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**NOTE**

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From: Presidency  
To: Delegations

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Subject: Proposal for a Directive of the European Parliament and of the Council laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, and replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA  
- Presidency note on Articles 1-11

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Delegations will find attached a note from the Presidency containing suggestions for revision of Articles 1-11 of the above-mentioned proposal.

The Presidency aims to discuss this note at the COPEN meeting that is scheduled to take place on 23 April 2024.

NOTE FROM THE PRESIDENCY ON ARTICLES 1-11

Introduction

On the basis of the input provided by delegations at the recent COPEN meetings, and the written input provided by Member States and Schengen Associated States, the Presidency suggests the textual changes to Articles 1-11 as set out below.

New changes made by the Presidency are marked by **bold** and underlined. Changes proposed earlier are marked by **bold** only.

Article 1 – Subject matter

The Presidency proposes to add the words “across” and “within the territory of any Member State”, for consistency with Article 3(1). The revised text is set out below.

**Q1: Unless there are objections, it will be assumed that these changes are acceptable.**

Suggested reformulation of Article 1:

*Article 1*

*Subject matter*

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of facilitation of unauthorised entry, transit **across** and stay of third-country nationals **within the territory of any Member State** as well as measures to prevent and counter the commission of such criminal offences.

## **Article 2 – Definitions**

The Presidency has no observations, nor suggestions to share about this Article at the moment.  
So the text remains as it stands:

### *Article 2*

#### *Definitions*

For the purposes of this Directive, the following definitions apply:

1. ‘third-country national’ means any person who is not a citizen of the Union within the meaning of Article 20(1) of the Treaty on the Functioning of the European Union and who is not a person enjoying the right of free movement under Union law as defined in Article 2, point 5, of Regulation (EU) 2016/399 of the European Parliament and of the Council;
2. ‘unaccompanied minor’ means a third-country national below the age of 18 years who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person, including a minor who is left unaccompanied after he or she has entered the territory of the Member States;
3. ‘legal person’ means any legal entity having such status under the applicable national law, except for States or public bodies exercising State authority and for public international organisations.

### **Article 3. Criminal offence**

On the basis of the exchanges during the previous meetings and the written comments, the Presidency proposes to delete Article 3(1)(a). As consequence, the condition of “financial and material benefit” will not be a constitutive element of the offence anymore. The Presidency suggests transferring this criterion to Article 9 on aggravating circumstances, as an element that Member States need to have in their national laws.

As a result of the suppression of “financial and material benefit” as constitutive elements of Article 3, the Presidency would also like to suggest – based on a majority of Member States’ comments – to include a humanitarian clause in the operative part of the text in addition to an amendment of recital 7. For this clause, the Presidency suggests, following a suggestion from Member States, to take inspiration from Article 3(6) of the Directive on the violation of Union restrictive measures (VRUM).<sup>1</sup>

In accordance with the previous changes, the Presidency would also like to suggest the deletion of Article 3(1)(b) to suppress the criterion of ‘highly likely to cause serious harm to a person’ as a constitutive element and to incorporate it in Article 9 as an aggravating circumstance, as an element that Member States need to have in their national laws.

Further, in view of the considerations of delegations, the Presidency suggests two options for Article 3(2).

The first one consists of rewording with a reference to the principle of freedom of expression. See the text below. As a consequence, Article 9(d) will gain in importance and the term instrumentalisation will be made clearer in a recital.

The second option is deletion.

The revised text of Article 3 is set out below.

**Q 3: Delegations are invited to indicate their position on the suggested changes.**

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<sup>1</sup> Article 3(6) of VRUM reads as follows (ref: 16758/23):

“(6) Nothing in paragraphs 1, 2 and 3 shall be understood as criminalising humanitarian assistance for persons in need or activities in support of basic human needs provided in accordance with the principles of impartiality, humanity, neutrality and independence and, where applicable with international humanitarian law.”

