Basic information

2010/0064(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Combating sexual abuse, sexual exploitation of children and child pornography Repealing 2001/0025(CNS) See also 2015/2129(INI) **Subject** 4.10.03 Child protection, children's rights 7.30.30.02 Action to combat violence, trafficking in human beings and migrant smuggling 7.40.04 Judicial cooperation in criminal matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	ANGELILLI Roberta (PPE)	26/01/2010
	Shadow rapporteur SIPPEL Birgit (S&D) WIKSTRÖM Cecilia (ALDE) LAMBERT Jean (Verts/ALE) KIRKHOPE Timothy (ECR) TRIANTAPHYLLIDES Kyriacos (GUE/NGL)	

Committee for opinion	Rapporteur for opinion	Appointed
CULT Culture and Education	KAMMEREVERT Petra (S&D)	03/05/2010
FEMM Women's Rights and Gender Equality	YANNAKOUDAKIS Marina (ECR)	04/05/2010

Council of the European Union

Council configuration	Meetings	Date
General Affairs	3125	2011-11-15
Justice and Home Affairs (JHA)	3034	2010-10-07
Justice and Home Affairs (JHA)	3018	2010-06-03

	Justice and Home Affairs (JHA)	3051	2010-12-02

European Commission

Commission DG	Commissioner
Justice and Consumers	MALMSTRÖM Cecilia

Key events

Date	Event	Reference	Summary
29/03/2010	Legislative proposal published	COM(2010)0094	Summary
21/04/2010	Committee referral announced in Parliament, 1st reading		
03/06/2010	Debate in Council		Summary
07/10/2010	Debate in Council		Summary
02/12/2010	Debate in Council		Summary
12/07/2011	Vote in committee, 1st reading		Summary
02/08/2011	Committee report tabled for plenary, 1st reading	A7-0294/2011	
26/10/2011	Debate in Parliament		
27/10/2011	Decision by Parliament, 1st reading	T7-0468/2011	Summary
27/10/2011	Results of vote in Parliament		
15/11/2011	Act adopted by Council after Parliament's 1st reading		
13/12/2011	Final act signed		
14/12/2011	End of procedure in Parliament		
17/12/2011	Final act published in Official Journal		

Technical information

Procedure reference	2010/0064(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Repealing 2001/0025(CNS) See also 2015/2129(INI)
Legal basis	Treaty on the Functioning of the European Union TFEU 082-p2 Treaty on the Functioning of the European Union TFEU 083-p1-a1
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/02673

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee opinion	CULT	PE442.976	18/11/2010	
Committee draft report		PE452.564	24/01/2011	
Amendments tabled in committee		PE456.647	24/01/2011	
Committee opinion	FEMM	PE448.743	25/01/2011	
Amendments tabled in committee		PE469.721	07/07/2011	
Committee report tabled for plenary, 1st reading/single reading		A7-0294/2011	02/08/2011	
Text adopted by Parliament, 1st reading/single reading		T7-0468/2011	27/10/2011	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00051/2011/LEX	13/12/2011	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2010)0094	29/03/2010	Summary
Commission response to text adopted in plenary	SP(2011)8697	30/11/2011	
Follow-up document	COM(2016)0871	16/12/2016	Summary
Follow-up document	COM(2016)0872	16/12/2016	Summary
For information	C(2025)5252	29/07/2025	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	PT_PARLIAMENT	COM(2010)0094	30/04/2010	
Contribution	AT_BUNDESRAT	COM(2010)0094	18/05/2010	
Contribution	IT_CHAMBER	COM(2010)0094	26/05/2010	
Contribution	PT_PARLIAMENT	COM(2010)0094	30/05/2010	
Contribution	AT_NATIONALRAT	COM(2010)0094	14/06/2010	
Contribution	IT_SENATE	COM(2010)0094	03/11/2010	
Contribution	IT_CHAMBER	COM(2010)0094	03/03/2011	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EDPS	Document attached to the procedure	N7-0080/2010 OJ C 323 30.11.2010, p. 0006	10/05/2010	Summary
EESC	Economic and Social Committee: opinion, report	CES1173/2010	15/09/2010	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Directive 2011/0093
OJ L 335 17.12.2011, p. 0001 Summary

Corrigendum to final act 32011L0093R(02)
OJ L 330 15.11.2014, p. 0063 Summary

Corrigendum to final act 32011L0092R(01)
OJ L 018 21.01.2012, p. 0007 Summary

Combating sexual abuse, sexual exploitation of children and child pornography

2010/0064(COD) - 13/12/2011 - Corrigendum to final act

This corrigendum does not concern the English version.

Combating sexual abuse, sexual exploitation of children and child pornography

2010/0064(COD) - 13/12/2011 - Corrigendum to final act

The directive of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, was published in Official Journal L 335 of 17 December 2011 with the wrong number.

The number of the directive, erroneously published as 2011/92/EU, should be **2011/93/EU**.

Combating sexual abuse, sexual exploitation of children and child pornography

2010/0064(COD) - 13/12/2011 - Final act

PURPOSE: to recast Framework Decision 2004/68/JHA on the sexual abuse, sexual exploitation of children and child pornography

LEGISLATIVE ACT: Directive 2011/92/EU of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.

