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*Committee on Civil Liberties, Justice and Home Affairs*

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**2010/0064(COD)**

16.12.2010

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## **DRAFT REPORT**

on the proposal for a directive of the European Parliament and of the Council on combating sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA (COM(2010)0094 – C7-0088/2010 – 2010/0064(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Roberta Angelilli

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council on combating sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA (COM(2010)0094 – C7-0088/2010 – 2010/0064(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2010)0094),
  - having regard to Article 294(2), and Article 82(2) and Article 83(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0088/2010),
  - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to Rules 55 and 37 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Culture and Education and the Committee on Women's Rights and Gender Equality (A7-0000/2010),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### **Proposal for a directive**

##### **Recital 1**

*Text proposed by the Commission*

(1) Sexual abuse and sexual exploitation of children, including child pornography constitute serious violations of fundamental rights, in particular the rights of the child to protection and care as is necessary for his or her well-being as

*Amendment*

(1) Sexual abuse and sexual exploitation of children, including child pornography constitute serious violations of fundamental rights, in particular the rights of the child to protection and care as is necessary for his or her well-being as

stipulated by the UN Convention on the Rights of the Child and the Charter of Fundamental Rights of the European Union.

stipulated by the UN Convention on the Rights of the Child *and its Optional Protocols thereto, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* and the Charter of Fundamental Rights of the European Union (*Charter*).

Or. en

#### *Justification*

*Additional internal instruments have to be listed here, especially the 2007 Council of Europe Convention on the Protection of children against Sexual Exploitation and Sexual Abuse as the most modern international instrument in that field.*

## **Amendment 2**

### **Proposal for a directive Recital 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***(1a) The legally binding nature of the provisions of the Charter, in accordance with Article 6 of the Treaty on European Union, introduced a new stage in the level of protection of children, as Article 24(2) of the Charter provides for the mainstreaming of child protection. Moreover, the multiannual Stockholm Programme - an open and Secure Europe Serving and Protecting Citizens<sup>1</sup>, adopted by the European Council, gives a clear priority to combating the sexual abuse and sexual exploitation of children, and child pornography.***

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<sup>1</sup> OJ L 115, 4.5.2010, p. 1.

Or. en

#### *Justification*

*With the entry into force of the Treaty of Lisbon the EU Charter of Fundamental Rights acquired full legally binding nature, whereby Article 24 of the Charter demands do take into*

*account the child's best interest in all activities related to children undertaken by public authorities or private institutions.*

### **Amendment 3**

#### **Proposal for a directive Recital 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3a) Rights of child victims in criminal proceedings should be strengthened, including, in addition to the rights set out in Framework Decision 2001/220/JHA, rights such as obligatory and free legal counselling and representation in all cases of sexual abuse and sexual exploitation of children.***

Or. en

*Justification*

*The legal counselling to and representation of child victims of sexual abuse and exploitation should be mandatory and free of costs in all cases, as a child needs such counselling and representation to fully understand and use his rights.*

### **Amendment 4**

#### **Proposal for a directive Recital 7 a (new)**

*Text proposed by the Commission*

*Amendment*

***(7a) Member States should ensure the promotion and protection of children's rights against any form of sexual abuse and sexual exploitation by reaching the highest level of prevention. This directive should be seen as part of integrated action to ensure prevention, in particular through appropriate school education programmes, including in the framework of the regular educational system, awareness-raising campaigns, research, exchanges of best practices and***

*cooperation between public authorities and non-governmental organisations, service providers and tour operators, as regards the danger of sexual abuse, sexual exploitation and child pornography, as well as regards the rights of victims and steps to be taken in the case of such abuse or suspected abuse. Those measures should be addressed to all parties concerned, including children, parents and education practitioners. The same objectives should be considered as an integral part of Union negotiations with third countries.*

Or. en

#### *Justification*

*The provisions which cover the criminal aspects and the preventive measures for the defence of children against abuse should be seen as part of an integrated approach to reach objectives in line with the 2007 Council of Europe Lanzarote Convention to encourage awareness of the protection and rights of children among persons who have regular contacts with children in the education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities.*

#### **Amendment 5**

##### **Proposal for a directive Recital 8**

###### *Text proposed by the Commission*

(8) Investigating offences and bringing charges in criminal proceedings should be facilitated, to take into account the difficulty for child victims of denouncing abuse and the anonymity of offenders in cyberspace. To ensure successful investigations and prosecutions of the offences referred to in this Directive, ***effective investigation tools should be made available to those responsible for the investigation and prosecutions of such offences. These tools may include covert operations, interception of communications, covert surveillance***

