



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 30 May 2011**

**DS 1114/6/11  
REV 6**

**WORKING DOCUMENT**

**Subject: Proposal for a Directive on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA.**

This is a revised version of four column table with regard to Articles 1-16 and 21-26 of the proposal, including comments by the Presidency in follow up of DROIPEN meeting on 26.5.2011 and Friends of Presidency meeting on 27.5.2011. Due to the complexity of the amendments, the provisions relevant to the victims are presented in the consolidated document.

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<p>Commission Proposal</p>	<p>LIBE Committee's position in follow-up to the orientation vote on 14 February 2011 (provisional text circulated to delegations on 23.2.2011)</p>	<p>Text of the general approach of the Council on 3 December 2010</p>	<p>Text proposed by the Presidency in follow-up to the COREPER, COPEN and FoP meetings. New text appears in bold and <i>italics</i>.</p> <p>(Explanation on the level of penalties:  → = equivalent levels  ↑ = the Council raised  ↓ = the Council lowered the level of penalties)</p>
<p>Proposal for a</p> <p><b>DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL</b></p> <p><b>on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA</b></p> <p>THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,</p> <p>Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2) and 83(1) thereof,</p> <p>Having regard to the proposal from the European Commission,</p> <p>After transmission of the draft</p>		<p>Proposal for a</p> <p><b>DIRECTIVE 2010/.../EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL</b></p> <p><b>on combating the sexual abuse, sexual exploitation of children and child pornography, replacing Framework Decision 2004/68/JHA</b></p> <p>THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,</p> <p>Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2) and 83(1) thereof,</p> <p>Having regard to the proposal from the European Commission,</p> <p>After transmission of the draft</p>	

legislative act to the national Parliaments, HAVE ADOPTED THIS DIRECTIVE		legislative act to the national Parliaments, HAVE ADOPTED THIS DIRECTIVE	
<p style="text-align: center;">Article 1 <i>Subject matter</i></p> <p>This Directive aims to establish minimum rules concerning the definition of criminal offences and sanctions in the area of sexual exploitation of children. It also aims to introduce common provisions to strengthen the prevention of the crime and the protection of its victims.</p>	<p style="text-align: center;">Compromise AM 1 (AM 14 and 90) Article 1 <i>Subject matter</i></p> <p>This Directive aims <i>to prevent the sexual abuse and sexual exploitation of children and to</i> establish minimum rules concerning the definition of criminal offences and sanctions in the area of sexual <i>abuse and sexual</i> exploitation of children, <i>as well as the presentation of child pornography</i>. It also aims to introduce common provisions to strengthen the prevention of the crime and the protection of its victims.</p>	<p style="text-align: center;">Article 1 <i>Subject matter</i></p> <p>This Directive aims to establish minimum rules concerning the definition of criminal offences and sanctions in the area of <b>sexual abuse and sexual exploitation of children, child pornography and solicitation of children for sexual purposes</b>. It also aims to [...] strengthen the prevention of <b>these crimes</b> and <b>to strengthen</b> the protection of <b>their</b> victims.</p>	<p style="text-align: center;"><b>Text agreed by institutions</b></p> <p>COMPROMISE PROPOSAL acceptable to all institutions: “This Directive aims to establish minimum rules concerning the definition of criminal offences and sanctions in the area of <b>sexual abuse</b> and sexual exploitation of children, <b>child pornography and solicitation of children for sexual purposes</b>. It also aims to introduce (...) <i>provisions</i> to strengthen the prevention of <i>the crime</i> and the protection of its victims.”</p>
<p style="text-align: center;">Article 2 Definitions</p> <p>For the purposes of this Directive: (a) ‘child’ shall mean any person below the age of 18 years;</p>		<p style="text-align: center;">Article 2 Definitions</p> <p>For the purposes of this Directive: (a) ‘child’ shall mean any person below the age of 18 years;</p>	Text agreed by institutions

	Amendment 15 (new) <i>(aa) 'age of sexual consent' shall mean the legal age according to national law to engage in sexual activities;</i>	<b>(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>	
(b) 'child pornography' shall mean	Compromise AM 2 (AM 16, 92, 93, 94 and 95)  (b) 'child pornography' or ' <i>child abuse material</i> ' shall mean:	(b) 'child pornography' shall mean	<b>A recital as a compromise:</b> it would make reference to the element of child abuse. The following drafting proposal, still mentioning "abuse", is submitted for consideration to the EP:  <i>"Child pornography frequently includes images recording the sexual abuse of children by adults. It can also include images of children involved in sexually explicit conduct, or of their sexual organs, where such images are produced, or intended to be used, for primarily sexual purposes and exploited with or without the child's knowledge"</i>

<p>(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</p>		<p>(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</p>	Text agreed
<p>(iv) realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, regardless of the actual existence of such child, for primarily sexual purposes;</p>	<p>Amendment 99  (iv) realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child [...] <b>or of a virtual image thereof</b> for primarily sexual purposes;</p>	<p>(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;</p>	Text of GA is acceptable as a compromise for the institutions.
	<p>Amendment 100  (iv) realistic images of a child engaged <b>or depicted as being engaged</b> in sexually explicit conduct or realistic images of the sexual organs of a child, regardless of the actual existence of such child, for primarily sexual purposes;</p>		As above

<p>(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 person;</p>		<p>(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;</p>	<p>Text agreed by institutions</p>
<p>(d) 'pornographic performance' shall mean the live exhibition, including by means of information and communication technology:</p> <p>(i) of a child engaged in real or simulated sexually explicit conduct; or</p> <p>(ii) of the sexual organs of a child for primarily sexual purposes;</p>		<p>(d) 'pornographic performance' shall mean the <b>organised</b> live exhibition, <b>aimed at an audience</b>, including by means of information and communication technology:</p> <p>(i) of a child engaged in real or simulated sexually explicit conduct; or</p> <p>(ii) of the sexual organs of a child for primarily sexual purposes;</p>	<p>The <b>Council</b> believes that the addition "organised", "aimed at an audience" is necessary to make sure that this Directive does not govern Member States' policies with regard to consensual sexual activities among children or adolescents, which can be regarded as the normal discovery of their sexuality in the course of development. These activities could also include the use of Internet.. However, the final text for (d) remains an open question; at least "aimed at an audience" should be kept. As an alternative, the <b>Presidency</b> suggests that the following recital should be added: <i>"In the context of criminalising acts related to pornographic performance [...] this Directive refers to the relevant acts as an organised live exhibition, aimed at an audience, thereby excluding personal face-to-face communication from the definition"</i></p>

	Amendments 102, 103 and 104 <b>(new)</b> <i>(da) 'child sexual exploitation in travel and tourism' shall mean the sexual exploitation of children by a person or persons who travel from their usual environment to a destination where they have sexual contact with children;</i>		<b>The Council</b> wishes to insist on the text of GA (Article 19a). It would be better to clarify the scope of the relevant provisions <b>in a recital</b> . The text is not clear enough to become a definition (“sexual exploitation” not being defined), furthermore, it covers very broad situations (ie. teenagers travelling within Europe making sexual contact with others close to adulthood)
(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.		(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.	Text agreed by institutions
Article 3 <b><i>Offences concerning sexual abuse</i></b> 1. Member States shall take the necessary measures to ensure that the intentional conduct referred to in paragraphs 2 to 5 is punishable.		Article 3 <b><i>Offences concerning sexual abuse</i></b> 1. Member States shall take the necessary measures to ensure that the intentional conduct referred to in paragraphs 2 to 5 is punishable.	Text agreed by institutions  <b>On the penalties in general:</b> <b>This is an outstanding issue for all institutions.</b> In an effort to reach a compromise, Articles 3 (4) and 5 (7) need to be further negotiated. The addition of the element of the "age of sexual consent" for the definition /differentiation of penalties has been accepted by all institutions, also in Article 4 with two different levels of penalties.

