



Brussels, 16.12.2016  
COM(2016) 871 final

**REPORT FROM THE COMMISSION 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 Directive 2011/93/EU of 13 December 2011 on combating the  
sexual abuse and sexual exploitation of children and child pornography**

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## 1. INTRODUCTION

Sexual abuse and sexual exploitation of children are particularly serious crimes. They cause long-term physical, psychological and social harm to vulnerable victims who have rights to as well as needs for special protection and care. In addition, child sexual abuse material, referred to in legislation as 'child pornography', represents multiple crimes against each victim. First, the sexual abuse which was photographed or recorded. Thereafter, every time the images and videos are posted, circulated or viewed, a gross violation of the child's privacy is committed. Trauma is added when the child knows that the images and videos are being circulated and friends or relatives may see them.

To fight these crimes effectively an integrated and holistic approach is needed, encompassing **investigation and prosecution of crimes, assistance to and protection of victims, and prevention.**

### 1.1. Objectives and scope of the Directive

The Directive follows the holistic approach required to fight these crimes effectively, incorporating in a comprehensive legal instrument provisions covering investigation and prosecution of offences (Articles 2 to 9 and 11 to 17), assistance to and protection of victims (Articles 18 to 20), and prevention (Articles 10 and 21 to 25).

To effectively **investigate and prosecute offences**, the Directive notably includes:

- Criminalisation of a wide range of situations of child sexual abuse and exploitation, online and offline (20 different offences, Articles 2 to 7). These include new phenomena such as online grooming (Article 6) and webcam sexual abuse and online viewing of child abuse images without downloading them (Article 5, in particular paragraph 3).
- Increased levels of penalties. The maximum penalties set by national legislation must not be lower than certain levels (ranging from 1 to 10 years in prison), depending on the seriousness of the offence (Articles 3 to 6). A number of aggravating circumstances must also be taken into account (Article 9).
- Extension of the statute of limitations after the victim has reached age of majority (Article 15(2)).
- Obligation to provide law enforcement and prosecution services with effective tools to investigate child sexual abuse, child sexual exploitation and child pornography offences, such as those used to investigate organised and serious crime (Article 15(3)). Law enforcement must also be put in a position to identify the victims of these offences (Article 15(4)).
- Removal of obstacles (created by confidentiality rules) to reporting by professionals whose main duty involves working with children (Article 16).
- Jurisdiction for cases perpetrated by offenders who are nationals of the investigating country, so that they can also be prosecuted in their country for crimes they commit in other Member States or third countries (Articles 17(1) to (3)).
- Removal of conditions of dual criminality and reporting in the place where the offence was committed when prosecuting crimes committed in other Member States or third countries (Articles 17(4) and 17(5)).

With regard to **assistance to and protection of child victims**, the Directive notably includes provisions requiring:

- Extensive assistance, support and protection measures, in particular to prevent child victims from suffering additional trauma through their involvement in criminal investigations and proceedings, inter alia by setting specific standards for interviews with child victims (Articles 18 to 20).
- Assistance and support as soon as there are reasonable grounds to suspect an offence (Article 18(2)).
- Special protection for children reporting abuse within the family (Article 19(1)).
- Assistance and support not conditional on cooperation with criminal proceedings (Article 19(2)).
- Protection of the victim's privacy, identity and image (Article 20(6)).

Finally, **to prevent these crimes**, the Directive notably includes:

- Mechanisms to enable excluding convicted offenders from professional activities involving direct and regular contact with children (Article 10(1)).
- The right of employers to request information about convictions and disqualifications for professional or organised voluntary activities involving direct and regular contact with children (Article 10(2)).
- Facilitation of the exchange of information between national criminal registers (through the ECRIS<sup>1</sup> system), to ensure that background checks by employers are complete and include information on offences committed by offenders anywhere in the EU (Article 10(3)).
- A requirement that Member States make intervention programmes or measures such as treatment available to convicted offenders and others who fear they could offend (Articles 22 and 24).
- An obligation on Member States to carry out prevention activities such as education, awareness raising and training of officials (Article 23).
- Mandatory assessment for all convicted offenders of the danger they represent and risk of recidivism (Article 24(4)).
- An obligation on Member States to ensure prompt removal of webpages containing or disseminating child pornography in their territory and to work to obtain removal if hosted outside their territory (Article 25(1)).
- An option for Member States to block access by users in their territory to webpages containing or disseminating child pornography through different means, including public action and self-regulation by the industry (Article 25(2)).

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<sup>1</sup> European Criminal Records Information System, regulated by Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States, and Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA. More information on ECRIS is available at [http://ec.europa.eu/justice/criminal/european-e-justice/ecris/index\\_en.htm](http://ec.europa.eu/justice/criminal/european-e-justice/ecris/index_en.htm).

## 1.2. Purpose and methodology of the report

Article 27 of the Directive requires Member States<sup>2</sup> 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 responds to the requirement under Article 28(1) of the Directive for the Commission to 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 the Directive.<sup>3</sup> The report aims to provide a concise yet informative overview of the main transposition measures taken by Member States.

Member States have faced significant challenges inherent in transposing and implementing such a comprehensive and ambitious Directive, which:

- 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);
- entails extensive administrative measures to complement the legislation (e.g. on access to information and the exchange of criminal records between Member States, training of the police and judiciary, and rules on child protection, law enforcement and prisons); and
- involves multiple actors, not only within the authorities of a Member State (i.e. at different levels of government, such as national and regional), 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), internet service providers (e.g. to disrupt the distribution of child sexual abuse material), clinical psychologists (e.g. in intervention programmes for offenders), and others.

