

Comment on the European Commission’s Proposal for a directive of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child sexual abuse material and replacing Council Framework Decision 2004/68/JHA (recast)

The German Digital Opportunities Foundation welcomes the European Commission’s initiative to recast and amend the existing Directive. Since their came in effect diction and perception of some circumstances changed as well as CSA online rapidly increased. On the whole we support this proposal, but we want to stress some points out and raise the awareness of the European Commission for further improvement.

We support that Article 2(3)(d) defines reproductions and representations also as CSAM. By understanding ‘representation’ also in the meaning of an avatar, we encourage the EC to extend the scope of the regulation, e.g. in Article 3 to virtual sexual abuse against an avatar of a child. Children growing-up today do not distinguish between a physical and a digital world, recognising both as real. About 40 percent of children consider their digital representation more important than their real one.¹ Having real-like 3D avatars and phenomena like embodiment will level this up. Offences and crimes against an own avatar will be experienced as one against oneself. In Germany, the Youth Protection Act² has established the protectional objective of Personal Integrity of a child in 2021. This legal concept needs to be concretised³ in order to provide an understanding which entails the protection of the physical and psychological integrity of a child as well as the protection of a child’s personal data as their individual representation in a digital environment.⁴

We welcome the extension of Art. 6 on proposing to meet a child either online or in person as thereby also cyber-grooming will be addressed. We recommend a reference to GC #25 on children’s rights in the digital environment, para 81 f⁵.

Article 10 addresses consensual sexual activities. In this context we welcome the specification regarding self-generated sexual material by children. In accordance with GC #25, para 118 we would like to the EC to adopt this notion.

With Article 16 the EC proposed to extend the limitation of offences concerning sexual abuse. Anyhow, recent research shows that survivors need often long time to disclose crimes⁶ and therefore organisations of survivors are pledging to abolish limitations entirely⁷.

¹ Wienreich, Carolin (2024): Metaverse – Mehr Freiheit und Sicherheit für alle?. Deutsches Museum. <https://www.youtube.com/watch?v=ydB8wFhLWJ4> 20.02.2024

² BRD (2021): Zweites Gesetz zur Änderung des Jugendschutzgesetzes, BGBl. I, 2021, S. 742 ff. <https://www.gesetze-im-internet.de/juschg/BJNR273000002.html> 20.02.2024

³ The understanding of the objective was discussed at the expert council for children’s rights in the digital world at the German Children’s Fund. All members of the council are listed at <https://www.dkhw.de/schwerpunkte/kinderrechte/koordinierungsstelle-kinderrechte/kinderrechte-in-der-digitalen-welt/expertinnenkreis-fuer-kinderrechte-in-der-digitalen-welt/> 7.3.2024

⁴ Krause, Torsten/Kretschmann, Yola/Yacob, Aaron: Zum Begriff der persönlichen Integrität im Jugendschutz. In: Recht der Jugend und des Bildungswesens (RdJB). Jahrgang 70 (2022). Heft 4. p. 629-635

⁵ UNCRC (2021): General Comment No. 25 on children’s rights in relation to the digital environment. <https://childrens-rights.digital/hintergrund/index.cfm/aus.11/kev.1738/StartAt.11/page.2> 21.05.2024

⁶ Brave Movement (2023): Justice unleashed. Ending limitations, protecting children. https://www.bravemovement.org/wp-content/uploads/2023/01/JusticeUnleashedInEurope_7_18_23_Final.pdf 13.05.2024

⁷ Brave Movement (2022): Brave Movement launches global challenge. https://www.bravemovement.org/wp-content/uploads/2023/02/FINAL_Brave-Global-Challenge_press-release.pdf 25.3.2024

We welcome the EC's proposal to further establish the role of the EU-Centre to prevent and combat child abuse as foreseen in the draft CSA-R, Art. 40⁸ also in the European Commission's Proposal for a directive of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child sexual abuse material. Nonetheless we suggest to choose a more structural approach instead of mentioning this important resource seemingly arbitrary in Art. 21, 25, 28, and 31. Also we are afraid the intension of the EC's proposal would fail if the CSA-R will not be adopted.

Last but not least, we appreciate the fact that the EC has already partially taken into account the terminology guidelines for the protection of children from sexual exploitation and sexual abuse adopted by the Interagency Working Group in Luxembourg in 2016⁹ and encourage their more comprehensive application.

⁸ EC (2022): Proposal for a regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse. https://eur-lex.europa.eu/resource.html?uri=cellar:13e33abf-d209-11ec-a95f-01aa75ed71a1.0001.02/DOC_1&format=PDF 21.05.2024

⁹ ECPAT (2016): Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse. <https://ecpat.org/wp-content/uploads/2021/05/Terminology-guidelines-396922-EN-1.pdf> 25.3.2024