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<p>2. Causing, for sexual purposes, a child who has not reached the age of sexual consent under national law to witness sexual abuse or sexual activities, even without having to participate, shall be punishable by a maximum term of imprisonment of at least two years.</p>		<p>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.</p>	<p>↓ The <b>Council</b> notes that paras 2 and 2a introduce a differentiation of penalties according to the type of activities. In para 2a, there is no compelling reason to raise the original level envisaged by COM. Therefore, in order to keep penalties proportionate, para 2 should refer to a lower level of penalty, ie. one year.</p>
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		2a. <b>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.</b>	➔ The <b>Council</b> believes that a well balanced text should emphasise the more serious nature of this act as opposed to para 2. The level of penalties is kept in line with COM proposal.
3. Engaging in sexual activities with a child who has not reached the age of sexual consent under national law shall be punishable by a maximum term of imprisonment of at least five 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.	➔ The level of penalties is kept in line with the COM proposal. The level of penalties of this para has to be compared with the level of penalties of para 4.
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; or		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 <b>five 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</b> ; or	<b>The Council pleads in favour of the GA.</b>  As a <b>last compromise and in the light of a future global agreement</b> , the <b>Council</b> could accept the penalty of <b>8 years</b> in case of children under the age of sexual consent, but insists on <b>3 years</b> for children over that age. In case of children over the age of consent, we need to keep in mind that this group is composed of persons close to adulthood. Therefore, five years is a too high penalty from that point of view. Three years of imprisonment should also be coherent with point

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			(ii) below Even with regards to 8 years, the Presidency notes that the votes in the Council may constitute a blocking minority.
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<p>(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; or</p>		<p>(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 <b>five 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;</b> or</p>	<p>↓ <b>The Council pleads in favour of the GA.</b> As a <b>last compromise and in the light of a future global agreement</b>, it could accept <b>8 years</b> for children under the age of sexual consent and <b>3 years</b> for children above this age. However, the <b>Presidency</b> notes that the votes in the Council with regard to EP proposal, depending on other elements of the compromise, may constitute a blocking minority. 8/3 would be also logical in the light of Article 3 (3) and Article 3 (4) (iii).</p>
<p>(iii) use is made of coercion, force or threats shall be punishable by a maximum term of imprisonment of at least ten years.</p>		<p>(iii) use is made of coercion, force or threats shall be punishable by a maximum term of imprisonment of at least ten years <b>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.</b></p>	<p>→ For underage victims, the original level is kept. ↓ The <b>Council</b> notes that the penalty level should be proportionate, therefore lower for children above the relevant age, thus wishes to insist on its GA.</p>
<p>5. Coercing a child into sexual activities with a third party shall be punishable by a maximum term of imprisonment of at least ten years.</p>		<p>5. Coercing, <b>forcing or threatening</b> a child into sexual activities with a third party shall be punishable by a maximum term of imprisonment of at least ten years <b>if</b></p>	<p>→ For underage victims, the original level is kept. ↓ The <b>Council</b> notes that the penalty level should be</p>

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		<b>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.</b>	proportionate, therefore lower for children above the relevant age, thus wishes to insist on its GA.
<p>Article 4 <i>Offences concerning sexual exploitation</i></p> <p>1. Member States shall take the necessary measures to ensure that the intentional conduct referred to in paragraphs 2 to 11 is punishable.</p>	<p>Amendment 116 --Article 4 <i>Offences concerning sexual exploitation</i></p> <p>1. Member States shall take the necessary measures to ensure that the [...] conduct referred to in paragraphs 2 to 11 is punishable.</p>	<p>Article 4 <i>Offences concerning sexual exploitation</i></p> <p>1. Member States shall take the necessary measures to ensure that the intentional conduct referred to in paragraphs 2 to <b>6</b> is punishable.</p>	<p><b>The EP</b> recognises the importance of intentionality in Article 4, and accepts the re-introduction of this element in the framework of an overall compromise.</p> <p>Text agreed by institutions</p>
<p>2. Causing a child to participate in pornographic performances shall be punishable by a maximum term of imprisonment of at least two years.</p>	<p>Amendment 123</p> <p>2. Causing a child to participate in pornographic performances shall be punishable by a maximum term of imprisonment of at least two years <b>and an appropriate fine.</b></p>	<p>2. Causing <b>or recruiting</b> a child to participate in pornographic performances, <b>or profiting from or otherwise exploiting a child for such purposes</b>, shall be punishable by a maximum term of imprisonment of at least <b>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.</b></p>	<p><b>On the fines:</b> <b>Text agreed by institutions</b></p> <p>The deletion of fines is followed by the addition of Article 10a regarding seizure and confiscation, together with a recital on the fines (recital 7c), which reads as: “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 Organised 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</p>

			<p>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.”</p> <p><b>On the elements of the crime: Elements from para 7 of the COM's proposal</b></p> <p>↑ The Council text of GA raises the level of penalties if the child is below the age of sexual consent. This makes the penalty consistent with Article 3 paras 3 and 4.</p> <p>→ If the child is above the age of sexual consent, the penalty should be two years, in accordance with COM proposal.</p>
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<p>3. Profiting from or otherwise exploiting a child participating in pornographic performances shall be punishable by a maximum term of imprisonment of at least two years.</p>	<p>Amendment 128 3. Profiting from or otherwise exploiting a child participating in pornographic performances shall be punishable by a maximum term of imprisonment of at least two years <b>and an appropriate fine.</b></p>		<p><i>On the fines, see comments above.</i></p> <p>There is an agreement among the institutions with regard to the elements of the crime.</p>
	<p>Amendment 155 9. Coercing <b>or forcing</b> a child to participate in pornographic performances, <b>or threatening a child for such purposes</b> shall be punishable by a maximum term of imprisonment of at least eight years <b>if the child has not reached the age of sexual consent, or of at least five years if the child is over that age.</b></p>	<p>3. Coercing <b>or forcing</b> a child to participate in pornographic performances, <b>or threatening a child for such purposes</b>, shall be punishable by a maximum term of imprisonment of at least eight years <b>if the child has not reached the age of sexual consent, or of at least five years if the child is over that age.</b></p>	<p>↓ <b>The text of Council's GA and EP is identical</b></p>
<p>4. Knowingly attending pornographic performances involving the participation of children shall be punishable by a maximum term of imprisonment of at least two years.</p>	<p>Amendment 133 4. Knowingly attending pornographic performances involving the participation of children shall be punishable by a maximum term of imprisonment of at least two years <b>and an appropriate fine.</b></p>	<p><b>3a.</b> Knowingly attending pornographic performances involving the participation of <b>a child</b> shall be punishable by a maximum term of imprisonment of at least two years <b>if the child has not reached the age of sexual consent, or of at least one year if the child is over that age.</b></p>	<p>The <b>Council</b> made the penalty level consistent with para 2. → For underage victims, the original level is kept. ↓ The <b>Presidency</b> notes that the penalty level should be proportionate, lower for children above the relevant age, thus wishes to insist on the GA.</p>
<p>5. Recruiting a child to participate in pornographic performances shall be punishable by a maximum term of imprisonment of at least five years.</p>	<p>Amendment 138 5. Recruiting a child to participate in pornographic performances shall be punishable by a maximum term of imprisonment of at least five years <b>and an appropriate fine.</b></p>		<p>Original para 5 has been moved to para 2 of the Council 's GA <i>On the fines, see comments above</i></p>

