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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT REPORT

[...]

Accompanying the document

Proposal for a Directive of the European Parliament and the Council
on combating the sexual abuse and sexual exploitation of children and child sexual
abuse material, and replacing Council Framework Decision 2004/68/JHA (recast)

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Executive Summary

Impact assessment accompanying the proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child sexual abuse material and replacing Council Framework Decision 2004/68/JHA

A. Need for action

Why? What is the problem?

Child sexual abuse affects **public security** in the EU and **infringes children's fundamental rights** under the Charter. It is a **public health problem** that contributes to a global burden through increased risk of serious mental and physical health problems across the human lifespan, and imposes an economic burden on individuals, families and societies. There is significant under-reporting given the inability of many victims to come forward, due to their young age and the circumstances of the abuse, which often occurs in family or other trusted settings. For live distant child sexual abuse, possibilities for investigating and prosecuting offences remain very limited even where crimes are reported or otherwise detected. The criminal law response to child sexual abuse therefore needs to be further strengthened to address existing gaps that have persisted or have arisen since the adoption of the original EU framework in 2011. The problem can be summarised as follows.

1. The **increased online presence** of children and the latest technological developments, such as pervasive livestreaming and virtual worlds, create new opportunities for abuse because children are often approached online or their sexual abuse is livestreamed as a service to order.
2. The **different legal frameworks** in place in Member States concerning investigation and prosecution do not provide for an effective fight against child sexual abuse and exploitation, particularly given the online dimension. This creates challenges for law enforcement due to the difficulties in identifying perpetrators and in gathering evidence.

In practice, the combination of the above two issues leads to pervasive impunity for serious crimes that have a lifelong impact on child victims.

3. Efforts to **prevent child sexual abuse** and to **assist victims** are still **limited** in nature, of unclear effectiveness, and lack coordination among relevant stakeholders.

What is this initiative expected to achieve?

In addition to regulating the role of online service providers, which the Commission addressed in its May 2022 proposal for a regulation laying down rules to prevent and combat child sexual abuse (COM(2022) 209), there is a need to supplement the existing criminal law framework to ensure its effectiveness. The general objective is to **improve identification, protection and support of victims** of child sexual abuse, ensure **effective prevention**, and **facilitate investigations**. The specific objectives are: (1) to ensure the criminalisation of all forms of online child sexual abuse and exploitation; (2) to ensure that national rules on investigation and prosecution provide for effective action against child sexual abuse and exploitation; and (3) to improve prevention, and protection, support and assistance to victims, require Member States to systematically collect statistics on child sexual abuse, and ensure increased coordination among Member States and, at the national level, among all parties involved. The proposal also updates the language of the existing framework, replacing all references to 'child pornography' with 'child sexual abuse material' to reflect internationally agreed standards to avoid an inadvertent legitimising effect of the association with legal adult pornography.

What is the value added of action at the EU level (subsidiarity)?

Gaps in the existing framework have largely emerged due to the online dimension, which is inherently cross-border in nature, in particular when dealing with livestreaming or online grooming. In the absence of common rules, Member States would face hurdles in effectively: (i) preventing the commission of child sexual abuse offences in their territory; (ii) investigating and prosecuting child sexual abuse crimes with a cross-border dimension; and (iii) identifying and providing assistance to victims.