Suggested reformulation of Article 3:

*Article 3*

*Criminal offences*

1. Member States shall ensure that intentionally assisting a third-country national to enter, or transit across, or stay within the territory of any Member State in breach of relevant Union law or the laws of the Member State concerned on the entry, transit and stay of third-country nationals constitutes a criminal offence ~~where:~~

~~a) the person who carries out the conduct requests, receives or accepts, directly or indirectly, a financial or material benefit, or a promise thereof, or carries out the conduct in order to obtain such a benefit; or~~

~~b) there is a high likelihood of causing serious harm to a person.~~

2. *Option 1:*

**Without prejudice to the principle of freedom of expression,** Member States shall ensure that publicly **and intentionally** instigating third-country nationals to enter, or transit across, or stay within the territory of any Member State in breach of relevant Union law or the laws of the Member State concerned on the entry, transit and stay of third-country nationals constitutes a criminal offence.

*Option 2:*

Deletion of the paragraph 2.

**2a. Nothing in paragraph 1 shall be understood as criminalising humanitarian assistance for persons in need or activities in support of basic human needs.**

Accompanying recital 7:

- (7) **This Directive should not criminalise humanitarian assistance for persons in need or activities in support of basic human needs. In particular, it is not the purpose of this Directive to criminalise, on the one hand, assistance provided to close family members and, on the other hand, humanitarian assistance or the support of basic human needs provided to third-country nationals in compliance with legal obligations and acting with no intention to exploit the vulnerability of migrants. Aid or assistance provided altruistically among close family members or the provision of humanitarian assistance or the support of basic human needs will not fulfil the constitutive elements of this provision. Moreover, third-country nationals should not become criminally liable for providing aid or assistance for such reasons, or for having been the subject of the provision of such aid or assistance.**

#### **Article 4. Aggravated criminal offences**

The Presidency considers there is a broad support to delete Article 4 on aggravated criminal offences and introduce it in Article 6. Therefore, Article 4 will be deleted and the corresponding references to Article 4 will be removed throughout the text.

**Q 4: Unless there are objections, it will be assumed that these changes are acceptable.**

#### **Article 5. Incitement, aiding and abetting, and attempt**

The Presidency proposes some linguistic changes to this Article to further align the text with the Envicrime and THB Directives, see the text below.

**Q 5: Unless there are objections, it will be assumed that these changes are acceptable.**

Suggested reformulation of Article 5:

*Article 5*

**Inciting, aiding and abetting, and attempting**

Member States shall ensure that inciting, aiding and abetting **or** attempting to commit any of the criminal offences referred to in Article 3(1) ~~and Article 4~~ are punishable as criminal offences.

**Article 6. Penalties for natural persons**

With the aim of pursuing a further alignment between the THB-Directive and this proposal, the Presidency would like to suggest a rewording of the points (b) and (c) of paragraph 3.

In order to try to encompass as many victims as possible of the offence referred to in Article 3, the Presidency suggests adding a mention to “persons” in paragraph 3(b) and paragraph 4, in addition of the third-country nationals. More explanations could be added in a recital to clarify which persons are aimed by this suggestion, for example police officers.

The Presidency would also like to suggest the suppression of initial point (b) in paragraph 5, as suggested by several Member States. Indeed, it seems that this provision brought confusion regarding the competent jurisdiction to establish such sanction, as it must be done in respect of relevant bilateral agreements established between the Member States and the relevant third country. Therefore, it does not seem to be relevant of the national judge’s authority.

Regarding point (c) of paragraph 3, the Presidency would like to highlight that the notions of “serious violence” and “serious harm” may be further developed in a recital, as it is the case in the THB-Directive (see recital 12).

The Presidency would like to know if Member States could agree with the suggested formulation of paragraph 3(d) aiming to a better express the intentions of the Commission with this article. Besides, the notion of “particularly vulnerable” may be developed in a recital. In addition, the Presidency would like to know if Member States would like to suggest the inclusion of any other group of people besides unaccompanied minors to further clarify the aimed persons. A mention to Article 21 of Directive 2013/33/UE laying down standards for the reception of applicants for international protection (recast) could be made, where minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human

trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation are considered as vulnerable persons.

Also, the Presidency suggests a rewording for paragraph 5 – in accordance with the Envicrime Directive and THB Directive – and would like to know if the Member States could accept such a formulation on additional sanctions – left to Member States’ margin of appreciation – that could be opposed to a person who committed an offence mentioned in Article 3 or Article 5.