<p>6. Causing a child to participate in child prostitution shall be punishable by a maximum term of imprisonment of at least five years.</p>	<p>Amendment 143 6. Causing a child to participate in child prostitution shall be punishable by a maximum term of imprisonment of at least five years <i>and an appropriate fine.</i></p>	<p>4. Causing <b>or recruiting</b> a child to participate in child prostitution, <b>or profiting from or otherwise exploiting a child for such purposes</b>, shall be punishable by a maximum term of imprisonment of at least <b>eight</b> years <b>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.</b></p>	<p><i>On the fines, see comments above.</i>   <b>The Council</b> has raised the level of penalties in eight years, reflecting on the age of sexual consent.   Above the age of sexual consent, the original level is kept.</p>
	<p>Amendment 166 11. Coercing <i>or forcing</i> a child into child prostitution, <i>or threatening a child for such purposes</i>, shall be punishable by a maximum term of imprisonment of at least ten years <i>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.</i></p>	<p>5. Coercing <b>or forcing</b> a child into child prostitution, <b>or threatening a child for such purposes</b>, shall be punishable by a maximum term of imprisonment of at least ten years <b>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.</b></p>	<p>(Corresponds to para 11 of COM's proposal)   The Presidency notes that the penalty level should be proportionate, therefore lower for children above the relevant age.   The original COM proposal is also 10 years for underage children.  <b>Text of EP AM and Council's GA are identical.</b></p>
<p>7. Profiting from or otherwise exploiting a child participating in child prostitution shall be punishable by a maximum term of imprisonment of at least five years.</p>	<p>Amendment 148 7. Profiting from or otherwise exploiting a child participating in child prostitution shall be punishable by a maximum term of imprisonment of at least five years <i>and an appropriate fine.</i></p>		<p>Original para 7 has been moved to para 2 of the Council's GA.  <i>On the fines, see comments above</i></p>

<p>8. 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.</p>	<p>Amendment 150 8. 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 <i>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.</i></p> <p>Amendment 151 8. 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 <i>and an appropriate fine.</i></p>	<p>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 <b>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.</b></p>	<p><b>EP AM and Council's text of GA are identical.</b></p> <p><i>On the fines, see comments above.</i></p>
<p>9. Coercing a child to participate in pornographic performances shall be punishable by a maximum term of imprisonment of at least eight years.</p>			<p>AM 155 moved to para 3 of the Council's text of GA.</p> <p><i>On the fines see comments above</i></p>
<p>10. Recruiting a child to participate in child prostitution shall be punishable by a maximum term of imprisonment of at least eight years.</p>	<p>Amendment 164 10. Recruiting a child to participate in child prostitution shall be punishable by a maximum term of imprisonment of at least eight years <i>and an appropriate fine.</i></p>		<p><i>On the fines, see comments above.</i></p>
<p>11. Coercing a child into child prostitution shall be punishable by a maximum term of imprisonment of at least ten years.</p>			<p>AM 166 was moved to para 5 of Council's text of GA.</p> <p><i>On the fines, see comments above.</i></p>



<p style="text-align: center;">Article 5 <b>Offences concerning child pornography</b></p> <p>1. Member States shall take the necessary measures to ensure that the intentional conduct referred to in paragraphs 2 to 6 is punishable.</p>		<p style="text-align: center;">Article 5 <b>Offences concerning child pornography</b></p> <p>1. Member States shall take the necessary measures to ensure that the intentional conduct, <b>when committed without right</b>, referred to in paragraphs 2 to 7 is punishable.</p>	<p><b>General remark on penalties: see above</b></p> <p><b>“when committed without right”</b></p> <p>Given its complex nature, a recital explaining the concept would offer the best solution.</p> <p>The <b>Presidency</b> proposes the following drafting for a recital (new recital 6ac) based on para 141 of the explanatory memorandum of Lanzarote Convention:</p> <p><i>"In the context of child pornography, the term "without right" allows MS to provide a defence in respect of conduct related to "pornographic material" having for <b>example</b> medical, scientific or similar merit. It also allows activities carried out under domestic legal powers such as the legitimate possession of child pornography by the authorities in order to institute criminal proceedings <b>or to prevent, detect or investigate crimes</b>. 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 to those cases".</i></p> <p><b>The Presidency invites the EP to accept the compromise proposal.</b></p>
<p>2. Acquisition or possession of</p>	<p>Amendment 174 2. Acquisition or possession of child</p>	<p>2. Acquisition or possession of</p>	<p>The texts of GA and EP are identical.</p>

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child pornography shall be punishable by a maximum term of imprisonment of at least one year.	pornography shall be punishable by a maximum term of imprisonment of at least one year <i>and an appropriate fine</i> .	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.	Amendment 175 3. Knowingly obtaining access [...] to child pornography shall be punishable by a maximum term of imprisonment of at least one year <i>and an appropriate fine</i> .	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.	<b>The text of the Council's GA</b> is aligned to Art 20 of the Lanzarote Convention. <i>On the fines, see comments above</i>  The <b>Council</b> notes that “knowingly obtaining access” is not technology neutral, and only describes acts in the context of the internet. Only one Member State has such rule in the Criminal Code.
4. Distribution, dissemination or transmission of child pornography shall be punishable by a maximum term of imprisonment of at least two years.	Amendment 182 4. Distribution, dissemination or transmission of child pornography shall be punishable by a maximum term of imprisonment of at least two years <i>and an appropriate fine</i> .	5. Distribution, dissemination or transmission of child pornography shall be punishable by a maximum term of imprisonment of at least two years.	<i>On the fines, see comments above.</i> On paras 5-9: in order to correct a clerical error, the Council version should be renumbered, to bring it in line with the COM/EP proposal, as there is no para 4.
5. Offering, supplying or making available child pornography shall be punishable by a maximum term of imprisonment of at least two years.	Amendment 185 5. Offering, supplying or making available child pornography shall be punishable by a maximum term of imprisonment of at least two years <i>and an appropriate fine</i> .	6. Offering, supplying or making available child pornography shall be punishable by a maximum term of imprisonment of at least two years.	<i>On the fines, see comments above.</i>
6. Production of child pornography shall be punishable by a maximum term of imprisonment of at least five years.	Amendment 188 6. Production of child pornography shall be punishable by a maximum term of imprisonment of at least five years <i>and an appropriate fine</i> .	7. Production of child pornography shall be punishable by a maximum term of imprisonment of at least <b>two</b> years.	<b>On the fines, see comments above.</b> ↓ The Presidency notes that the penalty level should be proportionate, therefore lower for children above the relevant age.

			<p><b>The Council pleads in favour of the GA. As a last compromise and as part of a general package, it could accept 3 years.</b></p> <p><b>EP is requested to accept this compromise proposal</b></p>
	<p>Amendment 189 (new) <i>6a. It shall be within the discretion of the 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.</i></p>	<p><b>8. It shall be within the discretion of the 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.</b></p>	<p>Text of AM and of the Council's GA are identical, and the Councils position remains unchanged.</p>

