

Revision of Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography

This briefing is one in a series of 'implementation appraisals', produced by the European Parliamentary Research Service (EPRS), on the operation of existing EU legislation in practice. Each briefing focuses on a specific EU law, which is likely to be amended or reviewed, as envisaged in the European Commission's annual work programme. 'Implementation appraisals' aim to provide a succinct overview of publicly available material on the implementation, application and effectiveness to date of an EU law, drawing on input from EU institutions and bodies, as well as external organisations. They are provided by the EPRS Ex-Post Evaluation Unit, to assist parliamentary committees in their consideration of new European Commission proposals, once tabled.

SUMMARY

In September 2021, the Commission launched a REFIT initiative to assess the implementation of Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography, with a view to revising it. This appraisal takes stock of reports published by the Commission, positions adopted and analyses submitted by EU institutions and agencies, and the relevant European Court of Human Rights case law.

The directive requires the EU Member States to criminalise a series of offences, including online child sexual abuse. Yet, it does not cover all of the related technological issues or provide clues on how to reconcile respect for fundamental rights with the urgent need to combat sexual abuse against children. The directive must be understood within the broader frame of applicable EU legislation, including the proposed [regulation on online child sexual abuse](#) currently under discussion.

Analysis demonstrates a need to amend the directive, with a focus on stronger preventive measures, educational programmes and assistance to victims, and more efficient investigation and prosecution mechanisms including through international cooperation.

Background

In 2007, the Council of Europe adopted the first comprehensive [Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse](#) (the 'Lanzarote Convention'). The convention criminalises a wide array of practices constituting sexual abuse against children (Articles 19 to 23). States are required to criminalise such practices, take measures to prevent sexual violence, but also to protect child victims, to prosecute perpetrators and to cooperate. The convention entered into force on 1 July 2010. To date, it has been [ratified](#) by all 46 Council of Europe member states and two non-member states.



In the EU, [Directive 2011/93/EU](#) on combating the sexual abuse and sexual exploitation of children and child pornography (the 'Child Sexual Abuse Directive') replaced [Council Framework Decision 2004/68/JHA](#) on combating the sexual exploitation of children and child pornography. The Child Sexual Abuse Directive is based on Articles 82(2) and 83(1) of the [Treaty on the Functioning of the EU](#) and defines criminal offences and sanctions in the area of child sexual abuse. It also adds these offences to a group of other serious crimes for which the EU may harmonise criminal law. The directive contains provisions on prevention, investigation and prosecution, and protection and assistance of victims.

As a consequence of new technologies and the COVID-19 pandemic, criminal reports of child sexual abuse have never been so numerous. It is estimated that [one in five](#) children is victim to some form of sexual violence in Europe. In real terms, this adds up to [16 million](#) children. Both governments and non-governmental organisations (NGOs) acknowledge a dramatic increase in online child sexual abuse materials. Between 1 January and 25 August 2023, the [Internet Watch Foundation](#) identified 101 988 webpages containing such material and hosted on servers in the EU. Each webpage may contain thousands of images or videos of children being abused. This is a 26 % increase compared to the same period in 2022. Of those webpages, 21 651 depict the most extreme forms of child sexual abuse, including rape, bestiality and sadism, and sexual torture. This is a 54 % increase compared to the same period in 2022.

The 2020 [EU strategy for a more effective fight against child sexual abuse](#) announced a comprehensive framework for strengthening and coordinating the implementation of effective measures against child sexual abuse. Combating this offence was also listed as one of the priorities of the 2020 [EU security union strategy 2020-2025](#), **to ensure the implementation of the directive while acknowledging that improvements are necessary**. Furthermore, **specific legislation** tackling child sexual abuse online was identified as a priority and a [proposal](#)¹ was submitted on 11 May 2022. However, striking a balance between the right to privacy and the need to detect and take down illegal content remains a complex issue. There are also ongoing [discussions](#) on the revision of the [e-privacy Directive](#), seeking to ensure respect for fundamental rights in all communications over public networks regardless of the technology used. Other prospective [initiatives](#) are aimed at boosting coordination, including through a prevention network for practitioners and researchers. A similar initiative involves creating a European centre to prevent and counter child sexual abuse, in cooperation with industry. In September 2021, the Commission launched its REFIT initiative, planning a revision of the Child Sexual Abuse Directive in its [2023 work programme](#) for the third quarter of the year. It was postponed to the first quarter of 2024.