Member State transposition involves collecting information on the relevant legislation and administrative measures, analysing it, drafting new legislation or amending existing acts, seeing it through to adoption, and finally reporting to the Commission.

On the basis of national transposition measures officially communicated to the Commission, the Directive has been transposed by means of more than 330 acts in force prior to the Directive and by around 300 new acts introduced since 2012 across all Member States.

Member States sent around 700 notifications to the Commission. 70% of these were received after the transposition deadline of 18 December 2013. The content covered legislation (new and amending acts), administrative provisions and working arrangements. Often, they included entire criminal codes and amending acts.

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<sup>2</sup> From this point onwards, ‘Member States’ or ‘all Member States’ refer to the Member States bound by the Directive (i.e. all EU Member States except Denmark). In accordance with Articles 1 and 2 of Protocol 22 on the Position of Denmark, Denmark did not take part in the adoption of the Directive, nor does the Directive apply to it. However Council Framework Decision 2004/68/JHA continues to be applicable to and binding upon Denmark. In accordance with Article 3 of Protocol 21 on the position of the United Kingdom and Ireland, both took part in the adoption of the Directive and are bound by it.

<sup>3</sup> In accordance with Article 28(2) of the Directive, the implementation of Article 25 on measures against websites containing or disseminating child pornography is assessed in a separate report (COM(2016) 872) published jointly with this one.

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**.<sup>4</sup> All these infringement proceedings had been closed by 8 December 2016. The late adoption and notification of national transposition measures delayed the Commission's analysis and publication of the transposition reports.

The description and analysis in this report are based on the information that Member States provided by 1 November 2016. Notifications received after that date have not been taken into account. Beyond the issues identified in this report, there may be both further challenges in transposition and other provisions not reported to the Commission or further legislative and non-legislative developments. Therefore, this report does not prevent the Commission from further evaluating some provisions, to continue supporting Member States in the transposition and implementation of the Directive.

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<sup>4</sup> Member States in this document are abbreviated according to these rules:  
<http://publications.europa.eu/code/en/en-370100.htm>

## 2. TRANSPOSITION MEASURES

### 2.1. Investigation and prosecution of offences (Articles 2 to 9 and 11 to 17)

#### 2.1.1. Definitions (Article 2)

Article 2 lays down definitions for terms used throughout the Directive: child, age of sexual consent, child pornography, child prostitution, pornographic performance and legal person.

- All Member States except **HU** define a child as any person below age 18.
- The age of sexual consent varies across Member States: 14 years (**AT, BG, DE, EE, HU** and **PT**), 15 years (**CZ, FR, HR, PL, SE, SI** and **SK**), 16 years (**BE, ES, LT, LU, LV, NL** and **UK**), 17 years (**CY** and **IE**) and 18 years (**MT**). **FI, IT** and **RO** have different ages of sexual consent depending on the nature of the offence. In **EL**, the age of consent is different for consensual male homosexual activities (17 years), and consensual heterosexual activities and female homosexual activities (15 years).
- **BE, CY, EE, EL, ES, HR, IE, IT, LV, PT, RO, SE, SK** and **UK (Gibraltar)** use the term 'child pornography' in their legislation. All other Member States use different terms, such as pornographic depictions (**AT**), pornographic material (**BG**), pornographic work (**CZ**), pornographic picture or depiction (**FR**), and others.
- With regard to child prostitution, **CY** and **SK** have included an explicit definition in their transposing legislation which includes all elements of Article 2(d). On the other hand, in **AT, BG, CZ, DE, EL, LT, LU, SE, SI** and **UK** the transposition follows from case law and other sources in conjunction with the child prostitution offences (Articles 4(5) to 4(7)), whereas in the case of **BE, EE, ES, FI, FR, HR, IT, MT, NL, PL, PT** and **RO** it follows solely from the child prostitution offences.
- An explicit definition of pornographic performance is included in the legislation of **AT, BG, CY, EL, HU, IE, RO, SK** and **UK (Gibraltar)**. Other Member States transpose Article 2 in conjunction with the offences in Articles 4(2) to 4(4) and a direct reference to information and communication technology, or case law.
- None of the Member States include states or public bodies in the exercise of state authority and public international organisations within the concept of a 'legal person'.

#### 2.1.2. Offences concerning sexual abuse (Article 3)

Article 3 defines the intentional conduct which constitutes an offence concerning sexual abuse.

- Most Member States have adopted provisions that punish causing, for sexual purposes, a child who has not reached the age of sexual consent to witness sexual activities (Article 3(2)) or sexual abuse (Article 3(3)), with the penalty levels required in the Directive.
- **CY, CZ, DE, EE, FR, IE, IT, LT, LV, MT, PL, SI** and **SK** include offences which penalise engaging in any sexual act with a child under the age of sexual consent in a similar manner as Article 3(4). **AT, BE, BG, ES, HR, LU, RO, PT** and **SE** differentiate between sexual acts involving penetration and those involving no penetration.



- With regard to engaging in sexual activities with a child in which abuse is made of a recognised position of trust, authority or influence (Article 3(5)(i)) or of a particularly vulnerable situation of the child (Article 3(5)(ii)), a majority of Member States have adopted legislation that does not seem to cover all these situations, or have adopted penalty levels that are too low.