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		<p><b>9. It shall be within the discretion of the 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.</b></p>	<p>The Councils position remains unchanged.</p>
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<p style="text-align: center;">Article 6 <b><i>Solicitation of children for sexual purposes</i></b></p> <p>Member States shall take the necessary measures to ensure that the following intentional conduct is punishable:</p> <p>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 under national law, for the purpose of committing any of the offences referred to in Articles 3 (3) and Article 5 (6), 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 two years.</p>	<p>Compromise Amendment 3 (AM 23, 192, 193, 194, 196, 197, 198), AM 200</p> <p style="text-align: center;">Article 6 <b><i>Solicitation of children for sexual purposes</i></b></p> <p>Member States shall take the necessary measures to ensure that the following intentional conduct <b><i>with the aim to attract the confidence and to manipulate a child</i></b> is punishable:</p> <p>The proposal <b><i>by an adult to a child, by any means, including</i></b> information and communication technology, to meet <b><i>or otherwise solicit</i></b> a child, for the purpose of committing any of the offences referred to in <b><i>Article 3(3), Article 4(2) and (3)</i></b> and Article 5(6), where this proposal has been followed by material acts leading to such a meeting <b><i>or contact</i></b>, shall be punishable by a maximum term of imprisonment of at least two years <b><i>and an appropriate fine</i></b>.</p>	<p style="text-align: center;">Article 6 <b><i>Solicitation of children for sexual purposes</i></b></p> <p>Member States shall take the necessary measures to ensure that the following intentional conduct is punishable:</p> <p>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 <b>one</b> year.</p>	<p><b>COM and Council are in agreement on the elements of the crime.</b></p> <p><b>The EP's</b> later suggestion (to divide the provision into two paragraphs depending on the age of sexual consent and the crime that the offender has the intention to commit, one para on engaging in sexual activities and another on pornographic performances, but keep the same level of penalties) could not be accepted by the MS</p> <p><b>The Council</b> wishes to insist on the text of the GA. Majority of MS cannot accept extending on-line grooming for the aim of obtaining pornographic material, noting that “the proposal (...) to otherwise solicit” does not make sense.</p>
<p style="text-align: center;">Article 7 <b><i>Instigation, aiding and abetting, attempt and preparatory offences</i></b></p> <p>1. Member States shall take the necessary measures to ensure that the instigation of, aiding and abetting to</p>		<p style="text-align: center;">Article 7 <b><i>Instigation, aiding and abetting and attempt [...]</i></b></p> <p>1. Member States shall take the necessary measures to ensure that the instigation of, aiding and abetting to</p>	<p><b>The Presidency</b> invites the EP to accept the text of the Council's GA.</p>

commit any of the offences referred to in Articles 3 to 6 is punishable.		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), and (2) with regard to witnessing sexual abuse; Article 4 (2) to (3) and (5) to (11); and Article 5 (2) and (4) 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 <b>4 (2) to (3)</b> and <b>Article (4) to (6) and Article 5 (5) to (7) are</b> punishable	
3. Member States shall take the necessary measures to ensure that the following intentional conduct is punishable: (a) the dissemination of materials advertising the opportunity to commit any of the offences referred to in Articles 3 to 6; (b) the organisation of travel arrangements with the purpose of committing any of the offences referred to in Articles 3 to 6.	Amendment 205, 206, 207 and FEMM37  (b) the organisation of travel <i>and/or other</i> arrangements with the purpose of committing any of the offences referred to in Articles 3 to 6.		<b>The Council</b> insists on its GA (Article 19a) which follows a different approach than the one in the AM.

	<p>Amendment 208-209 <b>(new)</b> <i>(ba) material acts in connection with travel for the purpose of having sexual intercourse with a child leading to a meeting, regardless of the actual sexual abuse and exploitation of the child.</i></p>		
<p style="text-align: center;"><i>Article 8</i> <b>Consensual sexual activities between peers</b></p> <p>The provisions of Article 3 (2), with regard to witnessing sexual activities, and (3); Article 4 (2) and (4) and Article 5 do not govern consensual sexual activities between children or involving persons who are close in age and degree of psychological and physical development or maturity, insofar as the acts did not involve any abuse.</p>	<p>Compromise Amendment 5 (AM 24, 210, 211 in 212)</p> <p style="text-align: center;"><i>Article 8</i> <b>Consensual sexual activities between peers</b></p> <p><b>I.</b> The provisions of Article 3(2), with regard to witnessing sexual activities, and (3); Article 4(2) and (4) and Article 5, do not govern consensual sexual activities between children or involving persons who are close in age and degree of psychological and physical development or maturity, insofar as the acts did not involve any abuse, <b>exploitation, coercion, force or threats, including that defined in Article 3(4) and (5).</b></p>	<p style="text-align: center;"><i>Article 8</i> <b>Consensual sexual activities [...]</b></p> <p><b>1. It shall be within the discretion of the 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.</b></p>	<p>The <b>Council</b> wishes to insist to the text of its GA. The Presidency suggests a modified recital 7, by adding at the end of its text the following sentence: “Member States which avail themselves of the possibilities referred to in Article 8, do so in the exercise of their competences.”</p> <p>Additionally, as a last compromise, the Council could accept the following text for para 1: <b>“1.[...] Member States may decide to apply Articles 3(2) and (3) (...) 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.</b></p> <p>The Presidency invites the EP to accept the compromise proposal.</p>

	<p><i>1a. Judicial prerogatives of national courts to make a case-by-case evaluation of the relationship mentioned above are fully preserved.</i></p>		
	<p><i>1b. Member States shall ensure that where offences referred in Articles 3 to 5 are committed by a child, they shall be, subject to appropriate alternative measures adapted to specific re-educational needs under national law, having due regard to the age of the offender, the need to avoid criminalisation and the objective of social reintegration of the child.</i></p>		



		<p><b>2. It shall be within the discretion of the 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.</b></p>	<p>The Council wishes to insist on the text of GA. However, as a last compromise, the Presidency suggests the following compromise proposal: “2. [...] Member States <i>may</i> decide to <i>apply</i> Article 4 (3a) 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.</p> <p>The Presidency invites the EP to accept the compromise proposal.</p>
		<p><b>3. It shall be within the discretion of the Member States to decide whether Article 5(2) and (7) apply 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.</b></p>	<p>The Council wishes to insist on the text of the GA. However, as a last compromise, the Presidency suggests the following compromise proposal: “3. [...] Member States <i>may</i> decide to <i>apply</i> Article 5 (2) and (7) 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</p>

			solely for private use of the persons involved, insofar as the acts did not involve any abuse.
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<p style="text-align: center;">Article 9</p> <p style="text-align: center;"><i>Aggravating circumstances</i></p> <p>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, they shall be considered as aggravating circumstances for the purposes of this Directive:</p>	<p style="text-align: center;">Article 9</p> <p style="text-align: center;"><i>Aggravating circumstances</i></p>	<p style="text-align: center;">Article 9</p> <p style="text-align: center;"><i>Aggravating circumstances</i></p> <p>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, <b>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></p>	<p>The <b>Council</b> wishes to insist on the text of its GA.</p> <p>The <b>Presidency</b> notes that this is an obligation, leaving space for the implementation only with respect to whether judicial guidelines or legislation should be used by the MSt.</p>
<p>(a) the child has not reached the age of sexual consent under national law;</p>	<p>Amendment 213</p> <p>(a) the child has not reached the age of sexual consent under national law, <i>or exhibits signs of slower physical and psychological development;</i></p>	<p>(a) [...]</p>	

<p>(b) the offence was committed against a child in a particularly vulnerable situation, notably because of a mental or physical disability or a situation of dependence;</p>	<p>Amendment 214</p> <p>(b) the offence was committed against a child in a particularly vulnerable situation, notably because of a mental or physical disability or a situation of dependence <i>or of a temporary alteration in psychophysical perception connected with taking drugs, drinking alcohol, or any other recognised type of dependence;</i></p>	<p>(b) the offence was committed against a child in a particularly vulnerable situation, notably because of a mental or physical disability or a situation of dependence;</p>	<p>COMPROMISE PROPOSAL</p> <p>The Presidency invites the EP to accept the following compromise proposal:</p> <p>“(b) the offence was committed against a child in a particularly vulnerable situation, <i>such as</i> a mental or physical disability or a situation of dependence <i>or state of physical or mental incapacity;</i>”</p> <p>Note: incapacity is included to cover cases mentioned by the EP.</p>
<p>(c) the offence was committed by a member of the family, a person cohabiting with the child or a person having abused their authority;</p>	<p>Amendment 215</p> <p>(c) the offence was committed by a member of the family, a person cohabiting with the child or a person having abused their <i>recognised position of trust, authority or influence over the child;</i></p>	<p>(c) the offence was committed by a member of the family, a person cohabiting with the child or a person having abused their authority;</p>	<p>COMPROMISE PROPOSAL</p> <p>The Presidency invites the EP to accept the following compromise proposal:</p> <p>“(c) the offence was committed by a member of the family, a person cohabiting with the child or a person having abused their <i>recognised position of trust or authority;</i>”</p>
<p>(d) the offence was committed by several people acting together;</p>		<p>(d) the offence was committed by several people acting together;</p>	<p>There is an agreement among the institutions.</p>
	<p>Amendment 26</p> <p><b>(new)</b></p> <p><i>(da) the offence has been committed as part of an organised activity for the main purpose of economic revenue;</i></p>		<p>The COREPER has voted against his proposal.</p> <p>The Council indicates that this subpara is already covered by subpara e (criminal organisation)</p> <p>As a compromise proposal, the The Presidency invites the EP to accept the compromise proposal.</p>

