

**Contribution from the *European Centre for Law and Justice (France)* –
Call for inputs by the European Commission in May 2024
“Combating child sexual abuse – review of EU rules”**

European Centre for Law and Justice (ECLJ) welcomes the European Commission’s initiative to revise European rules on combating the sexual abuse and exploitation of children, in particular through the proposal for a directive on combating the sexual abuse and sexual exploitation of children and child sexual abuse material (recast), and the proposed regulation establishing rules to prevent and combat the sexual abuse of children.

In a Resolution on Pornography of December 17, 1993, the European Parliament stated that *“the public, including children, are increasingly being unwillingly confronted by pornography in the media (in sex advertisements and television programmes), in the street (on hoardings) and in shops (in books and magazines)”*.¹ “And online” can now be added to this list. In France, ARCOM has revealed that in 2022, 2.3 million minors visit “adult” websites every month, an increase of +36% in 5 years; this represents over 51% of boys aged 12 to 17².

In this context, the ECLJ wishes to draw the European Commission’s attention to the need to take into account and combat children’s exposure to online pornography. It is not a question of underestimating or downplaying in any way the abhorrent sexual abuse of all kinds committed against children, but precisely of recognizing all its forms. The exposure of a child to online pornography, particularly when this exposure is unwanted, is already a form of sexual abuse (see Part 1).

To combat children’s exposure to online pornography and ensure that they cannot access it, particularly unintentionally, the ECLJ recommends taking advantage of the revision of European rules on combating the sexual abuse and exploitation of children. In particular, it is necessary to criminalize the fact of leaving online pornography available to children, i.e. in conditions in which they can see or perceive it, in the absence of an effective mechanism to prevent exposure to this type of content. It is correspondingly necessary to lay down obligations for online service providers to prevent such exposure, including the introduction of effective age verification as a minimum standard. This is what the Parliamentary Assembly of the Council of Europe (PACE) recently called on states to do, in order to make online service providers accountable for child protection: it called on states to *“introduce effective age verification obligations on websites, particularly on sites providing goods and content which are not intended for children, and which would incur similar obligations in the offline world”*.³ The first measure, relating to criminal law, would be embodied in the proposed directive, while the second, as an obligation on service providers, would be contained in the proposed regulation laying down rules to prevent and combat sexual abuse of children, as *“The Directive constitutes the criminal law pillar upon which the proposed Regulation stands”*.⁴

¹ European Parliament, Resolution on Pornography, December 17, 1993, Official Journal of the European Communities No. C 20/547 of January 24, 1994, cons. A. (emphasis added).

² ARCOM, *La fréquentation des sites « adultes » par les mineurs*, May 2023, p. 26.

³ PACE, The protection of children against online violence, Resolution no. 2547, April 19, 2024, 4.1.

⁴ The proposal for a regulation laying down rules to prevent and combat child sexual abuse *“would put in place obligations on online service providers to take responsibility for protecting children who use their services from online child sexual abuse. The proposed Regulation relies on the Directive for the definition of what is a*

Such provisions aimed at combating children’s exposure to online pornography are in line with the objectives of the present proposal for a directive and help to ensure the coherence of European policies (cf. Part 2).

PART 1: Children’s exposure to online pornography is a form of sexual abuse

1. Children’s exposure to pornography falls under the definition of sexual abuse

Children’s exposure to pornography falls squarely within the definition of sexual abuse. In this respect, it should be noted that, as part of the consultation on the revision of EU rules on combating child sexual abuse, the document “Inception Impact Assessment” (Ares(2021)5900229) refers in footnote 11 to a document stating that “*The definition of child sexual abuse is broader than most people realize. [...] Child sexual abuse includes: [...] - non-contact acts such as exhibitionism, exposure to pornography, voyeurism, and communicating in a sexual manner by phone or Internet*”.⁵ On the other hand, concerning “*Commercial sexual exploitation and internet sex crimes against children*”, the same document reveals that “**23% of all 10 to 17 year olds experience unwanted exposure to pornography**”.⁶

Acts without contact with genital areas can therefore constitute abuses as well, including children’s exposure to online pornography⁷. Author Pierre Collart defines sexual abuse as “*any sexual interaction involving a person or persons who do not consent. [...] Sexual abuse therefore includes all acts directed towards the victim’s bodily intimacy, which assault his/her sensory sphere and/or make use of his/her body. It includes verbal and non-verbal, gestural, visual, exhibitionist and voyeuristic forms [...]*”.⁸