EU legal framework

The 2011 [Child Sexual Abuse Directive](#) (the directive) is a **substantive criminal law instrument**. It requires Member States to criminalise a series of offences. It considers a child any person below the age of 18 years.² It defines four categories of offences based on a set of minimum rules (Articles 3 to 6). **Sexual abuse** involves causing children to witness or engage in sexual activities or sexual abuse, as well as coercing, forcing or threatening a child into sexual activity with a third party. **Sexual exploitation** involves causing or recruiting or benefiting from a child to participate in sexual exploitation, such as pornographic performances or prostitution. It also includes engaging in sexual activities with a child who is a victim of prostitution. **Child pornography**³ entails acquisition, possession, distribution or transmission, offering, supplying or making available or producing child pornography, including by information and communication technology (ICT). This has to be done 'knowingly', accidental clicking is excluded. **Solicitation** of children for sexual purposes, or attempt at solicitation, including through ICT, is also criminalised. Criminalisation is envisaged for inciting, aiding and abetting as well as for attempts to commit any of the above offences (Article 7). Aggravating factors are linked to the status of the victim, the position or nature of the offender, or the presence of life endangering, serious violence or harm (Article 9). Sanctions vary from at least 1 year to at least 10 years of imprisonment.

The directive does not mention other existing forms of child sexual abuse. This is left to national legislation or to specific EU legislation, in particular because some forms of sexual abuse, including ICT-facilitated violence, mainly concern both [women](#) and children. At present, sexual harassment⁴ is addressed by [legislation on gender-based equality](#), but the proposal for a [directive on combating violence against women and domestic violence](#) envisages its criminalisation beyond the working environment. Interinstitutional [discussions](#) are ongoing. While there are conflicting views on other potential sexual crimes that may affect children, most Member States have criminalised [female genital mutilation](#).⁵ Likewise, [child, early and forced marriage](#)⁶ is condemned under both children's rights and gender equality legislation.⁷ Member States have competence to criminalise other forms of sexual abuse without this being one of the directive's requirements.⁸

To achieve greater effectiveness, the directive introduces new elements requiring the authorities to adopt a more **proactive approach** in the detection of crimes. Accordingly, victims do not need to have submitted a complaint for the authorities to investigate and prosecute. Similarly, statutes of limitation of the crimes must be extended to enable prosecution beyond 18 years (Article 15(2)), and investigative tools made available (Article 15(3)). More needs to be done to identify victims in particular by analysing child pornography material. The directive seeks to lift existing barriers and demands the lifting of professional or medical confidentiality so that suspected sexual offences could be reported (Article 16).⁹ To broaden the territorial scope of investigations, the directive demands the adoption of a clause of extraterritorial jurisdiction enabling authorities to pursue suspects including habitual residents who act in a third country (Article 17).

In support of a **child-centred approach**, Member States are required to plan assistance, support and protection measures from an early stage (Article 18). Such measures must continue throughout the proceedings and after their completion; they may be granted to family members (Article 19). To improve **prevention**, Member States are required to address sex tourism (Article 21). They need to implement programmes or measures for potential sex offenders (Article 22), and to prevent risks of recidivism for suspects and convicted offenders (Article 24). They have to organise awareness-raising campaigns on risks faced by children and training for professionals likely to be in contact with child victims (Article 23). Article 25 envisages measures to ensure the removal of web pages and to block access to such pages. These measures are part of the prevention of dissemination and do not preclude investigation and prosecution.

The setting up of a multifaceted legal framework is considered the backbone of an effective fight against child sexual abuse. The directive acknowledges complementarity with the [Council Framework Decision](#) of 15 March 2001 on the standing of victims in criminal proceedings (since then replaced by [Directive 2012/29/EU](#) establishing minimum standards on the rights, support and protection of victims of crime) and with [Directive 2011/36/EU](#) of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. Discussions are ongoing on its revision;¹⁰ the above-mentioned instruments will undoubtedly remain complementary.

As a criminal law instrument, the directive cannot address every specific aspect of child sexual abuse. The complexity of online child sexual abuse requires additional and more technical rules beyond the sole criminalisation of the acts. The detection of online child sexual abuse is rendered difficult by end-to-end encryption communications or by the anonymity of net users.¹¹ Thus, some instruments dealing with new technologies have been put forward. One of them the [e-Evidence Regulation](#), was adopted on 23 July 2023 to facilitate cross-border access to electronic data needed for investigation and prosecution of crimes including child sexual abuse. Questions relating to the **liability of online intermediaries** initially covered by the 2000 [Directive on Electronic Commerce](#) have been reviewed by the 2022 [Digital Services Act](#). At present, online intermediaries, such as social networks, content-sharing platforms, search engines, app stores, marketplaces, and online travel platforms must expeditiously remove and disable access to illegal content online. There are additional obligations in place to reduce the risk of re-victimisation and prevent further dissemination. Nevertheless, a dedicated instrument was considered necessary to enable the EU to take collective action against online child sexual abuse. A draft [regulation](#) to prevent and combat

child sexual abuse is under discussion. Its objective is to introduce clear, uniform, and balanced EU rules imposing detection, reporting and removal obligations on certain relevant ICTs.

European Commission reports and consultations

Given that the Commission decided to prepare the ex-post evaluation of the Child Sexual Abuse Directive in parallel with the ex-ante impact assessment underpinning the proposal for a new directive ('back-to-back' in Commission jargon), the evaluation report was not publicly available at the time of drafting of this briefing.