	Amendment 27 <b>(new)</b> <i>(db) the offence was committed in the context of travel abroad, where such travel was organised or undertaken for the main purpose of committing any of the offences referred to in Articles 3 to 6;</i>		
(e) the offences are committed within the framework of a criminal organisation within the meaning of Framework Decision 2008/841/JHA <sup>1</sup> ;		(e) the offences are committed within the framework of a criminal organisation within the meaning of Framework Decision 2008/841/JHA <sup>2</sup> ;	There is an agreement among the institutions.
(f) the perpetrator has previously been convicted of offences of the same nature,		(f) the <b>offender</b> has previously been convicted of offences of the same nature;	There is an agreement among the institutions.
(g) the offence endangered the life of the child;		(g) the <b>offender has deliberately or by recklessness</b> endangered the life of the child;	There is an agreement among the institutions.
(h) the offence involved serious violence or caused serious harm to the child.	Amendment 217 (h) the offence involved serious violence or <i>threat or</i> caused <i>or was likely to cause</i> serious harm to the child.	(h) the offence involved serious violence or caused serious harm to the child.	The Council wishes to insist on the text of GA.

<sup>1</sup> OJ L 300, 11.11.2008, p. 42.

<sup>2</sup> OJ L 300, 11.11.2008, p. 42.

	<p>Compromise Amendment 4  <b>(new)</b>  <i>(ha) the offender has intentionally used different means to target a great number of children to multiply his chances of committing the crime.</i></p>		<p>Delegations expressed serious doubts on the implementation of such provision. The EP is requested to consider the deletion of this AM.</p>
<p>2. Where at least one of the aggravating circumstances referred to in paragraph 1 are present, Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 to 6 are punishable by effective, proportionate and dissuasive penalties which are more severe than those foreseen in Articles 3 to 6 for the basic offence.</p>		<p>2. [...]</p>	

<p style="text-align: center;">Article 10 <i>Disqualification arising from convictions</i></p> <p>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 activities involving regular contacts with children.</p>	<p style="text-align: center;">Article 10 <i>Disqualification arising from convictions</i></p> <p>Compromise Amendment 6</p> <p>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 <i>professional</i> activities involving <i>direct and</i> regular contact with children <i>and volunteer activities related to the supervision and/or care of children. The measures referred to in this paragraph shall be entered in the criminal record of the convicting Member State.</i></p>	<p style="text-align: center;">Article 10 <i>Disqualification arising from convictions</i></p> <p>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 <b>at least professional</b> activities involving regular contacts with children.</p>	<p><b>General remark: The Presidency invites the EP to accept a new compromise proposal for Article 10 which was discussed in depth by the ÉCRIS experts and by the DROIPEN experts.</b></p> <p><b>The Presidency</b> invites the EP to accept the text of GA for para (1) of Article 10.</p>
		<p><b>1a. Member States shall take the necessary measures to ensure that employers, when recruiting a person for professional activities involving regular contacts with children, are entitled to be informed, in accordance with national law, by any appropriate way, such as direct access, 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 regular contacts</b></p>	<p>For para 1a, the Presidency suggests the following compromise proposal: “Member States shall take the necessary measures to ensure that employers, when recruiting a person for <b>professional or organised voluntary</b> activities involving <b>direct and regular</b> contacts with children, are entitled to <b>request information in any appropriate way</b> in accordance with national law of the existence of convictions for an offence</p>

		with children arising from a conviction for an offence referred to in Article 3 to 7.	referred to in Articles 3 to 7 <b>or</b> of any disqualification to exercise activities involving <b>[direct and]</b> regular contacts with children arising from <b>those criminal convictions, entered in the criminal record.</b> "  <b>The Presidency invites the EP to accept the suggested compromise proposal.</b>
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2. Member States shall take the necessary measures to ensure that the measure referred to in paragraph 1 is entered in the criminal record of the convicting Member State.	Compromise Amendment 7 2. Member States shall take the necessary measures to ensure that <i>employers, when recruiting for professional activities involving direct and regular contact with children and volunteer activities related to the supervision and/or care of children, are entitled to obtain information in accordance with national law, by any appropriate way, such as access upon request or via the person concerned, concerning the existence of convictions for an offence referred to in Articles 3 to 7 or of any additional measure related to those convictions which prevents them from exercising activities involving contacts with children. If serious suspicion should arise during working relations, employers</i>	2. [...]	
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	<i>may, in accordance with national law, request such information even after the recruitment procedure. Member States authorities shall ensure, by any appropriate means and in accordance with national law, that such information may also be obtained from the criminal records held in other Member States.</i>		
	Amendment 227  2. Member States shall take the necessary measures to ensure that the measure referred to in paragraph 1 is entered in the criminal record of the convicting Member State <i>and in the European Criminal Records Information System (ECRIS) when operational. Member States shall work together to establish a European certificate of good conduct.</i>		The European certificate of good conduct is too ambitious to be achieved in the framework of a criminal law directive with the intention of harmonising criminal law. There is no legal basis for such certificate. Member States opposed this concept.
3. By way of derogation from Articles 7 (2) and 9 (2) of the Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from criminal records between Member States <sup>3</sup> , Member States shall take the necessary measures to ensure that, for the purpose of effectively	Amendment 30 3. By way of derogation from Articles 7(2) and 9(2) of the Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from criminal records between Member States, Member States shall <i>ensure full cooperation and availability of all information when</i>	3. [...]	For para 3, the Presidency suggests the following text: <b>“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</b>

<sup>3</sup> OJ L 93, 7.4.2009, p. 23.

<p>implementing the measure consisting in temporarily or permanently preventing the person from exercising activities involving regular contacts with children, in particular insofar as the requesting Member State subjects access to certain activities to conditions to ensure that candidates have not been convicted of any of the offences referred to in Articles 3 to 7 of this Directive, information concerning the disqualification arising from conviction of any of the offences referred to in Articles 3 to 7 of this Directive is transmitted when requested under Article 6 of that Framework Decision from the central authority of the Member State of the person's nationality, and that personal data concerning such disqualification provided under Article 7(2) and (4) of that Framework Decision may in all cases be used for such purpose.</p>	<p><i>replying to requests by competent authorities of other Member States submitted according to Article 10(2). Personal data concerning such disqualification provided under Article 7(2) and (4) of that Framework Decision may in any case be used for such purpose.</i></p>		<p><b>exercise activities involving direct and regular contacts with children arising from those criminal convictions entered in the criminal records, 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 from the central authority of the Member State requesting the information and with the consent of the person concerned.”</b></p> <p>The Presidency invites the EP to accept the suggested compromise proposal.</p>
	<p>Amendment 232 <b>(new)</b> <i>3a. Member States shall take the necessary measures to ensure that when recruiting for professional activities involving direct and regular contact with children and volunteer activities related to the supervision and/or care of children, employers shall be entitled to obtain from competent authorities, which</i></p>		

	<i>shall take into account the necessary safeguards, a national or when appropriate a European certificate of good conduct concerning the absence of convictions for an offence referred to in Articles 3 to 7 or of any additional measure related to those convictions which prevents them from exercising such activities. If serious suspicion should arise during working relations, employers may, in accordance with national law, request such a certificate even after the recruitment procedure.</i>		
	Amendment 40 (new) <i>3a. Member States should ensure that state and private organisations exercising professional activities involving direct and regular contact with children and volunteer activities related to the supervision and/or care of children check systematically the criminal records of new employees, and that organisations, including schools, providing services for children have in place strong and active child protection policies.</i>		
4. Member States shall take the necessary measures to ensure that the measure referred to in paragraph 1 imposed in another Member State, is recognised and enforced.		4. [...]	

