights and principles and must be implemented accordingly.

↓ 2011/93/EU recital 51(adapted)

~~51. In accordance with Article 3 of the Protocol (No 21) on the position of United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Directive.~~

↓ new

- (61) [In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified [, by letter of ...] its wish to take part in the adoption and application of this Directive.]

OR

[In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application.]

↓ 2011/93/EU recital 52
(adapted)

- (62) In accordance with Articles 1 and 2 of ~~the~~ Protocol ~~(No 22)~~ on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

↓ new

- (63) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.
- (64) This Directive should be 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.

↓ 2011/93/EU (adapted)
⇒ new

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of sexual abuse and sexual exploitation of children, child pornography ⇒ sexual abuse material ⇐ and solicitation of children for sexual purposes. It also introduces

provisions to strengthen the prevention of those ~~crimes~~ ⇒ criminal offences ⇐ and the protection of the victims thereof.

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;
- (3) ‘child ~~pornography~~ ⇒ sexual abuse material ⇐ ’ means:
 - (a) any material that visually depicts a child engaged in real or simulated sexually explicit conduct;
 - (b) depiction of the sexual organs 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 of any person appearing to be a child, for primarily sexual purposes; ~~or~~
 - (d) realistic images ⇒, reproductions or representations ⇐ of a child engaged in sexually explicit conduct or ~~realistic images~~ of the sexual organs of a child, for primarily sexual purposes;

↓ new

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- (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;

↓ 2011/93/EU (adapted)

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- (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) ‘~~pornographic~~ ⇒ child sexual abuse ⇐ performance’ means a live exhibition aimed at an audience, 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 of a child for primarily sexual purposes;

- (6) ‘legal person’ means an entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations;³⁵
-

↓ new

- (7) ‘information society service’ means a service as defined in Article 1, point (b), of Directive (EU) 2015/1535³⁵.
- (8) ‘peers’ means persons who are close in age and degree of psychological and physical development or maturity.
-

↓ 2011/93/EU (adapted)
⇒ new

Article 3

Offences concerning sexual abuse

1. Member States shall take the necessary measures to ensure that the conduct referred to in paragraphs 2 to 8 is punishable.
2. Causing, for sexual purposes, a child who has not reached the age of sexual consent to witness sexual activities, even without having to participate, shall be punishable by a maximum term of imprisonment of at least 1 year.
3. Causing, for sexual purposes, a child who has not reached the age of sexual consent to witness sexual abuse, even without having to participate, shall be punishable by a maximum term of imprisonment of at least 2 years.
4. Engaging in sexual activities with a child who has not reached the age of sexual consent or causing the child to engage in sexual activities with another person shall be punishable by a maximum term of imprisonment of at least 8 years.
5. Engaging in sexual activities with a child, where:
 - (a) abuse is made of a recognised position of trust, authority or influence over the child, shall be punishable by a maximum term of imprisonment of at least 10 years if the child has not reached the age of sexual consent, and of at least 6 years of imprisonment, if the child is over that age; or
 - (b) abuse is made of a particularly vulnerable situation of the child, in particular because of a mental or physical disability or a situation of dependence, shall be
- 6.

³⁵ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification), OJ L 241, 17.9.2015, p. 1–15.

punishable by a maximum term of imprisonment of at least 8 ⇨ 10 ⇨ years if the child has not reached the age of sexual consent, and of at least 3 ⇨ 6 ⇨ 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~~ ⇨ 12 ⇨ 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 ~~10~~ ⇨ 12 ⇨ 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.
-

⇩ new

7. The following intentional conduct shall be punishable by a maximum term of imprisonment of at least 12 years:
- (a) engaging with a child below the age of sexual consent in any act of vaginal, anal or oral penetration of a sexual nature, with any bodily part or object;
 - (b) causing a child below the age of sexual consent to engage with another person in any act of vaginal, anal or oral penetration of a sexual nature, with any bodily part or object.
8. 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 10 years.
9. For the purpose of paragraph 8, Member States shall ensure that:
- (a) a non-consensual act is understood as an act which is performed without the child's consent given voluntarily, as a result of the child's free will assessed in the context of the surrounding circumstances, or where the child is unable to form a free will due to the presence of circumstances referred to in paragraph 5, or due to other circumstances, including the child's physical or mental condition such as a state of unconsciousness, intoxication, freezing, illness or bodily injury;
 - (b) the consent can be withdrawn at any moment before and during the act;
 - (c) the absence of consent cannot be refuted exclusively by the child's silence, verbal or physical non-resistance or past sexual conduct.

