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COMMISSION STAFF WORKING PAPER

Accompanying document to the

Proposal for a

COUNCIL FRAMEWORK DECISION

**on combating the sexual abuse, sexual exploitation of children and child pornography,
repealing Framework Decision 2004/68/JHA**

SUMMARY OF THE IMPACT ASSESSMENT

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SUMMARY OF THE IMPACT ASSESSMENT

1. WHAT IS THE PROBLEM?

Sexual abuse and sexual exploitation of children are particularly serious forms of crime as they are directed against children, who have the right to special protection and care. They produce long-term physical, psychological and social harm to victims and its persistence undermines the core values of a modern society relating to special protection of children and trust in relevant State institutions. Despite a lack of accurate and reliable statistics, studies suggest that a significant minority of children in Europe may be sexually assaulted during their childhood, and research also suggests that this phenomenon is not decreasing over time, rather that certain forms of sexual violence are on the rise.

On the side of the child victims, the main cause of this phenomenon is vulnerability resulting from a variety of factors. Insufficient response by law enforcement mechanisms contributes to the prevalence of these phenomena, and the difficulties are exacerbated because certain forms of offences transcend national borders. Victims are reluctant to report abuse for shame or fear of the consequences; variations in national criminal law and procedure may give rise to differences in investigation and prosecution in various countries; convicted offenders may continue to be dangerous after serving their sentences. Developments in information technology have made these problems more acute by making it easier to produce and distribute child sexual abuse images while offering offenders anonymity. At the same time national legal systems need to deal with high number of actors involved, with different degrees of responsibility and operating in different jurisdictions. Ease of travel and income differences fuel so-called child sex tourism, resulting often in child sex offenders committing offences abroad with impunity. Beyond the difficulties of prosecution, organised crime can make considerable profits with little risk.

2. WHAT IS THE RATIONALE FOR EU ACTION?

National legislation covers some of these problems to varying degrees. However, it is not strong or consistent enough to provide a vigorous social response to this disturbing phenomenon. At EU level, Council Framework Decision 2004/68/JHA, introduces a minimum of approximation of Member States' legislation to criminalise the most serious forms of child sexual abuse and exploitation, to extend domestic jurisdiction, and to provide for a minimum of assistance to victims. Although the requirements have generally been put into implementation, the Framework Decision has a number of shortcomings. It approximates legislation only on a limited number of offences, does not address new forms of abuse and exploitation using information technology, does not remove obstacles to prosecuting offences outside national territory, does not meet all the specific needs of child victims and does not contain adequate measures to prevent offences.

Ongoing initiatives in police and judicial cooperation may have some effect in tackling such crime. Furthermore, a Council of Europe Convention CETS No. 201 against child sexual exploitation and sexual abuse was adopted in 2007 and is arguably the highest international standard for protecting children against sexual abuse and exploitation to date. If all Member States implemented the Convention CETS No 201 this would also lead to significant improvements. However, there is no guarantee that all Member States will ratify the Convention in the near future due to lengthy national procedures and the lack of a timescale

for ratification. Nor can the Convention provide for a vigorous monitoring mechanism to ensure appropriate implementation.

For these reasons, stakeholders argue forcefully for more effective, specific measures.

3. WHAT ARE THE OBJECTIVES?

The general policy objective of the Union in this field, under Article 29 of the Treaty on the European Union, is to prevent and combat offences against children, which includes child sexual abuse and child sexual exploitation.

This general objective could be served by action aimed at achieving the following **specific and operational objectives**:

A. Specific objective: to effectively prosecute the crime

Operational objectives:

A.1 **To impose effective, proportionate and dissuasive criminal penalties** on offenders who commit child sexual abuse or exploitation

A.2 **To facilitate the investigation of offences and the initiation of criminal proceedings**

A.3 **To effectively prosecute abuse or exploitation committed abroad**

A.4 **To remove obstacles to international cooperation** and to foster the use of investigative tools which are effective in organised crime and transnational cases

B. Specific objective: to protect victims' rights

Operational objectives:

B.1 **To facilitate access by victims** to legal remedies and appropriate specialist protection measures.