On the other hand, most Member States have adopted legislation that penalises engaging in sexual activities with a child where use is made of coercion, force or threats, with the level of penalties required by the Directive (Article 3(5)(iii)). Whereas **CY, DE, LU** and **MT** mention 'coercion, force and threat', other Member States refer to 'violence and threat' (**CZ, EL, FI, FR, LT, LU, LV, NL, PT, SE** and **SK**), 'force and threat' (**BE, BG, DE, HR, HU, IT, PL** and **SI**), 'violence and intimidation' (**ES**), 'against a child's will' (**EE**), 'coercion by use of force' (**AT**) and other terminology.

- In relation to coercing, forcing or threatening a child into sexual activities with a third party (Article 3(6)), **CY, DE, FR, LU, MT, NL** and **PT** explicitly refer in their legislation to the commission of the offence with a third person, while **AT, BG, CZ, ES, HU, IE, IT, LT, RO, SE** and **SI** cover this implicitly or through the provision on rape, sexual assault or sexual abuse through coercion, force or threat.

### **2.1.3. Offences concerning sexual exploitation (Article 4)**

Article 4 defines the intentional conduct which constitutes an offence concerning sexual exploitation.

- With regard to causing or recruiting a child to participate in pornographic performances (Article 4(2)), **AT, BG, CY, DE, EL, ES, IT, LT, MT, NL, RO, SK** and **UK (Gibraltar)** have enacted legislation that transposes this provision of the Directive. The information from the other Member States was not conclusive.
- Under Article 4(3), Member States must sanction the coercing or forcing a child to participate in pornographic performances, or threatening a child for such purposes. **AT, BG, CY, DE, EL, ES, IE, IT, LT, MT, NL, SI, SK** and **UK (Gibraltar)** have in place legislation that transposes this provision of the Directive. Member States use different wording in order to illustrate 'coercion, force and threat'. For example, **BG, DE, HR, HU, IT, PL** and **SI** refer to 'force and threat', **BG** to 'force, threat of serious harm', **EL** to 'coercion or violence or threat' and **ES** to 'use of violence or intimidation'.
- Article 4(4) punishes knowingly attending pornographic performances involving the participation of a child. **AT, BG, CY, DE, ES, FI, IE, IT, LT, MT, RO, SI, SK** and **UK (Gibraltar)** have in place legislation that transposes this provision of the Directive. The information from the other Member States was not conclusive.
- Under Article 4(5), Member States shall punish causing or recruiting a child to participate in child prostitution, or profiting from or otherwise exploiting a child for such purposes. **BE, BG, CY, CZ, DE, EL, ES, FR, HR, IT, LT, LU, MT, NL, PT, RO, SE, SI, SK** and **UK** have in place legislation that transposes this provision of the Directive. The information from the other Member States was not conclusive.
- Article 4(6) punishes coercing or forcing a child into child prostitution, or threatening a child for such purposes. **AT, BG, CY, CZ, DE, EE, EL, ES, FR, HR, IT, LT, LU, MT, NL, PT, RO, SI, SK** and **UK (Scotland)** have in place legislation that



transposes this provision of the Directive. The information from the other Member States was not conclusive.

- Article 4(7) penalises engaging in sexual activities with a child where recourse is made to child prostitution. Most Member States have in place legislation that transposes this provision. For **HU, IE, LV, PL, PT, RO** and **SE** the information was not conclusive.

#### ***2.1.4. Offences concerning child pornography (Article 5)***

Article 5 defines the intentional conduct which constitutes an offence concerning child pornography.

- Article 5(2) punishes the acquisition or possession of child pornography. The information provided by most Member States was not conclusive, except in **AT, BG, CZ, ES, FI, FR, LT, MT, RO** and **SI**.
- Article 5(3) punishes knowingly obtaining access to child pornography by means of information and communication technology. Most Member States transposed the requirement of ‘knowingly obtaining access’, despite some using different terminology. For example, **DE** uses the term ‘undertaking to retrieve’ and **HU** refers to ‘obtaining and keeping’.
- Article 5(4) punishes the distribution, dissemination or transmission of child pornography. Most Member States employ different terminology when referring to ‘distribution’, ‘dissemination’ or ‘transmission’ of child pornography. For example, the term ‘transmission’ has been interpreted as the equivalent of ‘mediation’ (**CZ**), ‘broadcasting’ (**BG** and **DE**), ‘spreading’ (**IT**) or ‘granting access’ (**LT**).
- Article 5(5) penalises offering, supplying or making available child pornography. The majority of Member States use different terms to ‘offering’, ‘supplying’ and ‘making available’. For example, **CZ** uses the terms ‘import’, ‘selling’ or ‘provision in another manner’, instead of the term ‘supplying’, whereas **SE** uses a general term of ‘making [child pornography] available’.
- Article 5(6) penalises the production of child pornography. All Member States use the same term of ‘production’ in their transposition, except **FR** (‘setting and recording’) and **UK** (‘taking’, ‘making’ and ‘permitting to take’).
- Articles 5(7) and 5(8) are optional provisions concerning the applicability of Article 5 to specific situations. All Member States except **AT, DE, ES, SE** and **UK** (Article 5(7)) and **AT** and **DE** (Article 5(8)) decided not to apply them.

#### ***2.1.5. Solicitation of children for sexual purposes (Article 6)***

Article 6 defines the intentional conduct which constitutes an offence concerning solicitation of children for sexual purposes.

Most Member States have in place legislation that transposes this Article. The information was not conclusive in **CY, HR, HU, IE, LU, LV, PL, RO** and **UK** (Article 6(1)) nor in **BE, CY, LV** and **PL** (Article 6(2)).