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 ~~pornographic~~ ⇒ 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 ~~pornographic~~ ⇒ 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 ~~pornographic~~ ⇒ child sexual abuse ⇐ performances involving the participation of a child shall be punishable by a maximum term of imprisonment of at least 2 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 ⇐ ~~child~~ 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 ⇐ ~~child~~ 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.
7. Engaging in sexual activities with a child, where recourse is made to ⇒ exploitation in ⇐ ~~child~~ prostitution shall be punishable by a maximum term of imprisonment of at least ~~5~~ ⇒ 8 ⇐ years if the child has not reached the age of sexual consent, and of at least ~~2~~ ⇒ 4 ⇐ years of imprisonment if the child is over that age.

Article 5

Offences concerning child ~~pornography~~ ⇨ 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 ~~pornography~~ ⇨ sexual abuse material ⇨ shall be punishable by a maximum term of imprisonment of at least 1 year.
 3. Knowingly obtaining access, by means of information and communication technology, to child ~~pornography~~ ⇨ sexual abuse material ⇨ shall be punishable by a maximum term of imprisonment of at least 1 year.
 4. Distribution, dissemination or transmission of child ~~pornography~~ ⇨ sexual abuse material ⇨ shall be punishable by a maximum term of imprisonment of at least 2 years.
 5. Offering, supplying or making available child ~~pornography~~ ⇨ sexual abuse material ⇨ shall be punishable by a maximum term of imprisonment of at least 2 years.
 6. Production of child ~~pornography~~ ⇨ sexual abuse material ⇨ shall be punishable by a maximum term of imprisonment of at least 3 years.
-

⇩ new

7. For the purposes of paragraph 1, the conducts referred to in paragraph 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 established in a Member State acting in the public interest against child sexual abuse that has been authorised by competent authorities of that Member State when such actions were carried out in accordance with the conditions set out in such authorisation.

These conditions may include the requirement that the organisations that receive such authorisations have the necessary expertise and 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 make use of secure channels of communication to carry out the actions covered by the authorisation.

8. Member States shall ensure that authorisations for an organisation acting in the public interest against child sexual abuse referred to in paragraph 7 allow some or all of the following activities to:
 - a. receive and analyse 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. promptly notify the relevant law enforcement authority of the Member State where the material is hosted of reported illegal content;
- c. collaborate 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.

↓ 2011/93/EU (adapted)
 ⇨ new

- 9. It shall be within the discretion of Member States to decide whether this Article applies to cases involving child ~~pornography~~ ⇨ sexual abuse material ⇨ as referred to in Article 2 ⇨, point (3)(c) ⇨ ~~(e)(iii)~~, where the person appearing to be a child was in fact 18 years of age or older at the time of depiction.
- 10. ~~It shall be within the discretion of Member States to decide whether paragraphs 2 and 6 of this Article apply to cases where it is established that pornographic material as referred to in Article 2 (e)(iv) is produced and possessed by the producer solely for his or her private use in so far as no pornographic material as referred to in Article 2 (e)(i), (ii) or (iii) has been used for the purpose of its production and provided that the act involves no risk of dissemination of the material.~~

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) ~~the proposal~~ ⇨ proposing ⇨, by means of information and communication technology, ~~by an adult~~ 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;

↓ new

- (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.
-

↓ 2011/93/EU (adapted)

⇒ new

2. 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 5(2) and (3) by an adult soliciting a child ~~who has not reached the age of sexual consent~~ to provide child pornography ⇒ sexual abuse material ⇐ ~~depicting that child~~ is punishable ⇒ by a maximum term of imprisonment of at least 6 months ⇐ .
-

↓ new

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 7

Solicitation of sexual abuse

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 any of the offences listed in Article 3(4), (5),(6), (7), and (8), Article 4(2) and (3) and Article 5(6) is punishable by a maximum term of imprisonment of at least 3 years.

Article 8

Operation of an online service for the purpose of child sexual abuse or sexual exploitation

Member States shall take the necessary measures to ensure that intentionally operating or administering an information society service which is conceived to facilitate or encourage the commission of any of the offences referred to in Articles 3 to 7 is punishable by a maximum term of imprisonment of at least 1 year.

