



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from:	Presidency
to:	COREPER (Part II)
No prop. Com.	8155/10 DROIPEN 29 JAI 269
Subject:	Proposal for a Directive on combating the sexual abuse, sexual exploitation of children and child pornography, replacing Framework Decision 2004/68/JHA (First reading) -Analysis of the final compromise text with view to a first reading agreement

I. INTRODUCTION

The proposal for a Directive on combating the sexual abuse, sexual exploitation of children and child pornography, replacing Framework Decision 2004/68/JHA was submitted by the Commission to the Council on 29 March 2010.¹

At its session on 3 December 2010, the Justice and Home Affairs Council has reached a general approach on the text of the draft Directive as set out in document 17583/10 DROIPEN 148 JAI 1055 CODEC 1476, in view of the negotiations with the European Parliament in the framework of the ordinary legislative procedure.

¹ Doc. 8155/10 DROIPEN 29 JAI 269.

The Economic and Social Committee delivered its opinion on 15 September 2010²
Pursuant to Article 64 of the Committee's Rules of Procedure, the Committee of the Regions
decided on 12 October 2010 not to issue an opinion but to reply to the Council with a letter.³

On 16 February 2011, the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) held an orientation vote, approving amendments to the Commission proposal. Subsequently and in the framework of the ordinary legislative procedure, the Presidency entered into discussions with the European Parliament and the Commission, aiming at reaching a first reading agreement on this file.

II. TRIALOGUES

In this respect, nine informal Triilogue meetings have taken place. Several technical meetings have taken place between the Commission the European Parliament and the Council aimed at resolving technical issues. Member States were continuously informed of the outcome of those informal Trialogues .

III. FINAL COMPROMISE TEXT

In the course of the Triologue meetings, the three Institutions were able to reconcile their positions. The final compromise text as it arose from those meetings is set out in the Annex to this Note. Modifications with regard to the initial Commission proposal are highlighted in **bold**. While few delegations still have scrutiny reservations on some of the Articles of the proposed instrument, the final compromise in its consolidated version, as included in the Annex to this note, should now be accepted as a package.

The vote in the European Parliament's LIBE Committee is scheduled on 12 July 2011, while the European Parliament intends to hold its vote on the text aiming at reaching a first reading agreement during the second Plenary session of September 2011.

²SOC/377-CESE1173/2010

³doc. 16401/10 DROIPE 133 JAI 970 CODEC 1275

With regard to Article 6, the Council and the European Parliament will make a joint statement to be inserted in the minutes of the Council adopting the proposed instrument, having as follows:

JOINT STATEMENT ON SOLICITATION OF CHILDREN FOR SEXUAL PURPOSES

"The European Parliament and the Council,

Having regard to the fact that real-life solicitation of children ("off-line grooming") for sexual purposes means intentional manipulation of a child under the age of sexual consent by means of speech, writing, audio-visual material or by similar presentations, to meet him or her for the purpose of committing any of the offences referred to in Articles 3(3) and 5(7) of the present Directive,

Having regard to the fact that real-life solicitation of children for sexual purposes is already covered by the national law of Member States in different forms, either as attempt, a preparatory offence or a special form of sexual abuse,

CALL on the Member States to carefully check their criminal law definitions as regards criminalization of real-life solicitation of children for sexual purposes, and to improve and correct their criminal law, if necessary, as regard any legal lacunae that might still exists in that regard".

On Article 23 of the proposed instrument and in particular on the question of correlation tables, which is a question of horizontal character not likely to be solved in the near future , the Presidency, foresees in the framework of a global compromise proposal, the solution chosen in other instruments⁴, namely the addition of a relevant recital in the Preamble, while at the same time the Commission will proceed to a statement in the minutes of the Council adopting the instrument, having as follows:

⁴ Ex. Directive 1008/99/EC of the European Parliament and of the Council on the protection of the environment through criminal law, Road safety Regulation.

COMMISSION STATEMENT ON CORRELATION TABLES

"The Commission recalls its commitment towards ensuring that Member States establish correlation tables linking the transposition measures they adopt with the EU directive and communicate them to the Commission in the framework of transposing EU legislation, in the interest of citizens, better-law making and increasing legal transparency and to assist the examination of the conformity of national rules with EU provisions.