Inception impact assessment

In the first half of 2021, the Commission published an [inception impact assessment](#) offering insight into its views on the scope of the revision, the policy options and their expected impact. It is supported by two Commission reports of December 2016: a [report](#) assessing the extent to which the Member States have taken the necessary measures to comply with the directive and a [report](#) assessing the implementation of the measures referred to in Article 25 of the directive.

The inception impact assessment outlines four obstacles to the directive's effective implementation. Two are inherent to the text – and were outlined in both Commission assessment reports. In transposing the directive, Member States have applied disparate approaches, which has sometimes harmed their cooperation. In the area of prevention, initiatives have been fragmented and often insufficient. The two other obstacles are the complex technological changes and the need for tailor-made measures to mitigate victims' long-term trauma.

To address these obstacles, the revision sets itself two major objectives, according to the inception impact assessment: to combat and reduce all forms of child sexual abuse and to ensure effective implementation of all necessary measures, i.e. prevention, investigation and prosecution, assistance to, and support and protection of victims. Both objectives are similar to those of the original directive. Specifically, the revision seeks to adapt the directive to the new challenges. It also seeks to: (i) identify any legislative and implementation gaps, and best practices in the current legislative framework (in line with the priorities of the 2020 EU [strategy for a more effective fight against child sexual abuse](#)); (ii) ensure that the legislative framework addresses all emerging challenges; (iii) enable a coherent, coordinated approach. All relevant stakeholders must be involved in a manner consistent with other key EU policies and horizontal objectives; (iv) provide holistic support to Member States to ensure an effective coordination in the use of financial and human resources.

In both above-mentioned reports assessing the transposition of the directive, the Commission noted that only 12 Member States had notified the transposition by the deadline of 18 December 2013. The 15 infringement proceedings opened against Member States for non-communication of national transposition measures had all been closed by 8 December 2016. The Commission initiated a second round of infringements proceedings in 2019 against 18 Member States, and a third in 2022. In 2023, [additional letters of formal notice](#) were sent to 12 Member States. Currently, the Commission has [closed](#) infringement cases for seven Member States.¹²

Both reports show that despite Member States' actions and the undisputable need to tackle all forms of child sexual abuse, there have been disparate approaches and unresolved challenges to an effective implementation of the directive. Assessing the [extent](#) to which the Member States have taken the necessary measures to comply with the directive, the Commission looked at the transposition measures adopted until 1 November 2016. Their overview – or lack thereof – show the **nature of disparities** between Member States. Some differences, often minor, concern the transposition procedures at the level of the terminology and/or legal approaches used. Some use the exact same words or concepts in new legislation, while others rely on pre-existing national legislation and complement it when relevant provisions are missing. Such procedural disparities do not prevent the implementation of the directive, as long as the laws, pre-existing or not – guarantee that objectives are reached. Challenges arise when one and the same concept contradicts the objectives of the directive because it is used to cover different realities. For instance, variations between 14 and 18 years for *the age of consent* from one Member State to another may hamper

judicial cooperation. Moreover, Member States have different procedural requirements for the *statute of limitations*. In some, it runs from the date of the offence; as a consequence, children abused at an early age run the risk of never being able to assert their rights and seeing the culprits prosecuted beyond their 18th year, even though this is a condition set by the directive.

The transposition is not only a procedural question, it touches upon substantive issues.¹³ The Child Sexual Abuse Directive gives broad discretion to Member States in transposing its provisions. It contains several minimum harmonisation provisions, obliging Member States to criminalise certain offences and adopt a certain level of sanctions. Yet, it has numerous openly worded provisions too. Member States can freely decide what measures they will implement to transpose those provisions that mainly concern the strengthening of investigations and prosecution, additional sanctions, prevention measures¹⁴ or protection of children. Even though the Commission did not regard some of the information provided by Member States – in particular on preventive measures and victim support – as being conclusive, this circumstance does not seem to be the directive's major deficiency. There was no evidence that the objectives were not reached (due to a lack of detailed quantitative and qualitative data throughout EU) or that the fight against children sexual abuse did not become a priority, that the criminalisation of major offences and effective sanctions were not implemented, or that efforts were not undertaken to reinforce law enforcement, protection and prevention. Disparities may have resulted in legal uncertainties having the potential to affect cross-border cooperation, but hypotheses in this regard are not supported by evidence. What was more worrisome than transposition weaknesses was the dramatic increase of online child sexual abuse. This became the major problem and is not a consequence of the Member States' failure to transpose the directive properly. This phenomenon is the main driver of the revision, as it calls for certain clarifications.

In another [report](#), the Commission assessed the implementation of measures referred to in Article 25 of the directive. Article 25 focuses on the adoption of measures aimed at removing webpages containing or disseminating child pornography when those webpages are hosted on any of the Member States' territories. Member States must also endeavour to obtain such removal when the webpages are hosted outside their territory. Article 25(2) further provides for the possibility to take measures to block access to those pages. In recital 47, the directive indicates that the internet industry may voluntarily act to prevent the misuse of its services and support any action taken by Member States.