According to the World Health Organization (WHO), child sexual abuse is “the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared, or else that violates the laws or social taboos of society”.⁹ The UN General Secretariat defines sexual abuse as “*the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions*”.¹⁰

Nor is it by chance that in French law, Article 227-24 of the Penal Code, which punishes the exposure of minors to pornography with three years’ imprisonment and a fine of 75,000 euros, appears in a paragraph on “*sexual offences committed against minors*”, itself belonging to a section dealing with “*endangering minors*” in a title on “*offences against the human person*”.

criminal offence because it constitutes child sexual abuse material and solicitation. The Directive constitutes the criminal law pillar upon which the proposed Regulation stands”: Proposal for a Directive, February 6, 2024, COM(2024) 60 final, 2024/0035 (COD), p. 2.

⁵ Darkness to Light, *Child sexual abuse statistics*, p. 1: https://www.d2l.org/wp-content/uploads/2017/01/all_statistics_20150619.pdf

⁶ Ibid, p. 3: Mitchell, K., Finkelhor, D. (2012). Trends in youth internet victimization: Findings from three youth internet safety surveys 2000-2010, *Journal of Adolescent Health* 50: 179-186.

⁷ See for example: Dis No, *INFRACTIONS À CARACTÈRE SEXUEL* (<https://disno.ch/actes-dordre-sexuel/>).

⁸ Collart, Pierre. « L’abus sexuel : discussion de la définition, éléments de diagnostic et de prévention. » *Service social*, volume 63, numéro 1, 2017, p. 29–42 (our translation).

⁹ WHO and International Society for Prevention of Child Abuse and Neglect, *Preventing Child Maltreatment: a guide to taking action and generating evidence*, 2006, p.10.

¹⁰ Secretary-General’s Bulletin, Special measures for protection from sexual exploitation and sexual abuse, 9 October 2003, ST/SGB/2003/13*: <https://poppp.undp.org/fr/regles-et-reglements/special-measures-protection-sexual-exploitation-stsgb200313>

The fight against children's exposure to pornography therefore has its rightful place in European texts on child sexual abuse.

2. Children's exposure to pornography and the consequences of sexual abuse

Like any sexual abuse, children's exposure to pornography can cause serious psychological, physical and behavioral damage. Research shows that *"the disturbances induced by the viewing of this type of program by young children [can] lead to psychic and behavioral disturbances similar to those of sexual abuse"*.¹¹

Early viewing of pornography is not without consequences, as recognized by the PACE, which said it was *"alarmed by the unprecedented exposure of children to pornographic imagery, which is detrimental to their psychological and physical development"*.¹² In fact, it *"brings increased risks of harmful gender stereotyping, addiction to pornography, early and unhealthy sexual relationships, as well as difficulties with developing balanced, respectful relationships in future life"*; similarly, it *"results in the blurring of the boundaries of normal curiosity towards sexuality and those of socially acceptable behaviour, and it undermines respect for human dignity, privacy and physical integrity"*.¹³ On the other hand, *"Recent studies have analysed the impact of pornography on young people's behaviour and attitudes, highlighting mostly its negative effects regarding gender equality. As teenage years are a time for young people to develop an image of themselves and to discover their sexuality, this impact can be deep and lifelong"*.¹⁴

Young people's exposure to pornography thus increases the likelihood that they will accept and adopt harmful and risky sexual behavior, both for themselves and for others: sexual activity at an earlier age,¹⁵ sexting,¹⁶ multiple sexual partners, deviant sexual practices, use of psychoactive substances and vulnerability to STIs.¹⁷

It also causes serious psychological damage to children. Overall, *"research suggests that children who consume pornography [...] have lower levels of social integration and higher levels of undesirable behavior. They also have a higher incidence of depressive symptoms and reduced emotional bonds with their parents"*.¹⁸ The "perfect" bodies shown in this content are

¹¹ L'environnement médiatique des jeunes de 0 à 18 ans : Que transmettons-nous à nos enfants ? Rapport en réponse à la mission confiée par Ségolène Royal, Ministre déléguée à la Famille, à l'Enfance et aux Personnes handicapées au Collectif Interassociatif Enfance Médias (CIEM), mai 2002, p. 39 : <https://enfants-medias.cemea.asso.fr/IMG/rapportCIEM.pdf>

¹² PACE, For an assessment of the means and provisions to combat children's exposure to pornographic content, Resolution 2429 (2022), §2.

¹³ Ibid., §2-3.

¹⁴ PACE, Gender aspects and human rights implications of pornography, Report (15406), § 18.