The Commission regrets the lack of support for the provision included in the proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, replacing Framework Decision 2004/68/JHA, which aimed at rendering the establishment of correlation tables obligatory.

The Commission, in a spirit of compromise and in order to ensure the immediate adoption of that proposal, can accept the substitution of the obligatory provision on correlation tables included in the text with a relevant recital encouraging Member States to follow this practice.

However, the position followed by the Commission in this file shall not be considered as a precedent. The Commission will continue its efforts with a view to finding together with the European Parliament and the Council an appropriate solution to this horizontal institutional issue."

The President of the Permanent Representatives Committee (Part II) communicates in a letter, forwarded to the Chair of LIBE Committee, Council's willingness to accept the consolidated compromise text, subject to legal-linguistic verification by the two Institutions, should it be confirmed by the vote in the European Parliament's Plenary session in September.

On Article 22 Denmark will proceed to the following statement in the minutes of the Council adopting the instrument:

"Article 22 of the Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography is based on an understanding of the Protocol No 22 on the position of Denmark annexed to the Treaty on the European Union and to the Treaty on the Functioning of the European Union which Denmark does not agree with. Denmark has noted the solution found in Article 22, which consists in specifying that the Directive amends Framework Decision 2004/68/JHA through replacing it, whereas the solution is without prejudice to the outcome of the ongoing discussion concerning future comparable situations."

The draft instrument is subject to Parliamentary scrutiny reservations by LT and IE .

IV. CONCLUSION

COREPER is invited :

- to confirm the agreement on the final compromise package for a consolidated text of the proposed Directive, as set out in the Annex to this Note.

- with a view to reaching an agreement at first reading, to give the Chairman of the Permanent Representatives Committee (Part II) the mandate to inform the Chair of the European Parliament's LIBE Committee that, should the European Parliament adopt the amendments to the Commission proposal in the exact form as set out in the consolidated compromise package, set out in the Annex to this Note, the Council would adopt the proposed Directive in the form of the text thus amended, subject to legal-linguistic verification by both institutions.

2010/0064 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on combating the sexual abuse, sexual exploitation of children and child pornography,
replacing Framework Decision 2004/68/JHA**

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 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 Committee⁵,

Having regard to the opinion of the Committee of the Regions⁶,

⁵ OJ C , , p. .

⁶ OJ C , , p. .

Acting in accordance with the ordinary legislative procedure⁷,

Whereas:

- (1) Sexual abuse and sexual exploitation of children, including child pornography, constitute serious violations of fundamental rights, in particular the rights of the child to protection and care as is necessary for his or her well-being, as stipulated by the **United Nations** Convention on the Rights of the Child and the Charter of Fundamental Rights of the European Union.

- (1a) In accordance with Article 6 of the Treaty of the European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights, which in its 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 multiannual Stockholm Programme - an open and Secure Europe Serving and Protecting Citizens, adopted by the European Council - gives a clear priority to combating the sexual abuse and sexual exploitation of children, and child pornography.**

- (2) Child pornography, which consists of images of child sex abuse, 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.

⁷ OJ C , , p. .

- (2a) In the context of criminalising acts related to pornographic 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 consent and their partners from the definition.**
- (3) Council Framework Decision 2004/68/JHA on combating the sexual exploitation of children and child pornography⁸ 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 on the standing of victims in criminal proceedings⁹ establishes a set of victims' rights in criminal proceedings, including the right to protection and compensation. Moreover, the coordination of prosecution of cases of sexual abuse, sexual exploitation of children and child pornography will be facilitated by the adoption of Council Framework Decision 2009/948/JHA on prevention and settlement of conflict of jurisdiction in criminal proceedings¹⁰.
- (4) According to 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 abuse. The 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 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse¹¹ are crucial steps in the process of enhancing international cooperation in this field.

⁸ OJ L 13, 20.1.2004, p. 14.

⁹ OJ L 82, 22.3.2001, p. 1.

¹⁰ OJ L 328, 15.12.2009, p. 42.

¹¹ Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, opened for signature in Lanzarote, 25.10.2007, Council of Europe Treaty Series No. 201.

(5) Serious criminal offences such as the sexual exploitation of children and child pornography require a comprehensive approach covering the prosecution of offenders, the protection of child victims, and prevention of the phenomenon. 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 UN 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.