The report briefly analysed measures adopted by the Member States to ensure the removal of suspicious material whether hosted on or outside their territory, as well as the roles of and cooperation mechanisms between the relevant stakeholders (i.e. national hotlines, law enforcement authorities and hosting providers). The report concluded that Member States had made significant efforts to transpose Article 25, yet there was still room to use its full potential by 'continuing to work on its correct and complete implementation across Member States'.

Although at that time the Commission had neither planned to amend Article 25 nor to adopt complementary legislation, it was already clear that child sexual abuse online had to be addressed, and that two contradictory requirements needed to be taken into account: ensuring the prompt removal of suspicious material and providing adequate safeguards for internet users. The Commission insisted on the need to sustain and develop multi-stakeholder engagement processes, where the role of internet providers could be examined in depth.

Stakeholder consultations

From 28 September to 26 October 2021, 17 contributions were received in response to the [consultations](#) on the inception impact assessment (10 from civil society organisations, 5 from ICT business or related associations and 2 from individuals). Details of the respondents' stances on online child sexual abuse are outside the main scope of the 2011 directive and are therefore not examined here.

All respondents favoured a new proposal and non-legislative measures. Some insisted on changing a few legal definitions in accordance with the [Luxembourg Guidelines](#) (for instance, replacing 'pornography' with 'child sexual abuse material'). It was also noted that the directive falls short of effectively criminalising all forms of sexual violence against children. The possibility left to Member States to opt out of criminalising child sexual abuse material that does not include a real child or involves an adult portraying a child, was considered as significantly lessening the impact of the directive. Full harmonisation was highlighted as a way to enable a common EU approach, facilitate coordination and foster trans-border cooperation.

Some insisted on designing specific measures for children facing increased risk of sexual abuse (more specifically, children in institutional care, for whom effective and standardised guardianship systems must be in place in each Member State). Specialised measures are needed for missing children too,¹⁵ as well as a child-sensitive legal system to avoid children's re-victimisation.

Regarding prevention, some respondents asked for a Europe-wide certification system for all persons taking up jobs requiring contact with minors, and measures to ensure that any convicted natural person would be permanently prevented from exercising professional and volunteering activities involving direct contact with children. Some respondents demanded stronger legislative and non-legislative preventive and treatment measures targeting individuals at risk of becoming offenders, as well as self-help and referral services for perpetrators. Finally, they supported setting up a European centre to prevent and counter child sexual abuse, as a potential key player in ensuring coherence in the legislation, policies and good practices across the EU, and in terms of international cooperation. Several respondents stressed the need for harmonised data collection 'for the purpose of observing and evaluating the phenomenon of sexual abuse and sexual exploitation of children'.

A total of 49 citizens and stakeholders took part in a [public consultation](#) between 20 April and 13 July 2022, and replied to 34 questions. Their answers mirror those from the consultation on the inception impact assessment. Overall, respondents agreed that the directive had succeeded in setting ground rules and minimum requirements throughout EU. EU-wide definitions help clarify the meaning of crimes of sexual violence against children and foster a common approach. New forms of abuse online need to be criminalised, and some of them (i.e. grooming, visualisation of child sexual abuse material, sextortion and self-generated child sexual abuse material) need to be clarified. Respondents highlighted the need for further harmonisation in particular on the age of consent, statute of limitations, investigative tools and techniques for combating child sexual abuse, and the civil award of damages to victims. They also found that more needs to be done in the area of prevention, with more mandatory prevention measures and educational measures in school, better training for professionals, as well as a higher number of support services for minors.

European Parliament position and activities

Resolution of the European Parliament

In its [resolution](#) of 14 December 2017 on the implementation of the Child Sexual Abuse Directive, Parliament condemned unequivocally all forms of sexual abuse or exploitation and called on EU institutions and Member States to make child protection an 'explicit priority'.

Parliament insisted on the criminalisation of all forms of abuse but also of all offenders, including legal persons. There are no details on who the legal persons may be, leaving open the possible legal responsibility of any group, private or public body, association, or company.

Parliament deplored the lack of full transposition and implementation of the directive. It highlighted the existence of new forms of sexual abuse and exploitation, in particular online.

Parliament stressed the need for all players to seek concrete measures for combating and preventing such phenomena, including through the development and better use of technologies. However, it also emphasised 'that over reliance on hotlines and the industry can be counterproductive and only outsources the fight against child sexual abuse'. It demanded the same efforts from Member State authorities including through the provision of adequate financial and material resources to law enforcement and judicial authorities, and through legal measures.

Parliament highlighted the importance of cooperation at all levels: across borders, between private and public players, between services, with NGOs and with internet service providers.

