



EU legal framework related to child victims of violence and abuse

***PROTECTION OF THE CHILD
FROM VIOLENCE AND ABUSE:
MODERN CHALLENGES***

International Conference, 03 June 2021





EU directives

- DIRECTIVE 2011/92/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 **on combating the sexual abuse and sexual exploitation of children and child pornography**, and replacing Council Framework Decision 2004/6 **(child sexual abuse and exploitation directive)**
- DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 **establishing minimum standards on the rights, support and protection of victims of crime**, and replacing Council Framework Decision 2001/220/JHA8/JHA **(victims' directive)**
- DIRECTIVE 2011/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 April 2011 **on preventing and combating trafficking in human beings and protecting its victims**, and replacing Council Framework Decision 2002/629/JHA **(Human trafficking directive)**





EU Child Sexual Abuse directive Overview

The Directive is a comprehensive legal framework which covers:

- ✓ investigation and prosecution of crimes;
- ✓ assistance to and protection of victims;
- ✓ prevention.





EU Child Sexual Abuse Directive Overview

- ✓ definition of 20 offences;
- ✓ sets minimum levels for criminal penalties;
- ✓ facilitates reporting, investigation and prosecution;
- ✓ extends national jurisdiction to cover abuse by EU nationals abroad;
- ✓ gives child victims easier access to legal remedies;
- ✓ includes measures to prevent additional trauma from participating in criminal proceedings.





EU Child Sexual Abuse Directive Definitions

- ✓ Definition of “child pornography”
- ✓ Definition of “child prostitution”
- ✓ Definition of “pornography performance”





EU Child Sexual Abuse Directive

Offences and penalties

- ✓ Offences concerning sexual abuse (child witnessing sexual activities and abuse, engaging with sexual activities with a child)
- ✓ Offences concerning sexual exploitation (child pornography, prostitution)
- ✓ Offences concerning child pornography (users, producers)
- ✓ Soliciting children for sexual purpose





EU Child Sexual Abuse Directive Penalties

- This Directive obliges Member States to provide for criminal penalties in their national legislation in respect of the provisions of Union law on combating sexual abuse, sexual exploitation of children and child pornography
- creates no obligations regarding the application of such penalties, or any other available system of law enforcement, in individual cases





EU Child Sexual Abuse Directive

Aggravating circumstances

- Member States should provide for aggravating circumstances in their national law in accordance with the applicable rules established by their legal systems on aggravating circumstances.
- They should ensure that those aggravating circumstances are available for judges to consider when sentencing offenders, although there is no obligation on judges to apply those aggravating circumstances.





EU Child Sexual Abuse Directive

Other obligations

- ✓ Disqualification arising from convictions
- ✓ Seizure and confiscation
- ✓ Liability of legal persons
- ✓ Non-prosecution or non-application of penalties to the victim





EU Child Sexual Abuse Directive

Investigation and prosecution

- ✓ investigations into or the prosecution of the offences 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**
- ✓ **effective investigative** tools, such as those which are used in organised crime or other serious crime
- ✓ **analysing child pornography material**, such as photographs and audiovisual recordings transmitted or made available by means of information and communication technology.





EU Child Sexual Abuse Directive

Assistance and support to victims

- ✓ Child victims of any of the offences shall be considered as **particularly vulnerable victims**
- ✓ Appointing **special representative** to the child (conflict of interest)
- ✓ **Legal counseling and legal representation** including for obtaining compensation free of charge





EU Child Sexual Abuse Directive

Protection of child victims in criminal investigations and proceedings

- ✓ interviews with the child victim take place **without unjustified** delay after the facts have been reported to the competent authorities;
- ✓ interviews with the child victim take place, where necessary, in **premises** designed or adapted for this purpose;
- ✓ interviews with the child victim are carried out by or through **professionals trained** for this purpose;





EU Child Sexual Abuse Directive

Protection of child victims in criminal investigations and proceedings

- ✓ the **same persons**, if possible and where appropriate, conduct all interviews with the child victim;
- ✓ the **number of interviews is as limited as possible** and interviews are carried out only where strictly necessary for the purpose of criminal investigations and proceedings;





EU Child Sexual Abuse Directive

Protection of child victims in criminal investigations and proceedings

- ✓ the child victim may be accompanied **by his or her legal representative** or, where appropriate, by an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.





EU child sexual abuse directive

Protection of child victims in criminal investigations and proceedings

- ✓ interviews with the child victim or, where appropriate, with a child witness, may be **audio-visually recorded** and that such audio-visually recorded interviews **may be used as evidence in criminal court proceedings**,
- ✓ In criminal court proceedings the hearing take place **without the presence of the public**;





EU child sexual abuse directive

Protection of child victims in criminal investigations and proceedings

- the child victim be heard in the courtroom **without being present**, in particular through the use of appropriate communication technologies;
- where in the interest of child victims and taking into account other overriding interests, **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.





EU Child Sexual Abuse Directive

Offender's risk assessment programmes

- Offenders are to be subjected to **risk assessments** and have access to **special intervention programmes**;
- **Information on convictions and disqualifications** are to circulate more easily among criminal records, making controls more reliable;
- **Prohibits advertising the possibility of abuse**, or organising child sex tourism, and provides for education, awareness raising and training of officials.





EU Child Sexual Abuse Directive

Training of professionals

- Professionals likely to come into contact with child victims of sexual abuse and sexual exploitation should be adequately trained to identify and deal with such victims;
- ✓ front-line police officers, aimed at enabling them to identify and deal with child victims and potential child victims of sexual abuse or exploitation,
- ✓ public prosecutors,
- ✓ lawyers,
- ✓ members of the judiciary and court officials,
- ✓ child and health care personnel;





EU victims' directive

- **DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA**





Individual assessment of victims to identify specific protection needs

- ✓ Timely and individual assessment
- ✓ To identify specific protection needs
- ✓ Whether and to what extent they would benefit from special protection measures in the criminal proceedings





Individual assessment of victims to identify specific protection needs

- The individual assessment shall, in particular, take into account:
 - ✓ the personal characteristics of the victim;
 - ✓ the type or nature of the crime; and
 - ✓ the circumstances of the crime.
- Particular attention should be paid to:
 - ✓ victims whose relationship to and dependence on the offender make them particularly vulnerable
 - ✓ victims of gender-based violence,
 - ✓ violence in a close relationship,
 - ✓ sexual violence





Individual assessment of victims to identify specific protection needs

- **Child victims are presumed** to have specific protection needs due to their vulnerability to secondary and repeat victimization, intimidation and to retaliation
- Individual assessment in case of child victims determine whether and to what extent they would benefit from special measures





Special protection measures

- General special protection measures (all victims with specific protection needs)
- Protection measures specific to victims of sexual crimes
- Protection measures specific to child victims

- Protection measures during criminal investigations
- Protection measures during trial





Special protection measures during criminal investigations (victims of sexual violence)

- all interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a prosecutor or a judge, being conducted by a person of the **same sex** as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced





Special measures during court proceedings (all victims with specific needs)

- **measures to avoid visual contact** between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technology;
- measures to avoid **unnecessary questioning concerning the victim's private life** not related to the criminal offence;