BACKGROUND: with regard to child victims, the main cause of this phenomenon is vulnerability resulting from a variety of factors. Insufficient response by law enforcement mechanisms contributes to the prevalence of these phenomena, and the difficulties are exacerbated because certain forms of offences transcend national borders. Victims are reluctant to report abuse, variations in national criminal law and procedure may give rise to differences in investigation and prosecution, and convicted offenders may continue to be dangerous after serving their sentences. Developments in information technology have made these problems more acute by making it easier to produce and distribute child sexual abuse images while offering offenders anonymity and spreading responsibility across jurisdictions. Ease of travel and income differences fuel so-called child sex tourism, resulting often in child sex offenders committing offences abroad with impunity.

National legislation covers some of these problems, to varying degrees. However, **it is not strong or consistent enough to provide a vigorous social response** to this disturbing phenomenon. The recent Council of Europe Convention CETS No. 201 on the Protection of Children against Sexual Exploitation and Sexual Abuse ("the COE Convention") arguably constitutes the highest international standard for protecting children against sexual abuse and exploitation to date. However, not all Member States have yet acceded to this Convention.

At EU level, Council Framework Decision 2004/68/JHA, introduces a minimum of approximation of Member States' legislation to criminalise the most serious forms of child sexual abuse and exploitation, to extend domestic jurisdiction, and to provide for a minimum of assistance to victims. Although the requirements have generally been put into implementation, the Framework Decision has a number of shortcomings. This is why a new Directive has been adopted to recast the 2004 text and integrate new provisions to protect children more effectively.

CONTENT: this Directive, adopted following an agreement reached at first reading with the European Parliament, seeks to establish minimum rules concerning the definition of criminal offences and sanctions in the area of sexual abuse and sexual exploitation of children, child pornography and solicitation of children for sexual purposes.

Principles: the directive will harmonise around twenty relevant criminal offences, at the same time setting high level of penalties. The new rules include provisions to fight against **online child pornography and sex tourism**. They also aim to prevent convicted paedophiles moving to another EU member state from exercising **professional activities** involving regular contacts with children. The directive introduces measures to protect the child victim during investigations and legal proceedings.

Definitions: the Directive lays down a certain number of definitions including that of a “child”, which means any person below the age of 18 years, and “age of sexual consent” or the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child. “Child pornography” is also defined and includes, among other things, “realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, for primarily sexual purposes” and “any material that visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct”.

Offences: the directive penalises the following offences across the EU and sets lower thresholds for their maximum penalties as compared to previous rules from 2004:

a) sexual abuse of children: Maximum penalties range from at least one year imprisonment for causing a child to witness sexual activities to at least ten years for coercing a child into sexual actions. Moreover, engaging in sexual activities with a child:

- where abuse is made of a recognised position of trust, authority or influence over the child, shall be punishable by a maximum term of imprisonment of at least eight years if the child has not reached the age of sexual consent, and of at least three years of imprisonment, if the child is over that age ;
- or abuse is made of a particularly **vulnerable situation of the child**, in particular because of a mental or physical disability or a situation of dependence, shall be punishable by a maximum term of imprisonment of at least eight years if the child has not reached the age of sexual consent, and of at least three years of imprisonment if the child is over that age;
- or use is made of coercion, force or threats shall be punishable by a maximum term of imprisonment of at least ten years if the child has not reached the age of sexual consent, and of at least five years of imprisonment if the child is over that age.

It is also stipulated that coercing, forcing or threatening a child into sexual activities with a third party shall be punishable by a maximum term of imprisonment of at least ten years if the child has not reached the age of sexual consent, and of at least five years of imprisonment if the child is over that age.

b) Offences concerning sexual exploitation: Member States shall take the necessary measures to ensure that the intentional conduct is punishable:

- causing or recruiting a child to participate in pornographic performances, or profiting from or otherwise exploiting a child for such purposes shall be punishable by a maximum term of imprisonment of at least 5 years if the child has not reached the age of sexual consent and of at least 2 years of imprisonment if the child is over that age;
- coercing or forcing a child to participate in pornographic performances, or threatening a child for such purposes shall be punishable by a maximum term of imprisonment of at least 8 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age;
- knowingly attending pornographic performances involving the participation of a child shall be punishable by a maximum term of imprisonment of at least 2 years if the child has not reached the age of sexual consent, and of at least 1 year of imprisonment if the child is over that age;
- causing or recruiting a child to participate in child prostitution, or profiting from or otherwise exploiting a child for such purposes shall be punishable by a maximum term of imprisonment of at least 8 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age;

- coercing or forcing a child into child prostitution, or threatening a child for such purposes shall be punishable by a maximum term of imprisonment of at least 10 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age;
- 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 5 years if the child has not reached the age of sexual consent, and of at least 2 years of imprisonment if the child is over that age.

c) Offences concerning child pornography: besides the penalties already provided for in the 2004 Framework Decision, the production of child pornography shall be punishable by a maximum term of imprisonment of at least three years. It shall be within the discretion of Member States to decide whether punishment shall apply to cases involving child pornography where the person appearing to be a child was in fact 18 years of age or older at the time of depiction. In addition, Member States shall decide if the punishment shall apply to cases where it is established that pornographic material is produced and possessed by the producer solely for his or her private use, provided that the act involves no risk of dissemination of the material.

d) Solicitation of children for sexual purposes ("grooming"): Member States shall take the necessary measures to ensure that an attempt through information and communication technology to commit the offences concerning child pornography by an adult soliciting a child who has not reached the age of sexual consent to provide child pornography depicting that child is punishable. In case the production of child pornography or child abuse were preceded by an online invitation to the child, for instance in a chat, the maximum sentence must be at least one year higher than otherwise.

Consensual sexual activities: new measures are introduced which aim to call on the Member States to take the necessary measures to determine under which circumstances it may be considered that certain sexual activities referred to in the Directive may be considered as consensual sexual activities in particular 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. Generally, the penalty thresholds are reduced where the child has reached the age of sexual consent as defined by national legislation.