Regarding the sanctions referred to in paragraph, the Presidency suggests to firstly mention fines as it is one of the most used sanctions and to suppress ancient point (b) about the return or the serving the penalty in a third country of return.

Concerning the prohibition to enter and stay on a Member State’s territory, the Presidency would like to suggest harmonising this point with the Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals and in particular with its Article 11(2). This could be mentioned in the recitals.

In paragraph 4, following a suggestion from Member States, the Presidency suggests referring to Articles 3(1) and 5. In this way, “attempt” is also addressed, while the offence referred to in Article 3(2) seems not relevant here.

Furthermore, the Presidency would already like to suggest the introduction of a new provision on freezing and confiscation of the proceeds derived from the commission of an offence as suggested by several Member States.<sup>2</sup>

**Q 6: Delegations are invited to indicate their position on the suggested changes in Article 6, and on the new Article X/8a (see below).**

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<sup>2</sup> Suggested new Article X (provisionally indicated as 8a):

**Article [8a]**

**Freezing and confiscation**

**Member States shall take the necessary measures to enable the freezing and confiscation of instrumentalities and proceeds from the criminal offences referred to in Articles 3 and 5. Member States bound by Directive 2014/42/EU of the European Parliament and of the Council<sup>2</sup> shall do so in accordance with that Directive.**



Suggested reformulation of Article 6:

*Article 6*

*Penalties for natural persons*

1. Member States shall take the necessary measures to ensure that the criminal offences referred to in Articles 3, 4 and 5 are punishable by effective, proportionate and dissuasive criminal penalties.
2. Member States shall take the necessary measures to ensure that the criminal offences referred to in Article 3 are punishable by a maximum term of imprisonment of at least three years.
3. Member States shall take the necessary measures to ensure that the criminal offences referred to in **Article 3** are punishable by a maximum term of imprisonment of at least ten years **where that offence:**
  - (a) **was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA;**
  - (b) **deliberately or by gross negligence caused serious harm to, or endangered the life of, the third country nationals subject to the criminal offence or of other persons;**
  - (c) **was committed by the use of serious violence or has caused particularly serious harm to the victim, including physical or psychological harm;**
  - (d) **the third-country nationals who were subjected to the criminal offence were particularly vulnerable, including such as unaccompanied minors.**
4. Member States shall take the necessary measures to ensure that the criminal offence referred to in Article **3(1) and 5**, ~~including attempts to commit the criminal offence referred to in that provision,~~ **are** punishable by a maximum term of imprisonment of at least fifteen years **where that offence caused the death of the third-country nationals who were subject of the criminal offence, or of other persons.**

5. In addition to criminal penalties imposed in accordance with paragraphs 1 to 4, Member States shall take the necessary measures to ensure that natural persons who ~~that have been convicted of committing~~ **committed** one of the criminal offences referred to in Articles ~~3, 4~~ and 5 may be subject to **additional** criminal or non-criminal sanctions or measures imposed by a competent authority, ~~including~~ **which may include**:

**(0a)** fines;

- (a) withdrawal of permits or authorisations to pursue activities which have resulted in committing the criminal offence, or prohibition on practising directly or through an intermediary the occupational activity in the exercise of which the criminal offence was committed;
- (b) ~~return after the enforcement of the penalty in a Member State, or to serve the penalty imposed, or part of it, in the third country of return, without prejudice to more favourable provisions that may be applicable by virtue of Union or national law;~~
- (c) prohibition to enter and stay on the territory of the Member States for an appropriate period of maximum 10 years, **based on all the relevant circumstances of the individual case and** without prejudice to more favourable provisions that may be applicable by virtue of Union or national law;
- (d) exclusions from access to public funding, including tender procedures, grants and concessions.
- (e) *(moved to 0a)*
- (f) ~~freezing and confiscation of the proceeds derived from, and instrumentalities used for, the commission of the offence, in accordance with Directive 2014/42/EU of the European Parliament and of the Council.~~

## **Article 7. Liability of legal persons**

The Presidency proposes two minor linguistic changes in paragraph 3, see below.