#### ***2.1.6. Incitement, aiding and abetting, and attempt (Article 7)***

Article 7 requires Member States to punish the incitement, aiding and abetting and attempt to commit the offences contained in Articles 3 to 6.

- All Member States have taken measures transposing Article 7(1).
- Article 7(2) has mostly been transposed through general provisions on attempt, except in **CY, DE, FI, FR, HR, IE, LU, PT, RO** and **SE**, which have introduced specific provisions punishing the attempt of the sexual offences listed in Article 7(2).

#### **2.1.7. Consensual sexual activities (Article 8)**

Article 8 sets out three optional provisions concerning consensual sexual activities. **CY** and **UK (England/Wales)** chose to apply all three, whereas **BE, BG, CZ, EE, IE, LU, LV, MT, NL, PL, SK** chose to not apply any of them.

- **AT, CY, FI, EL, ES, HR, HU, IT, LT, LV, PT, RO, SE, SI** and **UK (England/Wales and Northern Ireland)** chose to apply Article 8(1).
- **CY, HR, SE** and **UK (England/Wales and Scotland)** chose to apply Article 8(2).
- **AT, CY, DE, FI, HR** and **UK** chose to apply Article 8(3). **DE, FI** and **UK** apply the option to both the possession and the production of child pornography, while **FR** only applies it to the production of child pornography.

#### **2.1.8. Aggravating circumstances (Article 9)**

Article 9 defines the situations that may be regarded as aggravating circumstances in relation to the offences referred to in Articles 3 to 7.

In most Member States, the situations of application of aggravating circumstances are described in the law. That was not the case for some provisions of this Article in **IE** and the **UK (England/Wales, Northern Ireland, and Scotland)** where the courts have more discretion in taking into account aggravating circumstances when sentencing.

- Article 9(a) refers to offences committed against a child in a particularly vulnerable situation, a situation of dependence or in a state of mental or physical incapacity. Most Member States have in place legislation that transposes this provision. For **BE, DE, ES, IE, LU, PL, SI** and **UK (England/Wales, Scotland and Gibraltar)** the information was not conclusive.
- Article 9(b) refers to offences committed by a member of the child's family, a person cohabiting with the child or a person who has abused a recognised position of trust or authority. Most Member States have in place legislation that transposes this provision. For **AT, BE, BG, DE, ES, IE, LT, LU, PL, RO, SI** and **UK (England/Wales, Scotland and Gibraltar)** the information was not conclusive.
- Under Article 9(c), if the offence was committed by several persons acting together, this should be seen as an aggravating circumstance. Whereas **CY, HR** and **IT** explicitly refer to 'several persons' acting together, other Member States use different terminology. For example, **BE** mentions 'one or more persons', **BG, EL, MT, NL** and **PT**, 'two or more persons', **DE** and **SE** 'more than one person'.
- Pursuant to Article 9(d), an offence should be penalised more severely if it was committed within the framework of a criminal organisation. Most Member States have in place legislation that transposes this provision, including the transposition of the definition 'criminal organisation', with **MT** making a direct reference to Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime.

- Under Article 9(e), if the offender has previously been convicted of offences of the same nature, this should constitute an aggravating circumstance. **AT, BE, CZ, HR, IT, LV, PT** and **SK** foresee a general aggravating circumstance, irrespective of whether the subsequent offence is of a similar nature or not. On the other hand, the commission of an offence of the same nature is required in **BG, CY, EE, ES, FI, HU, MT,** and **PL**. Separate consideration for both options (similar offences and unrelated offences) is foreseen in **FR** and **LT**.
- Article 9(f) foresees an aggravating circumstance when the offender has deliberately or recklessly endangered the life of the child. Most Member States have in place legislation that transposes this provision. For **BE, CZ, ES, FI, FR, IE, IT, LV, SK** and **UK** the information was not conclusive.
- Under Article 9(g), a more severe penalty should be considered if the offence involved serious violence or caused serious harm to the child. Most Member States have in place legislation that transposes this provision. For **BG, ES, FI, IE, LT** and **UK (Scotland)** the information was not conclusive.

### ***2.1.9. Seizure and confiscation (Article 11)***

Under Article 11, Member States must ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in Articles 3, 4 and 5.

Whereas some Member States (**BG, CY, DE, HR, FR, IT, LU** and **SI**) have introduced specific provisions dealing with seizure and confiscation in case of the offences referred to in Articles 3, 4 and 5, the rest of Member States rely on general rules on seizure and confiscation under criminal law, which apply to all criminal offences.

The national laws of all Member States address both the instrumentalities used and the proceeds made from the crime.

### ***2.1.10. Liability of legal persons (Article 12)***

Article 12 requires Member States to ensure that legal persons may be held liable for any of the offences referred to in Articles 3 to 7.

- With regard to Articles 12(1)(a) to (c), **CY, LT** and **PL** use the same or almost the same wording as the Directive, whereas the other Member States use different terms. For example, when transposing Article 12(1)(b), Member States refer to ‘managers’, ‘directors’ or ‘board of directors’, instead of ‘an authority to take decisions on behalf of the legal person’.
- The liability required in Article 12(2) has been introduced by almost all Member States. For **BG, CZ, IE, LU, NL** and **PT** the information was not conclusive.
- With regard to Article 12(3), all Member States provide for the possibility of pursuing criminal proceedings against natural persons, who are perpetrators, inciters or accessories, simultaneously to the enforcement of the liability of legal persons. However, the information provided by **IE** and **PT** was not conclusive on the offences covered.