↓ 2011/93/EU (adapted)

⇒ new

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 6 ⇒ 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), (5) ~~and~~ ⇐ , ⇐ (6), ⇐ (7) and (8), ⇐ Article 4(2), (3), (5), (6) and (7), ~~and~~ Article 5(4), (5) and (6) ⇐ , Article 7 and Article 8 ⇐ is punishable.

Article 10

Consensual sexual activities

1. It shall be within the discretion of Member States to decide whether Article 3(2) and (4) apply to consensual sexual activities between peers, ~~who are close in age and degree of psychological and physical development or maturity~~, in so far as the acts did not involve any abuse.
2. It shall be within the discretion of Member States to decide whether Article 4(4) applies to a ~~pornographic~~ performance that takes place in the context of a consensual relationship where the child has reached the age of sexual consent or between peers ~~who are close in age and degree of psychological and physical development or maturity~~, 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 ~~pornographic~~ 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 ~~involving~~ ⇐ which exclusively involves:
 - (a) ⇐ children who have reached the age of sexual consent ⇐, or ⇐

↓ new

(b) children above the age of sexual consent and their peers,

↓ 2011/93/EU (adapted)
⇒ new

where that material is produced and possessed with the consent of ~~those~~ ⇒ the ⇐ children ⇒ involved ⇐ and only for the private use of the persons involved, in so far as the acts did not involve any abuse.

↓ new

4. It shall be within the discretion of Member States to decide whether Article 6 applies to proposals, conversations, contacts or exchanges between peers.
 5. For the purpose of paragraphs 1 to 4, a child above the age of sexual consent can be considered as having consented to an activity only where the consent was given voluntarily, as result of the child's free will assessed in the context of the surrounding circumstances.
Consent can be withdrawn at any moment.
The absence of consent cannot be refuted exclusively by the child's silence, verbal or physical non-resistance or past conduct.
 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.
-

↓ 2011/93/EU (adapted)
⇒ new

Article 11

Aggravating circumstances

In so far as the following circumstances do not already form part of the constituent elements of the offences referred to in Articles 3 to ⇒ 9 ⇐ 7, Member States shall take the necessary measures to ensure that the following circumstances may, in accordance with the relevant provisions of national law, be regarded as aggravating circumstances, in relation to the relevant offences referred to in Articles 3 to ⇒ 9 ⇐ 7:

- (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 ⇨, ⇩ ~~or~~ 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 ~~of 24 October 2008 on the fight against organised crime~~³⁶;
- (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;~~or~~
- (g) the offence involved serious violence or caused serious harm to the child ⇨; ⇩₃

⇩ new

- (h) the offence was committed repeatedly;
- (i) the offence was committed with the use or threat of using a weapon; ⇨ or ⇩
- (j) the offence was committed by causing the victim to take, use or be affected by drugs, alcohol or other intoxicating substances.

⇩ 2011/93/EU (adapted)
⇨ new

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 ⇩ ~~7~~ may be temporarily or permanently prevented from exercising at least professional 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 or 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 ~~entitled~~ ⇨ required ⇩ to 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.

³⁶ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, OJ L 300, 11.11.2008, p. 42.

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, ~~that, for the application of paragraphs 1 and 2 of this Article~~ transmission of information concerning the existence of criminal convictions for any of the offences referred to in Articles 3 to 7 ⇨ 9 ⇨, or of any disqualification from exercising activities involving direct and regular contacts with children arising from those criminal convictions, ~~is transmitted in accordance with the procedures set out in Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (13) when requested under Article 6 of that Framework Decision with the consent of the person concerned,~~ ⇨, 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. ⇨
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↓ 2011/93/EU (adapted)

~~Article 11~~

~~Seizure and confiscation~~

~~Member States shall take the necessary measures to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in Articles 3, 4 and 5.~~

Article 13

Liability of legal persons

1. Member States shall take the necessary measures to ensure that legal persons may be held liable for any of the offences referred to in Articles 3 to ⇨ 9 ⇨ 7 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within 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 also take the necessary measures to ensure that legal persons may be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission, by a person under its authority, of any of the offences referred to in Articles 3 to ⇨ 9 ⇨ 7 for the benefit of that legal person.