**Q 7: Unless there are objections, it will be assumed that these changes are acceptable.**

Suggested reformulation of Article 7:

### *Article 7*

#### *Liability of legal persons*

1. Member States shall take the necessary measures to ensure that legal persons can be held liable for the criminal offences referred to in Articles 3, 4 and 5 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has 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;
  - (c) an authority to exercise control within the legal person.
2. Member States shall also take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of the criminal offences referred to in Articles 3, 4 and 5 for the benefit of that legal person by a person under its authority.
3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators of inciters of **to**, or accessories into the criminal offences referred to in Articles 3, 4 and 5.

## **Article 8. Sanctions for legal persons**

The Presidency suggests aligning the wording of the first paragraph with the Envicrime and THB Directives.

The Presidency proposes to align paragraph 2 with the Envicrime and THB Directives and by introducing criminal or non-criminal fines as mandatory sanction for legal persons, as Member States are also free to transpose other types of sanctions – presented by an exemplative list – in their national law.

Still in paragraph 2, and in order to further align the criminal or non-criminal sanctions or measures that can be opposed to legal persons who committed the offence to the THB-Directive, the Presidency would like to propose several revisions of the text. The Presidency further suggests the suppression of point (i) on freezing and confiscation for the same reasons mentioned in the context of Article 6.

Regarding paragraph three, the Presidency suggests adapting the wording and the percentage established in this paragraph in accordance with the Envicrime Directive. Indeed, several Member States asked for alternative maximum fixed amounts for fines alongside the proposed percentage in line with the Envicrime Directive. Those amounts need to be further discussed by the Member States.

The Presidency also suggests suppressing point (c) of paragraph 3 due to its link with Article 4.

In paragraph 4, the wording is also slightly adapted to align with the Envicrime Directive.

**Q 8: Member States are invited to indicate their position on these suggested changes.**

Suggested reformulation of Article 8:

*Article 8*

*Sanctions for legal persons*

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 7 is ~~subject to~~ **punishable by** effective, proportionate and dissuasive criminal **or non-criminal** sanctions **or measures**.
2. Member States shall take the necessary measures to ensure that sanctions or measures for legal persons **held** liable pursuant to Article 7 for the ~~criminal~~ offences referred to in Articles 3, 4 and 5 **shall include criminal or non-criminal fines and may include other criminal or non-criminal sanctions or measures, such as** ~~may include:~~
  - ~~(a)~~ ~~criminal or non-criminal fines;~~
  - (b) exclusion from entitlement to public benefits, **or** aid ~~or subsidies~~;
  - (c) temporary or permanent exclusions from access to public funding, including tender procedures, grants, ~~and~~ concessions **and licences**;
  - (d) temporary or permanent disqualification from the practice of **business** ~~commercial~~ activities;
  - (e) placing under judicial supervision;
  - (f) judicial winding-up;
  - (g) temporary or permanent closure of establishments ~~which have been~~ used for committing the ~~criminal~~ offence;
  - ~~(h)~~ withdrawal of permits and authorisations to pursue activities which have resulted in committing the criminal offence;
  - ~~(i)~~ ~~freezing and confiscation of the proceeds derived from, and instrumentalities used for, the commission of the offence, in accordance with Directive 2014/42/EU of the European Parliament and of the Council.~~

3. **Member States shall take the necessary measures to ensure that, at least for legal persons held liable pursuant Article 7(1), offences referred to in Article 3 and 6(3) are punishable by criminal or non-criminal fines,** the amount of ~~eriminal or non-criminal fines~~ **which** shall be proportionate to the seriousness of the conduct and to the individual, financial and other circumstances of the legal person concerned. Member States shall take the necessary measures to ensure that the maximum level of such fines is not less than:
- (a) ~~3~~ **5%** of the total worldwide turnover of the legal person, either in the business year preceding the one in which the criminal offence was committed, or in the business year preceding the fining decision, for criminal offences referred to in Article 4, ~~points (a) to (d)~~ **6(3), and,**
  - (b) ~~5~~ **3%** of the total worldwide turnover of the legal person, either in the business year preceding the one in which the criminal offence was committed, or in the business year preceding the fining decision, for criminal offences referred to in Article 3.
  - ~~(c) 6% of the total worldwide turnover of the legal person, either in the business year preceding the one in which the criminal offence was committed, or in the business year preceding the fining decision, for criminal offences referred to in Article 4, point (e).~~
- or, alternatively**
- (c) an amount corresponding to EUR [...] \* for offences referred to in Article 3, and EUR [...] \* for offences referred to in Article 6(3).**
4. When providing for ~~eriminal or non-criminal~~ fines pursuant to paragraph 3, Member States may provide for rules applicable in cases where it is not possible to determine the amount of the fine on the basis of the total worldwide turnover of the legal person in the business year preceding the one in which the criminal offence was committed, or in the business year preceding the fining decision.