Aggravating circumstances: more severe sanctions were introduced for "aggravating circumstances", especially in cases of abuse committed by a member of the family, a person cohabiting with the child or a person having abused their recognised position of trust or authority; by several people acting together; etc. or that the offence was committed against a child in a particularly vulnerable situation, such as a mental or physical disability or a situation of dependence or where the offender has deliberately or recklessly endangered the life of the child.

Narrowing the supply of child pornography on the internet: with the new rules, the EU effectively responds to challenges following the internet revolution that made child pornography widely available. Prevention as well as protection of victims are among the main objectives. Concerning online child pornography, the text obliges Member States to ensure the prompt removal of such websites hosted in their territory and to endeavour to obtain their removal if hosted outside of their territory. In addition, Member States may block access to such web pages, but must follow transparent procedures and provide safeguards if they make use of this possibility.

Fighting sex tourism: the directive also aims to fight the sex tourism industry: first, by introducing compulsory jurisdiction over nationals who commit crimes abroad, and secondly by establishing preventive measures to that effect. This is meant to diminish demand for sexual services outside the EU.

Reliable check for EU nationals when applying for jobs related to the care of children: within the EU, higher protection of children will be achieved once Member States implement the directive and fully commit themselves to circulate data on disqualifications from their criminal records so as to prevent paedophiles moving abroad and taking advantage of free movement of workers within the EU. Under the new directive, Member States must ensure that convicted offenders can be prevented from exercising professional activities involving regular contacts with children. Employers recruiting for such activities must be able to request information about candidates' previous convictions.

Non prosecution or non-application of penalties to the victim: the Directive states that 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.

Assistance and support: Children shall be provided with assistance and support as soon as the competent authorities have reasonable grounds indication for believing that the child may have been subject to an offence. The necessary steps shall be taken to ensure protection for children who report cases of abuse taking place within their family, as well as to ensure that assistance and support for a child victim are not made conditional on the child victim's willingness to co-operate in the criminal investigation, prosecution or trial.

Member States shall ensure that child victims have without delay access to legal counselling and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge when the victim does not have sufficient financial resources.

Preventive intervention programmes or measures: Member States shall take the necessary measures to ensure that persons who fear that they might commit any of the offences referred to in the Directive may have access, where appropriate, to effective intervention programmes or measures designed to evaluate and prevent the risk of such offences being committed. Member States shall take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of sexual exploitation of children.

Intervention programmes or measures on a voluntary basis in the course of or after criminal proceedings: Member States shall take the necessary measures to ensure that effective intervention programmes or measures are made available to prevent and minimise the risks of repeated offences of a sexual nature against children. Such programmes or measures shall be accessible at any time during the criminal proceedings, inside and outside prison, in accordance with national law. The following persons may have access to the intervention programmes: persons subject to criminal proceedings for any of the offences referred to the Directive, and in compliance with the principle of the presumption of innocence; and persons convicted of any of the offences for similar offences.

Reporting: the Commission shall, by 18 December 2015, submit a report to the European Parliament and the Council assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by a legislative proposal.

Territorial provisions: in accordance with Protocols (No 21 and 22) annexed to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Directive, although Denmark is not taking part.

ENTRY INTO FORCE: 18.12.2011. From that date, this directive will replace the Framework Decision 2004/68/JHA.

TRANSPOSITION: 18.12.2013.

Combating sexual abuse, sexual exploitation of children and child pornography

2010/0064(COD) - 27/10/2011 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 541 to 2, with 31 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA.

Parliament adopted its position at first reading adopted under the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated between the European Parliament and the Council. They amend the Commission proposal as follows:

Scope: this Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of sexual abuse and sexual exploitation of children, child pornography and solicitation of children for sexual purposes.

The "**age of sexual consent**" shall mean the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child.

As regards "pornographic performance", this shall mean the live exhibition aimed at an audience, including by means of information and communication technology.

Offences concerning sexual abuse: 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.

Engaging in sexual activities with a child, where:

- abuse is made of a recognised position of trust, authority or influence over the child, shall be punishable by a maximum term of imprisonment of at least eight years if the child has not reached the age of sexual consent, and of at least three years of imprisonment, if the child is over that age ; or
- abuse is made of a particularly vulnerable situation of the child, in particular because of a mental or physical disability or a situation of dependence, shall be punishable by a maximum term of imprisonment of at least eight years if the child has not reached the age of sexual consent, and of at least three years of imprisonment if the child is over that age; or
- use is made of coercion, force or threats shall be punishable by a maximum term of imprisonment of at least ten years if the child has not reached the age of sexual consent, and of at least five years of imprisonment if the child is over that age.

Coercing, forcing or threatening a child into sexual activities with a third party shall be punishable by a maximum term of imprisonment of at least ten years if the child has not reached the age of sexual consent, and of at least five years of imprisonment if the child is over that age.

