



ASSEDEL, L'Association européenne pour la défense des droits et des libertés
9, Place de l'Esplanade, 67000 Strasbourg, FRANCE, info@assedel.org

Dear Sir or Madam,

ASSEDEL (*Association européenne pour La Défense des droits et des libertés*) is a non-profit association governed by its statutes. Its objective is to disseminate, promote, and defend human rights and fundamental freedoms in the spirit of the European Convention on Human Rights, within the framework of the Council of Europe as well as at local, national, and international levels.

ASSEDEL welcomes *the proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child sexual abuse material, intended to replace Council Framework Decision 2004/68/JHA*. We are honored to share our suggested amendments to enhance the effectiveness of this vital directive.

The suggestions of ASSEDEL “On combating sexual abuse and sexual exploitation of children and child sexual abuse material and replacing the Council Framework decision 2004/68/JHA (recast)”

↓ 2011/93/EU recital 8 (adapted)

(9) In the context of criminalising acts related to ~~pornographic~~ child sexual abuse performance, this Directive refers to such acts which consist of an organised live exhibition, aimed at an audience, thereby excluding personal face-to-face communication between consenting peers, as well as children over the age of sexual consent and their partners from the definition.

- According to this article, we are in dire need to have a concrete approach on the “(...) **personal face-to-face communication between consenting peers, as well as children over the age of sexual consent and their partners**” classification. We are concerned about the vagueness of this explanation since it is used in a large number of articles of this directive.

↓ 2011/93/EU recital 9 (adapted)

⇒ new

(10) Child ~~pornography~~ sexual abuse material frequently includes images recording the sexual abuse of children by adults.

- An aspect not mentioned in this paragraph is “peer bullying” on the basis of child sexual abuse material. Since this phenomenon presents an issue amongst minors in today’s age, we deem its inclusion as reasonable.

↓ 2011/93/EU recital 10

(13) Disability, by itself, does not automatically constitute an impossibility to consent to sexual relations. However, the abuse of the existence of such a disability in order to engage in sexual activities with a child should be criminalised.

- This comprehensive approach is really useful. However, it could be much more inclusive with additional details. We also suggest that other related articles refer to this article to ensure that disabilities are taken into consideration in different contexts of child sexual abuse.

Revised and Suggested Article:

“(13) Disability, in itself, does not constitute an inherent incapacity to consent to sexual relations. However, the abuse or exploitation of a child’s disability—whether physical, cognitive, or psychological—to engage in sexual activities with that child shall be criminalized. Special attention shall be given to situations where an adult misuses their power, authority, or a dependent caregiving relationship, or where the child’s capacity to understand or give informed consent is compromised due to their disability.

Furthermore, exploitation shall encompass manipulation, coercion, emotional influence, or any form of undue pressure on the child, particularly where communication barriers or cognitive challenges exist. Member States are encouraged to ensure that professionals and caregivers are trained to identify and report signs of abuse among children with disabilities and to support victims through specialized, accessible, and trauma-informed services.

↵ new

(23) *In light of recent technological developments and, in particular, of the development of augmented, extended and virtual reality settings, the criminalisation of the solicitation of children should not be limited to voice, text or mail conversations, but also include contacts or exchanges in augmented, extended or virtual reality settings, as well as large-scale solicitation of children through the use of chat-bots trained for that purpose, as this phenomenon is itself expected to increase in light of the foreseeable evolution of artificial intelligence applications. Therefore “by means of information and communication technology” should be understood in a sufficiently broad way to cover all those technological developments.*

- This inclusive article could be mentioned repeatedly in the related articles or where the term “**information and communication technology**” is used to be more concrete and comprehensive.

↓ 2011/93/EU recital 38

↵ new

(48) ~~*Intervention programmes or measures are not provided as an automatic right. It is for the Member State to decide which intervention programmes or measures are appropriate.*~~ ↵ *In the case of persons who fear that they might offend, these programmes or measures should be accessible in line with national standards concerning healthcare.* ⇐

- The programmes or measures mentioned in the article should be **free of charge** for the sake of the victims in line with national standards concerning healthcare.

Revised and Suggested Article:

⇒ In the case of persons who fear that they might offend, these programmes or measures should be **free of charge** in line with national standards concerning healthcare. ⇐

↓ 2011/93/EU recital 39
(adapted)

⇐ new

(49) (...) Those intervention programmes or measures should not interfere with national schemes set up to deal with the treatment of persons suffering from mental disorders ⇐ health issues and should be accessible and affordable in line with national standards concerning healthcare, for example with regard to their eligibility for reimbursement under the health schemes of the Member States ⇐.

- The measures and programmes mentioned in the article could be free of charge for the sake of the victims and funded by the relevant EU healthcare policy programmes.

Revised and Suggested Article:

⇐ health issues and should be accessible and **free of charge** in line with national standards concerning healthcare, for example with regard to their eligibility for reimbursement under the health schemes of the Member States ⇐.

↓ 2011/93/EU recital 44
(adapted)

⇐ new

(54) Member States ~~are encouraged~~ ⇐ should take the necessary measures ⇐ to create mechanisms for data collection ~~or focal points~~, at the national, local or regional levels (...)

- For this sentence we could add “and” instead of “or” to be more inclusive.

Revised and Suggested Article:

Member States ~~are encouraged~~ ⇐ should take the necessary measures ⇐ to create mechanisms for data collection ~~or focal points~~, at the national, local **and** regional levels (...)

Article 3

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

(a) 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 8 ⇨ 10 ⇨ years if the child has not reached the age of sexual consent, and of at least 3 ⇨ 6 ⇨ years of imprisonment, if the child is over that age; or (...)