	<p>Amendment 233 (new)</p> <p><b>4a. Member States may consider adopting other measures in relation to perpetrators, such as the registration of persons convicted for offences referred to in Articles 3 to 7 in sex offenders registers. These registers should only be accessible to the judiciary and/or law enforcement agencies.</b></p>		<p>The Member States have considered this idea and are of the view that such provision would be confusing in this text, and remain therefore against it.</p>
	<p>Amendment 234</p> <p><b>Article 10 a (new)</b> <b>Seizure and Confiscation</b></p> <p><i>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 this Directive.</i></p>		<p>COMPROMISE PROPOSAL acceptable for all institutions</p> <p><i>Seizure and confiscation</i></p> <p>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.</p>
	<p>Amendment 235 (new)</p> <p><b>1a. The Member States shall undertake to use the economic revenue arising from confiscation in respect of established crimes for the purpose of prevention, rehabilitation and support for victims and their families.</b></p>		<p>With a view to settling the issue of the fines, the <b>Presidency</b>, proposes the following text for a recital (new recital 7c) to align the text with the Recital 13 of THB Directive <i>“In combating sexual exploitation of the children, full use should be made of existing instruments on the seizure and confiscation of the proceeds of</i></p>

			<p><i>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, including compensation of victims and Union trans-border law enforcement activities, should be encouraged.”</i></p>
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<p style="text-align: center;">Article 11 <i>Liability of legal persons</i></p> <p>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:</p> <p style="padding-left: 40px;">(a) a power of representation of the legal person;</p> <p style="padding-left: 40px;">(b) an authority to take decisions on behalf of the legal person;</p> <p style="padding-left: 40px;">(c) an authority to exercise control within the legal person.</p>		<p style="text-align: center;">Article 11 <i>Liability of legal persons</i></p> <p>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:</p> <p style="padding-left: 40px;">(a) a power of representation of the legal person; (</p> <p style="padding-left: 40px;">b) an authority to take decisions on behalf of the legal person;</p> <p style="padding-left: 40px;">(c) an authority to exercise control within the legal person.</p>	<p>There is an agreement among the institutions.</p>
<p>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.</p>		<p>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.</p>	<p>There is an agreement among the institutions.</p>

<p>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 accessories to, any of the offences referred to in Articles 3 to 7.</p>		<p>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, <b>or inciters</b> or accessories to the offences referred to in Articles 3 to 7.</p>	<p><b>The EP is invited to accept the Council's GA</b></p>
<p style="text-align: center;"><i>Article 12</i> <b>Sanctions on legal persons</b></p> <p>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:</p> <ul style="list-style-type: none"> <li>(a) exclusion from entitlement to public benefits or aid;</li> <li>(b) temporary or permanent disqualification from the practice of commercial activities;</li> <li>(c) placing under judicial supervision;</li> <li>(d) judicial winding-up;</li> <li>(e) temporary or permanent closure of establishments which have been used for committing the offence</li> </ul>		<p style="text-align: center;">Article 12 <i>Sanctions on legal persons</i></p> <p>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:</p> <ul style="list-style-type: none"> <li>(a) exclusion from entitlement to public benefits or aid;</li> <li>(b) temporary or permanent disqualification from the practice of commercial activities;</li> <li>(c) placing under judicial supervision;</li> <li>(d) judicial winding-up;</li> <li>(e) temporary or permanent closure of establishments which have been used for committing the offence.</li> </ul>	<p>Text agreed by institutions</p>

<p>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.</p>		<p>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.</p>	<p>There is an agreement among the institutions.</p>
<p style="text-align: center;">Article 13 <i>Non prosecution or non-application of penalties to the victim</i></p> <p>Member States shall provide for the possibility of not prosecuting or imposing penalties on child victims of the offences referred to in Articles 4 and Article 5 (4) to (6) for their involvement in unlawful activities as a direct consequence of being subjected to those offences.</p>	<p style="text-align: center;">Amendment 237  Article 13 <i>Non prosecution or non-application of penalties to the victim</i></p> <p>Member States shall <i>ensure that</i> child victims of the offences referred to in Articles 4 and Article 5 (4) to (6) <b><i>will not be prosecuted and will not have penalties imposed on them</i></b> for their involvement in unlawful activities as a direct consequence of being subjected to those offences.</p>	<p style="text-align: center;">Article 13 <i>Non prosecution or non-application of penalties to the victim</i></p> <p>Member States shall, <b>in accordance with the basic principles of their legal system</b>, provide for the possibility of not prosecuting or imposing penalties:</p> <p style="padding-left: 40px;"><b>(a) under national law on prostitution or pornographic performances, on child victims of offences referred to in Articles 4(2), (3), (4) and (5) ;</b></p> <p style="padding-left: 40px;"><b>(b) under national law on pornography, on child victims of offences referred to in Article 5(7) insofar as they have been compelled to commit the acts concerned.</b></p>	<p><b>The Presidency invites the EP to accept the following COMPROMISE PROPOSAL</b> based on the language used in THB Directive (Article 8):</p> <p>“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).”</p>



<p style="text-align: center;">Article 14 <i>Investigation and prosecution</i></p> <p>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, and that the criminal proceedings may continue even if the victim has withdrawn their statements.</p>	<p style="text-align: center;">Amendment 243 - Article 14 <i>Investigation and prosecution</i></p> <p>1. Member States shall take the necessary measures to ensure that investigations <b><i>should be carried out bearing in mind the best interests and the rights of the child at all times and that investigation</i></b> 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, and that the criminal proceedings may continue even if the victim has withdrawn their statements.</p>	<p style="text-align: center;">Article 14 <i>Investigation and prosecution</i></p> <p>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 <b>or by its representative</b>, and that the criminal proceedings may continue even if <b>that person</b> has withdrawn <b>his</b> statements.</p>	<p><b>"or by its representative": There is an agreement among the institutions.</b></p>
<p>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 (5) to (11), and Article 5 (6) 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.</p>	<p style="text-align: center;">Amendment 246</p> <p>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 (5) to (11), and Article 5 (6) for a sufficient period of time <b><i>of minimum 15 years</i></b> after the victim has reached the age of majority and which is commensurate with the gravity of the offence concerned.</p>	<p>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 <b>(6), (...)</b> <b>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</b>, 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.</p>	<p><b>The Council</b> can consider adding a reference in a recital, in order to make a link between the length of the prescription and the penalty levels.</p>
<p>3. Member States shall take the necessary measures to ensure that effective investigative tools are</p>	<p style="text-align: center;">Amendment 248</p> <p>3. Member States shall take the necessary measures to ensure that effective investigative tools are</p>	<p>3. Member States shall take the necessary measures to ensure that effective investigative tools, <b>such as</b></p>	<p>AM and Council's text of GA are essentially identical. On covert operations, the Presidency proposes</p>