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

(5ab) Child pornography 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 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.

- (5a) In adopting legislation on substantive criminal law, the Union should ensure consistency of this overall legislation in particular with regard to the level of penalties. The Council conclusions of April 2002 on the approach to apply regarding the 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.**
- (6) Serious forms of child sexual abuse and sexual exploitation should be subject to effective, proportionate and dissuasive sanctions. This includes, in particular, various forms of sexual abuse and sexual exploitation 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 should also be clarified and brought closer to that contained in international instruments.
- (6a) 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.**
- (6aa) 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.**
- (6ab) In order to reach the maximum term of imprisonment provided for in this Directive in offences concerning sexual abuse, sexual exploitation and child pornography, Member States may combine, taking into account their national law, the imprisonment terms provided for in national legislation in respect of these offences.**

(6aba) This Directive obliges Member States to provide for criminal penalties in their national legislation in respect of provisions of EU law on combating sexual abuse, sexual exploitation of children and child pornography. This Directive creates no obligations regarding the application of such penalties, or any other available system of law enforcement, in individual cases.

(6abb) Especially for those cases where the criminal offences described 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.

(6ac) In the context of child pornography, the term "without right" allows Member States to provide a defence in respect of conduct related to "pornographic material" having for example medical, scientific or similar purpose. It also allows activities carried out under domestic legal powers, such as the legitimate possession of child pornography by the authorities in order to conduct criminal proceedings or to prevent, detect or investigate crimes. Furthermore, it 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.

(6b) Knowingly obtaining access, by means of information and communication technology, to child pornography should be criminalised. To be liable, the person should both intend to enter a site where child pornography is available and know that such images can be found there. Sanctions should not be applied to persons inadvertently accessing sites containing child pornography. The intentional nature of the offence may notably be deduced from the fact that it is recurrent or that the offences were committed via a service in return for payment.

(6ba) 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, thus an opportunity to conceal one's real identity and personal characteristics, such as age. At the same time, Member States acknowledge the importance of also combating the solicitation of a child outside the context of the internet, notably 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 the 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 special preparatory offence, attempt to commit the crimes described by this directive or as a special 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 one way or another.

(7) 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 Article 5 and 8, do so in the exercise of their competences.**

(7a) Member States should provide for aggravating circumstances in their national law in line with the applicable rules established by their legal system on aggravating circumstances and should ensure that those aggravating circumstances are available for judges to consider when sentencing offenders, although there is no obligation on judges to apply them. Those circumstances should not be provided for by Member States in national legislation 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 instrument.

(7b) 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.

(7c) In combating sexual exploitation of the 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 Crime 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 crime, and Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime Related Proceeds, Instrumentalities and Property. 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.

(7aa) Secondary victimisation should be avoided for victims of offences referred to in this Directive. 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.

(7ab) 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.

- (8) Investigating offences and bringing charges in criminal proceedings should be facilitated, to take into account the difficulty for child victims of denouncing 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 reporting or accusation by the victim. The length of the sufficient period of time for prosecution should be determined in accordance with respective national law.**
- (8a) Effective investigation tools should be made available to those responsible for the investigation and prosecutions of such offences. These tools may 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 accordance with national law, such tools should also include the possibility for law enforcement authorities to use a concealed identity on the Internet.**
- (8b) **Member States should encourage any person who has knowledge or suspicion of sexual exploitation or abuse of a child to report to the competent services. It is the responsibility of each Member State to determine the competent authorities to which such suspicions may be reported. These competent authorities should not be limited to child protection services or relevant social services. The requirement of suspicion “in good faith” should be aimed at preventing the provision being invoked to authorise the denunciation of purely imaginary or untrue facts carried out with malicious intent.**

- (9) Rules on jurisdiction should be amended to ensure that child sexual abusers or exploiters from the European Union face prosecution even if they commit their crimes outside the European Union, in particular via so-called sex 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 takes place outside the EU, Member States are encouraged to seek through the available national and international instruments, including bilateral or multilateral treaties on extradition, mutual assistance or transfer of proceedings, to increase co-operation 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 EU in order to be able to prosecute perpetrators, under the relevant national legislation, who travel outside EU borders for the purposes of child sex tourism.**
- (10) Measures to protect child victims should be adopted in their best interest, taking into account an assessment of their needs. Child victims should have easy access to legal remedies and **measures to address conflicts of interest where abuse occurs in 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 sanctions, 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. **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.**

(10aa) Member States should consider giving 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. 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 or guardians of the child in cases, where they are not implicated as suspects in relation to the offence concerned, in order to help them to assist their child throughout the proceedings.