¹⁵ "Les adolescents et le porno : vers une "Génération Youporn" ?", IFOP study for the Observatoire de la Parentalité et de l'Education Numérique, conducted from February 21 to 27, 2017 among 1,005 people representative of the population aged 15 to 17 living in metropolitan France, p. 11: "71% of teens who have already had sex have "already surfed a pornographic site in their lifetime". As a reminder, the average for all teenagers is 51%".

¹⁶ In Poland, around a quarter of 16-year-olds surveyed (23.5%) have sent such sexually explicit photos or videos of themselves to others: R. Lange, M. Błażej, F. Konopczyński, A. Ładna, Nastolatki wobec pornografii cyfrowej - Trajektorie użytkowania, Thinkstat NASK, op. cit. pp. 29-35.

¹⁷ Elizabeth M. Morgan, "Associations between Young Adults' Use of Sexually Explicit Materials and Their Sexual Preference, Behaviors, and Satisfaction", The Journal of Sex Research 48, no. 6 (2011): 520-530.

¹⁸ R. Lange, M. Błażej, F. Konopczyński, A. Ładna, Nastolatki wobec pornografii cyfrowej - Trajektorie użytkowania, Thinkstat NASK, op. cit., p. 4 (our translation).

likely to give rise to complexes.¹⁹ Early exposure to pornography leads to the development of unrealistic and distorted expectations of sexuality and misleading attitudes towards relationships. It has detrimental effects “*on their self-esteem, well-being, relationships, equal opportunities and achievements in school. In some cases, it can lead to sexual violence²⁰ and be severely detrimental to their physical and mental health*”.²¹ On June 7, 2023, in its Communication on a comprehensive approach to mental health, the European Commission stated that, concerning children and young people, “*This includes: protecting them from inappropriate content*”; [the summary report](#) of this Communication expressly refers to pornography as one of the harmful effects of social media against which the at-risk group of children and adolescents must be protected (p. 6).

3. Children’s exposure to pornography and the responsibility of pornographic industry

The technology sector bears a huge responsibility when it comes to children’s exposure to online pornography. In particular, the pornography industry is well aware that children are currently being exposed to this type of content unintentionally, but also that many others are consulting it voluntarily.

As studied in a report by the Ennocence association, the following are particularly at issue: “*the porn industry’s ferocious marketing*” and “*various techniques used by [it] to attract Internet users against their will*”, including children: advertising clicks, clandestine sites, use of hidden keywords, downloading, streaming and live streaming illegal websites.²² Exposure of minors to online pornography is a major source of revenue for the industry: on the order of \$789 million a year, including around \$147 million generated by accidental exposure, not to mention the fact that these minors are tomorrow’s customers.²³ A recent ARCOM study showed that “*minors represent 12% of the audience of 'adult' sites, 17% of Pornhub’s audience*”.²⁴

4. Exposure to online pornography, a violation of children’s rights

There is no doubt that the exposure of children to pornography, whether intentional or not, is in any case a violation of children’s rights from which they must be effectively protected.

The Declaration of Geneva (September 26, 1924) states that “*men and women of all nations, [recognize] that mankind owes to the Child the best that it has to give*” (Preamble) and that “*The child must be given the means requisite for its normal development, both materially and spiritually*” (art. 1). Similarly, the International Convention on the Rights of the Child (1989), echoing the terms of the Declaration of the Rights of the Child (November 20, 1959), states that “*the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth*” (Preamble); with regard to access to the media, article 17.e. stipulates that “*States Parties shall encourage the*

¹⁹ 01net, “Exclusif (IFOP) - 8 Français sur 10 doutent de l’efficacité du blocage des sites X”, IFOP study for 01net carried out by online self-administered questionnaire from April 13 to 17, 2023 on a sample of 2,006 people, representative of the French population aged 18 and over: note the 17-point increase among young men compared with 2013.

²⁰ We will come back later to the sexual violence induced by exposure to pornography.

²¹ PACE, Fighting the over-sexualisation of children, Resolution 2119 (2016), 21 June 2016, § 2.

²² Ennocence, Réseaux sociaux, streaming, live streaming et téléchargement illégal : nouvelles portes d’entrée des enfants vers le monde de la pornographie, premier pas vers une sensibilisation de notre société sur ces sujets, 2016, p. 21-25 (our translation).

²³ Ibid., p. 13.

²⁴ ARCOM, La fréquentation des sites « adultes » par les mineurs, May 2023, p. 23.

development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being". Everyone will agree that pornography is detrimental to the well-being and normal development of the child, and is hardly a model of the best that humanity has to offer. It is obviously incompatible with such provisions, which States parties obliged to comply with by combating children's exposure to pornography.