### ***2.1.11. Sanctions on legal persons (Article 13)***

Under Article 13, Member States shall introduce sanctions for the legal persons held liable pursuant to Article 12(1) or (2) and can choose to impose the sanctions foreseen in Articles 13(1)(a) to (e).

- With regard to Article 13(1), all Member States have introduced administrative or criminal penalties that are applicable to legal persons. Some Member States (**BE, CZ, FR, PL, RO** and **SK**) have also chosen to introduce the additional sanction of publishing or displaying the decision/judgement in which the legal person was found guilty of the crime. Most Member States, with the exception of **BG, DE, EE, FI, IE** and **UK (England/Wales, Northern Ireland and Gibraltar)** have chosen to transpose at least one of the options set out in Articles 13(1)(a) to (e).
- Most Member States' legislation does not contain provisions to specifically transpose Article 13(2), but imposes the same sanctions on legal persons held liable under Article 12(2) as on those held liable under Article 12(1). Only **EL** introduced a specific transposing measure and thus did not apply the same sanctions in both cases.

### ***2.1.12. Non-prosecution or non-application of penalties to the victim (Article 14)***

Article 14 requires Member States to take the measures needed to ensure that competent national authorities are entitled not to prosecute or impose penalties on child victims of sexual abuse and sexual exploitation for their involvement in criminal activities, which they have been compelled to commit as a direct consequence of being subjected to such crimes.

Most Member States have in place legislation that transposes this provision. For **ES, LU, MT, PL** and **SK** the information was not conclusive.

### ***2.1.13. Investigation and prosecution (Article 15)***

Article 15 lays down measures for the investigation and prosecution of the offences referred to in Articles 3 to 7.

- Under Article 15(1), Member States shall take the necessary measures to ensure that investigations into or the prosecution of the offences referred to in Articles 3 to 7 are not dependent on a report or accusation being made by the victim or by his or her representative, and that criminal proceedings may continue even if that person has withdrawn his or her statements. Whereas the national laws of **CY, NL, PL** and **PT** explicitly follow the principle of Article 15(1), **AT, BE, BG, CZ, DE, EE, EL, ES, FI, FR, HR, HU, IT, LT, LU, LV, MT, RO, SE, SI** and **SK** transposed this provision by means of general rules of criminal law regulating the opening of investigations or prosecutions. In the **UK (England/Wales, Northern Ireland and Scotland)**, prosecutors may initiate or continue criminal proceedings if they find that there is sufficient evidence to provide a realistic prospect of conviction and that prosecution is in the public interest. **IE** applies the same principle of public interest.
- Article 15(2) requires that Member States make it possible to prosecute offences for a sufficient period of time after the victim has reached the age of majority. **AT, BE, CY, EE, EL, ES, HR, HU, IE, LV, MT, PL, RO, SE, SI** and **UK** have in place legislation that transposes this provision. In **BG, CZ, DE, FI, IT, LT, NL** and **SK**, the statute of limitations for some offences runs from the date the offence was committed. This means that child victims, in particular those abused at a very young

age, may not have enough time after they have reached the age of majority to obtain prosecution.

- Under Article 15(3), Member States shall ensure that effective investigative tools are available for investigating and prosecuting offences. Whereas **CY** and **EL** explicitly reflect Article 15(3) in their legislation, most of the other Member States transpose it through a multiplicity of provisions from criminal procedural codes.
- Article 15(4) requires Member States to take the necessary measures to enable investigative units or services to attempt to identify victims, in particular by analysing child pornography material. Most Member States have in place measures that transpose this provision. For **BG, CZ, EE, FR, HU, IE, LT, PT, SK** and **UK (Gibraltar)** the information provided was not conclusive.

#### ***2.1.14. Reporting suspicion of sexual abuse or sexual exploitation (Article 16)***

Article 16 aims at guaranteeing that professionals whose main duty is to work with children can report offences (Article 16(1)) and that any person who knows about or suspects these offences are being committed is encouraged to report them (Article 16(2)).

- With regard to Article 16(1), legislation in **HR, MT, PT, SI** and **UK (England/Wales, Northern Ireland and Gibraltar)** lays down a general obligation to report offences. However, the legislation of most Member States contains a specific provision on reporting offences in order to protect children (**AT, BG, CY, CZ, DE, EE, EL, ES, FI, HU, IT, LT, LV, NL, RO** and **SE**). Additionally, **BG, CY, CZ, DE, EL, FI, HU, IT, LV, RO, SE**, and **SK** provide for a specific obligation on certain professions (such as teachers, doctors, psychologists, nurses) to notify competent authorities.
- Some Member States (**AT, BE, BG, EL, FI, HR, HU, IT, LU, PL** and **SI**) have transposed Article 16(2) through a general provision obliging or encouraging the reporting of offences and/or helping people in need. Other Member States (**BG, CY, CZ, EE, ES, FR, HR, LT, LV, NL, PT, RO, SE** and **SK**) have transposed it through a more specific legal provision, making it obligatory to report offences against children. **UK (England/Wales, Northern Ireland and Scotland)** uses non-legislative measures.

People are encouraged to report abuse mainly through helplines/hotlines, such as Child Focus (telephone number 116000) in **BE** or Child Line (116111) in **LT**.

#### ***2.1.15. Jurisdiction and coordination of prosecution (Article 17)***

Article 17 lays down rules on the establishment of jurisdiction by Member States over the offences listed in the Directive.