(10a) The Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings¹² establishes a set of victims' rights in criminal proceedings, including the right to protection and compensation. In addition children, victims of sexual abuse, sexual exploitation and child pornography 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 help 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.

¹² OJ L 82, 22.3.2001, p. 1.

(10b) Member States should undertake action to prevent or prohibit acts related to the promotion of abuse of children and child sex tourism. Different preventing measures could be considered such as e.g. 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” for tourist organisations combating child sex tourism or having explicit policy to tackle that form of tourism.

(10ba) Member States should establish and/or strengthen policies to prevent sexual exploitation of children, including measures to discourage and reduce the demand that fosters all forms of exploitation, and measures to reduce the risk of children becoming victims, by means of research, information, awareness-raising, and education. In such initiatives, Member States should adopt a child-rights approach. Particular care should be taken to ensure that awareness campaigns aimed at children are appropriate and sufficiently easy to understand. The establishment of help-lines/hotlines should be taken into consideration.

(10baa) 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 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 as amended by Decision 2009/884/EC of 30 November 2009, should be promoted and experience with their functioning should be taken into account.

(10bc) Professionals likely to come into contact with child victims of sexual exploitation should be adequately trained to identify and deal with such victims. That training should be promoted for members of the following categories when they are likely to come into contact with child victims: police officers, public prosecutors, lawyers, members of the judiciary and court officials, child and health care personnel, but could also involve other groups of persons who are likely to encounter child victims of sexual exploitation in their work.

(10c) In order to prevent the sexual exploitation and abuse of children, intervention programmes or measures targeting sex offenders should be proposed to them. Those programs 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.

(10d) Intervention measures or programmes are not provided as an automatic right. It is for the Member State to decide which intervention measures or programmes are appropriate.

(11) 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. Modalities of 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 this assessment should take place as well as modalities of effective intervention programmes or measures offered following this 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. These intervention programmes or measures should not interfere with national schemes set up to deal with the treatment of persons suffering from mental disorders.

(12) 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, where appropriate. **Employers when recruiting for a post involving direct and regular contact with children are entitled to be informed, of convictions for sexual offences against children entered in the criminal record, or of existing disqualifications. For the purposes of this directive, the notion of 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. The way to deliver information, such as for example access via the person concerned, as well as the exact content of this information, the meaning of organised voluntary activities and direct and regular contact with children should be defined according to national legislation.**

(12a) **With due regard to the different legal traditions of the Member States, the provisions of 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.**

(12aa) **The aim of the directive is not to harmonise rules concerning consent of the person concerned when exchanging information from the criminal registers, ie. whether to require such consent or not. Whether the consent is required or not under national law, this directive does not establish any new obligation to change the national law and procedures in this respect.**

(12ab) Member States may consider adopting additional administrative measures in relation to perpetrators, such as the registration of persons convicted of offences referred to in Articles 3 to 7 in sex offender registers. The access to these 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 agencies.

(12ac) Member States are encouraged to create mechanisms for data collection or focal points, at the national or local levels and in collaboration with civil society, for the purpose of observing and evaluating the phenomenon of sexual exploitation and sexual abuse of children. In order to be able to properly evaluate the results of actions to combat sexual abuse, sexual exploitation and child pornography, the Union should continue to develop its work on methodologies and data collection methods to produce comparable statistics.

(12ad) Member States shall take appropriate action for setting up information services in order to teach how to recognise the signs of sexual exploitation.

(13) Child pornography, which constitutes sex abuse images, 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 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 abuse images. **With a view to supporting the Union's efforts in combating child pornography, Member States should do their best to cooperate with third countries in seeking to secure the removal of such content from servers in their territory.**

(13aa) However, despite such efforts, the removal of child pornography content at its source **is often not possible** where 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. **It is understood that the measures undertaken by Member States in accordance with this directive in order to remove or, where appropriate, block websites containing child pornography could be based on various types of public action, such as legislative, non-legislative, judicial or other. In that context, the provisions of this directive are without prejudice to voluntary action taken by the internet industry to prevent misuse of their 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 interest of ensuring that national lists of websites containing child pornography 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, adhere to existing legal and judicial procedures and comply with 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 whose goal is to collect information and to ensure coverage and exchange of reports on the major types of illegal content online.