In **European Union** law, Article 24 of the Charter of Fundamental Rights, stating that "*1. Children shall have the right to such protection and care as is necessary for their well-being [and that] 2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration*", justifies preventing minors from accessing pornography. Directive 2010/13/EU of March 10, 2010 (Audiovisual Media Services Directive) dealt with pornography in the context of the protection of minors in television broadcasting (article 27), requiring in particular that "*Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes which might seriously impair the physical, mental or moral development of minors*".

The **Council of Europe** has repeatedly called for access to pornography for children to be prevented, most recently in 2022 with the resolution "For an assessment of the means and provisions to combat children's exposure to pornographic content".²⁵ As early as 2011, PACE stressed "*the need to ensure that children are protected against exposure to violent and extreme pornographic material which might harm their balanced development*".²⁶

However, when weighing up the rights and interests at stake, an argument that puts other interests ahead of the child's best interests sometimes hinders the implementation of effective protection policies. Regarding online measures, freedom of expression and the right to privacy are often invoked. However, these are not absolute. The PACE has repeatedly affirmed in resolutions on pornography that while "*freedom of expression is a pillar of democratic societies and a right guaranteed by the European Convention on Human Rights [...] it is possible to set limits to this right when they are prescribed by law and are necessary in the interests of, amongst others, the prevention of crime, the protection of morals and the protection of the rights of others*",²⁷ in this case children. While certain measures may appear to threaten privacy,²⁸ it is first and foremost the exposure of children to pornographic material that violates children's rights. PACE has also recently stressed that "*the best interests of the child must prevail in the development and implementation of any measure or policy*"²⁹ to protect children from online violence. As for the European Court of Human Rights, it has often affirmed "*the need, where their physical and moral welfare is threatened, for children and other vulnerable members of society to benefit from State protection*".³⁰ According to the Committee of Ministers of the Council Europe in 2001, "*the freedom to use new*

²⁵ PACE, For an assessment of the means and provisions to combat children's exposure to pornographic content, Resolution 2429 (2022); and accompanying report: Doc. 15494, 07 April 2022.

²⁶ PACE, Violent and extreme pornography, Resolution 1835 (2011), § 8.

²⁷ PACE, Violent and extreme pornography, Resolution 1835 (2011), § 3; PACE, Gender aspects and human rights implications of pornography, Resolution 2412 (2021), 26.11.2021, § 5.

²⁸ Universal Declaration of Human Rights (art. 12), EU Charter of Fundamental Rights (art. 7), European Convention on Human Rights (art. 8.1).

²⁹ PACE, The protection of children against online violence, Resolution no. 2547, §3 and 4.

³⁰ ECHR, *Wetjen and Others v. Germany*, 22 March 2018, no 68125/14 and 72204/14, §74 ; ECHR, *Tlapak and Others v. Germany*, 22 March 2018, no 11308/16 and 11344/16, §87 ; ECHR, *A and B v. Croatia*, 20 June 2019, no 7144/15, §106-113.

*communications and information services should not prejudice the human dignity, human rights and fundamental freedoms of others, especially of minors”.*³¹

PART 2: Compliance with the objectives of the proposed directive and coherence of European policies

The text of the proposed directive states that “*The initiative will have a positive impact on the fundamental rights of children, including their right to physical and mental health and their right to protection and care as is necessary for their well-being*”.³² As for the summary of the initiative’s impact report, it justifies the need for it by stating that “*Child sexual abuse affects public security in the EU and infringes children’s fundamental rights under the Charter. It is a public health problem that contributes to a global burden through increased risk of serious mental and physical health problems across the human lifespan, and imposes an economic burden on individuals, families and societies*”.³³

In view of what has been set out in the first part, it is clear that measures to prevent children’s exposure to online pornography are an absolute necessity in the context of the European fight against child sexual abuse. This is in line with the aims of the proposed directive (1) and ensures consistency in European policies (2).