3. Liability of legal persons under paragraphs 1 and 2 shall be without prejudice to criminal proceedings against natural persons who are perpetrators, inciters or accessories to the offences referred to in Articles 3 to ~~9~~ ~~7~~.
-

Article 14

Sanctions on legal persons

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article ~~12(1)~~ ~~13~~ is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:
- (a) exclusion from entitlement to public benefits or aid;
 - (b) ~~exclusion from access to public funding, including tender procedures, grants and concessions;~~
 - (c) temporary or permanent disqualification from the practice of commercial 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.
2. ~~Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 12(2) is punishable by sanctions or measures which are effective, proportionate and dissuasive.~~
-

↓ new

2. Member States shall take the necessary measures to ensure that, for legal persons held liable pursuant to Article 13, offences punishable by a maximum term of imprisonment of at least 2 years for natural persons are punishable by fines whose maximum level should be not less than 1 percent of the total worldwide turnover of the legal person in the business year preceding the fining decision.
3. Member States shall take the necessary measures to ensure that, for legal persons held liable pursuant to Article 13, offences punishable by a maximum term of imprisonment of at least 3 years for natural persons are punishable by fines, whose maximum level should be not less than 5 percent of the total worldwide turnover of the legal person in the business year preceding the fining decision.
-

↓ 2011/93/EU (adapted)

⇒ new

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 in Article 5 ⇒ (4), (5) and ⇐ (6).

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 7 ⇒ 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. Member States shall take the necessary measures to enable the prosecution of any of the offences referred to in Article 3, Article 4(2), (3), (5), (6) and (7) ~~and~~ ⇒ , ⇐ of any serious offences referred to in Article 5(6) when child pornography ⇒ sexual abuse material ⇐ as referred to in Article 2 ⇒ , points (3)(a) and (b) ⇐ ~~(c)(i) and (ii)~~ has been used, ⇒ and of any of the offences referred to in Articles 7 and 8 ⇐ , 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.

↓ new

This period of time referred to in the first subparagraph shall be:

- (a) at least 20 years from the date the victim has reached the age of majority for the offences punishable under this Directive by a maximum penalty of at least 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;
- (c) at least 30 years from the date the victim has reached the age of majority for the offences punishable under this Directive by a maximum penalty of at least 8 years of imprisonment.

↓ 2011/93/EU

⇒ new

3. Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases are available to persons, units or services responsible for investigating or prosecuting offences referred to in Articles 3 to 9 ~~7~~.
-

↓ new

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, 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.
-

↓ 2011/93/EU (adapted)

⇒ new

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 ~~7~~, in particular by analysing child ~~pornography~~ ⇒ sexual abuse material ⇐, such as photographs and audiovisual recordings transmitted or made available by means of information and communication technology.

Article 17

Reporting suspicion of child sexual abuse or sexual exploitation

1. Member States shall take the necessary measures to ensure that the confidentiality rules imposed by national law on certain professionals whose main duty is to work with children do not constitute an obstacle to the possibility, for those professionals, of their reporting to the services responsible for child protection any situation where they have reasonable grounds for believing that a child is the victim of offences referred to in Articles 3 to 7 ⇒ 9 ⇐.
2. Member States shall take the necessary measures to encourage any person who knows about or suspects, in good faith, that any of the offences referred to in Articles 3 to 7 ⇒ 9 ⇐ have been committed, to report this to the competent services ⇐, without affecting Article 18 of Regulation (EU) 2022/2065 of the European

Parliament and of the Council³⁷ and Article 12 of Regulation (EU) .../...³⁸ [*laying down rules to prevent and combat child sexual abuse*]. ↩

↓ new

3. Member States shall ensure that at least professionals working in close contact with children in the child protection, education, childcare and health care sectors are obliged to report to the competent authorities if they have reasonable grounds for believing that an offence punishable under this Directive has been committed or is likely to be committed.
4. Member States shall exempt professionals working in the health care sectors in the context of programmes dedicated to persons who have been convicted of a criminal offence punishable under this Directive or persons who fear that they might commit any of the offences punishable under this Directive from the reporting obligation provided for in paragraph 3.
5. Member States, supported by the EU Centre once established, shall issue guidelines for the persons referred to in paragraph 3 on identifying whether an offence punishable under this Directive has been committed or is likely to be committed and on reporting to competent authorities. Such guidelines shall also indicate how to address the specific needs of victims.

