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**Explanatory
note: EU
Recast of
CSA
Directive**



INHOPE

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This explanatory note is designed to assist EU hotlines in advocating for the implementation of Article 5(8) of the proposed Recast CSA Directive among their national legislators, which also serves as a reference for non-EU hotlines to use in advocating for an enhanced mandate and improved national and regional legislation.

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Introduction

On February 6, 2024, the European Commission (EC) put forward a proposal to amend Directive 2011/93/EU¹, addressing the sexual abuse and exploitation of children. The Recast Directive seeks to broaden the scope of offenses, impose stricter penalties, and set specific requirements for prevention and victim support. Crucially, the proposal also provides a solid legal foundation for INHOPE member hotlines in the EU to handle reports of child sexual abuse material (CSAM) and work with national law enforcement and other hotlines to eliminate this material.

Specifics

Article 5(8) of the proposed Recast Directive, together with paragraph 45 of the preamble and the explanatory note, calls upon Member States to authorise hotlines to engage in at least 2 of the following activities:

1. Receiving and analysing suspected CSAM reports.
2. Notifying law enforcement authorities about illegal content.
3. Collaborating with organizations authorized to receive CSAM reports in other countries.
4. Conducting searches on publicly accessible material to detect the dissemination of CSAM.

Action: To ensure that all European Union (EU) hotlines will receive the legal recognition and mandate as intended by the European Union legislators, it is crucial that each hotline actively advocates at national level in their own country once the Recast Directive gets adopted at the EU level.

Directive vs. Regulation

Regarding European Union legislation – regulation and directive are two different things which often get confused. Regulations and directives are two different types of legislative acts that serve different purposes and have distinct characteristics in the context of European Union law.

Regulations are binding legislative acts that apply directly to all EU Member States without the need for any national implementing legislation. Once a regulation is enacted, it becomes immediately enforceable and is uniformly applied across the EU. This ensures consistency and uniformity in the application of EU law throughout all member states.

Directives are legislative acts that set out a specific goal that all EU Member States must achieve through national legislation within a specific time period of years. It is up to the individual countries to decide how to transpose directives

¹ [EUR-Lex - 52024PC0060 - EN - EUR-Lex \(europa.eu\)](#)

into their national laws and choose the appropriate means to achieve the directive's objectives. This allows for flexibility in implementation, taking into account national legal systems, national constitutional requirements and practices.

Therefore, the EU CSAM Regulation that was proposed by the European Commission in May 2022 will be directly applicable to all EU Member States once it gets into force.

Conversely the recast of the Directive 2011/93/EU, addressing the sexual abuse and exploitation of children will require implementation via national legislation by all EU Member States when it comes into effect at European Union level. The national legislators will have the discretion on how the directive will be implemented in the national legislation. Because implementation will happen at a national legislative level, hotlines in the European Union must advocate strongly at national level to ensure that the spirit and objectives of the Directive are met in any national legislation including legal recognition of the Hotline. Legal recognition of a Hotline in legislation will provide legal protection and diminish the need or reliance upon Memorandas of Understanding (or similar) as the legal basis for their operations.

Article 5(8) the Recast CSA Directive

Currently the proposed article states as follows:

Member States shall ensure that authorisations for an organisation acting in the public interest against child sexual abuse referred to in paragraph 7 allow some or all the following activities to:

- a. receive and analyse reports of suspected child sexual abuse material, submitted to them by victims, online users or other organisations acting in the public interest against child sexual abuse;*
- b. promptly notify the relevant law enforcement authority of the Member State where the material is hosted of reported illegal content;*
- c. collaborate with organisations acting in the public interest against child sexual abuse and authorized to receive reports of suspected child sexual abuse material in accordance with point (a) in the Member State or third country where the material is hosted*
- d. carry out searches on publicly accessible material on hosting services to detect the dissemination of child sexual abuse material, using the reports of suspected child sexual abuse material referred to in letter (a) or on a request of a victim.*

It is important to note that this is a proposed legislative text and therefore it is subject to changes. Only once the proposed Directive gets into force at the EU level, the national legislators will start the process of transferring the Directive into their national laws.

Hotlines response

There are two main challenges regarding the of the Directive 2011/93/EU as it is currently proposed (the draft):

- The article itself does not mention hotlines specifically (referenced in the recital & objectives).



- The article obliges Member States to only choose two of the proposed activities, while not restricting them to apply all the listed activities or grant the chosen organisation additional activities/legal capacities.

Because of this, hotlines must ensure:

- Their national legislators provide the legal capacity to the Hotline.
- They will authorise hotlines with all the listed actions in the article (at a minimum).