- Article 17(1) covers jurisdiction where the offence is committed in whole or in part within a Member State's territory or the offender is one of its nationals. Most Member States have put in place legislation that transposes this provision. For **CY, IE, LV, NL, SI, PT** and **UK (Gibraltar)** the information was not conclusive.
- Under Article 17(2), a Member State has the option to establish further jurisdiction over an offence committed outside its territory. For example, if the offence is committed against one of its nationals or a person who is an habitual resident in its territory (17(2)(a)), the offence is committed for the benefit of a legal person established in its territory (17(2)(b)), or the offender is an habitual resident in its territory (17(2)(c)). Most Member States decided to apply the options provided for



under Article 17(2)(a) (**AT, BE, BG, CZ, EE, EL, ES, FI, FR, HR, HU, IT, MT, NL, PL, PT, RO, SI** and **SK**) and 17(2)(c) (**AT, BE, ES, FI, FR, HR, IE, LT, LU, LV, MT, NL, PT, RO, SE** and **SK**), whereas fewer of them decided to apply the options under Article 17(2)(b) (**CY, CZ, ES, HR, IT, LV, MT, PL, PT, RO** and **SI**).

- Article 17(3) requires Member States to ensure that their jurisdiction includes situations where an offence is committed by means of information and communication technology accessed from their territory, whether or not it is based on their territory. Whereas **CY, EL, MT** and **PT** have a specific provision which follows the wording of the Directive and refers directly to offences committed by means of information and communication technology, **AT, BE, BG, DE, EE, ES, FI, FR, HR, HU, IE, IT, LT, RO, SI, SK** and **UK** use a general provision establishing jurisdiction over crimes committed on their territories.
- Article 17(4) prohibits the establishment of the double criminality requirement for the prosecution of offences committed outside the territory of the Member State concerned, when the offender is one of its nationals. **BG, CZ, HU, IT, LV, MT, SK** and **UK (England/Wales and Northern Ireland)** do not provide for the requirement of double criminality when establishing their jurisdiction over an offence. Despite having a double criminality clause, **AT, BE, DE, EE, EL, ES, FI, FR, HR, LT, LU, NL** and **SE** provide for specific exceptions for all offences referred to in Article 17(4).
- Under Article 17(5), Member States shall ensure that their jurisdiction is not subordinated to the condition that the prosecution can only be initiated following a report made by the victim in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed. Most Member States have in place legislation that transposes this provision. For **LU** and **SI** the information provided was not conclusive.

## **2.2. Assistance to and protection of victims (Articles 18 to 20)**

### **2.2.1. General provisions on assistance, support and protection measures for child victims (Article 18)**

Article 18 lays down general provisions on assistance, support and protection measures for child victims:

- Under Article 18(1), child victims shall be provided with assistance, support and protection taking into account the best interests of the child. Most Member States have in place legislation that transposes this provision. The information provided by **BE, DE, LV** and **SI** was not conclusive.
- Article 18(2) obliges Member States to take the necessary measures to ensure that a child is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication that the child might be a victim. About half of the Member States have in place measures that transpose this provision. For **AT, BE, BG, DE, EL, ES, FR, IT, LU, NL, PL, SI** and **UK (England/Wales, Northern Ireland and Scotland)** the information was not conclusive.
- Article 18(3) requires Member States to ensure, when the age of the person is uncertain and there are reasons to believe that he/she is a child, that the person is presumed to be a child in order to receive immediate access to assistance, support and protection. Whereas the wording of the legislation in **BG, CY, EL** and **LT** transposing this provision is very similar to the Directive, the legislation in **EE, ES, HR, LV, MT, PT, RO** and **UK (England/Wales and Gibraltar)** contains a general

presumption of minority in favour of the victim until the contrary is proved. For **AT, BE, CZ, DE, FI, FR, HU, IE, IT, LU, PL, SE, SI, SK** and **UK (Scotland)** the information was not conclusive.

### 2.2.2. *Assistance and support to victims (Article 19)*

Article 19 lays down general provisions on assistance, support and protection measures for child victims and their families.

- Under Article 19(1), Member States shall ensure that assistance and support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings, in particular ensuring the protection of children who report cases of abuse within their family. Most Member States have in place legislation that transposes this provision. The information provided by **DE, HU, IE, IT, LV, PL, RO, SI** and **SK** was not conclusive.
- Article 19(2) requires Member States to ensure that assistance and support for a child victim are not made conditional on the child's willingness to cooperate in the criminal investigation, prosecution or trial. Whereas the legislation in **CY, EL, MT** and **UK (England/Wales and Gibraltar)** uses very similar wording to the Directive, most Member States (**AT, BE, BG, CZ, EE, ES, FI, FR, HR, HU, IE, IT, LT, LU, LV, NL, PL, PT, RO, SE, SK** and **UK (Northern Ireland and Scotland)**) used a variety of provisions on assistance and support. The information provided by **DE** and **SI** was not conclusive.
- Under Article 19(3), Member States shall ensure that assistance and support to child victims are provided following an individual assessment of the special circumstances of each victim, and taking due account of the child's views, needs and concerns. Most Member States have introduced measures that transpose this provision.<sup>5</sup> The information provided by **DE, EL, IT, LT, LU, LV, NL, PL, SI** and **UK (Scotland)** was not conclusive.
- Under Article 19(4), child victims of sexual offences are considered as particularly vulnerable victims pursuant Framework Decision 2001/220/JHA, replaced since 2012 by the Victims' Rights Directive.<sup>6</sup> Most Member States have taken measures that transpose this provision. The information provided by **DE, EL, IE, IT, SI** and **UK (Scotland)** was not conclusive.