Offences concerning sexual exploitation: Member States shall take the necessary measures to ensure that the intentional conduct is punishable:

- causing or recruiting a child to participate in pornographic performances, or profiting from or otherwise exploiting a child for such purposes shall be punishable by a maximum term of imprisonment of at least five years if the child has not reached the age of sexual consent and of at least two years if the child is over that age;
- coercing or forcing a child to participate in pornographic performances, or threatening a child for such purposes shall be punishable by a maximum term of imprisonment of at least eight years if the child has not reached the age of sexual consent, and of at least five years if the child is over that age;
- knowingly attending pornographic performances involving the participation of a child shall be punishable by a maximum term of imprisonment of at least two years if the child has not reached the age of sexual consent, and of at least one year if the child is over that age;
- causing or recruiting a child to participate in child prostitution, or profiting from or otherwise exploiting a child for such purposes shall be punishable by a maximum term of imprisonment of at least eight years if the child has not reached the age of sexual consent, and of at least five years of imprisonment if the child is over that age;
- coercing or forcing a child into child prostitution, or threatening a child for such purposes shall be punishable by a maximum term of imprisonment of at least ten years if the child has not reached the age of sexual consent, and of at least five years of imprisonment if the child is over that age;
- engaging in sexual activities with a child, where recourse is made to child prostitution shall be punishable by a maximum term of imprisonment of at least five years if the child has not reached the age of sexual consent, and of at least two years of imprisonment if the child is over that age.

Offences concerning child pornography: production of child pornography shall be punishable by a maximum term of imprisonment of at least three years. It shall be within the discretion of Member States to decide whether punishment shall apply to cases involving child pornography where the person appearing to be a child was in fact 18 years of age or older at the time of depiction.

In addition, Member States shall decide if the punishment shall apply to cases where it is established that pornographic material is produced and possessed by the producer solely for his or her private use in so far as no pornographic material has been used for the purpose of its production and provided that the act involves no risk of dissemination of the material.

Solicitation of children for sexual purposes: Member States shall take the necessary measures to ensure that an attempt through information and communication technology to commit the offences concerning child pornography by an adult soliciting a child who has not reached the age of sexual consent to provide child pornography depicting that child is punishable.

Consensual sexual activities: new measures are introduced which aim to call on the Member States to take the necessary measures to determine under which circumstances it may be considered that certain sexual activities referred to in the Directive may be considered as **consensual sexual activities** in particular 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. The same goes for a pornographic performance that takes place in the context of a consensual relationship where the child has reached the age of sexual consent or between peers who are close in age and degree of psychological and physical development or maturity, insofar as the acts did not involve any abuse or exploitation and no money or other form of remuneration or consideration is given as payment in exchange for the pornographic performance and for the production and possession of material for private use.

Aggravating circumstances: Members are in favour of more severe sanctions within the EU, especially in cases of abuse committed by a member of the family, a person cohabiting with the child or a person having abused their recognised position of trust or authority; by several people acting together; etc. or that the offence was committed against a **child in a particularly vulnerable situation**, such as a mental or physical disability or a situation of dependence or state of physical or mental incapacity caused by the influence of drugs and alcohol.

Disqualification arising from convictions: 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 may be temporarily or permanently prevented from exercising at least professional activities involving direct and regular contacts with children.

Employers when recruiting for a post involving direct and regular contact with children are entitled to be informed, of convictions for sexual offences against children entered in the criminal record, or of existing disqualifications.

Seizure and Confiscation: Member States shall take the necessary measures to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in the Directive.

Non prosecution or non-application of penalties to the victim: the amended text states that 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.

Jurisdiction and coordination of prosecution: a Member State shall inform the Commission where it decides to establish further jurisdiction over an offence referred to in the Directive committed outside its territory, inter alia where:

- the offence is committed against one of its nationals or a person who is an habitual resident in its territory;
- the offence is committed for the benefit of a legal person established in its territory; or
- the offender is an habitual resident in its territory.

Assistance and support: Member States shall take the necessary measures to ensure that a child is provided with assistance and support as soon as the competent authorities have reasonable grounds indication for believing that the child may have been subject to an offence. Member States shall in particular take the necessary steps to ensure protection for children who report cases of abuse taking place within their family. They shall also take the necessary measures to ensure that assistance and support for a child victim are not made conditional on the child victim's willingness to co-operate in the criminal investigation, prosecution or trial.

Member States shall ensure that child victims have without delay access to legal counselling and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge when the victim does not have sufficient financial resources.

Advertising abuse opportunity and child sex tourism:Member States shall take appropriate measures to prevent or prohibit: (a) the dissemination of material advertising the opportunity to commit any of the offences against children; (b) the organisation for others, whether or not for commercial purposes, of travel arrangements with the purpose of committing any of the offences.

Intervention programmes or measures on a voluntary basis in the course of or after criminal proceedings: Member States shall take the necessary measures to ensure that effective intervention programmes or measures are made available to prevent and minimise the risks of repeated offences of a sexual nature against children. Such programmes or measures shall be accessible at any time during the criminal proceedings, inside and outside prison, in accordance with national law.

Member States shall take the necessary measures to ensure that the following persons may have access to the intervention programmes:

- persons subject to criminal proceedings for any of the offences referred to the Directive, under conditions which are neither detrimental nor contrary to the rights of the defence or to the requirements of a fair and impartial trial, and, in particular in compliance with the principle of the presumption of innocence; and

- persons convicted of any of the offences for similar offences.

Preventive intervention programmes or measures: Member States shall take the necessary measures to ensure that persons who fear that they might commit any of the offences may have access, where appropriate, to effective intervention programmes or measures designed to evaluate and prevent the risk of offences being committed. Member States shall take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of sexual exploitation related to exploitation of children.

Measures against websites containing or disseminating child pornography: Member States shall take the necessary measures to ensure the prompt removal of web-pages containing or disseminating child pornography hosted in their territory and to endeavour to obtain the removal of such pages hosted outside of their territory. Member States may take measures to **block access to webpages** containing or disseminating child pornography towards the Internet users in their territory. These measures must be set by transparent procedures and provide adequate safeguards. These safeguards shall also include the possibility of judicial redress.