1. Combating the exposure of children to online pornography and compliance with the objectives of the proposed directive

“*Directive 2011/93/EU (the Directive) is a comprehensive legal instrument, which contains provisions on substantive criminal law harmonising definitions and criminal offences covering both offline and online acts. It also contains provisions in the area of prevention, investigation and prosecution of offences, as well as assistance to and protection of victims*”.³⁴

Providing for measures to prevent children’s exposure to online pornography is in line with the aims of the proposed directive, in particular combating all types of child sexual abuse (a), ensuring consistency between online and offline areas (b) and preventing further child sexual abuse (c).

a. Combating all types of sexual abuse of children

It is clear from the various documents issued as part of the initiative to revise European law on combating child sexual abuse that one of its aims is to broaden definitions in this area, so as to take account of all types of online child sexual abuse. The general objectives of this initiative include “[*combating*] and [*reducing*] child sexual abuse in all its forms”,³⁵ while one of the specific objectives is “*1. to ensure the criminalisation of all forms of online child sexual abuse and exploitation; (...)*”.³⁶ It is also intended to “[*bring*] to light issues that may

³¹ Recommendation Rec(2001)8 of the Committee of Ministers to member states on self-regulation concerning cyber content (self-regulation and user protection against illegal or harmful content on new communications and information services), 5.09.2001.

³² Proposal for a directive, February 6, 2024, COM(2024) 60 final , 2024/0035 (COD), p. 9.

³³ Commission staff working document, Executive summary of the impact assessment report, 6 February 2024, SWD(2024) 34 final (A. Need for action / Why? What is the problem?)

³⁴ Combined Evaluation Roadmap/Inception Impact Assessment, Ares(2021)5900229, A. Context.

³⁵ Combined Evaluation Roadmap/Inception Impact Assessment, Ares(2021)5900229, B. Objectives and Policy options

³⁶ Commission staff working document, Executive summary of the impact assessment report, 6 February 2024,

*not be addressed by the existing legal framework”.*³⁷

However, as highlighted in the first part, children’s exposure to online pornography is a form of sexual abuse, and the fight against it should therefore be fully included in the text of the proposed directive.

b. Ensuring consistency between online and offline areas

The online domain is not a lawless zone that should harm children. Preventing the exposure of minors to online pornography amounts to “*putting into practice the principle that what is illegal offline is illegal online*”,³⁸ a logical principle currently guiding European legislative efforts. This is also the case for the present initiative to revise European law in the fight against child sexual abuse: this is what emerges from the inception impact assessment, which defines as a specific objective to “*enable a coherent, coordinated approach to online and offline child sexual abuse*”.³⁹ Under the heading of likely social impacts, it expressly states that “*The proposed measures would help protect children offline and online*”.⁴⁰

Providing measures to prevent children’s exposure to online pornography is precisely part of this objective. Not to do so would be illogical, as showing a child pornographic material, or even simply leaving it within his or her reach, is generally punishable by law in the real world (see e.g. French Penal Code, Art. 227-24). So what about pop-ups and other means⁴¹ used in pornographic industry to attract more and more people to pages containing this type of content, with children also being caught in the net? Similarly, under French law, Article 222-32 of the Penal Code states that “*Sexual exhibition in public view in a place where it can be seen by the public is punishable by one year’ imprisonment and a fine of 15,000 euros. Even in the absence of exposure of a naked part of the body, sexual exhibition is constituted if the explicit commission of a sexual act, real or simulated, is imposed to the view of others in a place where it can be seen by the public. When the acts are committed to the detriment of a minor of fifteen years of age, the penalties are increased to two years’ imprisonment and a fine of 30,000 euros*”. However, this text has been interpreted by the courts as meaning that this offence is constituted even if the exposure of nudity to other people is unintentional in the facts: “*a person cannot be naked in his or her car or in his or her garden if passers-by or neighbors are likely to see him or her*”.⁴² Leaving online pornography within the reach of children thus bears certain similarities to sexual exhibition in the real world. In any case, the absence of any protective measures at the entrance to a pornographic site is tantamount to leaving the doors

SWD(2024) 34 final (What is this initiative expected to achieve?)

³⁷ Combined Evaluation Roadmap/Inception Impact Assessment, Ares(2021)5900229 (Problem the initiative aims to tackle).

³⁸ « DSA : le règlement sur les services numériques vise une responsabilisation des plateformes », Vie publique, 5 July 2022 : [https://www.vie-publique.fr/eclairage/285115-dsa-le-reglement-sur-les-services-numeriques-ou-digital-services-act#:~:text=Le%20futur%20r%C3%A8glement%20DSA%20\(pour.europ%C3%A9en%20le%205%20juillet%202022](https://www.vie-publique.fr/eclairage/285115-dsa-le-reglement-sur-les-services-numeriques-ou-digital-services-act#:~:text=Le%20futur%20r%C3%A8glement%20DSA%20(pour.europ%C3%A9en%20le%205%20juillet%202022)

³⁹ Combined Evaluation Roadmap/Inception Impact Assessment, Ares(2021)5900229, B. Objectives and Policy options

⁴⁰ Combined Evaluation Roadmap/Inception Impact Assessment, Ares(2021)5900229, C. Preliminary Assessment of Expected Impacts

⁴¹ See Ennocence, Réseaux sociaux, streaming, live streaming et téléchargement illégal : nouvelles portes d’entrée des enfants vers le monde de la pornographie, premier pas vers une sensibilisation de notre société sur ces sujets, 2016.