The recognition of children as particularly vulnerable victims is foreseen through special assistance and protection measures (except for **UK (Gibraltar)** that transposed literally). These measures ensure that child victims are entitled to testify in a manner that shields them from giving evidence in open court and that they are handled only by people that have been specially trained for this purpose.

- Article 19(5) requires Member States, where appropriate and possible, to provide assistance and support to the family of the child victim when the family is in their territory. **AT, BE, BG, CY, EE, FI, HR, IE, LT, MT, NL, PT, SK** and **UK** have

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<sup>5</sup> For example, the assessment may encompass the evaluation of the child victim's situation based on information collected by the family, the child, the school, nursery, relatives or other authorities, the child's development and satisfaction of needs, parental capacity, the social environment of the child and the family, the child's views and wishes, and the child's age, health condition, intellectual maturity and cultural identity.

<sup>6</sup> Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings, replaced by Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime.



taken measures to transpose this provision, whereas in the other Member States the information provided was not conclusive.

### **2.2.3. Protection of child victims in criminal investigations and proceedings (Article 20)**

Article 20 lays down requirements for Member States concerning the protection of victims in criminal investigations and proceedings.

- The majority of Member States (**BG, CY, CZ, DE, EE, EL, ES, FR, FI, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK** and **UK (Gibraltar)**) have taken measures to ensure that in criminal investigations and proceedings the competent authorities appoint a special representative for the child victim, in accordance with Article 20(1). The information provided by **AT, BE** and **UK (Northern Ireland, Scotland and England/Wales)** was not conclusive.
- Under Article 20(2), Member States shall ensure that child victims have access to legal counselling and legal representation, which must be free of charge if the victim does not have sufficient financial resources. Most Member States have in place legislation that transposes this provision. For **AT, CZ, DE, EE, IE, LT, PL, RO** and **UK (England/Wales, Scotland and Northern Ireland)** the information provided was not conclusive.
- Article 20(3) describes a series of requirements to take into account when conducting criminal investigations involving child victims, and in particular during interviews. Whereas **EL, HR, LT, MT, PT, RO, SE** and **UK (England/Wales, Northern Ireland and Gibraltar)** have put in place the necessary measures to transpose Article 20(3), the information provided by the other Member States was not conclusive.
- Most of the Member States have taken measures to ensure that interviews with the child victim or child witness are audio-visually recorded and can be used as evidence in criminal court proceedings, in accordance with Article 20(4). The information provided by **AT, FI, IE, MT** and **PL** was not conclusive.
- Article 20(5) requires Member States to put in place measures to ensure that it may be ordered that the hearing take place without the presence of the public or without the presence of the child. Most Member States transposed this Article although the information provided by **BE, FI, PL** and **UK (Scotland)** was not conclusive.
- In accordance with Article 20(6), most Member States have taken measures to protect the privacy, identity and image of child victims, and to prevent the public dissemination of any information that could lead to their identification. The information provided by **BE, DE, PL, PT** and **SI** was not conclusive.

## **2.3. Prevention (Articles 10 and 21 to 25)**

### **2.3.1. Disqualification arising from convictions (Article 10)**

Article 10 addresses the prevention of offences against children through disqualification arising from convictions.

- Article 10(1) requires Member States to put in place measures to ensure that a natural person who has been convicted of child sex offences may be temporarily or permanently prevented from exercising at least professional activities involving direct and regular contact with children. Some Member States (**BE, BG, EL, ES, LT, PT** and **RO**) opted for temporary disqualification, whereas **LU** and **SK** opted for

permanent disqualification. In **DE, FR, HR, HU, IE, MT** and **UK (England/Wales, Northern Ireland and Scotland)**, both the temporary and the permanent disqualifications are possible. On the other hand, it is not evident from the legislation of **CY, EE, FI, LV** and **NL** whether such disqualification is permanent or temporary. **SE** transposes this Article through systematic background checks for work involving contact with children rather than through a specific provision for disqualification.

The information provided by **AT, CZ, IT, PL, SI** and **UK (Gibraltar)** was not conclusive.

- Under Article 10(2), Member States shall put in place measures to ensure that employers are entitled to request information on criminal convictions or disqualifications when recruiting for professional or voluntary activities. Most Member States have transposed this provision. The information can be obtained, for example, by requiring the submission of the person's criminal record (**BE, ES, FI, HR, HU, IE, IT, LU, MT, NL, PT, RO, SE, SK** and **UK**), the convict register (**LT**), the punishment register (**LV**), the record of good conduct (**DE**), the police record (**CY**), the record containing criminal punishment data (**EE**) or the automated national file of sexual or violent offences authors (**FR**).
- With regard to Article 10(3), most Member States have transposed the requirement to transmit the information on criminal convictions and disqualifications in accordance with the procedures set out in Framework Decision 2009/315/JHA on the exchange of criminal records information.<sup>7</sup> However, a few Member States still do not seem to ensure that information is transmitted if other Member States request information on previous criminal convictions. In some cases, they do not make it a legal obligation to send that information (**BE, CZ, IE, LV, MT** and **SE**). In other cases, they go beyond the requirement of the Directive that the person concerned (a national from Member State A) must consent to the issuing of the criminal certificate by the country where he intends to work or volunteer (Member State B), by specifically requiring an additional consent from the person concerned for the information on the conviction to be sent from Member State A to Member State B (**FI, LU** and **UK (England/Wales, Northern Ireland and Scotland)**).

### *2.3.2. Measures against advertising abuse opportunities and child sex tourism (Article 21)*

Article 21 provides for the adoption of preventive/prohibitive measures against advertising abuse opportunities and child sex tourism.