Transposition: the Directive shall be transposed two years following its entry into force.

Joint statement of the European Parliament and of the Council on solicitation of children for sexual purposes: the European Parliament and the Council make the following statement: having regard to the fact that 'real-life' solicitation of children for sexual purposes (*off-line grooming*) means intentional manipulation of a child under the age of sexual consent by means of speech, writing, audio-visual material or by similar presentations, to meet him or her for the purpose of committing any of the offences referred to in the Directive on combating the sexual abuse and sexual exploitation of children and child pornography and that 'real-life' solicitation of children for sexual purposes is already covered by the national law of Member States in different forms, as attempt, a preparatory offence or a particular form of sexual abuse, the European Parliament and the Council call on the Member States to check carefully **their criminal law definitions as regards the criminalisation of 'real-life' solicitation of children for sexual purposes**, and to improve and correct their criminal law, if necessary, as regards any legal lacunae that might still exists in that regard.

Combating sexual abuse, sexual exploitation of children and child pornography

2010/0064(COD) - 10/05/2010 - Document attached to the procedure

Opinion of the European Data Protection Supervisor on the proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA.

To recall:on 29 March 2010, the Commission adopted a proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA. The proposal intends to repeal a Framework Decision adopted on 22 December 2003, due to some **shortcomings** of this previous legislation. The new text would improve the fight against child abuse with regard to the following aspects: criminalisation of serious forms of child abuse in relation for instance to child sex tourism, protection of unaccompanied children; criminal investigation and coordination of prosecution; new criminal offences in the IT environment; protection of victims; prevention of offences.

With regard to the objective to prevent offences, one of the tools would be the restriction of access to child pornography on the internet.

The EDPS has noted the main purpose of the proposal. His intention is not to question the need to put in place a better framework providing for adequate measures to protect children against abuses. He nevertheless wishes to stress the impact of some of the measures envisaged in the proposal, **such as the blocking of websites and the setting- up of hotlines, on the fundamental rights to privacy and data protection of different individuals involved**. For this reason, he has decided to submit this brief opinion at his own initiative.

Analysis of the proposal

The data protection issues relate to two aspects of the proposal, which are not specific to the fight against child abuse but to any initiative aiming at the collaboration of the private sector for law enforcement purposes. These issues have already been analysed by the EDPS in different contexts, especially related to the fight against illegal content on the Internet.

With regard to the proposal, the two elements of concern may be described as follows:

(1) The role of service providers with regard to the blocking of websites: the proposal foresees two possible alternatives to block access from the Unions' territory to internet pages identified as containing or disseminating child pornography: mechanisms to facilitate blocking by order of competent judicial or police authorities, or voluntary actions by Internet Service Providers to block the internet pages on the basis of codes of conducts or guidelines.

The EDPS questions the criteria and conditions leading to a blocking decision: while he could support actions taken by police or judicial authorities in a well defined legal framework, he has **strong doubts about the legal certainty of any blocking operated by private parties**.

He questions first of all the possible monitoring of the internet which could lead to such blocking. Monitoring and blocking may imply different activities, including scanning the internet, identifying unlawful or suspect websites and blocking access to end users, but also monitoring online behaviour of end-users who are trying to access or download such content.

These **surveillance activities** have consequences in terms of data protection, as personal data of various individuals will be processed, be it information about victims, witnesses, users or content providers.

In this context, the EDPS:

- underlines that monitoring the network and blocking sites would constitute a purpose unrelated to the commercial purpose of ISPs: this would raise issues with regard to lawful processing and compatible use of personal data under the Data Protection Directive;
- questions the criteria for blocking and stresses that a code of conduct or voluntary guidelines would not bring enough legal certainty in this respect;
- underlines the risks linked with possible blacklisting of individuals and their possibilities of redress before an independent authority.

The EDPS has already stated at several occasions that 'the monitoring of Internet user's behaviour and further collection of their IP addresses amounts to an interference with their rights to respect for their private life and their correspondence. Considering this interference, more appropriate safeguards are needed to ensure that monitoring and/or blocking will only be done in a strictly targeted way and under judicial control, and that misuse of this mechanism is prevented by adequate security measures.

(2) The setting-up of a network of hotlines: a network of hotlines is foreseen by the Safer Internet Programme on which the EDPS has issued the opinion referred to above. One of the comments of the EDPS relate precisely to the conditions according to which information would be collected, centralised and exchanged: there is a need for a precise description of what should be considered as illegal or harmful content, who is enabled to collect and keep information and under what specific safeguards. This is particularly important considering the consequences of reporting: in addition to the information related to children, personal data of any individual connected in some way with the information circulating on the network could be at stake, including for instance information on a person suspected of misbehaviour, be it an internet user or a content provider, but also information on a person reporting a suspicious content or the victim of the abuse. The rights of all these individuals should not be overlooked when developing reporting procedures: they should be taken into account in compliance with the existing data protection framework.

The information collected by these hotlines will also most probably be used for prosecution during the judicial stage of the case. In terms of quality and integrity requirements, additional safeguards should be implemented in order to guarantee that this information considered as digital evidence has been properly collected and preserved and will therefore be admissible before a court.

Guarantees related to the supervision of the system, in principle by law enforcement authorities, are decisive elements to comply with. Transparency and independent redress possibilities available to individuals are other essential elements to be integrated in such a scheme.