(13ab) 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.

- (13a) In accordance with paragraph 34 of the Interinstitutional agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interest of the Union, their own tables, illustrating as far as possible, the correlation between the Directive and the transposition measures and to make them public.**
- (14) Since the objective of this Directive, namely to combat sexual abuse, sexual exploitation of children and child pornography, cannot be sufficiently achieved by the Member States alone and can therefore, by reasons of the scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principles of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (15) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably human dignity, the prohibition of torture and inhuman or degrading treatment or punishment, the rights of the child, the right to liberty and security, freedom of expression and information, 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. In particular, this Directive seeks to ensure full respect for those rights and has to be implemented accordingly.
- (16) 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 has notified its wish to take part in the adoption and application of this Directive.

(17) 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.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive aims to establish minimum rules concerning the definition of criminal offences and sanctions in the area of **sexual abuse and sexual exploitation of children, child pornography and solicitation of children for sexual purposes**. It also aims to introduce provisions to strengthen the prevention of the crime and the protection of its victims.

Article 2

Definitions

For the purposes of this Directive:

- (a) ‘child’ shall mean any person below the age of 18 years;
- (aa) ‘age of sexual consent’ shall mean the age below which it is prohibited to engage in sexual activities with a child according to national law;**
- (b) ‘child pornography’ shall mean
 - (i) any material that visually depicts a child engaged in real or simulated sexually explicit conduct; or

- (ii) any depiction of the sexual organs of a child for primarily sexual purposes; or
 - (iii) 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
 - (iv) realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, for primarily sexual purposes;
- (c) ‘child prostitution’ shall mean 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 this payment, promise or consideration is made to the child or to a third **party**;
- (d) ‘pornographic performance’ shall mean the live exhibition **aimed at an audience**, including by means of information and communication technology;
- (i) of a child engaged in real or simulated sexually explicit conduct; or
 - (ii) of the sexual organs of a child for primarily sexual purposes;
- (e) ‘legal person’ shall mean any 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.”

Article 3

Offences concerning sexual abuse

1. Member States shall take the necessary measures to ensure that the intentional conduct referred to in paragraphs 2 to 5 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 **one** year.

2a. 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 two years.

3. Engaging in sexual activities with a child who has not reached the age of sexual consent shall be punishable by a maximum term of imprisonment of at least five years.

4. Engaging in sexual activities with a child, where:

(i) 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 eight years **if the child has not reached the age of sexual consent and of at least three years of imprisonment, if the child is over that age;** or

(ii) abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence, shall be punishable by a maximum term of imprisonment of at least eight years **if the child has not reached the age of sexual consent, and of at least three years of imprisonment if the child is over that age;** or

(iii) use is made of coercion, force or threats shall be punishable by a maximum term of imprisonment of at least ten years **if the child has not reached the age of sexual consent, and of at least five years of imprisonment if the child is over that age.**

5. 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 ten years **if the child has not reached the age of sexual consent, and of at least five years of imprisonment if the child is over that age.**

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 6 is punishable.

2. Causing **or recruiting** a child to participate in pornographic performances, **or profiting from or otherwise exploiting a child for such purposes**, shall be punishable by a maximum term of imprisonment of at least **five years if the child has not reached the age of sexual consent, or of at least two years if the child is over that age.**

3. Coercing **or forcing** a child to participate in pornographic performances, **or threatening a child for such purposes**, shall be punishable by a maximum term of imprisonment of at least eight years **if the child has not reached the age of sexual consent, or of at least five years if the child is over that age.**

3a. Knowingly attending pornographic performances involving the participation of **a child** shall be punishable by a maximum term of imprisonment of at least two years **if the child has not reached the age of sexual consent, or of at least one year if the child is over that age.**

4. Causing **or recruiting** a child to participate 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 eight years **if the child has not reached the age of sexual consent and of at least five years of imprisonment if the child is over that age.**