- The differentiation of the child being above or below the age of sexual consent, which is mentioned repeatedly throughout this directive, raises certain questions. To begin with, it should be specified whether the action of giving consent influences the punishment of the crime in the case of the victim being above the age of sexual consent. ASSEDEL believes that in the case in which the child above the age of sexual consent does not consent to the sexual activity, the punishment should be higher than in a case in which the consent is given. However, in the case in which sexual consent is given, the punishment should still align with national law on sexual activities between minors and adults.

↓ 2011/93/EU (adapted)

⇨ new

Article 4

Offences concerning sexual exploitation

2. Causing or recruiting a child to participate in ~~pornographic~~ ⇨ child sexual abuse ⇨ 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.

- We humbly suggest reformulating “*child sexual abuse performances*” as “*producing child sexual material*” to be more inclusive and consistent with the rest of the directive on that matter.

Revised and Suggested Article:

*Causing or recruiting a child to participate in **producing child sexual material**, 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.*

Article 5

Offences concerning child ~~pornography~~ ☒ sexual abuse material ☒

2. Acquisition or possession of child ~~pornography~~ ☒ sexual abuse material ☒ shall be punishable by a maximum term of imprisonment of at least 1 year.

- We humbly suggest adding “consumption” to the beginning of the article to ensure an all-encompassing inclusion of the crimes.

Revised and Suggested Article:

Consumption, acquisition or possession of child ~~pornography~~ ☒ sexual abuse material ☒ shall be punishable by a maximum term of imprisonment of at least 1 year.

↓ new

Article 8

Operation of an online service for the purpose of child sexual abuse or sexual exploitation

Member States shall take the necessary measures to ensure that intentionally operating or administering an information society service which is conceived to facilitate or encourage the commission of any of the offences referred to in Articles 3 to 7 is punishable by a maximum term of imprisonment of at least 1 year.

- We suggest adding “participating in” as follows to ensure an all-encompassing inclusion of the crimes.

Revised and Suggested Article:

Member States shall take the necessary measures to ensure that **participating in**, intentionally operating or administering an information society service which is conceived to facilitate or encourage the commission of any of the offences referred to in Articles 3 to 7 is punishable by a maximum term of imprisonment of at least 1 year.

↓ new

Article 11

(h) *the offence was committed repeatedly;*

(i) *the offence was committed with the use or threat of using a weapon; or*

(j) *the offence was committed by causing the victim to take, use or be affected by drugs, alcohol or other intoxicating substances.*

- We humbly suggest adding an article to this list to be more inclusive :

Revised and Suggested Article:

(k) the offender has made efforts to keep the child from seeking help or protect itself from the abuse.

Article 18

3. Member States shall ensure that the competent authorities coming in contact with victims reporting child sexual abuse offences or sexual exploitation offences are prohibited from transferring personal data pertaining to the residence status of the victim to competent migration authorities, at least until completion of the first individual assessment of the victims' protection needs conducted in accordance with Article 22 of Directive 2012/29/EU.

- Migrant children might refrain from reporting sexual abuse if they fear deportation. As ASSEDEL, we would like to emphasize that this directive could be also added to the related EU migrant and children's rights directives and charters to be more precise and inclusive.

(...) (f) the child victim may be accompanied by his or her legal representative or, where appropriate, by an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.

- We suggest adding an article to this list to be more inclusive and concise:

“(h) All necessary language assistance for the victim, irrespective of the victim’s nationality and the country in which the crime was committed, shall be provided free of charge By the Member State dealing with the criminal investigation.

Article 28

↵ new

4. (...)

- (a) dedicated training and awareness raising activities for staff working in such settings;
- (b) dedicated guidelines, internal protocols and standards identifying good practices, such as the establishment of mechanisms of supervision and accountability for staff working in close contact with children in such settings;
- (c) the creation of safe spaces, run by dedicated and appropriately trained personnel, where children, parents, carers and members of the community can report inappropriate behaviour.

- We suggest the following reformulation as provision of dedicated persons rather than spaces is more precise:

(c) *the provision of dedicated and appropriately trained contact persons whom children, parents, carers and members of the community can report inappropriate behaviour to.*

↓ 2011/93/EU (adapted)

Article 30

(...)

2. Member States may take measures to block access to web pages containing or disseminating child ~~pornography~~ ☒ sexual abuse material ☒ towards the Internet users within their territory.

- We would like to suggest adding the following sub-article, as in the cases in which web pages are dedicated to disseminating child sexual abuse material, the Member State should be obliged to block its access.

(a) In cases in which the main purpose of the web page is to disseminating child sexual abuse material, Member States shall take measures to block access to web pages.

Further suggestions and remarks:

1. In several parts of the directive (Article 16 2. (a)-(c), Article 23 3. (a)-(c)), the duration of imprisonment for a crime increases if the point at which the victim has reached the age of majority dates back further. We would like to inquire about the purpose of implementing a higher punishment if the victim has been an adult for a longer time.
2. ASSEDEL is concerned about the data protection of citizens. We would like to inquire whether the directive can ensure the citizens' data protection regarding for example Article 16 4. as well as point 5. in the explanatory memorandum. We suggest that these sections refer to the Digital Services Act to ensure that data collection complies with this act.
3. We remarked that the directive fails to mention pedophilic disorder despite the fact that child sexual abuse is largely rooted in this disorder. The directive also does not sufficiently cover the advertisement for treatment of this disorder or ways to combat the shame people with pedophilic disorder have, which causes their hesitation to seek help. ASSEDEL would like to point out that paedophilic disorder is not a crime in itself but rather a mental health issue which should be treated as such. Acting on the desires caused by the disorder is the crime. Therefore, Article 28 should include the provision of therapy for paedophilic disorder and the advertisement of such therapy as well as education on the disorder as part of the measures to prevent child sexual abuse.