As regards prevention, all players must be involved. This includes parents, teachers and children themselves, for whom Member States need to adopt measures encouraging them to report abuses. Parliament insisted on the need to introduce anonymous reporting mechanisms as well. More needs to be done to raise awareness, to train, to share best practices and to educate society. Programmes employed in this regard could improve media literacy, online safety and reinforce the principles of respect and dignity. Prevention also relies on measures against offenders; Parliament therefore recommended going further than what the directive calls for and insisted on the introduction of a mandatory background check of individuals in contact with children (under the directive, reporting existing convictions to one's employer is not obligatory). Parliament called for a systematic exchange of information on offenders posing a risk and traveling.

Assistance and protection to victims were discussed along the same lines as the directive, with a focus on measures to prevent re-victimisation.

Parliament stressed the challenges posed by the implementation of measures against websites containing or disseminating child pornography, insisting that 'removal measures are more effective than blocking, since the latter does not delete content'. There is great concern that functional notice and take-down procedures are still far from being implemented throughout all Member States; in this regard, Parliament called on the Commission to launch infringement proceedings. In dealing with online sexual abuse material, Parliament insisted on cooperation, including through proactive intervention by the internet industry, the public and help lines whose importance was underlined. Parliament pointed out the need for more data and evaluations on the performance of measures in the area of prevention, investigation and prosecution.

Members' written questions

In view of the large number of questions raised by MEPs on child sexual abuse, those selected from the 2019-2024 parliamentary term relate directly to the directive. Questions referring to online child sexual abuse materials are addressed when they concern preventive or criminalisation measures.

[Question](#) by Rosa Estaràs Ferragut (PPE) Spain (26 February 2020)

Mentioning the case of a group of minors cared for in reception centres and being sexually exploited and raped in some cases, in exchange for drugs or money, the MEP noted the inefficiency and lack of control of those responsible within the system. She asked if and what type of programme the Commission has for raising awareness and preventing sexual abuse of minors, and generally what action and protective measures it recommends for addressing the proliferation of such cases.

[Answer](#) given by Ms Johansson on behalf of the Commission (13 May 2020)

The Commission recalled the measures set out in the directive, such as disqualification and intervention programmes for offenders, education and awareness raising, including for officials. It mentioned the infringement procedures against Member States that did not fully transpose the directive and noted that prevention was identified as requiring targeted attention across Member States. The implementation of the directive is supported by other measures such as the development and exchange of good practices, expert workshops and research funding.

[Question](#) by Dan-Ștefan Motreanu (PPE) Romania (5 August 2020)

The Member noted that replacing the directive with a regulation directly applicable in all EU Member States would solve the transposition problems of the current directive, and would introduce clear standards and provisions establishing EU-wide responsibility for combating child sexual abuse. He asked whether the Commission would replace the directive with an EU regulation.

[Answer](#) given by Ms Johansson on behalf of the Commission (21 October 2020)

The Commission underlined that it could not propose to replace the directive by a regulation because the directive is based on Articles 82(2) and 83(1) TFEU, which limit the legislative powers of the Parliament and the Council to the adoption of directives.

[Question](#) by Maite Pagazaurtundúa, María Soraya Rodríguez Ramos, Jordi Cañas (Renew) Spain (3 March 2021)

In relation to a case of exploitation of minors in a public reception centre, the Members noted that public child guardianship systems in the Member States suffer from serious problems, inadequate protocols and negligence. Such deficiencies also affect migrant children 'fairly frequently'.

The Members asked whether Member States would be provided with guidelines so national guardianship laws could be harmonised and effective action taken to combat sexual exploitation in public reception centres. They asked if there was any planned analysis of the measures taken by each Member State to combat such exploitation in the public guardianship system.

[Answer](#) given by Ms Johansson on behalf of the Commission (3 June 2021)

While acknowledging the high risks of abuse to which children in migration are exposed, the Commission said it did not intend to propose harmonising guardianship systems for unaccompanied migrant children. In its strategy on the rights of the child, it had already recommended strengthening them, including through participation in the European guardianship network. The diversity of models reflects the social and cultural diversity of the Member States, it said, and is to be welcomed as long as guardianship systems ensure proper protection for children.

[Question](#) by Gianantonio Da Re (ID) Italy (30 December 2022)

The MEP highlighted the dangers faced by unaccompanied minors and asked what measures the Commission intended to take to prevent and combat these dangers. He further enquired if coordination between the agencies responsible for migration issues and child protection would be promoted, for example, through the adoption of specific protocols to protect victims.

In her [answer](#) on behalf of the Commission (27 February 2023), Ms Johansson recalled that Member States' obligations are clearly stipulated in Directive 2011/93/EU and highlighted that these provisions are applicable to all children within the EU regardless of their status.

As regards prevention, the Commission underlined the setting up of a network on prevention between experts and practitioners aimed at sharing expertise and good practices and developing effective prevention initiatives. It underlines EU asylum law obliging Member States to take appropriate measures to prevent assault and gender-based violence within the premises and accommodation centres for asylum-seekers. The Commission expressed the view that such measures must be in place in reception facilities hosting children, including unaccompanied minors. It recalled the 2018 [guidance](#) on reception conditions for unaccompanied children by the EASO.