5. Coercing **or forcing** a child into child prostitution, **or threatening a child for such purposes**, shall be punishable by a maximum term of imprisonment of at least ten years **if the child has not reached the age of sexual consent and of at least five years of imprisonment if the child is over that age.**

6. Engaging in sexual activities with a child, where recourse is made to child prostitution shall be punishable by a maximum term of imprisonment of at least five years **if the child has not reached the age of sexual consent and of at least two years of imprisonment if the child is over that age.**

Article 5

Offences concerning child pornography

1. Member States shall take the necessary measures to ensure that the intentional conduct, **when committed without right**, referred to in paragraphs 2 to 7 is punishable.

2. Acquisition or possession of child pornography shall be punishable by a maximum term of imprisonment of at least one year.

3. Knowingly obtaining access, by means of information and communication technology, to child pornography shall be punishable by a maximum term of imprisonment of at least one year.

5. Distribution, dissemination or transmission of child pornography shall be punishable by a maximum term of imprisonment of at least two years.

6. Offering, supplying or making available child pornography shall be punishable by a maximum term of imprisonment of at least two years.

7. Production of child pornography shall be punishable by a maximum term of imprisonment of at least **three** years.

8. **It shall be within the discretion of Member States to decide whether this Article applies to cases involving child pornography, as referred to in Article 2(b)(iii), where the person appearing to be a child was in fact 18 years of age or older at the time of depiction.**

9. **It shall be within the discretion of Member States to decide whether paragraphs (2) and (7) apply to cases where it is established that pornographic material as referred to in Article 2(b) (iv) is produced and possessed by the producer solely for his or her own private use, as far as no pornographic material as referred to in Article 2(b)(i) to (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 is punishable:

The proposal, by means of information and communication technology, by an adult to meet a child who has not reached the age of sexual consent, for the purpose of committing any of the offences referred to in Articles 3(3) and Article 5(7) where this proposal has been followed by material acts leading to such a meeting, shall be punishable by a maximum term of imprisonment of at least **one** year.

2. **Member States shall take the necessary measures to ensure that an attempt through 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 depicting that child is punishable.**

Article 7

Instigation, aiding and abetting and attempt

1. Member States shall take the necessary measures to ensure that the instigation of, aiding and abetting to commit any of the offences referred to in Articles 3 to 6 is punishable.
2. Member States shall take the necessary measures to ensure that attempts to commit any of the offences referred to in Article 3(3) to (5), Article 4 (2) to (3) **and (4) to (6), and Article 5(5) to (7)** are punishable.

Article 8

Consensual sexual activities

1. **It shall be within the discretion of Member States to decide whether Articles 3(2) and (3) apply to consensual sexual activities between peers, who are close in age and degree of psychological and physical development or maturity, insofar as the acts did not involve any abuse.**
2. **It shall be within the discretion of Member States to decide whether Article 4(3a) applies to a performance held within consensual relations where the child has reached the age of consent or between peers who are close in age and degree of psychological and physical development or maturity, insofar as the acts did not involve any abuse or exploitation and insofar as no money or other forms 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) and (7) applies to production, acquisition or possession of material involving children having reached the age of sexual consent where this material is produced and possessed with their consent and solely for private use of the persons involved, insofar as the acts did not involve any abuse.

Article 9

Aggravating circumstances

1. 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 7, **Member States shall take the necessary measures to ensure that the following circumstances may, in conformity with the relevant provisions of internal law, be regarded as aggravating circumstances, in relation to the relevant offences referred to in Articles 3 to 7:**

- (b) the offence was committed against a child in a particularly vulnerable situation, **such as a mental or physical disability or a situation of dependence or state of physical or mental incapacity;**
- (c) the offence was committed by a member of the family, a person cohabiting with the child or a person having abused their **recognised position of trust or authority;**
- (d) the offence was committed by several people acting together;
- (e) the offences are committed within the framework of a criminal organisation within the meaning of Framework Decision 2008/841/JHA;
- (f) the **offender** has previously been convicted of offences of the same nature;
- (g) the **offender has deliberately or by recklessness** endangered the life of the child;
- (h) the offence involved serious violence or caused serious harm to the child.

