

ECLAG ADVOCACY PAPER on the proposed Directive on Child Sexual Abuse

October 2024

We welcome the [European Commission \(EC\) proposed recast of Directive 2011/93/EU of February 2024 on Sexual Abuse and Exploitation of Children](#) and **we strongly support:**

- **the extended list of crimes**, in particular the recognition of the online dimension of child sexual abuse (CSA), the inclusion of live-streaming CSA, the inclusion of “reproduction and representation” as child sexual abuse material (CSAM) and the criminalisation of “instructions manual”;
- **the definition of ‘consent’ and ‘non-consensual act’**;
- **the right to compensation for victims**, including for the dissemination of CSAM;
- **the increased prevention obligations**, including creation of dedicated national authorities and multi-stakeholders cooperation mechanisms, the EU Centre prevention mandate, data collection obligations.

Besides, **we call for important additions** to strengthen prevention and prosecution of child sexual abuse. As a priority, the Recast Directive must:

1. Extend the list of crimes.

- Criminalise the **sexual extortion** of children.
- Clarify that **rape covers situations where the offenders instruct the child to penetrate themselves**.
- Criminalise effectively **the sexual abuse and exploitation of children above the age of consent** - children above the age of consent need to be protected from non consensual activities with peers and from sexual activities with a person who is not a peer and to which they cannot consent. *(Article 3)*

2. Align penalties for in-person and technology facilitated abuses.

- Penalties for tech-facilitated abuse are currently significantly lower than for in-person abuse.
- **Victims of tech-facilitated abuse experience similar levels of trauma** as victims of penetrative in-person sexual offences.
- **Possessing CSAM should have the same penalty as distributing CSAM**, recognising the role that possession has on demand and the additional trauma caused to the child portrayed in the material. **Producing CSAM** and instruction manuals should be considered **as severe as in-person abuse**. *(Article 5)*

3. Require the same penalties for sexually abusing a child below or above the age of consent.

- Penalties for sexually abusing and exploiting a child are currently lower if the child is above the age of sexual consent.

- Abuse is abuse; rape is rape - whether or not the child is above the age of consent is simply irrelevant when determining the penalties. **The crime lies in the abuse and exploitation of the child, not in the child's legal capacity to consent.**
- The Directive should remove this distinction and **impose the same penalties, regardless of whether the child is below or above age of consent.** (*Articles 3 and 4*). The age of the child victim should rather be considered as **an aggravating circumstance.** (*Article 11*)

4. Protect children from being criminalised for consensual activities between peers in all Member States.

- The Directive **currently leaves it to Member States to decide** whether the list of crimes applies or not to consensual activities between peers.
- As recommended by the UN Committee on the Rights of the Child, the Lanzarote Committee and UNICEF, the Directive should **ensure that children are protected from criminalisation for consensual activity between peers** who are close in age, maturity and development. (*Article 10*)

5. Abolish statute of limitations or at least extend them until survivors reach 53y. old.

- ECLAG advocates for **the abolition of statutes of limitation (SOL)** to guarantee the right of every victim to access justice. As the Directive can only establish minimum standards of harmonisation, we ask that **the periods suggested are based on objective evidence** that these (1) **allow the majority of victims to have a chance to access justice** and (2) **protect other children** from falling victim to a convicted abuser.
- Research shows that:
 - Average age of disclosure is 52, over 50% of victims disclosing their abuse did first after age 50, at least 30% never disclose at all.
 - Many of the factors affecting disclosure timing are unrelated to the severity of the abuse and its potential penalty.
 - Recidivism risk of child sex abusers does not significantly decrease over time.
 - Prosecution prevents reoffending by engaging convicted offenders in prevention programs and preventing their access to child-contact positions.
- Accordingly, Member States should abolish the statute of limitation. The Directive should **extend the time periods for all crimes of child sexual abuse and exploitation until the victim reaches the age of 53, i.e. at least 35 years after the victims reach 18 years old**, as urged by the Parliamentary Assembly of the Council of Europe in 2020. (*Article 16*)

6. Require age-appropriate multidisciplinary and interagency structures for responding to child sexual abuse.

- Structures which enable victims to **receive support and participate in criminal proceedings under the same roof** (such as the Barnahus model) are the **most efficient approach for supporting child victims of abuse** due to their expertise and their holistic, child-centric, and multidisciplinary nature which helps avoid re-traumatisation of the child.
- The Directive should explicitly **require the existence of such age-appropriate multidisciplinary structures.** (*Article 18*)

7. Include a definition of survivors and ensure support to all persons who experienced child sexual violence, irrespective of their legal status.

- The **vast majority of person who experience sexual violence as a child** do not access justice via a formal legal procedure, due to a variety of barriers associated with this crime, and **fall outside the definition of 'victims'**.
- The Directive should **recognise survivors and their need for support and assistance**, irrespective of their legal status. *(Article 1 and articles 21, 23, 24 and 25)*
- By introducing a definition of survivors, the Directive will also ensure harmonisation with the proposed CSA Regulation if the current negotiations lead to the inclusion of "survivors" in the work of the EU Centre.

8. Ensure all children have access to child-friendly justice.

- The Directive **currently provides limited protection for child victims** in criminal proceedings.
- The Directive should align with the Council of Europe Guidelines on **child-friendly justice** and ensure **the protection of all children** which are likely to be, for whatever reason and in whatever capacity, brought into contact with criminal, civil or administrative justice. *(Article 22)*
- The Directive should strengthen the protection for child victims and ensure **access to tailored, age-appropriate, gender-sensitive, trauma-informed support and protection throughout all stages of proceedings** with the aim to avoid their revictimization. *(Article 22)*

9. Enhance prevention measures.

- The Directive should extend **obligations concerning reporting, child safeguarding policies, training and criminal record checks to all organisations** whose staff and volunteers **work in close contact with children**. *(Articles 12, 17, 18 and 28)*
- The Directive recognises suspects and offenders' right to access rehabilitation programmes. The Directive should make these **rehabilitation programs mandatory for all offenders**. *(Article 29)*