⁴² Olivier Le Bot, « Le nu et le droit », *Dalloz*, 5 février 2015 : <https://actu.dalloz-etudiant.fr/focus-sur/article/le-nu-et-le-droit/h/57e9a7659d73aba85342921efee3e117.html>

of a brothel open and unguarded, allowing anyone, including children, to enter and observe what is happening there. If a simple *disclaimer* is used prior to accessing the site, this is tantamount to posting a bouncer at the entrance to the same brothel, who would ask the teenager if he is 18 years old and then let him in as soon as he says that this is indeed the case. So it is time to take steps to remedy the inconsistency of such situations.

c. Prevent further sexual abuse of children

The need to prevent sexual abuse is widely recognized and is also one of the aims of the initiative to revise European law on combating child sexual abuse. And to prevent sexual abuse, we need to tackle its causes. It turns out that if children’s exposure to online pornography is a form of sexual abuse, it is also one of the causes of a multitude of sexual abuses committed against children by other children: thus this online sexual abuse sometimes gives rise to others, particularly offline. So it is particularly timely to combat them all on a common front, by preventing children’s exposure to online pornography.

The inception impact assessment states that “*Child victims of sexual abuse are more likely to engage in violent and criminal behaviours*”,⁴³ while PACE acknowledges that early exposure to pornography “*can lead to sexual violence*”.⁴⁴ Indeed, a correlation between pornography consumption and sexual violence between young people has been noted:⁴⁵ “*the patients we meet frequently mention repeated contact with, or even massive use of, pornography, as in the case of 15-year-old Mohamed (...), who has been charged with sexual assault on girls at his school and with the rape of two of his neighbors aged under 10*”.⁴⁶ It is disturbing to observe, as does the French Ministry of Justice, that with a “*significant increase between 1996 and 2018, almost one in two cases of rape and sexual assault of minors handled by the public prosecutor’s office in 2020 involves a minor perpetrator (at the time of the events)*”,⁴⁷ i.e. precisely during the rise of the internet. In a resolution on pornography, PACE notes that “*Law-enforcement authorities have reported a massive spike in cases of harmful sexual behaviour by children*”.⁴⁸

This is hardly surprising, since it is common knowledge that violence is omnipresent in pornography. According to an analysis of the 50 most popular pornographic videos, 88% of scenes contain physical violence, and 49% contain at least one verbal assault.⁴⁹ In the

⁴³ Combined Evaluation Roadmap/Inception Impact Assessment, Ares(2021)5900229, C. Preliminary Assessment of Expected Impacts / Likely economic impacts.

⁴⁴ PACE, Fighting the over-sexualisation of children, Resolution 2119 (2016), 21 June 2016, § 2.

⁴⁵ See e.g.. Olivia Sarton et Claire de Gatellier (dir.), *Violences sexuelles entre mineurs. Agir, Prévenir, Guérir... Les spécialistes répondent*, Artège, 2023.

⁴⁶ Barbara Smaniotto, « Réflexions autour de l’impact de la pornographie... sur la sexualité adolescente », *Revue de l’enfance et de l’adolescence*, 2017/1 (n° 95), p. 47-56 (our translation). See Juristes pour l’enfance & Famille et Liberté, *Violences sexuelles entre mineurs – Agir, Prévenir, Guérir*, Colloque, 28 November 2022 : <https://www.juristespourl'enfance.com/wp-content/uploads/2023/01/DOSSIER-DE-PRESSE.pdf> and Center for Family and Human Rights, *Dismantling the Pornography Industry and Making the Internet Safe for Children*, 23 février 2022, <https://c-fam.org/event/dismantling-the-pornography-industry-and-making-the-internet-safe-for-children/> : In Kansas City, it was found that half the perpetrators of sexual violence against girls under the age of 10 were boys aged between 11 and 15, and the cause is likely to be exposure to pornography.

