



EUROPEAN COMMISSION

20.01.2023

SEC(2024) 57

REGULATORY SCRUTINY BOARD OPINION

Revision of Directive 2011/93/EU on combating child sexual abuse

{COM(2024) 60}

{SWD(2024) 32-34}



Brussels,
RSB/

Opinion

Title: Impact assessment / Revision of Directive 2011/93/EU on combating child sexual abuse

Overall opinion: POSITIVE WITH RESERVATIONS

(A) Policy context

Child sexual abuse (CSA) is a serious crime with severe, life-long consequences for victims. The EU Directive on combating child sexual abuse contains provisions harmonising substantive criminal law definitions and criminal offences covering both offline and online acts. It also contains provisions on prevention, investigation and prosecution of offences, as well as assistance to and protection of victims.

The back-to-back evaluation as well as implementation reports and infringement proceedings launched by the European Commission in 2019 against 23 Member States indicate that the Directive may no longer be fit for purpose. The revision aims at updating the EU rules to improve the identification, protection and support of victims of child sexual abuse, ensure effective prevention, and facilitate investigations and prosecution. It complements the 2022 Commission proposal for a Regulation on preventing and combating CSA.

(B) Summary of findings

The Board notes the additional information provided and commitments to make changes to the report.

However, the report still contains significant shortcomings. The Board gives a positive opinion with reservations because it expects the lead DG to rectify the following aspects:

- (1) The report does not factor the expected effects of the CSA Regulation proposal sufficiently into the dynamic baseline nor the cost benefit analysis.**
- (2) The subsidiarity assessment does not sufficiently demonstrate the need for “independent institutions to promote children rights”.**

This opinion concerns a draft impact assessment which may differ from the final version.

(C) What to improve

(1) The dynamic baseline should include all measures relevant to this initiative, in particular the CSA Regulation. Given the close interlinkage between the CSA Directive and CSA Regulation, the report should clearly set out how the expected effects from the CSA Regulation proposal have been reflected in the dynamic baseline scenario (and under which time frame) and factor them into the assessment of impacts. It should clarify how the estimated annual baseline victim costs of EUR 13.8 billion take into account the improvements expected from the CSA Regulation proposal. The same should be done when estimating the benefits of the options.

(2) The report should provide more details on the analytical methods and underlying assumptions. In particular, it should further explain the methodology of the extrapolation of non-EU data to the EU and better justify the assumption of the 25% (and 50% in the long run) reduction of the current costs of CSA as a result of this initiative.

(3) The report should provide more detail on the proposed measure of “independent institutions to promote children rights” and also explain the difference between this and the creation of “Anti-Child Sexual Abuse Coordinators”. It should better argue the necessity of independent institutions and explain how this measure would comply with the principle of subsidiarity. This assessment should set out clearly the views of Member States regarding the need for this harmonisation element, given the diversity of situations across Member States.

(4) The report should clearly explain the logic of the policy options and specify that they have an incremental character, while also explaining their individual limits. It should set out clearly the underlying trade-offs that frame the context for the policy options. An overview of the policy options in function of each specific policy objective should be provided. Furthermore, the report should clarify whether Policy options A and B are genuine alternatives and how their measures are to improve prevention. More generally, the options should consider synergies and take advantage of measures introduced in the CSA Regulation proposal.

(5) The views of different stakeholder categories, including those of competent Member States authorities, should be systematically reported throughout the report and account taken of consultation feedback and targeted interviews. The report should clarify stakeholders’ expressed preferences on the policy options including dissenting views.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must take these recommendations into account before launching the interservice consultation.

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| Full title | Commission proposal to review the Directive 2011/93 on combating the sexual abuse and sexual exploitation of children and child pornography |
| Reference number | PLAN/2021/10693 |
| Submitted to RSB on | 13 December 2022 |
| Date of RSB meeting | 18 January 2023 |