Article 18

Reporting of child sexual abuse or sexual exploitation

1. In addition to the rights of victims when making a complaint under Article 5 of Directive 2012/29/EU, and Article 5a under Directive (EU) .../... [proposed Directive amending Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crimes], Member States shall ensure that victims can report the offences referred to in Articles 3 to 9 of this Directive to the competent authorities in an easy and accessible manner. This shall include the possibility of reporting those criminal offences, and submitting evidence where feasible, by means of easily accessible and user-friendly information and communication technologies.
2. Member States shall ensure that the reporting procedures referred to in paragraph 1 are safe, confidential and designed in a child-friendly manner and language, in accordance with their age and maturity. Member States shall ensure reporting is not conditional upon parental consent.
3. Member States shall ensure that the competent authorities coming in contact with victims reporting child sexual abuse offences or sexual exploitation offences are

³⁷ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1, ELI: <http://data.europa.eu/eli/reg/2022/2065/oj>).

³⁸ Regulation (EU)

prohibited from transferring personal data pertaining to the residence status of the victim to competent migration authorities, at least until completion of the first individual assessment of the victims' protection needs conducted in accordance with Article 22 of Directive 2012/29/EU.

↓ 2011/93/EU (adapted)
⇒ new

Article 19

Jurisdiction and coordination of prosecution

1. Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Articles 3 to ~~7~~ ⇒ 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 ~~7~~ ⇒ 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 ~~and~~ ⇒ , ⇐ 6 ⇒ and 8 ⇐, and in so far as is relevant, in Articles 3 ~~and~~ ⇒ , 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), ⇐ Article 4(2), (3), (5), (6) and (7) ~~and~~ ⇒ , ⇐ Article 5(6) ⇒ , Article 7 and Article 8 ⇐ committed outside the territory of the Member State concerned, as regards paragraph 1 ⇒ , point ⇐ (b) of this Article, each Member State shall take the necessary measures to ensure that its jurisdiction is not subordinated to the condition that the acts are a criminal offence at the place where they were performed.
5. For the prosecution of any of the offences referred to in Articles 3 to ~~7~~ ⇒ 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. Where a criminal offence referred to in Articles 3 to 9 falls within the jurisdiction of more than one Member State, these Member States shall cooperate to determine

which Member State is to conduct criminal proceedings. The matter shall, where appropriate and in accordance with Article 12 of Framework Decision 2009/948/JHA, be referred to Eurojust. ↩

Article 20

General provisions on assistance, support and protection measures for child victims

1. Child victims of the offences referred to in Articles 3 to 7 ⇒ 9 ↩ shall be provided assistance, support and protection in accordance with Articles ~~19 and 20~~ ⇒ 21 and 22 ↩, taking into account the best interests of the child.
2. Member States shall take the necessary measures to ensure that a child is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that a child might have been subject to any of the offences referred to in Articles 3 to ⇒ 9 ↩.
3. Member States shall ensure that, where the age of a person subject to any of the offences referred to in Articles 3 to 7 ⇒ 9 ↩ is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles ~~19 and 20~~ ⇒ 21 and 22 ↩.

Article 21

Assistance and support to victims

1. Member States shall take the necessary measures to ensure that assistance and ⇒ specialised and appropriate ↩ support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in ~~Framework Decision 2001/220/JHA~~ ⇒ Directive 2012/29/EU, Directive (EU) .../... [*proposed Directive amending Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crimes*] ↩ and in this Directive. ⇒ Member States shall notably ensure that victims of offences referred to in Articles 3 to 9 have access to targeted and integrated support services for children in accordance with Article 9a of Directive (EU) .../... [*proposed Directive amending Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crimes*]. ↩ Member States shall, in particular, take the necessary steps to ensure protection for children who report cases of abuse within their family.

↓ new

2. Victims shall be provided with coordinated, age-appropriate medical care, emotional, psychosocial, psychological and educational support, as well as any other appropriate support tailored in particular to situations of sexual abuse.
3. Where it is necessary to provide for interim accommodation, children shall, as a priority, be placed with other family members, where necessary in temporary or permanent housing, equipped with support services.