## **Article 9. Aggravating circumstances**

On the basis of the input during the last COPEN, the Presidency proposes to have fully optional aggravating circumstances for a) till e), in line with the text of Article 8 of the Envicrime Directive, Article 8 of the Restrictive Measures Directive (VRUM) and Article 9 of the Directive on Violence against women.

However the Presidency proposes to include the criterion ‘financial and material benefit’, and ‘likely to cause serious harm’, as mandatory aggravating circumstances. See text below of Article 9.1.

Furthermore, various Member States requested to discuss the content of this provision. On the basis of the exchanges during the previous meetings, the Presidency proposes the following changes:

The Presidency proposes no changes in letters a) and e).

Some Member States raised concerns with the element of ‘intent’ for the aggravating circumstances of letter b) and d). The Presidency will invite the Commission to address the concerns of these Member States in the next COPEN meeting.

Under letter c) the Presidency proposes an alignment with Article 8(e) Envicrime Directive.

Under letter d) several Member States asked for a clarification of the notion ‘exploitation or instrumentalisation’. The Presidency proposes to explain these concepts in a recital.

Some Member States pointed out that the aggravating circumstances under e) and f) constitute separate criminal offences in national law. The Presidency proposed to address this concern in recital 14.

Furthermore, letter (f) was aligned with other criminal law instruments: replacing ‘carrying a firearm’ by ‘use or threat of using a weapon’.

**Q 9: Delegations are invited to indicate their position on these suggested changes.**

*Article 9*

*Aggravating circumstances*

- 1. To the extent that the following circumstances do not form part of the constituent elements of the criminal offences referred to in Article 3, Member States shall take the necessary measures to ensure that the following circumstances shall, in accordance with national law, be regarded as an aggravating circumstances, in relation to the criminal offences referred to Articles 3 and 5:**
  - (a) the criminal offence was committed by a person who requests, receives or accepts, directly or indirectly, a financial or material benefit or a promise thereof, or carries out the conduct in order to obtain such a benefit;**
  - (b) the criminal offence was likely to cause serious harm to a person.**
  
- 2. To the extent that the following circumstances do not form part of the constituent elements of the criminal offences referred to in Article 3, Member States shall take the necessary measures to ensure that one or more of the following circumstances may can, in accordance with national law, be regarded as an aggravating circumstances, in relation to the criminal offences referred to Articles 3, 4 and 5:**
  - (a) the criminal offence was committed by a public official when performing his or her duties;
  - (b) the criminal offence entailed or resulted in the involvement of third-country nationals who were subject to the criminal offence in illegal employment as referred to in Directive 2009/52/EC of the European Parliament and of the Council;
  - (c) the offender has previously been ~~definitively~~ convicted **by a final judgment** of criminal offences of the same nature ~~under~~ **as those referred to in** Articles 3, ~~4~~ or 5;



- (d) the criminal offence entailed or resulted in the exploitation or instrumentalisation of a third-country national who was subject to the criminal offence;
- (e) dispossessing the third-country nationals who are subject to the criminal offence of their identity or travel documents;
- (f) the criminal offence was ~~carried out while carrying a firearm~~ **committed with the use of a weapon or the threat of using a weapon.**

The Presidency considers that there is broad support to add the following wording to corresponding recital 14:

*“The notion of aggravating circumstances should be understood either as facts allowing the judge to pronounce a higher sentence for the same offence than the one normally incurred without these facts, or as the possibility of retaining several offences cumulatively in order to increase the level of sanction. Therefore, Member States should not be obliged to provide for specific aggravating circumstances where national law provides for separate criminal offences, and this may lead to more severe sanctions.”*

The Presidency proposes to clarify the concepts of ‘exploitation’ and ‘instrumentalisation’ in a recital:

New recital X would read as follows:

**(X) In the context of the aggravating circumstances set out in this Directive, the notion of ‘exploitation’ should be understood as the exploitation of other persons through prostitution, or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs, or the exploitation of surrogacy, of forced marriage, or of illegal adoption, as defined in Article 2(3) of Directive (EU) XX/YY of the European Parliament and of the Council [Proposed Directive amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victim].**

**In the same context, the notion of ‘instrumentalisation’ should be understood as a situation where a third country or hostile non-state actor encourages or facilitates the movement of third country nationals and stateless persons to the external borders or to a Member State, with the aim of destabilising the Union or a Member State where such actions are liable to put at risk essential functions of a Member State, including the maintenance of law and order or the safeguard of its national security, as referred to in Article 1(4) letter (b) of Regulation (EU) XX/YY of the European Parliament and of the Council [Proposed Regulation addressing situations of crisis and force majeure in the field of migration and asylum].**

### **Article 10 Mitigating circumstances**

The Presidency proposes just small editorial changes to Article 10.

**Q 10a: Delegations are invited to indicate whether they can accept the proposed changes.**

Suggested reformulation of Article 10:

#### *Article 10*

##### *Mitigating circumstances*

Member States shall take the necessary measures to ensure that, in relation to the **relevant** criminal offences referred to in Articles 3, 4 and 5, ~~it~~ **the following** may, **in accordance with national law**, be regarded as a mitigating circumstance ~~that~~:

The offender provides the competent authorities with information which they would not otherwise been able to obtain, helping them to:

- (a) identify or bring to justice other offenders; or
- (b) find evidence.

The Commission proposal refers to information ‘*which the competent authorities would not otherwise been able to obtain*’ (in line with the Envicrime Directive and the Restrictive measures Directive). However, the Presidency notes that several delegations are of the opinion that this objective element is too restrictive and difficult to prove.

**Q 10b: Delegations are invited to indicate whether or not they want to keep this objective criterion in the text of Article 10.**

### **Art. 11 Limitation Periods for criminal offences**

The Presidency notes that the discussion on limitation periods (Article 11) is linked to discussion on the level of criminal penalties of particular offences (Article 6).

In general, delegations requested a more coherent and consistent approach with other EU criminal law instruments. Furthermore, various delegations consider the proposed limitation periods to be too long. Therefore, the Presidency suggests to align the approach of limitation periods for criminal offences to Article 11 Envicrime Directive.

The Presidency suggests aligning the **title** with article 11 Envicrime Directive, deleting the reference to criminal offences.

**Paragraph 1:** The Presidency suggests a minor linguistic change, in line with the Envicrime Directive.

The **structure of paragraph 2** was aligned with the Envicrime Directive.

**Paragraph 2a:** Several Member States noted that the limitation period of 7 years does not reflect the level of the criminal penalty, which is set at 3 years. The Presidency suggests, to align the limitation period with the level of the criminal penalty.

**Paragraph 2b) and 2c):** The Presidency suggests, to adapt these limitation periods to the outcome of the debate on the level of the criminal penalties, aligning the level of the limitation periods with the final level of the penalties.

**Paragraph 3:** The Presidency suggests to provide for two alternative connecting factors, aligning this paragraph with art. 11§3 of the Envicrime Directive. This allows Member States to bring the provisions on the limitation periods in line with their national systems.

**Paragraph 4:** The Presidency suggests some technical changes, replacing the reference to the relevant provisions by a reference to the level of the penalties.

**Q 11a: Delegations are invited to indicate whether they can accept the proposed changes.**

Suggested reformulation of Article 11:

*Article 11*

*Limitation periods for criminal offences*

1. Member States shall take the necessary measures to provide for a limitation period that enables the investigation, prosecution, trial and ~~judicial decision~~ **adjudication** of criminal offences referred to in Articles 3, 4 and 5 for a sufficient period of time after the commission of those criminal offences, in order for those criminal offences to be tackled effectively.