###### *Amendment*

(8) Investigating offences and bringing charges in criminal proceedings should be facilitated, to take into account the difficulty for child victims of denouncing abuse and the anonymity of offenders in cyberspace. To ensure successful investigations and prosecutions of the offences referred to in this Directive, ***Member States should encourage any person who has, in good faith, a suspicion or knowledge about sexual abuse or exploitation of a child, to report the matter to the competent services. Regarding the system of reporting sexual***



*including electronic surveillance, monitoring of bank accounts or other financial investigations.*

*abuse and sexual exploitation of children and helping children in need, Union hotlines under the number 116 000 for missing children, 116 006 for victims of crime and 116 111 for children, as introduced by Commission Decision 2007/116/EC of 15 February 2007 on reserving the national numbering beginning with 116 for harmonised numbers for harmonised services of social value<sup>1</sup> as amended by Decision 2009/884/EC of 30 November 2009<sup>2</sup>, should be promoted and experience with their functioning taken into account.*

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<sup>1</sup> OJ L 49, 17.2.2007, p. 30.

<sup>2</sup> OJ L 317, 3.12.2009, p. 46.

Or. en

#### *Justification*

*Encouragement of reporting cases of sexual abuse and exploitation of children should be highlighted. In that regard existing EU mechanisms (telephone numbers of social value) have to be analysed and taken into account.*

### **Amendment 6**

#### **Proposal for a directive Recital 8 a (new)**

*Text proposed by the Commission*

*Amendment*

***(8a) Effective investigation tools and full cross-border cooperation to ensure rapid and efficient access to criminal records and international child abuse databases should be made available to those responsible for the investigation and prosecutions of such offences, as children are entitled, as confirmed by the European Court of Human Rights, to State protection, in the form of effective deterrence, from such grave types of interference with essential aspects of their private lives. Such tools may include***

*disclosure of identity of internet users, covert operations, interception of communications, covert surveillance including electronic surveillance, monitoring of bank accounts or transfers or other financial investigations, taking into account the principle of proportionality and subject to judicial overview.*

Or. en

#### *Justification*

*The application of investigation tools should be placed in a separate recital, indicating their limits in accordance with basic human rights principles, such as proportionality and judicial overview. Because of the nature of the crimes and of the several cases of lack of communication in identifying paedophiles between Member States, a cross border intelligence system for the national police should be promoted to ensure full cooperation in the investigation systems to prevent risks, ensure identification of offenders and identification and protection of the victims.*

#### **Amendment 7**

##### **Proposal for a directive Recital 9**

###### *Text proposed by the Commission*

(9) Rules on jurisdiction should be amended to ensure that child sexual abusers or exploiters from the European Union face prosecution even if they commit their crimes outside the European Union, in particular via so-called sex tourism.

###### *Amendment*

(9) Rules on jurisdiction should be amended to ensure that child sexual abusers or exploiters from the European Union face prosecution even if they commit their crimes outside the European Union, in particular via so-called ***child sex tourism. Offences committed against children in the context of travel abroad should be considered as having been committed in aggravating circumstances.***

Or. en

#### *Justification*

*Child sex tourism grows at an alarming rate and inflicts devastating consequences on millions of children around the globe. In the recital it should be already stressed that in order to strengthen the prevention of this practice it is essential to reinforce deterrence by providing higher sanctions for the crimes if committed abroad in the context of travelling.*

## Amendment 8

### Proposal for a directive Recital 10

#### *Text proposed by the Commission*

(10) Measures to protect child victims should be adopted in their best interest, taking into account an assessment of their needs. Child victims should have easy access to legal remedies, including free legal counselling and representation and measures to address conflicts of interest where abuse occurs in the family. Moreover, child victims should be protected from sanctions, for example under national legislation on immigration or prostitution, if they bring their case to the attention of competent authorities. Furthermore, participation in criminal proceedings by child victims should not cause additional trauma as a result of interviews or visual contact with offenders.