Article 10

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 7 may be temporarily or permanently prevented from exercising **at least professional** activities involving **direct and** regular contacts with children.
 - 1a **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, are entitled to request information in accordance with national law in any appropriate way, such as access upon request or via the person concerned, of the existence of convictions for an offence referred to in Articles 3 to 7 entered in the criminal record or of any disqualification to exercise activities involving direct and regular contacts with children arising from those criminal convictions.**
3. **Member States shall take the necessary measures to ensure that, for the application of paragraph 1 and 1a, information concerning the existence of criminal convictions for any of the offences referred to in Articles 3 to 7 of this Directive, or of any disqualification to exercise 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 when requested under Article 6 of that framework decision with the consent of the person concerned.**

Article 10a
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 3-5.

Article 11
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 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 one of the following:
 - (a) a power of representation of the legal person;
 - (b) an authority to take decisions on behalf of the legal person;
 - (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 of this Article has made possible the commission, by a person under its authority, of any of the offences referred to in Articles 3 to 7 for the benefit of that legal person.

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

Article 12

Sanctions on legal persons

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 11(1) is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, for example:
 - (a) exclusion from entitlement to public benefits or aid;
 - (b) temporary or permanent disqualification from the practice of commercial activities;
 - (c) placing under judicial supervision;
 - (d) judicial winding-up;
 - (e) 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 11(2) is punishable by penalties or measures which are effective, proportionate and dissuasive.

Article 13

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), (4) and (5), as well as in Article 5(7).**

Article 14

Investigation and prosecution

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 are not dependent on a report or accusation being made by the victim **or by its representative**, and that the criminal proceedings may continue even if **that person** has withdrawn **his** statements.
2. Member States shall take the necessary measures to enable the prosecution of any of the offences referred to in Articles 3, Article 4(2) to (3) and **(4) to (6), and of any serious offences referred to in Article 5(7) when pornographic material as defined in Article 2(b)(i) to (ii) has been used**, for a sufficient period of time after the victim has reached the age of majority and which is commensurate with the gravity of the offence concerned.
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 7.
4. 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 7, in particular by analysing child pornography material, such as photographs and audiovisual recordings transmitted or made available by means of information and communication technology.

Article 15

Reporting suspicion of sexual exploitation or sexual abuse

1. Member States shall take the necessary measures to ensure that the confidentiality rules imposed by national law on certain professionals **with the main duty** 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.
2. Member States shall take the necessary measures to encourage any person who knows about or suspects, in good faith, offences referred to in Articles 3 to 7 to report these facts to the competent services.

Article 16

Jurisdiction and coordination of prosecution

1. Member States shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 to 7 where:
 - (a) the offence is committed in whole or in part within its territory; or
 - (b) the offender is one of its nationals
- 1a. Member States shall inform the Commission where they decide to establish further jurisdiction over an offence referred to in Articles 3 to 7 committed outside of its territory e.g. where :**
 - (a) the offence is committed against one of their nationals or a person who has his or her habitual residence in the territory of that Member State; or**
 - (b) the offence is committed for the benefit of a legal person established in the territory of that Member State; or**

(c) the offender has his or her habitual residence in the territory of that Member State.

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

4. For the prosecution of any of the offences referred to in Article **3 (3), (4) and (5), Article 4 (2), (3), (4), (5) and (6), and Article 5 (7)** committed outside the territory of the State concerned, as regards paragraph 1 (b) of this Article, Member States 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.

- 4a.** For the prosecution of any of the offences referred to in Articles 3 to 7 committed outside the territory of the State concerned, as regards paragraph 1 (b) of this Article, Member States 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.

Article 17

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

1. **Child** victims of the offences referred to in Articles 3 to 7 shall be provided assistance, support and protection **in accordance with Article 18 and 19**, taking into account the best interests of the child.
 - 1a. **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 reasonable-grounds indication for believing that the child may have been subject to an offence provided for in Articles 3-7.**
2. Member States shall ensure that, where the age of a person subject to the offences referred to in Articles 3 to 7 is uncertain and there are reasons to believe that the person is a child, the person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 18 and 19.

Article 18

Assistance and support to victims

1. Member States shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate time after criminal proceedings in order to enable them to exercise the rights set forth in Council Framework Decision 2001/220/JHA¹³ on the standing of victims in criminal proceedings, and in this Directive. **Member States shall in particular take the necessary steps to ensure protection for children who report cases of abuse taking place within their family.**

¹³ OJ L 82, 22.3.2001, p. 1.