**Member States shall take the necessary measures to provide for a limitation period that enables the enforcement of penalties imposed following a final conviction for criminal offences referred to in Articles 3 and 5 for a sufficient period of time after that conviction.**

- ~~2. Member States shall take the necessary measures to enable the investigation, prosecution, trial and judicial decision:~~
  - ~~(a) of criminal offences referred to in Article 3, for a period of at least seven years from the time when the criminal offence was committed;~~
  - ~~(b) of criminal offences referred to in Article 4, points (a) to (d) for a period of at least ten years from the time when the criminal offence was committed;~~
  - ~~(c) of criminal offences referred to in Article 4, point (e), including attempts to commit the offence referred to in Article 4, point (e), for a period of at least fifteen years from the time when the criminal offence was committed.~~

**2. The limitation period referred to in paragraph 1, first subparagraph, shall be as follows:**

- (a) at least three years from the commission of a criminal offence punishable by a maximum term of imprisonment of at least three years;**
- (b) at least ten years from the commission of a criminal offence punishable by a maximum term of imprisonment of at least ten years;**
- (c) at least fifteen years from the commission of a criminal offence punishable by a maximum term of imprisonment of at least fifteen years.**

~~3. Member States shall take the necessary measures to enable the enforcement of:~~

- ~~(a) a penalty of imprisonment in the case of a criminal offence, imposed following a final conviction for a criminal offence referred to in Article 3, for at least seven years from the date of the final conviction;~~
- ~~(b) a penalty of imprisonment in the case of a criminal offence, imposed following a final conviction for a criminal offence referred to in Article 4, points (a) to (d), for at least ten years from the date of the final conviction;~~
- ~~(c) a penalty of imprisonment in the case of a criminal offence, imposed following a final conviction for a criminal offence referred to in Article 4, point (e), including attempts to commit the criminal offence referred to in Article 4, point (e), for at least fifteen years from the date of the final conviction.~~

**3. The limitation period referred to in paragraph 1, second subparagraph, shall be as follows:**

- (a) at least three years from the date of the final conviction in the following cases:**
  - (i) a penalty of imprisonment of up to one year, or alternatively**
  - (ii) a penalty of imprisonment for a criminal offence punishable by a maximum term of at least three years; and**

**(b) at least ten years from the date of the final conviction in the following cases:**

**(i) a penalty of imprisonment of more than five years, or alternatively**

**(ii) a penalty of imprisonment for a criminal offence punishable by a maximum term of at least ten years; and**

**(c) at least fifteen years from the date of the final conviction in the following cases:**

**(i) a penalty of imprisonment of more than eight years or alternatively**

**(ii) a penalty of imprisonment for a criminal offence punishable by a maximum term of at least fifteen years.**

4. By way of derogation from paragraphs 2 and 3, Member States may establish a shorter limitation period, provided that the period may be interrupted or suspended in the event of specified acts. This period shall not be shorter than:

(a) ~~two five~~ years for the criminal offences referred to in Article 3 **punishable by a maximum term of imprisonment of at least three years;**

(b) eight years for the criminal offences referred to in Article 4, points (a) to (d) **punishable by a maximum term of imprisonment of at least ten years;**

(c) ten years for the criminal offences referred to in Article 4, point (e), including attempts to commit the criminal offence referred to in Article 4, point (e) **punishable by a maximum term of imprisonment of at least fifteen years.**

Some delegations asked to specify the starting point of the limitation periods. Therefore, the Presidency suggests adapting recital 16, in line with recital 50 of the Envicrime Directive.

**Q 11 b: Delegations are invited to indicate whether they can accept the proposed addition to recital 16.**

**Proposed revised text of Recital 16:**

- (16) Member States should lay down rules concerning limitation periods in order to enable them to counter the criminal offences referred to in this Directive effectively, without prejudice to national rules that do not set limitation periods for investigation, prosecution and enforcement.

**As a general rule, the start of a limitation period should be the moment when the offence was committed. However, as this Directive sets minimum rules, Member States could provide in their national legislation that the limitation period starts later, at the moment when the offence was discovered, provided that such moment is clearly defined in accordance with national law. Where Member States are permitted to derogate from the limitation periods, provided that the period may be interrupted or suspended in the event of specified acts, such acts may be defined in accordance with the legal system of each Member State.**

**Concluding remarks**

The Presidency would like to thank the Member States and Schengen Associated States in advance for their careful examination of this Presidency paper and looks forward to a fruitful discussion on 23 April.