#### *Amendment*

(10) Measures to protect child victims ***and measures to adapt the justice system dealing with them*** should be adopted in their best interest, taking into account an assessment of their needs, ***and of their right to be protected against the risk of repeated victimisation, especially through violation of their privacy, and giving their opinions and views due weight, as envisaged, for example, in the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime and in the Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice.*** Child victims should have easy access to legal remedies, including free legal counselling and representation and measures to address conflicts of interest where abuse occurs in the family. ***In that regard they should be fully informed about their rights, the services at their disposal, the progress and outcome of the proceedings, and legal counselling and representation should also be provided for claiming compensation.*** Moreover, child victims should be protected from sanctions, for example under national legislation on immigration or prostitution, if they bring their case to the attention of competent authorities. Furthermore, participation in criminal proceedings by child victims should not cause additional trauma as a result of interviews or visual contact with offenders.

Or. en

### *Justification*

*Secondary victimisation has to be avoided. It should be also highlighted that justice dealing with children and especially with child victims has to be adapted to their needs, as envisaged by the recently adopted Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, welcomed by the European Commission and the EU Fundamental Rights Agency.*

### **Amendment 9**

#### **Proposal for a directive**

#### **Recital 10 a (new)**

*Text proposed by the Commission*

*Amendment*

***(10a) Child victims of sexual abuse and sexual exploitation should receive short and long-term assistance. Any harm caused by the sexual abuse and sexual exploitation of a child is significant and should be addressed. Because of the nature of the harm caused by sexual abuse and sexual exploitation, such assistance should continue for as long as necessary for the child's complete physical and psychological recovery and may last into adulthood if necessary.***

Or. en

### *Justification*

*The long-term need of aid for victims of sexual abuse and exploitation of children has to be highlighted.*

### **Amendment 10**

#### **Proposal for a directive**

#### **Recital 10 b (new)**

*Text proposed by the Commission*

*Amendment*

***(10b) Member States should put in place preventive protection measures in accordance with their national law to avoid contact between the child victims***

*and the offenders after the start of criminal proceedings, even before conviction. Child victims and their families should have the benefit of cross-border protection against their offenders within the framework of a European Protection Order.*

Or. en

#### *Justification*

*It is important to stress the need for children's protection and of their families already at the moment of the reporting of the crime before the conviction.*

### **Amendment 11**

#### **Proposal for a directive**

##### **Recital 13**

#### *Text proposed by the Commission*

(13) Child pornography, ***which constitutes sex abuse images***, is a specific type of content which cannot be construed as the expression of an opinion. To combat it, it is necessary to ***reduce the circulation of child abuse material by making it more difficult for offenders to upload such content onto the publicly accessible Web. Action is therefore necessary to remove the content at source and apprehend those guilty of making distributing or downloading child abuse images.*** The EU, in particular through increased cooperation with third countries and international organisations, should seek to facilitate the effective removal by third country authorities of websites containing child pornography, which are hosted in their territory. However as, despite such efforts, the removal of child pornography content at its source proves to be difficult where the original materials are not located within the EU, mechanisms should also be put in place to block access from the Union's territory to internet pages identified as

#### *Amendment*

(13) Child pornography, which constitutes ***child abuse material***, is a specific type of content which cannot be construed as the expression of an opinion. To combat it, it is necessary to ***ensure the full removal of the images from the source of the web. In addition, Member States may proceed with the means they consider most appropriate for an immediate intervention to stop further viewing and downloading of the image to prevent further damages to the victim. In any event, they should start immediately procedures to reach complete removal of the images from the source and to identify the offenders.*** The EU, in particular through increased cooperation with third countries and international organisations, should seek to facilitate the effective removal by third country authorities of websites containing child pornography, which are hosted in their territory. However as, despite such efforts, the removal of child pornography content at its source proves to be difficult where the original materials are not located

containing or disseminating child pornography. For that purpose, different mechanisms can be used as appropriate, including *facilitating the competent judicial or police authorities to order such blocking, or supporting and stimulating* Internet Service Providers on a voluntary basis to develop codes of conduct and guidelines for blocking access to *such* Internet pages. Both with a view to the removal and the blocking of child abuse content, cooperation between public authorities should be established and strengthened, particularly in the interest of ensuring that national lists of websites containing child pornography material are as complete as possible and of avoiding duplication of work. Any such developments must take account of the rights of the end users, adhere to existing legal and judicial procedures and comply with the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. The Safer Internet Programme has set up a network of hotlines whose goal is to collect information and to ensure coverage and exchange of reports on the major types of illegal content online.

within the EU, mechanisms should also be put in place to block access from the Union's territory to internet pages identified as containing or disseminating child pornography. For that purpose, different mechanisms can be used as appropriate, including *supporting judicial and police authorities in accessing the most advanced investigative techniques, such as picture DNA and favouring the exchange of best practices*. Internet Service Providers *should be encouraged* on a voluntary basis to develop codes of conduct and guidelines for blocking access to Internet pages *containing child pornography*. Both with a view to the removal and the blocking of child abuse content, cooperation between public authorities should be established and strengthened, particularly in the interest of ensuring that national lists of websites containing child pornography material are as complete as possible and of avoiding duplication of work. Any such developments must take account of the rights of the end users, adhere to existing legal and judicial procedures and comply with the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. The Safer Internet Programme has set up a network of hotlines whose goal is to collect information and to ensure coverage and exchange of reports on the major types of illegal content online.