B. Solutions
What are the various options to achieve the objectives? Is there a preferred option or not? If not, why?
<p>Option A: Targeted legislative adjustments to clarify ambiguities of the current framework, ensure consistency with new instruments, and improve the quantity and quality of available information.</p> <p>Option B: Option A plus legislative amendments modifying definitions of crimes to take into account current and expected technological developments.</p> <p>Option C: Option B plus legislative amendments to ensure more effective prevention, assistance to victims and investigation, and prosecution, taking into account the cross-border dimension of the phenomenon. This is the preferred option.</p>
What are the various stakeholder views? Who supports which option?
<p>Stakeholders have called on the Commission to review the framework. They confirmed that children were seen to be affected by gaps in criminalisation in relation to emerging trends enabled or facilitated by technological development and the increased online presence of both children and predators, especially since the COVID-19 pandemic. In particular, the challenges in investigating and prosecuting such offences and in identifying victims were identified as needing a more effective approach. Stakeholders also pointed to the need to better account for the specificities of child sexual abuse and exploitation offences, including the challenges encountered by victims in reporting, the long period that can elapse between the occurrence of the offence and the victim's ability to speak about it, the need for targeted prevention and victim assistance, and the difficulties caused by phenomena such as that of travelling sex offenders. In general, stakeholders were supportive of a targeted update of the framework, particularly with a view to addressing the phenomenon of live distant child sexual abuse.</p>
C. Impacts of the preferred option
What are the benefits of the preferred option (if any, otherwise of main ones)?
<p>The initiative is expected to bring improvements in identification, protection and support of victims of child sexual abuse, and would both ensure more effective prevention and facilitate investigations. It would reduce the pervasive impunity of live distant child sexual abuse by making available more effective investigative tools and by adapting the criminal law framework. This is to ensure that ordering the sexual abuse of a child, to be livestreamed for the offender's private viewing, is criminalised independently of the sexual abuse itself, and that attempts to solicit a child into sexual abuse via online channels such as chats or gaming platforms are similarly criminalised. The initiative would also make it possible, for an extended period of time to take into account the lasting fear and trauma that often hinders reporting, for survivors to file complaints and to claim compensation for damages, both of which would have a positive impact on survivors' ability to assert their rights and recover their well-being. The creation of national authorities to coordinate efforts at national level would provide for a comprehensive national approach to the phenomenon of child sexual abuse, which is as much a public health problem as it is a criminal justice one. Existing structures of this kind in some Member States have shown the benefits for awareness raising, prevention, giving voice to victims and survivors, and supporting them more effectively.</p>
What are the costs of the preferred option (if any, otherwise of main ones)?
<p>The costs mainly fall on Member State administrations. The preferred option has a limited burden on Member States, which is offset by the positive impact of the measures on the prevention and fight against trafficking, and on protection of the victims. The preferred option mostly consists in strengthening and expanding existing provisions rather than creating new obligations. Some Member States have already put in place measures to expand the scope of criminal laws in line with the new proposals, and made available additional investigative measures, which will reduce the regulatory burden on them. The requirement to create a national authority to coordinate would also create a limited regulatory and administrative burden on Member States that do not already have a system in place.</p>
What are the impacts on SMEs and competitiveness?
<p>There are no direct or indirect impacts on SMEs and competitiveness.</p>
Will there be significant impacts on national budgets and administrations?
<p>There will be four main types of impact on national budgets and administrations, all of which are expected to be limited in scope. Firstly, the administration will need to invest resources to make the necessary changes to the national legislative framework. Secondly, making more investigative measures available should increase the number of cases that can be investigated, and hence the required resources, but on the other hand this would likely also increase the efficiency and effectiveness of investigations, hence also lowering the overall workload</p>

of law enforcement. Thirdly, the creation and maintenance of national authorities to coordinate efforts against child sexual abuse will have an ongoing impact on national budgets in Member States where such functions do not yet exist. Finally, the proposed collection of statistics may go beyond what is already available at national level but it is in line with what has already been adopted under Regulation (EU) 2021/1232 of the European Parliament and of the Council of 14 July 2021 on a temporary derogation from certain provisions of Directive 2002/58/EC as regards the use of technologies by providers of number-independent interpersonal communications services for the processing of personal and other data for the purpose of combating online child sexual abuse¹.

Will there be other significant impacts?

A core impact of the preferred option is related to safeguarding the well-being and rights of children online and offline, and those of survivors of child sexual abuse. In addition, the proposal to extend the right of victims to file charges and to enable them to claim damages would be expected to have a significant positive impact on the ability of victims and survivors to assert their rights.

Proportionality?

The changes to the Directive under this proposal are limited and targeted, aimed at effectively addressing the key shortcomings identified in the implementation and evaluation of that Directive. Any further administrative burden that might arise from this update is considered proportionate in view of the long-term benefits, including cost benefits, that are linked to prevention and early detection of these types of offence for victims and society at large. Therefore, the proposal does not go beyond what is necessary in order to achieve the stated objectives.

D. Follow-up

When will the policy be reviewed?

The concrete impacts of the preferred option, i.e. the actual progress in the fight against child sexual abuse offline and online, will be monitored and evaluated against the three specific objectives. The proposal includes measures to gather relevant statistics in order to be able to accurately assess these impacts. On this basis, the Commission will provide regular implementation reports every 5 years, which will be accompanied by proposals for amendment as needed.

¹ OJ L 274, 30.7.2021, p. 41-51.