B.2 **To ensure that victims** of child sexual abuse and exploitation **suffer no harm** from participating in criminal investigations and proceedings.

C. Specific objective: to prevent child sexual exploitation and abuse

Operational objectives:

C.1 **To promote access to intervention programmes and measures** as a means to prevent repeated and first-time offences against children.

C.2 **To ensure that appropriate security measures** are taken with regard to child sex offenders who continue to be dangerous after their release, and that they are **effectively implemented** throughout the EU.

C.3 **To technically prevent or make it more difficult to access and disseminate child pornography, especially on the internet.**

D. Specific objective: to establish effective monitoring systems

Operational objective:

D.1 To create harmonised national mechanisms to **measure the extent of such crime** and to **monitor the effectiveness of policy** to fight child sexual abuse and exploitation.

4. WHAT ARE THE POLICY OPTIONS?

Various policy options are examined as a means to achieve the objective.

- Policy option (1): No new EU action

The EU would take no new action (legislation, non-policy instruments, financial support) to combat child sexual abuse and exploitation, while Member States may continue the process of signature and ratification of Council of Europe Convention CETS No 201.

- Policy option (2): Complement existing legislation with non-legislative measures

Existing EU legislation, in particular Framework Decision 68/2004/JHA, would not be amended. Instead, non-legislative measures could be put in place to support coordinated implementation of national legislation. This would include exchanging information and experience in prosecution, protection or prevention, awareness raising, cooperation with private sector and encouragement of self-regulation, or the setting up of mechanisms for data collection.

- Policy option (3): New legislation on prosecuting offenders, protecting victims, and preventing offences

A new Framework Decision would be adopted, incorporating the existing Framework Decision, certain provisions of the Convention CETS No 201, and additional elements not contained in either of them. It would cover, for instance, criminalisation of serious forms of child sexual abuse and exploitation that are currently not included, such as new criminal offences in the IT environment. Provisions would be introduced to assist with investigating offences and bringing charges, as well as rules to extend national jurisdiction, provisions to protect and support victims in criminal proceedings, and measures to prevent recidivism and to disrupt access to child pornography.

- Policy option (4): New comprehensive legislation to enhance prosecution of offenders, protection of victims and prevention of offences (as in option 3) plus non-legislative measures (as in option 2)

The existing provisions of Framework Decision 68/2004/JHA would be supplemented by EU action to amend substantive criminal law and procedure, protect victims, and prevent offences as in option 3, plus the non-legislative measures identified under option 2 to improve implementation of national legislation in criminal matters resulting from the amendments, and to provide tools for investigation, prosecution, protection and prevention beyond criminal law.

5. HOW DO THE POLICY OPTIONS COMPARE?

Option 1 (status quo) may provide substantial improvement if Member States sign, ratify and implement Convention CETS No 201, as they seem willing to do. However, the lengthy national ratification procedures in the absence of a legally binding EU framework and the lack of a vigorous monitoring mechanism mean that it is uncertain when and to what extent the benefits of that Convention would be put into practice. Option 2 would make for more effective implementation of the existing legal framework, but it would be insufficient to improve prosecution in a number of areas where a specific legal basis is required.

Option 3 would improve matters in comparison to the current situation. It would strengthen legislation in areas currently covered by EU legislation on the prosecution of offenders and protection of child victims. It would also address preventive measures, thus improving the protection of children in general. The financial cost is expected to be outweighed by the social and economic benefit of more efficient action against this crime. Fundamental rights improvements would also outweigh the risks of interference that come with certain measures.

Option 4 would multiply the effectiveness of the measures in option 2 and 3 by combining them and encouraging Member States to cooperate on setting up tools and acting to improve the implementation of the more comprehensive legal framework been put in place.

Following analysis of the economic impact, social impacts, and impacts on fundamental rights, options 3 and 4 represent the best approach to the problems and achieve the objectives of the proposal. The preferred option would be option 4, followed by option 3.