- 1a 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 co-operate in the criminal investigation, prosecution or trial.**
2. 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, taking due account of the child's views, needs and concerns.
3. **Child** victims of any of the offences referred to in Articles 3 to 7 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.
4. 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 State**. In particular, Member States shall, where appropriate and possible, apply Article 4 of Council Framework Decision 2001/220/JHA to the family.

Article 19

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, by 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 when 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 of any of the offences referred to in Articles 3 to 7:
 - (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, where necessary, 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 only carried out 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, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.

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 all interviews with the child victim or, where appropriate, with a child witness, may be **audiovisually recorded** and that these **audiovisually recorded** interviews may be used as evidence in criminal court proceedings, according to the rules under its national law.

5. Member States shall take the necessary measures to ensure, in criminal court proceedings relating to any of the offences referred to in Articles 3 to 7, that it may be ordered that:
 - (a) the hearing shall take place without the presence of the public;
 - (b) the child victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies.

6. **Member States shall take the necessary measures, where in the interest of the child victims and taking into account other overriding interests, to protect their privacy, their identity and their image, and to prevent the public dissemination of any information that could lead to their identification.**

Article 19a

Advertising abuse opportunity and 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 Article 3 to 6;**
- (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 5.**

Article 19aa

Preventive intervention programmes or measures

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 may have access, where appropriate, to effective intervention programmes or measures designed to evaluate and prevent the risk of offences being committed.

Article 19aaa

Prevention

- 1. Member States shall take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of sexual exploitation related to exploitation of children.**
- 2. Member States shall take appropriate action, including through the Internet, such as information and awareness- raising campaigns, research and education programmes, 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 exploitation.**
- 3. Member States shall promote regular training for officials likely to come into contact with child victims of sexual exploitation, including front-line police officers, aimed at enabling them to identify and deal with victims and potential victims of sexual exploitation.**

Article 20

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 effective intervention programmes or measures are made available with a view to preventing and minimising the risks of repeated offences of a sexual nature against children. These programmes or measures shall be accessible at any time during the criminal proceedings, inside and outside prison, according to the conditions laid down in national law.
2. **Intervention programmes or measures 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 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 7, under conditions which are neither detrimental nor contrary to the rights of the defence and to the requirements of a fair and impartial trial, and particularly with due respect for the rules governing the principle of the presumption of innocence; and**
 - (b) **persons convicted of any of the offences referred to in Articles 3 to 7.**
4. Member States shall take the necessary measures to ensure that persons referred to in **paragraph 3(a) and 3(b) are subject to an assessment of the danger presented by the person and possible risks of repetition of any of the offences referred to in Articles 3 to 7, with the aim of identifying appropriate intervention programmes or measures.**

5. Member States shall take the necessary measures to ensure that persons referred to in paragraph 3(a) and 3(b) to whom intervention programmes or measures in accordance with paragraph 4 have been proposed:

- (c) are fully informed of the reasons for the proposal;**
- (d) consent to participation in the programmes or measures in full knowledge of the facts;**
- (e) may refuse and, in the case of convicted persons, are made aware of the possible consequences a refusal might have.**

Article 21

Measures against websites containing or disseminating child pornography

1. Member States shall take the necessary measures to ensure the prompt removal of webpages containing or disseminating child pornography 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 **webpages** containing or disseminating child pornography towards the Internet **users** in 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**. **These safeguards shall also include the possibility of judicial redress.**

Article 22

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 the Member States relating to the time limits for transposition **of the Framework Decision** into national law.

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

Article 23

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by TWO YEARS FROM ADOPTION at the latest.
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**.
3. When Member States adopt those **measures**, they shall contain a reference to this Directive or **shall** be accompanied by such a reference on the occasion of their official publication. **The methods of making such reference shall be laid down by the Member States.**

Article 24

Reporting

1. The Commission shall, by FOUR YEARS FROM ADOPTION, 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 legislative proposal.
2. **The Commission shall by four years from adoption submit a report to the European Parliament and the Council assessing the implementation of measures provided for by Article 21.**

Article 25
Entry into force

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

Article 26
Addressees

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President