⁴⁷ Marie Romero, *La prise en charge des mineurs auteurs d’infractions à caractère sexuel à la protection judiciaire de la jeunesse*, Rapport de recherche, Ministère de la Justice, October 2022 :

http://www.justice.gouv.fr/art_pix/rapport_recherche_maics.pdf ; République française, « Mineurs auteurs d’infractions sexuelles : quelle prise en charge ? », *Vie publique*, 23 January 2023 : <https://www.vie-publique.fr/en-bref/287879-mineurs-auteurs-dinfractions-sexuelles-quelle-prise-en-charge>

⁴⁸ PACE, For an assessment of the means and provisions to combat children’s exposure to pornographic content, Resolution 2429 (2022), §3.

⁴⁹ Ana J. Bridges, Robert Wosnitzer, Erica Scharrer, Chyng Sun, Rachael Liberman, “Aggression and Sexual

documentary *Pornocratie: les nouvelles multinationales du sexe*, actresses testify to the increase in this violence: “it has become more brutal, people have gone crazy, much crazier than before”.⁵⁰ By contributing to the normalization of rape and violence, viewing pornographic videos is a risk factor for sexual offences.⁵¹ In 1993, the European Parliament recognized that “pornography is an affront to human dignity and stimulates certain symptoms of undesirable social behaviour, particularly against women”.⁵² A report presented to the PACE further highlighted that “Watching porn frequently, is one important risk factor for sexual offenses, which can be traced back in the lives of convicted perpetrators. Amongst high rate consumers of porn, sexual aggression is much more likely to occur”.⁵³ Finally, “adolescent porn use increases the development of intrapsychic sexual scripts, which contain ambiguous communication (“No means yes”) or sexual aggression”.⁵⁴

If it seems that children’s exposure to online pornography may constitute a risk factor for sexually abusing other children, then it is necessary to prevent by all means that pornographic content can be viewed by children in order to avoid as far as possible the reproduction of behavior seen in this type of content. This would involve applying a similar line of reasoning to the offences relating to child sexual abuse material covered by article 5 of the proposed directive: the criminalization of such material is justified because it could incite the perpetrator to commit the act. This is precisely what the proposal for a directive itself states in its new recital 11: “Research has shown that limiting the dissemination of child sexual abuse material is [...] essential as a form of offender-side prevention, as accessing child sexual abuse material is often the first step towards hands-on abuse, regardless of whether it depicts real or simply realistic abuse and exploitation”.

2. Minimum rules to ensure consistency in European policies

Taking advantage of the revision of European rules on combating the sexual abuse and exploitation of children to lay down minimum rules, both in terms of criminal law⁵⁵ and in terms of obligations on online service providers, to prevent children’s exposure to online pornography, would ensure consistency in European policies. Failure to address this issue would, on the contrary, represent a gap, while one of the aims of this revision is to “[ensure]

Behavior in Best-Selling Pornography Videos: A Content Analysis Update”, *Violence against Women* 16, no. 10 (2010): 1065-1085.

⁵⁰ FigaroLIVE, *On ne parle que de ça*, with Charlotte Barrillon-Dennebouy : Ovidie : « On a atteint un stade de violence inouïe dans le porno », 13 January 2017 : <https://youtu.be/1kXt-sfkuMA>

⁵¹ See the extreme but notable examples of Theodore Robert Bundy and Arthur Gary Bishop, serial killers and consumers of pornography and child pornography: in Victor B. Cline, “Pornography’s Effects on Adults and Children”, *Morality in Media*, 2001: <https://fr.scribd.com/doc/20282510/Dr-Victor-Cline-Pornography-s-Effects-on-Adults-and-Children#scribd>

⁵² European Parliament, Resolution on Pornography, December 17, 1993, Official Journal of the European Communities No. C 20/547 of January 24, 1994, cons. B.

⁵³ APCE, Gender aspects and human rights implications of pornography, Report, Doc. 15406, 18 November 2021, § 24. See Vanessa Vega, Neil M. Malamuth, “Predicting sexual aggression: the role of pornography in the context of general and specific risk factors”, *Aggressive Behaviour*, Vol. 33, Issue 2, March/April 2007, pp 104-117 ; DOI: Frequent users of pornography. A population based epidemiological study of Swedish male adolescents», Carl Göran Svedin, Ingrid Åkerman, Gisela Priebbe, *Journal of Adolescence*, 2011.

⁵⁴ APCE, Gender aspects and human rights implications of pornography, Rapport, Doc. 15406, 18 novembre 2021, § 25. See Isabell Schuster, Paulina Tomaszewska, Barbara Krahé, “Changing Cognitive Risk Factors for Sexual Aggression: Risky Sexual Scripts, Low Sexual Self-Esteem, Perception of Pornography, and Acceptance of Sexual Coercion”, *Journal of Interpersonal Violence*, 2020 ; Kara Anne E. Rodenhizer, Katie M. Edwards, “The Impacts of Sexual Media Exposure on Adolescent and Emerging Adults’ Dating and Sexual Violence Attitudes and Behaviors: A Critical Review of the Literature”, *Trauma, Violence & Abuse*, 2019.