<p>available to persons, units or services responsible for investigating or prosecuting offences referred to in Articles 3 to 7, allowing the possibility of covert operations at least in those cases where the use of information and communication technology is involved.</p>	<p>available to persons, units or services responsible for investigating or prosecuting offences referred to in Articles 3 to 7 (...).</p>	<p><b>those which are used in organised crime or other serious crime cases</b> are available to persons, units or services responsible for investigating or prosecuting offences referred to in Articles 3 to 7 [...].</p>	<p>the inclusion of the following recital (new recital 8a), inspired by Article 30 (5) of Lanzarote Convention:  <i>“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 <b>concealed</b> identity on the Internet”.</i></p>
<p>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.</p>	<p>Amendment 250  4. Member States shall take the necessary measures to enable investigative units or services, <b>in accordance with national and EU data protection legislation</b>, 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</p>	<p>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.</p>	<p><b>The Presidency</b> underlined that if the AM is included in the text, it might impede investigations. Furthermore, the EU data protection legislation does not seem to cover exactly those issues that are relevant here. The Presidency insists on the text of the Council's GA.</p> <p>The <b>EP is requested to delete</b> the phrase "in accordance with national and EU data protection legislation" in AM 250.</p>

	and communication technology.		
	<p>Amendment 45 FEMM  <b>(new subparagraph in para 4)</b>  <i>In line with action to combat terrorism, monitoring and prevention measures should be taken vis-à-vis perpetrators of offences within the meaning of Articles 3 to 7 of this Directive. To that end, the Commission shall look into the feasibility of establishing a European early warning system (EWS) to coordinate anti-cyber crime activities conducted by Member State authorities and prevent offences by paedophiles and sex offenders, as called for by the European Parliament in its recommendation of 23 June 2010 on setting up a European early warning system (EWS) for paedophiles and sex offenders<sup>1</sup>, which was adopted by an absolute majority.</i></p>		<p>The delegations have difficulties to understand the reasoning of this AM (<i>Inter alia</i>, as drafted addressed to the COM, although a Directive is addressed to the MS).  The EP is requested to accept the deletion of this AM.</p>
	<p>Amendment 255  <b>(new)</b>  <i>4a. Member States shall ensure that for the offences referred to in Articles 3 to 7, authorities responsible for prosecution (corrected :persecution) and investigation of such offences under criminal law are not circumvented by internal investigations by other institutions</i></p>		

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	<i>without the same authority under criminal law. Such investigations may be of informatory nature but are in no means equalling or substituting of investigation by authorities under criminal law.</i>		
	<p>Amendment 46 FEMM  <i>4a. Member States shall work in partnership with law enforcement agencies, judicial authorities, the Information and Communication Technology Industry, Internet Service Providers, the banking sector and Non-Governmental Organisations.</i></p> <p><i>Member States shall work collaboratively and share examples of best practice for combating child sexual exploitation in those Member States where specialised units are working effectively.</i></p>		<p><b>The Presidency</b> could further consider the idea of a private-public co-operation for sharing best practices in a recital. However, Directives can only bind MS and not private parties directly. <b>The Presidency</b> invites the EP to consider the deletion of this AM</p>

<p>Article 15 <b>Reporting suspicion of sexual exploitation or sexual abuse</b></p> <p>1. Member States shall take the necessary measures to ensure that the confidentiality rules imposed by national law on certain professionals called upon to work in contact 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.</p>		<p>Article 15 <b>Reporting suspicion of sexual exploitation or sexual abuse</b></p> <p>1. Member States shall take the necessary measures to ensure that the confidentiality rules imposed by national law on certain professionals <b>with the main duty</b> 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.</p>	<p>General note on any article that is relevant for prevention: For all provisions relevant for victim's protection, Article 18 of the THB directive ("Prevention") should be the starting point.</p>
	<p>Amendment 47 FEMM (new) <b><i>1a. Member States shall encourage state and private organisations exercising activities involving regular contact with children to carry out routine staff training, so that individuals are better able to detect where a child is being abused and are aware to whom this information should be reported.</i></b></p>		
	<p>Amendment 48 FEMM (new) <b><i>1b. Member States shall take steps to ensure that victims have access to confidential child-friendly reporting and referral mechanisms, such as telephone or internet helplines, and that these are run by professionals trained in dealing with abuse.</i></b></p>		<p>This idea is repeated in the AM 283-284 to Article 18 (para 4a).</p>

<p>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.</p>	<p>Amendment 49 FEMM</p> <p>2. Member States shall <i>adopt</i> the necessary measures to encourage any person who knows about <i>the</i> offences referred to in Articles 3 to 7 <i>or who suspects in good faith that they may have been committed</i> to report these facts to the competent services. <b>Any person reporting such offences will be covered by data protection and anonymity.</b></p>	<p>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.</p>	<p>The <b>Presidency</b> wishes to insist on the text of the GA. A broad rule on anonymity would create problems.</p>
	<p>Amendment 257 <b>(new)</b> <b>2a. Member States shall create information campaigns advertising the hotline 116, to ensure that children are aware of the existence of the hotline.</b></p>		
	<p>Amendment 50 FEMM <b>(new)</b> <b>2a. Member States shall take the necessary measures to establish an anonymous reporting service to internet users who accidentally uncover child sex abuse material on the internet.</b></p>		
	<p>Amendment 82 CULT <b>(new)</b> <b>2b. The Member States shall take the necessary measures to ensure that prevention campaigns are mounted in primary and secondary schools with a view to enabling</b></p>		<p>The <b>Presidency</b>, subject to agreement by MS, could suggest to the EP to add this AM in the Preamble. Also, a possible model is provided by THB Article 18.</p>

	<b>persons under the age of 18 years to enhance their understanding of the rights of every individual, of self-respect and respect for others, and helping them recognise awkward, intrusive or abusive situations.</b>		
<p>Article 16 Jurisdiction and coordination of prosecution</p> <p>1. Member States shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 to 7 where:</p> <p>(a) the offence is committed in whole or in part within its territory; or</p> <p>(b) the offender is one of its nationals or has a habitual residence in its territory; or</p>	<p>Article 16 <i>Jurisdiction and coordination of prosecution</i></p>	<p>Article 16 Jurisdiction and coordination of prosecution</p> <p>1. Member States shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 to 7 where:</p> <p>(a) the offence is committed in whole or in part within its territory; or</p> <p>(b) the offender is one of its nationals [...].</p>	<p>The <b>Presidency</b> wishes to insist on the text of the Council's GA, and notes that <b>the principle of nationality has not been mandatory before this directive. This is the key ground for jurisdiction in relation to sex tourism.</b></p>
<p>(c) the offence is committed against one of its nationals or a person who has a habitual residence in its territory; or</p>		<p>(c) [...]</p> <p>(NB. modified and moved in a separate paragraph below)</p>	<p><b>The Presidency</b> wishes to insist on the text of GA.</p>
<p>(d) the offence is committed for the benefit of a legal person established in the territory of that Member State.</p>	<p>Amendment 33</p> <p>(d) the offence is committed for the benefit of a legal person <i>having the legal seat or place of establishment</i> in the territory of that Member State.</p>	<p>(d) [...]</p> <p>(NB. moved in a separate paragraph below)</p>	<p><b>The Presidency</b> wishes to insist on the text of GA.</p>

		<p><b>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 :</b></p> <p>(a) <b>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></p>	
		<p>(b) the offence is committed for the benefit of a legal person established in the territory of that Member State; or</p> <p>(c) <b>the offender has his or her habitual residence in the territory of that Member State.</b></p>	
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.		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.	
3. A Member State may decide that it will not apply or that it will apply only in specific cases or circumstances the jurisdiction rules set out in paragraph 1 (c) and (d) as far as the offence is committed outside its territory.	Amendment 52 FEMM <b>Paragraph 3 --Deleted</b>	3 [...]	<b>AM identical to Council's text of GA</b>



