

Combating child pornography

A case study on the development of EU substantive criminal law



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**LIETUVOS
TEISMAI**

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Main steps in the EU's combat against child pornography

- Framework Decision 2004/68/JHA on combating the sexual exploitation of children and child pornography
- 'Lisbonisation': Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children

Let us have a look at how this directive came to be!

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Main elements in Directive 2011/92/EU

- serious forms of child sexual abuse
- new criminal offences in the IT environment
- criminal investigation and initiation of criminal proceedings
- prosecution of offences committed abroad
- protection of victims
- prevention of offences

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Solicitation

COM proposal

Member States shall take the necessary measures to ensure that the following intentional conduct is punishable:
The proposal, by means of information and communication technology, by an adult to meet a child who has not reached the age of sexual consent under national law, for the purpose of committing any of the offences referred to in Articles 3 (3) and Article 5 (6), where this proposal has been followed by material acts leading to such a meeting, shall be punishable by a maximum term of imprisonment of at least two years.

Council Gen App

Member States shall take the necessary measures to ensure that the following intentional conduct is punishable:
The proposal, by means of information and communication technology, by an adult to meet a child who has not reached the age of sexual consent, for the purpose of committing any of the offences referred to in Articles 3(3) and Article 5(7) where this proposal has been followed by material acts leading to such a meeting, shall be punishable by a maximum term of imprisonment of at least one year.

EP report

1. Member States shall take the necessary measures to ensure that the following intentional conduct is punishable:
the proposal, by means of information and communication technology, by an adult to meet a child who has not reached the age of sexual consent **II**, for the purpose of committing any of the offences referred to in Article 3(4) and Article 5(6), where that proposal was followed by material acts leading to such a meeting, shall be punishable by a maximum term of imprisonment of at least one year.
2. Member States shall take the necessary measures to ensure that an attempt, by means of information and communication technology, to commit the offences provided for in Article 5(2) and (3) by an adult soliciting a child who has not reached the age of sexual consent to provide child pornography depicting that child is punishable.

Final
Art.
6(2)

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Self-images

COM proposal	Council Gen App	EP report
na	It shall be within the discretion of the Member States to decide whether paragraphs (2) and (7) apply to cases where it is established that pornographic material as defined in Article 2(b) (iv) is produced and possessed by the producer solely for his or her own private use, as far as no pornographic material as referred to in Article 2(b)(i) to (iii) has been used for the purpose of its production, and provided that the act involves no risk of dissemination of the material.	It shall be within the discretion of Member States to decide whether paragraphs 2 and 6 of this Article apply to cases where it is established that pornographic material as referred to in Article 2(c)(iv) is produced and possessed by the producer solely for his or her private use in so far as no pornographic material as referred to in Article 2(c)(i), (ii) or (iii) has been used for the purpose of its production and provided that the act involves no risk of dissemination of the material.

Final
Art.
5(8)

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Establishing jurisdiction when the offender is a national

COM Proposal	Council Gen App	EP report
For the prosecution of any of the offences referred to in Articles 3 to 7 committed outside the territory of the State concerned, as regards paragraph 1 (b) of this Article, Member States shall take the necessary measures to ensure that its jurisdiction is not subordinated to the condition: (a) that the acts are a criminal offence at the place where they were performed; or (b) 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.	For the prosecution of any of the offences referred to in Articles 3 to 7 committed outside the territory of the State concerned, as regards paragraph 1 (b) of this Article, Member States shall take the necessary measures to ensure that its 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.	For the prosecution of any of the offences referred to in Articles 3 to 7 committed outside the territory of the Member State concerned, as regards paragraph 1(b) of this Article, each Member State shall take the necessary measures to ensure that its 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.

Final
Art.
17(5)

6

Incitement, aiding and abetting, and attempt

COM Proposal

Member States shall take the necessary measures to ensure that the instigation of, aiding and abetting to commit any of the offences referred to in Articles 3 to 6 is punishable.

2. Member States shall take the necessary measures to ensure that attempts to commit any of the offences referred to in Article 3 (3) to (5), and (2) with regard to witnessing sexual abuse; Article 4 (2) to (3) and (5) to (11); and Article 5 (2) and (4) to (6) is punishable.