In a [Question](#) by Aurélia Beigneux (ID) France (30 May 2023), the Member asked the Commission if it intended to run an awareness campaign about the effects of pornography on behaviour. She asked what approach the Commission advocated in terms of sex education and if it intended to encourage Member States to better control minors' access to such websites and what actions it was taking to combat addiction in adolescents.

On 11 August 2023, the Commission, represented by Mr Breton, [replied](#) that the EU co-funded network of safer Internet centres, together with the EU-funded Better Internet for Kids (BIK) portal, develops awareness campaigns and resources on online risks. He added that legislative powers in the area of sexual education and sexual and reproductive health and rights (SRHR) lie with the Member States. The Commission has complementary and supportive competence.

Council of the EU

On 8 October 2019, the Council adopted [conclusions](#) on combating the sexual abuse of children. Acknowledging online forms of abuse as an increasing phenomenon, the Council also explicitly linked it with organised crime and trafficking in human beings. It addressed child sexual abuse in an

encompassing manner. It repeatedly called for a multi-stakeholders, inter-sectorial, comprehensive and inclusive approach when designing and implementing policies. The best interest of the child and a child sensitive approach are the underlying principles of any action or measure to prevent, assist and protect children, irrespective of their physical location or nationality.

While the Council recalled the need for additional efforts in all domains, it also stressed the importance of cooperation. Cooperation implies working with EU agencies, with the industry and in particular with online platforms. To this effect, the Council noted technical, legal and human challenges and insisted in particular on ensuring lawful access to digital evidence and data retention in full respect of privacy and fair trial guarantees. Online service providers were asked either to block sites containing sexual abuse material or to remove or disable access to contents; the Council did not prioritise any of the solutions. It also highlighted the key role of civil society and helplines, in particular [INHOPE hotlines](#).

Specific preventive approaches, such as vetting of all professionals and volunteers in regular contact with children or educational campaigns, were highlighted. The Council concluded by focusing on the global approach, welcoming the [WeProtect Global alliance](#) as a global organisation.¹⁶

The European Court of Human Rights

The case law of the European Court of Human Rights on sexual abuse and sexual exploitation of children covers various forms of abuse and any interpretation of the Child Sexual Abuse Directive must take this case law into account. In most cases, applicants' claims are grounded on violations of the prohibition of inhuman or degrading treatment (Article 3 of the European Convention on Human Rights, ECHR) and/or violations of the right for respect of privacy (Article 8 ECHR).

In several cases, **ensuring effective criminal investigations of cases involving violence against children has been highlighted as a positive obligation of the states, and failure to do so as a violation of Article 3**. For instance, in [C.A.S. and C.S. v Romania](#) (20 March 2012) it took the authorities 5 years to investigate the rape of a 7-year-old boy, and they were held responsible for violating Article 3. In cases of **rape**, the Court has highlighted the state's obligation to conduct effective investigations as well as the need to have a **victim-centred approach**. In [I.C. v Romania](#) (24 May 2016), the Court found that 'the investigation of the case had been deficient, notably on account of the State's failure to effectively apply the criminal-law system for punishing all forms of rape and sexual abuse'. It noted the lack of context-sensitive approach, the lack of consideration of the victim's young age and the lack of consideration for her slight intellectual disability.¹⁷ In [X. and Others v Bulgaria](#), (2 February 2021 (Grand Chamber) the Court analysed further **what effective investigations may entail**: although in this case the authorities did not know or ought to have known of a real and immediate risk to the applicants of being subjected to ill-treatment, such as to give rise to authorities' obligation to take preventive measures, the Court held those authorities accountable for violation of the procedural limb of Article 3. The Court emphasised that authorities should have made use of the available investigation and international cooperation mechanisms, and taken all reasonable measures to shed light on the facts. Under the directive, the Member States must ensure as well that effective investigative tools, such as those used when dealing with serious crimes, are available. Under ECHR case law, such tools could be understood as international cooperation mechanisms, for instance.

State authorities are expected to be pro-active in detecting and investigating allegations of ill treatment of children. The Court may assess the measures (or lack thereof) that they took to protect victims preventively. In cases of **prostitution of minors** when national authorities did not take adequate protective measures, the Court holds them accountable for violating Article 3 ECHR. In [V.C. v Italy](#) (1 February 2018), the Court noted their lack of diligence and their failure to take the necessary measures to prevent the abuse suffered by the victim. This concerned in particular the Youth Court and social services that had failed to protect the victim despite her vulnerability and ongoing proceedings for her sexual exploitation. Member States have the same obligation under Article 18 of the directive, which stipulates that the child should be assisted as soon as there are reasonable

grounds to believe in the existence of an offence. Such a provision and case law reflect the best-interest-of-the-child principle.