⁵⁵ See article 1 (subject matter) of the proposed directive.

that there are no gaps in the EU legislative framework on combatting child sexual abuse and sexual exploitation".⁵⁶ The European Union, in particular the Commission, therefore needs to effectively address the issue of children's exposure to online pornography.

In 1993, the European Parliament stated in its Resolution on Pornography that "*although the prevention and possible suppression of pornography are the Member States' responsibility, forming part of their power to maintain law and order, the Community cannot ignore this problem, especially as it is linked in several ways with the abolition of internal frontiers between Member States*", and that "*Community competence is justified by the new framework within which the forces of law and order operate, i.e. an area without frontiers in which persons and goods, services and capital theoretically enjoy freedom of movement*".⁵⁷ In the same text, the European Parliament proposed that "*the potential victims of pornography should be protected at the same time and by the same means while sparing those who are shocked or offended by the use and/or abuse of a freedom and those for whom pornographic products are not by nature intended*".⁵⁸ It recommended the "*adoption of an appropriate method of distribution ([...]distribution criteria that take account of the recipients' age—ban on sales to minors—etc.), particular attention having to be paid in this context to the latest distribution channel, cable television*".⁵⁹ These last two words could now be replaced by "internet".

In 2018, the revision of Directive 2010/13/EU (Audiovisual Media Services) by Directive (EU) 2018/1808 inserted a new Article 28b stating that "*Member States shall ensure that video-sharing platform providers under their jurisdiction take appropriate measures to protect: (a) minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development in accordance with Article 6a(1)*", the latter stating that "*Member States shall take appropriate measures to ensure that audiovisual media services provided by media service providers under their jurisdiction which may impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see them*".

The explanatory memorandum to the proposed directive also states that it is "*consistent with related Union policy*" in that "*it complements the EU legal framework regulating digital services, most notably the recently adopted Digital Services Act*".⁶⁰ In December 2023, the European Commission decided to include three major pornographic sites in the list of "very large online platforms" under this Regulation, which could help to improve child safety on the internet from this point of view. This status implies reinforced obligations, notably in terms of an annual assessment of the systemic risks linked to the services offered by the platform, including "*the dissemination of illegal content*", "*any actual or foreseeable negative effects for the exercise of fundamental rights, in particular the fundamental rights [...] to respect for the rights of the child*", as well as "*any actual or foreseeable negative effects in relation to [...] the protection of public health and minors and serious negative consequences to the*

⁵⁶ Combined Evaluation Roadmap/Inception Impact Assessment, Ares(2021)5900229, Likely impacts on fundamental rights.

⁵⁷ European Parliament, Resolution on Pornography, December 17, 1993, Official Journal of the European Communities No. C 20/547 of January 24, 1994, cons. D and E.

⁵⁸ Ibid., §14.

⁵⁹ Ibid., § 14,e.

⁶⁰ Proposal for a Directive, February 6, 2024, COM(2024) 60 final, 2024/0035 (COD), p.9.

person's physical and mental well-being" (art. 34). Consequently, mitigating measures must be taken (art. 35), which may include "*targeted measures to protect the rights of the child, including age verification and parental control tools [...]*". While the ECLJ welcomes and congratulates the Commission on its decision to designate these three pornographic sites as "very large online platforms", it wishes to draw the Commission's attention to the fact that such a measure remains far inadequate to effectively protect children from online pornography. It would therefore make sense for the review of European rules on combating the sexual abuse and exploitation of children to provide an opportunity effectively combat children's exposure to online pornography.

From this point of view, it is important for the Commission to reflect on the scope of the recent *Google Ireland and Others* judgment (C-376/22) handed down by the Court of Justice of the European Union on November 9, 2023. While it has been criticized for "*favouring the free circulation of digital services over the public order requirements of child protection*", should the Commission not see it as "*a way for the Court to force the European Union to finally legislate to protect children, by tacitly but necessarily affirming that texts are needed to keep them away from pornographic services that destroy them, European standards that will then apply in France, the Czech Republic, Malta, etc.*"?⁶¹

⁶¹ Read Marie-Anne Frison-Roche and Olivia Dufour, [You Porn : La CJUE face au défi de la protection des mineurs](#), Actu-Juridique.fr, 11.03.2024.