3. Member States shall take the necessary measures to ensure that the following intentional conduct is punishable:

(a) the dissemination of materials advertising the opportunity to commit any of the offences referred to in Articles 3 to 6;

(b) the organisation of travel arrangements with the purpose of committing any of the offences referred to in Articles 3 to 6.

Council Gen App

Member States shall take the necessary measures to ensure that the instigation of, aiding and abetting to commit any of the offences referred to in Articles 3 to 6 is punishable.

2. Member States shall take the necessary measures to ensure that attempts to commit any of the offences referred to in Article 3(3) to (5), Article 4 (2) to (3) and (4) to (6), and Article 5(5) to (7) are punishable.

EP report

1. Member States shall take the necessary measures to ensure that inciting or aiding and abetting to commit any of the offences referred to in Articles 3 to 6 is punishable.

2. Member States shall take the necessary measures to ensure that an attempt to commit any of the offences referred to in Article 3(4), (5) and (6), Article 4(2), (3), (5), (6) and (7), and Article 5(4), (5) and (6) is punishable.

Final
Art.
7(2)

7

Measures against advertising abuse opportunities and child sex tourism

COM Proposal

na

Council Gen App

na.

EP report

Member States shall take appropriate measures to prevent or prohibit:

(a) the dissemination of material advertising the opportunity to commit any of the offences referred to in Article 3 to 6; and

(b) the organisation for others, whether or not for commercial purposes, of travel arrangements with the purpose of committing any of the offences referred to in Articles 3 to 5.

Final
Art.
21

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Prevention

COM Proposal	Council Gen App	EP report
na	na.	1. Member States shall take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of sexual exploitation of children. 2. Member States shall take appropriate action, including through the internet, such as information and awareness-raising campaigns, research and education programmes, where appropriate in cooperation with relevant civil society organisations and other stakeholders, aimed at raising awareness and reducing the risk of children, becoming victims of sexual abuse or exploitation. 3. Member States shall promote regular training for officials likely to come into contact with child victims of sexual abuse or exploitation, including front-line police officers, aimed at enabling them to identify and deal with child victims and potential child victims of sexual abuse or exploitation.

Final
Art.
23

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Blocking and/or removing websites

COM proposal	Council Gen App	EP report
1. Member States shall take the necessary measures to obtain the blocking of access by Internet users in their territory to Internet pages containing or disseminating child pornography. The blocking of access shall be subject to adequate safeguards, in particular to ensure that the blocking is limited to what is necessary, that users are informed of the reason for the blocking and that content providers, as far as possible, are informed of the possibility of challenging it. 2. Without prejudice to the above, Member States shall take the necessary measures to obtain the removal of internet pages containing or disseminating child pornography.	1. Member States shall take the necessary measures to ensure the removal of webpages containing or disseminating child pornography hosted in their territory and to endeavour to obtain the removal of such pages hosted outside of their territory. 2. Where the removal of webpages containing or disseminating child pornography is not possible, Member States shall take the necessary measures, whether legislative or non-legislative, to ensure that the blocking of access to webpages containing or disseminating child pornography is possible towards the Internet users in their territory. The blocking of access shall be subject to adequate safeguards, in particular to ensure that the blocking, taking into account technical characteristics, is limited to what is necessary, that users are informed of the reason for the blocking and that content providers, as far as possible, are informed of the possibility of challenging it.	1. Member States shall take the necessary measures to ensure the prompt removal of webpages containing or disseminating child pornography hosted in their territory and to endeavour to obtain the removal of such pages hosted outside of their territory. 2. Member States may take measures to block access to webpages containing or disseminating child pornography towards the internet users within their territory. These measures must be set by transparent procedures and provide adequate safeguards, in particular to ensure that the restriction is limited to what is necessary and proportionate, and that users are informed of the reason for the restriction. Those safeguards shall also include the possibility of judicial redress.

Final
Art.
25

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Next steps in the EU's combat against child pornography

- 2020 New Strategy  [20200724_com-2020-607-commission-communication_en.pdf \(europa.eu\)](#) 

- 2021: Proposal to review Directive 2011/92
- 2022: Proposal for a Regulation laying down rules to prevent and combat child sexual abuse (COM/2022/209 final)
- To be continued!



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