As regards **online child abuse**, the Court has examined the difficulty of reconciling the need to investigate online child abuse by accessing private data with the need for respect of the privacy of internet users. In [K.U. v Finland](#) (2 December 2008), the Court concluded that the legislature should have provided a framework for reconciling the confidentiality of internet services with the prevention of disorder or crime and the protection of the rights and freedoms of children and other vulnerable individuals.¹⁸ In [Trabajo Rueda v Spain](#) (30 May 2017), the Court had to assess whether the right to protection of the suspect's private life had been violated after his computer was seized on the suspicion of possession of child pornography material. The Court held that police access to the applicant's computer amounted to an interference with his privacy right.¹⁹

Europol

In recent years, Europol has focused on the significant increase of online child sexual abuse. In 2020, a [report](#) analysed the impact of the COVID-19 pandemic on the proliferation of child sexual abuse materials. Some trends among offenders and their modus operandi have since then been identified as [key threats](#). Since discussions on a new [regulation laying down rules to prevent and combat child sexual abuse](#) are ongoing, only a few points are noted here.

Offenders are increasingly using new technologies, such as the dark net and Tor²⁰ to preserve their anonymity. Forums increasingly get 'specialised' and participation is structured similarly to **criminal organisations**: with affiliation rules, codes of conduct division of tasks and strict hierarchies.

There are various modi operandi. Online child sexual abuse materials are accessible from the **surface web** and **on peer-to-peer networks**. There is an increasing distribution through social media applications or encrypted messaging.²¹ Online possibilities to share and re-share materials between multiple individuals aggravate re-victimisation.²² On the **dark net**, offenders with niche interests²³ are particularly active. They also increasingly trick, coerce and sexually **extort** children for the purposes of **self-generated explicit material** (SGEM).²⁴ Offenders are primarily interested in getting more materials, yet **monetisation** is growing. In live-stream abuse, abuse is perpetrated live against money, in particular in third countries. EUROPOL calls for broadening coordination and supporting third countries, where live-streaming abuse constitutes a key threat.

Europol's 2017 [report on online sexual coercion and extortion](#) provides an overview of the circumstances in which coercion takes place. Acquisition of more materials was already spotted as the main motivation, financial gains in a lesser extent. There is no specific profile of victims, nor of offenders except that a majority of those are male. The report highlights the complexity and multifaceted aspects of the crime, which is at the intersection of other offences such as online grooming or solicitation. Therefore, the report recommends the use of proper terminology to exhaustively reflect the nature of online sexual coercion and extortion and prevent confusion. These latter two practices are distinct from sextortion, which may affect adults. The detailed aspects of the offence are key to ensuring that the legal response is appropriate and may enable investigations and sanctions for each aspect of the crime.

The report highlights two other key aspects: youth behaviour online, which can be risky, and the need for preventive measures. Children and young people may not be aware of what constitutes unacceptable online communication, or that by exchanging intimate pictures they may expose each other to further risks. The report insists on the inclusion of programmes in school curricula.

European Economic and Social Committee

Some of the recommendations from the 2010 European Economic and Social Committee (EESC) [opinion](#) on the directive are still applicable.

First, **prevention** must be at the heart of any action combating sexual exploitation and abuse of children, and it must be considered in parallel to legislation. As early as 2010, the EESC regretted

that the directive did not address prevention sufficiently. It issued an additional [opinion on preventive measures](#), highlighting best-practice case studies from civil society and governments worldwide.

The EESC opinion highlighted **cross border/international cooperation** and suggested 1) setting up a platform to exchange best practises, involving all relevant players, to tackle the crime in all areas; 2) calling for joint efforts to remove websites containing child sexual abuse material as a priority, followed by blocking where removal is not possible; 3) harmonising and defining some of the provisions more clearly. This latter point concerns in particular issues that the Commissions' reports on the directive's transposition highlight as problematic. The EESC recommends opening a debate on setting a **minimum age of sexual consent** across Europe, stressing that 'in the context of mobility, immigration and changing societal values across Europe, debates and consultations should be held on what impact "traditions" have in this regard'. It stresses the differences among the Member States as regards the age of consent, and that this risks creating legal uncertainty and hampering judicial cooperation.

The need for uniform '**time limitations**' across all Member States is stressed too. Where appropriate, the EESC suggests that 'statutes of limitations begin when the victim reaches 18 years'.²⁵ The EESC recommends giving clearer definitions for certain terms as well.

Citizens' enquiries and petitions

Concerns were raised regarding the implementation of the Child Sexual Abuse Directive, more specifically regarding the following measures: disqualification arising from convictions (Article 10); and the reporting of suspicions of sexual abuse or sexual exploitation (Article 16). In [petition No°0354/2023](#), the petitioner on behalf of an association fighting child abuse claimed that voluntary associations including religious denominations were exempt by the national law from producing an anti-paedophilia certificate and of an obligation to forward complaints about sexual abuse against children to the national authorities.²⁶ The petitioner therefore asked 'whether there are any possible regulatory initiatives to extend the **obligation to report** to all citizens and to require the anti-paedophilia certificate to the categories currently exempted from it'.