ANNEX – Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board’s recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

| I. Overview of Benefits (total for all provisions) – Preferred Option | | |
|---|--|--|
| <i>Description</i> | <i>Amount</i> | <i>Comments</i> |
| Direct benefits | | |
| Measures to improve prosecution and investigation of CSA and level of coherence of EU rules across Member States | No data is available. It is not possible to provide quantified estimates for the direct benefits brought about by criminalisation | <p>This effort will ensure the Directive is future-proof and includes new trends and phenomena concerning serious child sexual abuse offences not currently covered by EU legislation. Ambiguity in existing legal provisions, including the criminalisation of possession of CSAM in the context of reporting and on statute of limitations will be removed, making it easier for victims to be safeguarded from abuse and to extend the possibility for restitution for crimes committed against them.</p> <p>Law enforcement will be enabled to make the fullest possible use of existing tools at their disposal, facilitating investigations and prosecutions, including into the online dimension of these crimes. Policy measures relating to cross-border cooperation will enhance coordination among law enforcement, and judicial authorities, and between</p> <p>Measures aimed at strengthening the criminalisation of child sexual abuse and exploitation and increasing the level of harmonisation of EU rules across Member States will provide a stronger legal basis of the law enforcement and judicial response and as a result will reduce the incidence of the crime and number of victims, as well as the risks posed by perpetrators to children.</p> |
| Introducing an obligation in the Directive for Member States to collect and report data on child sexual abuse and exploitation to the Commission every year | Approximate administrative cost of yearly data gathering and submission of statistics by national authorities is of EUR 2 399 738. | This measure is aimed at improving the collection of convictions related to CSAE crimes and monitoring of CSAE-related trends and threats. As a result, this will increase knowledge on child sexual abuse and exploitation supporting better informed and targeted policies and possible future funding and collaborative efforts. The yearly-data collection will contribute to more accurate and up-to-date reporting. |

Indirect benefits

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| <p>Strengthen the fight against child sexual abuse and exploitation in the EU</p> | <p>Conservative estimates of costs of CSAE for one year in the EU are approximately EUR 13.8 billion. This covers healthcare costs, productivity losses, child welfare costs, violence/crime costs, and special education.</p> | <p>The effects of CSA extend beyond the immediate act of harm and include risks for development of severe mental, physical and behavioural health disorders across victims' lives. Children who are already victims of sexual abuse are at higher risk of subsequent victimisation and criminal offending.</p> <p>These measures will allow for a more comprehensive and coordinated response within and across EU Member States and swifter identification and safeguarding of child victims from all forms of child sexual abuse and exploitation. It is also expected that victims will have swifter access to more tailored care and support for both themselves and their families and a more efficient judicial response.</p> <p>This will in turn decrease the cost of the loss of quality of life for victims and have an overall positive social impact including by increasing security and trust in authorities and lessening the need for parental and/or self-protection measures.</p> |
| <p>Decrease in the demand for child sexual abuse brought about by effective prevention measures.</p> | <p>The implementation of prevention programs for offenders and programs that raise awareness and provide training on child sexual abuse has been sporadic throughout the EU Member States. No data is available to estimate the cost of setting up and running different categories of prevention interventions as well as the overall efficacy for prevention initiatives.</p> <p>The gathering of relevant statistical data is already set out above.</p> | <p>Availability and delivery of rigorously evaluated and effective prevention programmes for offenders and persons who fear they might offend, will in the longer term decrease the demand for child sexual abuse material and fresh abuse.</p> <p>Prevention programs targeting awareness raising of carers, persons in regular contact with children and children themselves will help children and their carers to avoid and/or mitigate risky situations, decreasing instances of child sexual abuse.</p> <p>Obligations for regular data collection will support in the longer-term evidence based policy making, including putting in place effective preventative and deterrence mechanisms to decrease the prevalence of child sexual abuse.</p> <p>Annual benefits from reduction of crime.</p> <p>Savings on administrative costs for public authorities, in particular through the anticipated compliance with harmonised law across Member States (the Proposed Violence against Women Directive and the Proposed Regulation to Prevent and Combat Child Sexual Abuse).</p> |

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| Assistance to victims – support programmes and access to compensation | Victims of child sexual abuse who seek support within the EU Member States are treated within the general physical and psychosocial healthcare systems and there are no statistics on the types, and duration of treatments and associated costs. However from studies carried out in the US we can infer that | Annual benefits from reduction of impact of crime on victims’ long-term wellbeing. Savings on administrative costs for public authorities, in particular through the anticipated compliance with harmonised law across Member States (the Proposed Violence against Women Directive and the Proposed Regulation to Prevent and Combat Child Sexual Abuse. |
| <i>Administrative cost savings related to the ‘one in, one out’ approach*</i> | | |
| The preferred option would generally contribute to strengthening the fight against child sexual abuse and exploitation and coordination across the EU Member States. It will reduce the costs incurred by the crime for the society, and in particular victims of child sexual abuse and decrease its prevalence. | N/A | N/A |