Conclusion: while the EDPS has no reason to challenge the development of a strong and effective framework to fight against sexual abuse, sexual exploitation of children and child pornography, he insists on the need to ensure legal certainty with regard to all actors involved, including Internet Service Providers and individuals using the network. The mentioning in the proposal of the need to take into account the fundamental rights of end users is welcome but not sufficient: it should be complemented by an obligation for Member States to ensure harmonised, clear and detailed procedures when fighting illegal content, under the supervision of independent public authorities.

Combating sexual abuse, sexual exploitation of children and child pornography

2010/0064(COD) - 07/10/2010

The Council discussed the proposal for a directive on combating the sexual abuse, sexual exploitation of children and child pornography. Ministers focused on Articles 1-13 (with the exception of Art. 10) of the current version of the text.

Almost all member states agreed on the current wording of these articles. Only two delegations maintained their reservations on Art. 4(3), which concerns situations where children knowingly attend pornographic performances.

Articles 1-13 (with the exception of Art. 10) specify, among other things, the scope of offences and the level of penalties in the following areas:

- sexual abuse, sexual exploitation of children and child pornography;
- solicitation of children for sexual purposes by means of information and communication technology ('grooming');
- instigation, aiding and abetting, attempt.

They also concern provisions on aggravating circumstances, the liability of and sanctions on legal persons as well as the possibility not to prosecute or impose penalties on the child victims.

Combating sexual abuse, sexual exploitation of children and child pornography

2010/0064(COD) - 29/03/2010 - Legislative proposal

PURPOSE: to recast Framework Decision 2004/68/JHA on the sexual abuse, sexual exploitation of children and child pornography by including new provisions aimed at making it more effective.

PROPOSED ACT: Directive of European Parliament and of the Council.

BACKGROUND: with regard to child victims, the main cause of this phenomenon is vulnerability resulting from a variety of factors. Insufficient response by law enforcement mechanisms contributes to the prevalence of these phenomena, and the difficulties are exacerbated because certain

forms of offences transcend national borders. Victims are reluctant to report abuse, variations in national criminal law and procedure may give rise to differences in investigation and prosecution, and convicted offenders may continue to be dangerous after serving their sentences. Developments in information technology have made these problems more acute by making it easier to produce and distribute child sexual abuse images while offering offenders anonymity and spreading responsibility across jurisdictions. Ease of travel and income differences fuel so-called child sex tourism, resulting often in child sex offenders committing offences abroad with impunity.

National legislation covers some of these problems, to varying degrees. However, it is **not strong or consistent enough to provide a vigorous social response to this disturbing phenomenon**. The recent Council of Europe Convention CETS No. 201 on the Protection of Children against Sexual Exploitation and Sexual Abuse ("the COE Convention") arguably constitutes the highest international standard for protecting children against sexual abuse and exploitation to date. However, not all Member States have yet acceded to this Convention.

At EU level, Council Framework Decision 2004/68/JHA, introduces a minimum of approximation of Member States' legislation to criminalise the most serious forms of child sexual abuse and exploitation, to extend domestic jurisdiction, and to provide for a minimum of assistance to victims. Although the requirements have generally been put into implementation, the Framework Decision has a number of shortcomings. It approximates legislation only on a limited number of offences, does not address new forms of abuse and exploitation using information technology, does not remove obstacles to prosecuting offences outside national territory, does not meet all the specific needs of child victims, and does not contain adequate measures to prevent offences. It is therefore necessary to recast this text in order to respond to the needs of these new challenges.

It should be noted that this proposal would replace existing legislation in place since 2004, and builds on a proposal made on 25/03/2009. After the entry into force of the Lisbon Treaty, this proposal has to be reshaped. This will allow the Commission to verify that EU law is correctly translated into national rules and take those countries that are not complying to Court.

IMPACT ASSESSMENT: the Commission considered several options:

- ***option 1***: **no new EU action**;
- ***option 2***: **complement existing legislation with non-legislative measures**: Framework Decision 2004/68/JHA, would not be amended. Instead, non-legislative measures could be put in place to support coordinated implementation of national legislation. This would include exchanging information and experience in prosecution, protection or prevention, awareness raising, cooperation with private sector and encouragement of self regulation, or the setting up of mechanisms for data collection;
- ***option 3***: **new legislation on prosecuting offenders, protecting victims, and preventing offences**: a new legislative act would be adopted, incorporating the existing Framework Decision, certain provisions of the COE Convention, and additional elements not contained in either of these. It would cover prosecution of offenders, protection of the victims, and prevention of the phenomenon;
- ***option 4***: **new comprehensive legislation**: the existing provisions of Framework Decision 2004/68/JHA would be supplemented by EU action to amend substantive criminal law and procedure, protect victims, and prevent offences as under option 3, plus the non-legislative measures identified under option 2 to improve the implementation of national legislation.

Following the analysis of the economic impact, social impacts, and impacts on fundamental rights, options 3 and 4 represent the best approach to the problems and achieve the objectives of the proposal. The preferred option would be **option 4**, followed by option 3.

LEGAL BASIS: Articles 82 (2) and 83 (1) of the Treaty on the Functioning of the EU. Given the cross-border dimension, EU action is required as the objective of effectively protecting children cannot be sufficiently achieved by Member States, either at central level or at regional or local level.