The Commission [replied](#) that Article 16 removes obstacles that may prevent reporting but **does not impose an obligation**. It stressed that the confidentiality rules imposed on certain professionals must not constitute an obstacle to the possibility, for them, of their reporting any suspicious situation. Such a possibility does not imply that the professionals must use it. In addition, measures that Member States should take involve encouraging any person who knows about or suspects such offences to report them to the competent services. Again, encouragement does not equate obligation. The Commission indicated that an obligation could be considered in the impending review of the directive.

As for the certificate, in order to tackle the risks of recidivism through employment or voluntary activities, Article 10 of the directive entitles employers recruiting for activities involving close contact with children, to request the criminal records of the persons to be recruited. This is not an obligation either. However, Member States must provide criminal records, as complete as possible, in response to such requests, referring to the European Criminal Record Information System whenever relevant and to any other appropriate source of information.

ENDNOTES

¹ The new [proposal](#) envisages a series of obligations for online service providers. Meanwhile, the Commission adopted [temporary legislation](#) to allow them to continue their voluntary practices of detecting child sexual abuse in their systems.

² Consensual sexual activities between children who reach the age of sexual consent fall outside the scope of the directive.

³ [EUROPOL](#) and [NGOs](#) advocate for replacing the term '[child pornography](#)' by the term 'child sexual abuse material', which is a result of children being groomed, coerced, and exploited by their abusers, whereas pornography sounds like a legally acceptable issue. However, the term is still used in several legal instruments worldwide, see [terminology guidelines](#).

⁴ See on EIGE – Sexism at work: [what is sexual harassment?](#).

⁵ 18 Member States introduced specific criminal legislation; in all Member States offences dealing with bodily injury, mutilation and crimes against health apply to the practice of FGM and may be a basis for criminal prosecution.

⁶ See ECPAT 2015 report, [Unrecognised Sexual Abuse and Exploitation of Children in Child, Early and Forced Marriage](#).

⁷ Parliament and Council informally agreed to include forced marriage in the Directive against Trafficking in Human Beings.

⁸ The [Istanbul Convention](#) obliges states parties to criminalise child forced marriages and the intentional conduct of luring a child to the territory of third state for forced a marriage. The EU ratified the convention on 23 June 2023.

⁹ The breaking of the seal of confession is presented as a matter of religious freedom and conscience by the [French Catholic Church](#) and the [Catholic Church of England](#): 'confidentiality is an essential ingredient of Confession because we regard the conversation to [be] between Christ and the penitent and it must therefore remain "sealed" by the sacrament. To qualify it in certain circumstances would be to undermine the sacrament altogether'.

¹⁰ For details on the first trilogue held by Parliament and Council on 8 November 2023, see the EPRS [legislative train](#).

¹¹ The [Internet Watch Foundation](#) provides a wealth of information on this specific issue.

¹² See [Combating child sexual abuse](#), EPRS, 2023.

¹³ As demonstrated in Working Paper, EUI RSC, 2022/35, [Flexible Implementation and the EU Sexual Abuse Directive](#).

¹⁴ Depending on the Member States, only public or also private employers may request information on criminal conviction or disqualification (i.e., NL or IR).

¹⁵ There is often a [link](#) between child sexual abuse and disappearances. See [Missing Children Europe](#) federation website.

¹⁶ See [Global Threat Assessment 2023](#) on increasing forms of sexual abuses and recommendations to tackle them.

¹⁷ See [N.C. v Turkey](#), 9 February 2021. The conclusions indicate what effective investigations may entail.

¹⁸ The Court considered that posting an ad was a criminal act that made a minor a target for paedophiles and concluded that the legislature must be held accountable. But the service provider, who had refused to identify the person responsible on the grounds that it would be a breach of confidentiality, could not be legally obliged to disclose such information.

¹⁹ Although prevention of crime and protection of others' rights were a legitimate aim, by bypassing the legal requirements of prior judicial authorisation, police action was not deemed proportionate to such an aim.

²⁰ Tor is an open-source privacy network that enables anonymous web browsing. The worldwide Tor computer network uses secure, encrypted protocols to ensure that users' online privacy is protected.

²¹ See 2021 [Report of observatory function on encryption](#) Europol-Eurojust and challenges to law enforcement authorities.

²² Victims may never know how many times videos, pictures and other materials have been shared and viewed.

²³ For instance, forums circulating materials with infants and non-verbal children and/or violent material.

²⁴ First children share SGEM with their peers. Offenders have developed strategies to extort and share such images.

²⁵ The statute of limitations raises concerns when ill-treatment allegations go decades back (i.e. church paedophilia scandals) and the statute of limitation elapsed so there are no proceedings. Member States such as [Spain](#) decided to extend their statute of limitations.

²⁶ In 2019, the UN Committee on the Protection of Children raised concerns about the numerous cases of sexual abuse by religious personnel of the Catholic Church in Italy and the low number of investigations and prosecutions by the Italian judiciary, calling authorities to amend the law and take measures to address this.

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