| II. Overview of costs – Preferred option | | | | | | | |
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| | | Citizens/Consumers | | Businesses | | Administrations | |
| | | One-off | Recurrent | One-off | Recurrent | One-off | Recurrent |
| Legislative adjustments to clarify ambiguities including: | Direct adjustment costs | N/A | N/A | N/A | N/A | Member States would have an obligation to explicitly address the legislative adjustments in their legislation, which will require some limited adjustments in national law. | a) Member States already investigate, prosecute and punish offences related to CSAM when the material clearly depicts a minor. However, this broadening to include depictions of persons who may appear to be children may lead |
| <ul style="list-style-type: none"> a) Rules on offences concerning CSAM so that they apply when CSAM depicts a person appearing to be a child whose age cannot be determined; b) Clarifying that transmission of information on convictions between MSs is possible even without consent of the person concerned, if law of transmitting states allow it c) Providing exemptions from criminalisation when CSAM is accessed or | | | | | | | |

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| <p>downloaded for reporting purposes</p> <p>d) Non-criminalisation of consensual sharing, possession or production of CSAM by children over the age of sexual consent when material is destined for private use of those children alone</p> <p>e) Exemption from criminalisation for victims for possession of materials depicting their abuse</p> <p>f) Ensuring victims have access to national compensation schemes for victims of crimes</p> <p>g) Clarifying that time-limit for prosecution of CSA related offences cannot start before victim is 18 and upwards.</p> <p>h) Ensuring coherence with other relevant EU legislative instruments</p> | | | | | | | to a possible increase in numbers of investigations and prosecutions. It is difficult to estimate in concrete terms the extent of such an increase if any. |
| | Direct administrative costs | N/A | N/A | N/A | N/A | N/A | N/A |
| | Direct regulatory fees and charges | N/A | N/A | N/A | N/A | N/A | N/A |
| | Direct enforcement costs | N/A | N/A | N/A | N/A | N/A | N/A |
| | Indirect costs | | | | | N/A | |
| | | N/A | N/A | N/A | N/A | | |
| Legislative amendments ensuring that the language and definitions on CSA related crimes are future proof with regards to potential new technological developments, trends and threats. | Direct adjustment cost | N/A | N/A | N/A | N/A | Member States would have an obligation to explicitly address the legislative adjustments in their legislation, which will require some limited adjustments in national law. | N/A |
| | Direct administrative costs | N/A | N/A | N/A | N/A | N/A | N/A |
| | Direct regulatory fees and charges | N/A | N/A | N/A | N/A | N/A | N/A |

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| | Direct enforcement costs | N/A | N/A | N/A | N/A | N/A | N/A |
| | Indirect costs | N/A | N/A | N/A | N/A | N/A | N/A |
| Introduction of legislative amendments to prevent CSAE offences: a) Clear benchmarks to assess effectiveness of prevention programmes; b) Ensuring existence of dedicated prevention programmes for offenders inside and outside prison; c) Ensuring existence of dedicated prevention programmes for persons who fear they might commit CSA related offences; d) Ensuring MSs can introduce cross-border disqualifications for sex offenders from certain jobs involving children; e) Encourage harmonisation of national law on transmission of information on previous offences without consent of person concerned | Direct adjustment cost | N/A | N/A | N/A | N/A | Member States would have an obligation to explicitly address the legislative adjustments in their legislation, which will require some limited adjustments in national law. Setting up of clear criteria by which to assess the effectiveness of prevention initiatives carries a one-off cost, however this benchmarking exercise should be carried out at the EU-level possibly by the Network on Prevention, that brings together experts in the field. In this way an EU-wide standard of efficacy for prevention programmes can be ensured. | N/A |
| | Direct administrative costs | N/A | N/A | N/A | N/A | N/A | Under the current Directive, EU Member States are already obliged to set up prevention |