4. Victims of offences punishable under this Directive shall have access to the referral centres established under Article 28 of Directive [.../.../EU *Proposed violence against women Directive*]³⁹.
-

↓ 2011/93/EU

⇒ new

5. ~~2.~~ Member States shall take the necessary measures to ensure that assistance and support for a child victim are not made conditional on the child victim's willingness to cooperate in the criminal investigation, prosecution or trial.
6. ~~3.~~ Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims in enjoying their rights under this Directive, are undertaken following an individual assessment of the special circumstances of each particular child victim, ⇒ conducted in accordance with Article 22 of Directive (EU) .../... [*proposed Directive amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crimes*] and ⇐ taking due account of the child's views, needs and concerns.
7. ~~4.~~ Child victims of any of the offences referred to in Articles 3 to ~~7~~ ⇒ 9 ⇐ shall be considered as particularly vulnerable victims pursuant to ~~Article 2(2), Article 8(4) and Article 14(1) of Framework Decision 2001/220/JHA~~ ⇒ Article 22(2) of Directive 2012/29/EU and Directive (EU) .../... [*proposed Directive amending Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crimes*] ⇐.
8. ~~5.~~ Member States shall take measures, where appropriate and possible, to provide assistance and support to the family of the child victim in enjoying the rights under this Directive when the family is in the territory of the Member States. In particular, Member States shall, where appropriate and possible, apply Article 4 of ~~Framework Decision 2001/220/JHA~~ ⇒ Directive 2012/29/EU and Directive (EU) .../... [*proposed Directive amending Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crimes*] ⇐ to the family of the child victim.
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↓ new

9. The EU Centre, once established, shall proactively support Member States' efforts on assistance to victims by:
- (a) inviting other Union institutions, bodies, offices and agencies, as well as relevant authorities, bodies or agencies of the Member States, to share with the EU Centre information about assistance to victims of child sexual abuse and sexual exploitation whenever appropriate and at least once a year;
 - (b) collecting on its own initiative information on measures and programmes in the field of assistance to victims of child sexual abuse and sexual exploitation, including measures and programmes implemented in third countries;

³⁹ COM(2022) 105 of 08.03.2022.

- (c) facilitating the exchange of best practices among Member States and between Member States and third countries, by keeping a public database of assistance to victims measures and programmes implemented in each Member States as well as in third countries; the database shall not contain any personal data.
 - (d) facilitating the preparation of the guidelines and protocols referred to in paragraph 10.
10. Member States, supported by the EU Centre once established, shall issue guidelines for healthcare, education and social service professionals on providing appropriate support to victims of child sexual abuse or exploitation, including on referring victims to the relevant support services and clarifying roles and responsibilities. Such guidelines shall also indicate how to address the specific needs of victims.
-

↓ 2011/93/EU

⇒ new

Article 22

Protection of child victims in criminal investigations and proceedings

1. Member States shall take the necessary measures to ensure that in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a special representative for the child victim where, under national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim, or where the child is unaccompanied or separated from the family.
2. Member States shall ensure that child victims have, without delay, access to legal counselling and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources.
3. Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal investigations relating to any of the offences referred to in Articles 3 to 9 ~~⇐~~ ~~⇐~~ ~~⇐~~:
 - (a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;
 - (b) interviews with the child victim take place in premises designed or adapted for this purpose;
 - (c) interviews with the child victim are carried out by or through professionals trained for this purpose;
 - (d) the same persons, if possible and where appropriate, conduct all interviews with the child victim;
 - (e) the number of interviews is as limited as possible and interviews are carried out only where strictly necessary for the purpose of criminal investigations and proceedings;

- (f) the child victim may be accompanied by his or her legal representative or, where appropriate, by an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.

↓ new

- (g) medical examinations of the child victim for the purposes of the criminal proceedings are as limited as possible and are carried out by professionals trained for this purpose.

↓ 2011/93/EU

⇒ new

4. Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 3 to 7 ⇒ 9 ⇐ all interviews with the child victim or, where appropriate, with a child witness, may be audio-visually recorded and that such audio-visually recorded interviews may be used as evidence in criminal court proceedings, in accordance with the rules under their national law.
5. Member States shall take the necessary measures to ensure that in criminal court proceedings relating to any of the offences referred to in Articles 3 to 7 ⇒ 9 ⇐, that it may be ordered that:
- (a) the hearing take place without the presence of the public;
 - (b) the child victim be heard in the courtroom without being present, in particular through the use of appropriate communication technologies.
6. Member States shall take the necessary measures, where in the interest of child victims and taking into account other overriding interests, to protect the privacy, identity and image of child victims, and to prevent the public dissemination of any information that could lead to their identification.