<p>4. 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:</p> <p>(a) that the acts are a criminal offence at the place where they were performed; or</p>		<p>4. For the prosecution of any of the offences referred to in Article <b>3 (3), (4) and (5), Article 4 (2), (3), (4), (5) and (6), and Article 5 (7)</b> 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. [...]</p>	
<p>(b) 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.</p>			
		<p><b>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.</b></p>	

<p style="text-align: center;"><i>Article 21</i> <b>Blocking access to websites containing child pornography</b></p>	<p>Compromise Amendment 8 (AM (37), AM (313), AM (314), AM (320), AM (323), AM (329), AM (336), AM (337), AM (341), AM (342)) Article 21 <b>Measures addressing</b> websites containing <i>or disseminating</i> child pornography <i>or child abuse material</i></p>	<p style="text-align: center;">Article 21 <b><u>Measures against websites containing or disseminating child pornography</u></b></p>	<p>NB Compromise Amendment 8 (AM (37), AM (313), AM (314), AM (320), AM (323), AM (329), AM (336), AM (337), AM (341), AM (342)) includes the full text of Article 21. .</p>
<p>1. Member States shall take the necessary measures to obtain the blocking of access by Internet users in their territory to Internet pages containing or disseminating child pornography. The blocking of access shall be subject to adequate safeguards, in particular to ensure that the blocking is limited to what is necessary, that users are informed of the reason for the blocking and that content providers, as far as possible, are informed of the possibility of challenging it.</p>	<p>1. Member States shall take the necessary <b>legislative</b> measures to obtain the <b>removal at source of</b> Internet pages containing or disseminating child pornography <b>or child abuse material. Internet pages containing such material shall be removed, especially when originating from an EU Member State. In addition, the EU shall cooperate with third countries in securing the prompt removal of such content from servers in their territory.</b></p>	<p>1. Member States shall take the necessary measures to ensure the 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.</p>	<p>General remark: The <b>Presidency</b> prefers to keep a neutral language with regard to legislative or non legislative measures (or regulatory, self regulatory framework). It is also important to stick to the provisions of the Treaty, leaving marge of manoeuvre for MS as to the measures they use. The <b>Presidency</b> notes that "the removal at source" reference seems to be problematic and restrictive.</p>
<p>2. Without prejudice to the above, Member States shall take the necessary measures to obtain the removal of internet pages containing or disseminating child pornography.</p>	<p><b>2. When removal at source of Internet pages containing or disseminating child pornography or child abuse material is impossible to achieve, Member States may take the necessary measures in accordance with national legislation to prevent access to such content in their territory. These measures must be set by transparent procedures and provide adequate safeguards, in</b></p>	<p><b>2. Where the removal of webpages containing or disseminating child pornography is not possible, Member States shall take the necessary measures, whether legislative or non-legislative, to ensure that the blocking of access to webpages containing or disseminating child pornography is possible towards the Internet users in their territory. The blocking of</b></p>	<p>Regarding EP AM, the <b>Presidency</b> notes that the removal of Internet pages is never impossible in the territory of Member States. If a may clause is adopted, it shall not be subject to any conditions, otherwise it would interfere with already existing good practice. However, the Presidency could accept adding further safeguards on blocking, for transparency reasons.</p>

	<i>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. Content providers and users shall be informed of the possibility to whom to appeal under a judicial redress procedure.</i>	<b>access shall be subject to adequate safeguards, in particular to ensure that the blocking, taking into account technical characteristics, is limited to what is necessary, that users are informed of the reason for the blocking and that content providers, as far as possible, are informed of the possibility of challenging it</b>	The Presidency is not in favour of informing content providers of the possibility of blocking. Making this a prerequisite for blocking does not seem to be efficient, as in this case the content provider is the offender.
	<i>2a. Any measure under paragraphs 1 and 2 shall respect fundamental rights and freedoms of natural persons, as guaranteed by the European Convention of the Protection of Human Rights and Fundamental Freedoms, the EU Charter of Fundamental Rights and general principles of Union law. Those measures shall provide for prior authorisation in accordance with national law, and the right to an effective and timely judicial redress. 2b. The European Commission shall submit to the European Parliament an annual report on the activities undertaken by Member States to remove child sexual abuse material from Internet pages.</i>		<p>The <b>Presidency</b> is not in favour of the reference "prior authorisation".</p> <p>The <b>Presidency</b> also notes that these provisions are redundant, eventually a recital could be acceptable with a reference to the ECHR. This is the current practice on other files too.</p>
	Amendment 67 FEMM (new) <i>2b. Member States shall make an active effort to address the issue of peer-to-peer software and the re-emergence of usenet newsgroups.</i>		

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<p style="text-align: center;">Article 22 <b>Repeal of Framework Decision 2004/68/JHA</b></p> <p>Framework Decision 2004/68/JHA is hereby repealed, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law.</p> <p>References to the repealed Framework Decision shall be construed as references to this Directive.</p>		<p style="text-align: center;">[Article 22 <b>Repeal of Framework Decision 2004/68/JHA</b></p> <p>Framework Decision 2004/68/JHA is hereby repealed, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law.</p> <p>References to the repealed Framework Decision shall be construed as references to this Directive.]<sup>4</sup></p>	
<p style="text-align: center;">Article 23 <b>Transposition</b></p> <p>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. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.</p> <p>When Member States adopt those provisions, they shall contain a reference to this Directive or be</p>		<p style="text-align: center;">Article 23 <b>Transposition</b></p> <p>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. [...]</p>	<p>The <b>EP</b> noted the horizontal, high level negotiations, nevertheless, would like to see the “correlation table” mentioned in the text. The <b>Presidency</b> kindly reminds the EP that under the current inter-institutional agreement, no such obligation arises.</p>

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<sup>4</sup> The wording of this Article will need further discussion with regard to the relationship with Protocols 21 and 22 to the Lisbon Treaty.

<p>accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p>			
<p>2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.</p>		<p>2. Member States shall <b>transmit</b> to the Commission the text of the [...] provisions <b>transposing into their national law the obligations imposed on them under this Directive.</b></p>	
		<p>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. <b>The methods of making such reference shall be laid down by the Member States.</b></p>	

<p style="text-align: center;">Article 24 <i>Reporting</i></p> <p>1. By [FOUR YEARS FROM ADOPTION] and every three years thereafter, the Commission shall submit a report to the European Parliament and the Council including any necessary proposal.</p>		<p style="text-align: center;">Article 24 <i>Reporting</i></p> <p>1. <b>The Commission shall</b>, by FOUR YEARS FROM ADOPTION, [...] submit a report to the European Parliament and the Council, <b>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.</b></p>	
<p>2. Member States shall send to the Commission all the information that is appropriate for drawing up the report referred to in paragraph 1. The information shall include a detailed description of legislative and non-legislative measures adopted pursuant to this Directive.</p>		<p>2. [...]</p>	

<p style="text-align: center;">Article 25 <i>Entry into force</i></p> <p>This Directive shall enter into force on the 20<sup>th</sup> day following its publication in the <i>Official Journal of the European Union</i>.</p>		<p style="text-align: center;">Article 25 <i>Entry into force</i></p> <p>This Directive shall enter into force on <b>the day of its publication in the <i>Official Journal of the European Union</i></b>.</p>	
<p style="text-align: center;">Article 26 <i>Addressees</i></p> <p>This Directive is addressed to the Member States in accordance with the Treaties.</p> <p>Done at Brussels,</p> <p><i>For the European Parliament</i> <i>For the Council</i> The President The President</p>		<p style="text-align: center;">Article 26 <i>Addressees</i></p> <p>This Directive is addressed to the Member States in accordance with the Treaties.</p> <p>Done at Brussels,</p> <p>For the European Parliament For the Council The President The President</p>	