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| | | | | | | | initiatives for persons who have offended and those who fear they might offend, however, in the process of evaluating the implementation of the EU Directive in practice it was noted that these prevention initiatives remain sporadic. Member States are expected to incur an initial cost to set up such initiatives and recurring costs to maintain them in the longer term. The types of programs can vary in content, mode of delivery and length. No average cost for setting up and running these initiatives is available. |
| | Direct regulatory fees and charges | N/A | N/A | N/A | N/A | N/A | N/A |
| | Direct enforcement costs | N/A | N/A | N/A | N/A | N/A | N/A |
| | Indirect costs | N/A | N/A | N/A | N/A | N/A | N/A |
| Measures enhancing investigation and prosecution: a) Enabling use of undercover agents for investigative purposes; | Direct adjustment cost | N/A | N/A | N/A | N/A | Member States will have the obligation to explicitly address both measures fully in | |

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| b) Ensuring existing tools are full leveraged and used more effectively in this crime area | | | | | | national law, and will incur a one-off cost related to these updates. | |
| | Direct administrative costs | N/A | N/A | N/A | N/A | | <p>The use of undercover agents and other special investigative tools are in some Member States restricted for use on serious crimes which carry a specific penalty. The possibility to extend the use of these techniques and tools to all crimes of child sexual abuse and exploitation will entail a yearly recurrent direct cost to facilitate and maintain their use, as well as to train officers.</p> <p>With regards to the use of ECRIS and SIS, no additional costs are envisaged. All EU Member States should already have in place all the requisite infrastructure to link up to and query both systems. They also already are</p> |

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| | | | | | | | obliged to share convictions through ECRIS and have the functionality to put in place checks related to child sexual abuse and exploitation concerns. |
| | Direct regulatory fees and charges | N/A | N/A | N/A | N/A | N/A | N/A |
| | Direct enforcement costs | N/A | N/A | N/A | N/A | N/A | N/A |
| | Indirect costs | N/A | N/A | N/A | N/A | N/A | N/A |
| Collection of statistics on child sexual abuse and exploitation and disaggregated data available for groups considered vulnerable | Direct adjustment cost | N/A | N/A | N/A | N/A | | N/A |
| | Direct administrative costs | N/A | N/A | N/A | N/A | Member States will face a one-off direct cost to set up the infrastructure to be able to collect the statistical data fields that will be mandated within the Directive. There are currently no obligations on EU Member States to collect statistics related to child sexual abuse and there is very limited information on the types of set-ups that Member States have in place. A | The collection of statistics will entail a yearly output. The independent study supporting this Impact Assessment estimates costs to be around EUR 2.4 mil. |

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| | | | | | | variety of data collection architectures can be envisaged within national authorities. For these reasons it is difficult to provide a reasonable estimate of this one-off cost. | |
| | Direct regulatory fees and charges | N/A | N/A | N/A | N/A | | |
| | Direct enforcement costs | N/A | N/A | N/A | N/A | | |
| | Indirect costs | N/A | N/A | N/A | N/A | | |
| Encouraging the setting-up of CSA contact points at the national level within the EU Member States | Direct adjustment cost | N/A | N/A | N/A | N/A | N/A | N/A |
| | Direct administrative costs | N/A | N/A | N/A | N/A | N/A | The fight against child sexual abuse requires a coordinated and multi-stakeholder response. At the national level several key players have a significant role in the prevention of CSA as well as provision of assistance and support to victims and the investigation and prosecution of these crimes. The setting up of a national contact point on CSA would help |

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| | | | | | | | <p>coordinate, streamline efforts, avoid duplication and ensure that all resources are fully exploited at the national level.</p> <p>This role would also serve as the single point of contact on all concerns related to CSA at the EU level.</p> <p>Average recurring cost for the role would be around EUR 60 000 in hourly wages. Not enough information is available on Member States' set-ups to deal with child sexual abuse is available to have a realistic overview of the one-off costs to set up this role.</p> |
| | Direct regulatory fees and charges | N/A | N/A | N/A | N/A | N/A | N/A |
| | Direct enforcement costs | N/A | N/A | N/A | N/A | N/A | N/A |
| | Direct regulatory fees and charges | N/A | N/A | N/A | N/A | N/A | N/A |

Costs related to the 'one in, one out' approach

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|--------------|---------------------------------------|-----|-----|-----|-----|--|--|
| Total | Direct adjustment costs | N/A | N/A | N/A | N/A | | |
| | Indirect adjustment costs | N/A | N/A | N/A | N/A | | |
| | Administrative costs (for offsetting) | N/A | N/A | N/A | N/A | | |