↓ new

7. Member States shall take the necessary measures to ensure that, where the participation of a child is necessary in criminal court proceedings relating to any of the offences referred to in Articles 3 to 9, the court takes into account the child's age and maturity in the relevant court proceedings.

Article 23

Victim's right to compensation

1. Member States shall ensure that victims of offences referred to in Articles 3 to 9 of this Directive have a right to compensation for any damage suffered. Member States shall ensure that compensation can be requested from perpetrators of any of the offences referred to in Articles 3 to 9 from legal persons liable for such offences under Articles 13 and 14 and, where appropriate, from national compensation schemes established for the benefits of victims of crime.

2. In addition to their rights under Article 16a of Directive (EU) .../... [*proposed Directive amending Directive 2012/29 establishing minimum standards on the rights, support and protection of victims of crimes*], victims shall be allowed to request compensation in the context of criminal and civil proceedings for any damage caused to them by any of the offences punishable under this Directive, for a sufficient period of time, commensurate with the gravity of the offence, after reaching the age of majority.
3. The period referred to in the first subparagraph shall be:
 - (a) at least 20 years from the date the victim has reached the age of majority for the offences punishable under this Directive by a maximum penalty of at least 3 years;
 - (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;
 - (c) at least 30 years from the date the victim has reached the age of majority for the offences punishable under this Directive by a maximum penalty of at least 8 years.
4. Member States shall ensure that, in order to ensure sufficient compensation to victims of offences punishable under this Directive, all relevant elements are taken into account, including:
 - (a) any physical or mental pain and suffering caused by the offence, including the pain and suffering linked to the online circulation of child sexual abuse material concerning the victim in question;
 - (b) any cost of care in relation to the recovery from such pain and suffering, including expenses related to mental and physical health and treatment and travelling costs that might have been incurred to access such care; and
 - (c) any loss of income caused by the offence.

Article 24

National authorities or equivalent entities

Member States shall establish national authorities or equivalent entities to carry out the following activities:

- (1) facilitate and, where needed, coordinate efforts at national level on prevention and assistance to victims;
- (2) carry out assessments of trends in child sexual abuse, online and offline;
- (3) evaluate 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;
- (4) report on such trends, results and statistics.

In particular, national authorities shall be responsible for the data collection, research and reporting obligations referred to in Article 31.

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 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, 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.

↓ 2011/93/EU (adapted)
⇒ new

Article 26

Measures against advertising abuse opportunities and ⇒ the sexual abuse and sexual exploitation of children in travel and tourism ⇐ ~~child sex 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 ⇐ ~~6~~; and
- (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 ~~to~~ ⇒ , 4 and ⇐ 5.

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 ~~7~~ ⇒ 9 ⇐ have access; ~~where appropriate,~~ to ⇒ dedicated and ⇐ effective intervention programmes or measures designed to evaluate and prevent the risk of such offences being committed.

↓ new

2. Member States shall ensure that the programmes or measures referred to in paragraph 1 are accessible without undue restrictions in line with national standards concerning healthcare.

↓ 2011/93/EU (adapted)

⇒ new

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.~~
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 ⇐, where appropriate in cooperation with relevant civil society organisations and other stakeholders, aimed at raising awareness and reducing the risk of children, becoming victims of sexual abuse or ⇒ sexual ⇐ exploitation.
3. Member States shall promote regular training ⇒, including in child friendly justice for professionals, judges 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 and educators, family court judges and ⇐ front-line police officers, aimed at enabling them to identify and deal with child victims and potential child victims of sexual abuse or sexual exploitation.

↓ new

4. Member States shall take appropriate measures to enhance the prevention of child sexual abuse in community settings, including schools, hospitals, social care services, sports clubs or religious communities.

Those measures shall include:

- (a) dedicated training and awareness raising activities for staff working in such settings;
- (b) 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 spaces, run by dedicated and appropriately trained personnel, where children, parents, carers and members of the community can report inappropriate behaviour.

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

5. The EU Centre, once established, shall proactively support 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 exchange of best practices among Member States and third countries by keeping a public database of prevention measures and programmes implemented in each Member State as well as in third countries.

↓ 2011/93/EU (adapted) ⇒ new

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 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 ⇐ 7, 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 ~~↔ 7~~.
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 ~~↔ 7~~, 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 with paragraph 4 have been proposed:
 - (a) are fully informed of the reasons for the proposal;
 - (b) consent 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.