- Article 21(a) concerns the prohibition/prevention of the dissemination of material advertising the opportunity to commit child sexual offences. Whereas **AT, BE, CY, EE, EL, IT, LV, MT** and **SK** have in place a criminal offence penalising the advertising specified in Article 21(a), **DE, FI, FR, LV, PL, PT** and **RO** have transposed this provision of the Directive through the criminal offence of public incitement.
- Article 21(b) concerns the prohibition/prevention of the organisation for others of travel arrangements with the purpose of offending. Most Member States have taken a variety of measures to transpose this provision. For example, **AT, BG** and **FI** criminalize this conduct through provisions applicable to aiders/abettors and practical measures, while in **CZ, LT** and **SK** such conduct is solely penalised via the provision

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<sup>7</sup> See footnote 1.

applicable to participants, even if the main crime was not committed. **CY, EL, IT** and **MT** have adopted a specific offence which sanctions the organisation of travels for third parties with the aim to commit child offences.

### **2.3.3. Preventive intervention programmes or measures (Article 22)**

Article 22 requires Member States to ensure that persons who fear that they might offend may have access to effective intervention programmes or measures designed to evaluate and prevent the risk of such offences being committed. **AT, BG, DE, FI, NL, SK** and **UK (England/Wales, Northern Ireland and Scotland)** have put in place measures to transpose this provision, whereas the information provided by the other Member States was not conclusive.

### **2.3.4. Prevention (Article 23)**

Article 23 requires Member States to take appropriate measures to prevent the sexual abuse and sexual exploitation of children.

- Article 23(1) concerns education and training measures. While **CY, EL, ES,** and **LT** transposed this Article through specific legislative provisions, **BG, CZ** and **PT** used other measures such as national action plans/strategies. **NL, PL, RO, SE** and **UK (England/Wales, Northern Ireland and Scotland)**, used general legislative measures in combination with campaigns and projects.
- Article 23(2) concerns information and awareness campaigns, possibly in cooperation with civil society organisations. All Member States transposed this provision, for example through education programmes (**AT, BE, CY, FR, LU, LV, MT, PT, SK** and **UK (England/Wales and Northern Ireland)**).
- Article 23(3) concerns regular training of officials likely to come in contact with child victims. Most Member States have taken measures to transpose this provision. The information from **EL, HU, IE, IT** and **UK (Scotland)** was not conclusive.

### **2.3.5. Intervention programmes or measures on a voluntary basis in the course of or after criminal proceedings (Article 24)**

Article 24 regulates the provision of intervention programmes or measures in the course of or after the criminal proceedings.

- Article 24(1) requires Member States to ensure that effective intervention programmes or measures are made available at any time during the criminal proceedings, inside and outside prison, to prevent and minimise the risks of repeated offences. Whereas a number of Member States have taken measures to transpose this provision, the information provided by **AT, CY, CZ, DE, ES, FI, FR, HU, IE, IT, LU, LV, PL, PT, RO, SE, SI, SK** and **UK (Northern Ireland, Scotland and Gibraltar)** was not conclusive.
- Article 24(2) requires that the intervention programmes or measures meet the specific developmental needs of children who sexually offend. Member States have transposed this provision through various means such as legislation (**BG, HR** and **RO**), a combination of legislation and other measures (**HU, LT** and **MT**), or other measures (**FI, NL** and **UK (England/Wales, Northern Ireland and Scotland)**).
- Article 24(3) requires that access to the intervention programmes or measures be ensured for persons subject to criminal proceedings (Article 24(3)(a)) and convicted persons (Article 24(3)(b)). **CY, EL, MT, NL, RO** and **UK** have taken measures to

transpose Article 24(3)(a) and **BG, CY, DE, EL, ES, FI, HR, IT, LT, MT, NL, RO** and **UK** have taken measures to transpose Article 24(3)(b). The information provided by the rest of Member States was not conclusive.

- Under Article 24(4), Member States shall ensure that the persons who may access intervention programmes or measures are subject to an assessment of the danger they represent and the risk of recidivism, with the aim to identify the appropriate programme or measure. **AT, EL, HR, LT, MT, RO** and **SE** have taken measures to transpose this provision whereas the information provided by the rest of Member States was not conclusive.
- Article 24(5) requires Member States to ensure that the persons who may access intervention programmes or measures are fully informed of the reasons for the proposal (Article 24(5)(a)), consent to their participation with full knowledge of the facts (Article 24(5)(b)) and may refuse and be made aware of the possible consequences in the case of convicted persons (Article 24(5)(c)). **AT, BG, CY, EE, FI, LT, MT** and **UK (Gibraltar)** have taken measures to transpose Articles 24(5)(a) and (b) and **CY, EE, FI, FR, LT, MT** and **UK (Gibraltar)** to transpose Article 24(5)(c). The information provided by the other Member States was not conclusive.

#### ***2.3.6. Measures against websites containing or disseminating child pornography (Article 25)***

Please refer to the specific, separate report on the transposition of this Article.<sup>8</sup>

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<sup>8</sup> See footnote 3.

### 3. CONCLUSION AND NEXT STEPS

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.

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) and the 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).

Given the comprehensive nature of the Directive, the Commission will focus on ensuring that the transposition is finalised across the EU and that the provisions are correctly implemented. Therefore, for the time being, the Commission has no plans to propose amendments to the Directive or any complementary legislation. The Commission 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. This includes monitoring that national measures comply with the corresponding provisions in the Directive. 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.