CONTENT: the proposal will both repeal and incorporate Framework Decision 2004/68/JHA to include the following new elements:

- **substantive criminal law**: serious forms of child sexual abuse and exploitation currently not covered by EU legislation would be criminalised. This includes, for instance, the organisation of travel arrangements with the purpose of committing sexual abuse, something particularly relevant, but not exclusively, in the context of child sex tourism. The definition of child pornography is amended to approximate it to the COE Convention and the Optional Protocol to the Convention on the Rights of the Child. Special consideration is given to offences against children in a particularly vulnerable situation. In particular, the level of criminal penalties should be increased so that they are proportionate, effective and dissuasive. To determine the degree of seriousness and attach penalties proportionate to it, consideration is given to different factors which may intervene in very different sorts of offences, like the degree of harm to the victim, the level of culpability of the offender and the level of risk posed to society. Accordingly, a number of relations between offences can be established. In general terms, **activities involving sexual contact are more serious than those which do not**; the presence of exploitation makes the offence more serious than its absence; coercion, force or threats are more serious than abuse of a position of power of the offender or weakness of the victim, which in turn is more serious than free consent of the victim. Prostitution, which involves sexual activities and money, is more serious than pornographic performances, which may or may not include them; recruiting to prostitution or similar is more serious than mere causing, as it involves active seeking of children as commodities. On child pornography, production, usually involving recruiting and sexual contact with the child, is more serious than other offences like distribution or offering, which in turn are more serious than possession or access. As a result of combining these different criteria, distinction is thus made between five different groups of offences, depending on their degree of seriousness, leading to accordingly different levels of penalties for the basic crimes;
- **new criminal offences in the IT environment**: new forms of sexual abuse and exploitation facilitated by the use of IT would be criminalised. This includes **on-line pornographic performances**, or **knowingly obtaining access to child pornography**, to cover cases where viewing child pornography from websites without downloading or storing the images does not amount to "possession of" or "procuring" child pornography. Also the new offence of "**grooming**" is incorporated closely following the wording agreed in the COE Convention.
- **criminal investigation and initiation of criminal proceedings**: a number of provisions would be introduced to assist with investigating offences and bringing charges. A mechanism to coordinate prosecution in cases of multiple jurisdictions is included, but may be superseded once the proposal for a Framework Decision on conflict of jurisdiction in criminal proceedings is adopted;
- **prosecution of offences committed abroad**: rules on jurisdiction would be amended to ensure that child sexual abusers or exploiters from the EU, both nationals and habitual residents, face prosecution even if they commit their crimes **outside the EU**, via so-called sex tourism;

- **protection of victims**: new provisions will be included to ensure that victims have easy access to legal remedies and do not suffer from participating in criminal proceedings. They cover assistance and support to victims, and protection of victims specifically in criminal investigations and proceedings;
- **prevention of offences**: amendments would be introduced to help prevent child sexual abuse and exploitation offences, through a number of actions concentrating on previous offenders to prevent recidivism, and to **restrict access to child pornography on the internet**. The aim of restricting such access is to reduce the circulation of child pornography by making it more difficult to use the publicly-accessible Web. It is not a substitute for action to remove the content at the source or to prosecute offenders;
- **other protective measures not contained in the COE Convention**: the proposal includes elements not contained in the COE Convention, notably: (i) ensuring implementation across the EU of prohibitions from activities with children imposed on offenders; (ii) blocking access to child pornography on the internet; (iii) criminalising coercing a child into sexual relations with a third party and child sexual abuse online; (iv) a non-punishment clause for child victims. It also goes beyond the obligations imposed by the COE Convention regarding the level of **penalties**, free legal counselling for child victims and repression of activities encouraging abuse and child sex tourism. Moreover, incorporating provisions from the Convention into EU law will facilitate faster adoption of national measures compared to national procedures for ratification, and ensure better monitoring of implementation.

Territorial scope: the adoption of the proposal will be addressed to the Member States. The application of the resulting Directive to the United Kingdom, Ireland and Denmark will be determined in accordance with the provisions of Protocols (No 21) and (No 22) annexed to the Treaty on the functioning of the European Union.

BUDGETARY IMPLICATION: the proposal has no implication for the Community budget.

Combating sexual abuse, sexual exploitation of children and child pornography

2010/0064(COD) - 03/06/2010

The Spanish presidency informed justice ministers about the state of play concerning a directive on combating the sexual abuse, sexual exploitation of children and child pornography.

In March 2010, the Commission adopted its proposal on the file. Once adopted, the new rules will replace framework decision 2004/68/JHA. The goal is to further approximate national legislation and to improve international law enforcement and judicial cooperation.

Among the outstanding issues are:

- the definition of child pornography;
- the categorisation of offences;
- instigation, aiding and abetting, and preparatory acts for offences of this kind;
- the criminalisation of intentional access to child pornography by computerised means;
- how to deal with unintended access to web sites;
- the length of sentences;
- the extension of territorial jurisdiction;
- the blocking of websites with child pornography content as a complementary measure to the efforts to eliminate the source content;
- including unreal characters (images, cartoons, etc.) within the concept of child pornography (in this respect, the Commission has noted that the aim is to criminalise images which reproduce reality);
- assessing and offering rehabilitation programmes to the perpetrators of such crimes.

Combating sexual abuse, sexual exploitation of children and child pornography

2010/0064(COD) - 02/12/2010

The Council reached a general agreement on new EU-wide rules which will make it possible to combat sexual abuse, sexual exploitation of children and child pornography more effectively.

The negotiations with the European Parliament can now begin, with **the aim being to reach a first reading agreement as soon as possible**.

Combating sexual abuse, sexual exploitation of children and child pornography

2010/0064(COD) - 16/12/2016 - Follow-up document

The Commission presented a report to the European Parliament and the Council assessing the implementation of the measures referred to in Article 25 of Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography.

The report focused in particular on Article 27 of the Directive which requires Member States to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive and communicate them to the Commission by 18 December 2013.