Article 30

Measures against websites containing or disseminating child ~~pornography~~ ↔ sexual abuse material ↔

1. Member States shall take the necessary measures to ensure the prompt removal of web pages containing or disseminating child ~~pornography~~ ↔ sexual abuse material ↔ hosted in their territory and to endeavour to obtain the removal of such pages hosted outside of their territory.
2. Member States may take measures to block access to web pages containing or disseminating child ~~pornography~~ ↔ 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.

↕ new

Article 31

Data collection

1. Member States shall have a system in place for the collection, development, production and dissemination of public statistics on offences referred to in Articles 3 to 9.
2. The statistics shall include the following data disaggregated by sex, age of the victim and of the offender, relationship between the victim and the offender and type of offence:
 - (a) the number of victims who experienced one of the offences referred to in Articles 3 to 9 during the last 12 months, last five years and lifetime;

- (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 results of their prevention initiatives under Articles 27, 28 and 29 in terms of the number of offenders and potential offenders having accessed prevention programmes and the percentage of these offenders and potential offenders who has been convicted for one of the offences in Articles 3 to 9 after having participated in such programmes.
3. Member States shall conduct a population-based survey every 3 years using the harmonised methodology of the Commission (Eurostat) to contribute to gather the data referred to in paragraph 2, point (a), and on that basis assess the prevalence of and trends for all offences referred to in Articles 3 to 9 of this Directive. For the first time, Member States shall transmit those data to the Commission (Eurostat) by [3 years after the entry into force of the directive] at the latest.
 4. Member States shall collect administrative data pursuant to paragraph 2 on the basis of common disaggregations developed in cooperation with the EU Centre. They shall transmit that data to the EU Centre on a yearly basis. The transmitted data shall not contain personal data.
 5. The EU Centre shall support Member States in the data gathering referred to in paragraph 2, including by promoting the development of common voluntary standards on counting units, counting rules, common disaggregations, reporting formats, and on the classification of criminal offences.
 6. Member States shall transmit the statistics to the EU Centre and the Commission and make the collected statistics available to the public on an annual basis. The EU Centre shall compile the statistics and make them publicly available. The statistics shall not contain personal data.
 7. Member States shall support 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.

↓ 2011/93/EU adapted)

⇒ new

Article 32

Reporting

1. ~~The Commission shall, by 18 December 2015, submit a report to the European Parliament and the Council assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by a legislative proposal.~~
2. ~~The Commission shall, by 18 December 2015, submit a report to the European Parliament and the Council assessing the implementation of the measures referred to in Article 25.~~

⇒ The Commission shall, by [5 years after 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 26~~

~~Replacement of Framework Decision 2004/68/JHA~~

~~Framework Decision 2004/68/JHA is hereby replaced in relation to Member States participating in the adoption of this Directive without prejudice to the obligations of those Member States relating to the time limits for transposition of the Framework Decision into national law.~~

~~In relation to Member States participating in the adoption of this Directive, references to Framework Decision 2004/68/JHA shall be construed as references to this Directive.~~

Article 33

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ~~this Directive~~ ⇒ Article 2, paragraphs (3)(d), (4), (5), (6), (8), (9); Article 3 paragraphs (1), (4), to (9); Article 4 paragraphs (4) to (7); Article 5 paragraphs (2) to (10); Articles 6 to 10; Article 11, introductory wording and letters (b), (h), (i), (j); 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) and (7); Articles 23 to 28; Article 29 paragraphs (1), (3) and (4); Articles 30 to 32 of this Directive ↵ by ⇒ [two years after entry into force] ↵ ~~18 December 2013~~. ⇒ They shall immediately communicate the text of those measures to the Commission. ↵
2. ~~Member States shall transmit to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive.~~
2. 3. 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. ⇒ They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated. ↵ ~~The methods of making such reference shall be laid down by the Member States.~~
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, including a correlation table between such national measures and the corresponding obligations in this Directive. ↵

↓ new

Article 34

Repeal

Directive 2011/93/EU is repealed with effect from [the day after the second date referred to in Article 32, first subparagraph], 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.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex II.

↓ 2011/93/EU (adapted)
↓ new

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)], except Article 21 paragraph (9), Article 28 paragraph (5); Article 31 paragraphs (4), (5) and (6) which shall apply from [date to be aligned with the CSA Regulation].

Article 36

Addressees

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

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President