Below are concise argumentations or discussion points regarding these two key points that hotlines can use to develop their justifications for inclusion in national legislation. These justifications should be shared with national legislators once the proposed Recast Directive comes into effect and the process of transposition of the directive into national law begins.

1. Hotlines not mentioned specifically in the article

Although Article 5(8) of the proposed Recast CSA Directive does not explicitly mention hotlines, it is evident from Preamble Paragraph 45 and the explanatory note that legislators explicitly refer to INHOPE hotlines in the article.

The explanatory note for article 5(8) states that there is a public interest in supporting organizations like the INHOPE hotlines, which receive public reports and help remove child sexual abuse materials from the digital world and aid in investigations. It clarifies that when these organizations, acting in the public interest, review, analyse, or process such materials for removal or investigation purposes, the processing of such material should not be criminalised. Therefore, it is crucial to adjust the definition of related offenses to ensure that such processing is not deemed "without right" when authorized by the competent authorities in the Member State where the organizations are based. This approach underscores the legislators' intent to empower hotlines to effectively contribute to combating child sexual abuse.

Preamble Paragraph 45 further reinforces this intent by highlighting the crucial role of organizations like the INHOPE network of hotlines in combating child sexual abuse by cooperating with law enforcement and service providers to remove and report online child sexual abuse material. The preamble acknowledges that while these organizations have been active in several Member States, the legal frameworks governing their activities vary significantly and often lack clarity regarding the tasks they can lawfully undertake. To address this, the preamble encourages Member States to authorize these organizations to perform relevant tasks, particularly the processing of child sexual abuse material, ensuring such actions are not considered illegal. This authorization enhances legal certainty, strengthens collaboration between national authorities and other involved parties, and supports victims' rights by facilitating the removal of child sexual abuse material from public digital spaces.

2. Legal mandates listed in the article

While Article 5(8) of the Recast CSA Directive requires Member States to authorize hotlines to engage in some of the specified activities, it is crucial that hotlines possess the legal capacity to perform all of them. These activities include:

- a. **Receiving and Analysing Reports:** Hotlines must be authorized to receive and analyse reports of suspected child sexual abuse material submitted by victims, online users, or other organizations acting in the public interest. This capability is essential for effectively identifying and removing such illegal content. By categorising the material,



working with service providers to eliminate illegal images, and tracking the removal process, hotlines enable law enforcement agencies to concentrate on investigations, prioritise victim protection, and identify offenders.

- b. **Notifying Law Enforcement Agencies:** It is critical for hotlines to have the authority to promptly notify the relevant law enforcement authorities in Member State where the material is hosted. Quick notification is necessary to facilitate timely intervention and safeguarding the victim as rapidly as possible.
- c. **Collaborating Internationally:** Hotlines should be empowered to collaborate with other hotlines, both within Member State and in other countries. This international cooperation to fight crime in the digital world that knows no state borders is crucial. It enhances the effectiveness of efforts to combat child sexual abuse and ensures a coordinated approach.
- d. **Conducting Searches:** The ability to carry out searches on publicly accessible material on hosting services is vital for detecting the dissemination of child sexual abuse material. Using reports of suspected material or victim requests, hotlines can proactively identify and address illegal content. The detection of CSAM should not rely only on the reports coming from the public or from the victims themselves. With the extremely quick proliferation of CSAM online, a more proactive approach is of utmost importance.

Equipping hotlines with the legal capacity to perform all these activities is essential to comprehensively address the challenge of child sexual abuse material. It allows for a holistic approach, ensuring that hotlines can operate effectively and collaboratively with law enforcement and other hotlines across the globe. This comprehensive capacity not only improves the efficiency of interventions but also strengthens the overall framework for protecting children and removing harmful material from digital spaces.

Conclusion

As of July 2024, the proposed Recast CSAM Directive is still in the legislative process at the European Union level. This means that the text in the draft legislation may change before adoption. Nevertheless, once the directive is enacted in whatever form that takes, EU hotlines must engage with national legislators to ensure that Article 5(8) is incorporated into the national law. While it's important to incorporate the Directive, it's equally important for each country to consider its specific circumstances during the process. For instance, in countries with multiple hotlines, the national legislation should ensure that the law applies to all hotlines, rather just referencing one.

Also, while the recast CSAM Directive will only apply to European Union Member States, it serves as an example of a legislative framework establishing the legal basis for the operation and mandate of hotlines, which can be referenced in other regions or countries outside of the EU.

With the instructions and recommendations provided in the INHOPE Guidelines on Advocacy and Initiating Legislative Changes, hotlines will be able to effectively advocate for the positive changes in their national law to ensure legal recognition and codified legal mandate for their fight against CSAM.