This report should be read in conjunction with COM(2016) 872 on the prompt removal of webpages containing or disseminating child pornography on the territory of Member States (refer to the corresponding summary in the procedure file).

Report's objectives: the report provided a concise yet informative overview of the main transposition measures taken by Member States.

As a reminder, the text:

1. requires the adoption of legislation in many different areas, including substantive criminal law (e.g. definitions of offences and the level of penalties, the statute of limitations and the liability of legal persons) and procedural criminal law (e.g. extraterritorial jurisdiction, the participation of children in criminal proceedings, and legal representation);
2. entails extensive administrative measures to complement the legislation (e.g. on access to information and the exchange of criminal records between Member States);
3. involves multiple actors, not only within the authorities of a Member State but also in cooperation with non-governmental organisations (e.g. to disrupt the distribution of child sexual abuse material through hotlines and awareness raising campaigns).

State of transposition and main conclusions: by the transposition deadline, only 12 Member States had notified the Commission that they had completed transposition of the Directive. The Commission therefore opened infringement proceedings for non-communication of national transposition measures against the others: BE, BG, IE, EL, ES, IT, CY, LT, HU, MT, NL, PT, RO, SI and the UK. All these infringement proceedings had been closed by 8 December 2016.

The report noted that the Directive is a comprehensive **legislative framework which has led to substantive progress in the Member States** by amending criminal codes, criminal procedures and sectorial legislation, streamlining procedures, setting up or improving cooperation schemes and improving the coordination of national actors.

The Commission acknowledges the major efforts made by the Member States to transpose the Directive.

However, **there is still considerable scope for the Directive to reach its full potential** through complete implementation of all of its provisions by Member States.

Transposition challenges: the analysis so far suggests that some of the main challenges for Member States could be related to:

- **prevention and intervention programmes** for offenders (Articles 22, 23 and 24),
- substantial criminal law (Articles 3, 4 and 5),
- assistance, support and protection measures for child victims (Articles 18, 19 and 20).

Less challenging provisions seem to include those related to incitement, aiding and abetting, and attempt (Article 7), consensual sexual activities (Article 8), seizure and confiscation (Article 11) and liability and sanctions on legal persons (Articles 12 and 13).

The Commission stated that it has **no plans to propose amendments to the Directive or any complementary legislation**. It will instead focus its efforts on ensuring that children benefit from the full added value of the Directive, through its complete transposition and implementation by Member States.

The Commission will continue to provide support to Member States to ensure a satisfactory level of transposition and implementation. Where necessary, the Commission will make use of its enforcement powers under the Treaties through infringement procedures.

It will also support the implementation of the Directive by facilitating the development and exchange of best practices in specific areas such as prevention and intervention programmes for offenders.

Combating sexual abuse, sexual exploitation of children and child pornography

2010/0064(COD) - 16/12/2016 - Follow-up document

The Commission presented a report to the European Parliament and the Council assessing the implementation of the measures referred to in Article 25 of Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography.

The report noted that the Internet has brought about a dramatic increase in child sexual abuse in that:

- it facilitates the sharing of child sexual abuse material, by offering a variety of distribution channels such as the web, peer-to-peer networks, social media, bulletin boards, newsgroups, etc;
- it provides technical means and security measures that can facilitate anonymity;
- children continue to be at risk of becoming victims, while anonymity can obstruct the investigation and prosecution of these crimes;
- new child sexual abuse materials have become a currency.

The report recalled that online child sexual abuse is a nefarious crime with long-term consequences for its victims. There are indications that the average age of victims of child sexual abuse material is steadily decreasing (around 70% of the victims in the reports that INHOPE hotlines processed in 2014 appeared to be prepubescent and 3 % of the victims appeared to be two years old or younger and a **third of images showed children being raped or sexually torture**).

In this regard, the aim of this report, which responds to the requirement under Article 28(2) of the Directive, is to provide a concise yet informative overview of the **main transposition measures taken by Member States**.

Main conclusions of the report: the report noted that by the transposition deadline, only **12 Member States** had notified the Commission that they had completed transposition of the Directive. The Commission therefore **opened infringement proceedings** for non-communication of national transposition measures against the others: BE, BG, IE, EL, ES, IT, CY, LT, HU, MT, NL, PT, RO, SI and the UK. All these infringement proceedings had been closed by 8 December 2016.

The Commission acknowledges the significant efforts made by the Member States in the transposition of Article 25 of the Directive. There is still room, however, to use its potential to the full by continuing to work on its complete and correct implementation across Member States.

The Commission considered that some key challenges ahead include:

- ensuring that child sexual abuse material in Member States' territory is **removed promptly**;
- providing adequate safeguards where the Member State opts to take measures to block access to Internet users within its territory to web pages containing child sexual abuse material.

The Commission stated that it has **no plans to propose amendments to Article 25 or complementary legislation**. It will instead focus its efforts on ensuring that children benefit from the full added value of the Article, through its complete transposition and implementation by Member States.

However, in its recent Communication on Online Platforms, the Commission highlighted the need to sustain and develop multi-stakeholder engagement processes aimed at **finding common solutions to voluntarily detect and fight illegal material online** and committed to reviewing the need for formal notice and action procedures.

Continuing transposition: the Commission concluded that it will continue to provide support to Member States to ensure a satisfactory level of transposition and implementation. This includes monitoring that national measures comply with the corresponding provisions in the Article and facilitating the exchange of best practices. Where necessary, the Commission will make use of its enforcement powers under the Treaties through infringement procedures.