Or. en

#### *Justification*

*Even if the main aim shall be the complete removal of images from the web, it corresponds to the interest of the child that images will be made inaccessible within the shortest time. Therefore, MS should be allowed, in addition to trying to remove the images from the web, to proceed as well to blocking of the images if this corresponds to the interest of the child. The latest developments of ICT allows the tracking of a small part of the same pictures in the web with a technique called pictures DNA, and it would be important that those techniques would be available and exchanged between EU MS' authorities.*

## Amendment 12

### Proposal for a directive Recital 13 a (new)

*Text proposed by the Commission*

*Amendment*

***(13a) Any possible personal data processed when implementing this Directive should be protected in accordance with Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters<sup>1</sup> and in accordance with the principles laid down in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which all Member States have ratified.***

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<sup>1</sup> OJ L 350, 30.12.2008, p. 60.

Or. en

### *Justification*

*Any processing of personal data in the framework of the present directive has to fully comply with EU and Council of Europe data protection standards.*

## Amendment 13

### Proposal for a directive Recital 13 b (new)

*Text proposed by the Commission*

*Amendment*

***(13b) This Directive should be fully complementary with Directive 2011/.../EU of the European Parliament and the Council on preventing and combating trafficking in human beings, and protecting victims, replacing Framework***

***Decision 2002/629/JHA, as some victims of human trafficking have also been child victims of sexual abuse and sexual exploitation.***

Or. en

*Justification*

*It should be highlighted that the present directive and the directive on trafficking form part of the same fight against crime, especially as trafficking can be part of sexual abuse and exploitation of children.*

**Amendment 14**

**Proposal for a directive**

**Article 1**

*Text proposed by the Commission*

This Directive aims to establish minimum rules concerning the definition of criminal offences and sanctions in the area of sexual exploitation of children. It also aims to introduce common provisions to strengthen the prevention of the crime and the protection of its victims.

*Amendment*

This Directive aims ***to prevent the sexual abuse and sexual exploitation of children and to*** establish minimum rules concerning the definition of criminal offences and sanctions in the area of sexual exploitation of children. It also aims to introduce common provisions to strengthen the prevention of the crime and the protection of its victims.

Or. en

*Justification*

*Accent should be put on the need of protecting children.*

**Amendment 15**

**Proposal for a directive**

**Article 2 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

***(aa) 'age of sexual consent' shall mean the legal age according to national law to***



*engage in sexual activities;*

Or. en

*Justification*

*As requested by the Council of Europe Lanzarote Convention and to exactly define the content of the provisions on offences from Articles 3 to 7 it is need to clarify what the age of sexual consent is.*

**Amendment 16**

**Proposal for a directive**

**Article 2 – point b – introductory part**

*Text proposed by the Commission*

*Amendment*

(b) ‘child pornography’ shall mean

(b) ‘child pornography’ *or* ‘**child abuse material**’ shall mean:

Or. en

*Justification*

*The use of new and more adequate terminology in the form of "child abuse material" should be added and the use of such more adequate terminology encouraged.*

**Amendment 17**

**Proposal for a directive**

**Article 4 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Causing a child to participate in pornographic performances shall be punishable by a maximum term of imprisonment of at least **two years**.

2. Causing a child to participate in pornographic performances shall be punishable by a maximum term of imprisonment of at least **three years**.

Or. en

*Justification*

*Exploitation of abuse of children should be sanctioned with higher level of sanctions.*

## Amendment 18

### Proposal for a directive Article 4 – paragraph 3

*Text proposed by the Commission*

3. Profiting from or otherwise exploiting a child participating in pornographic performances shall be punishable by a maximum term of imprisonment of at least **two years**.

*Amendment*

3. Profiting from or otherwise exploiting a child participating in pornographic performances shall be punishable by a maximum term of imprisonment of at least **three years**.

Or. en

*Justification*

*Exploitation of abuse of children should be sanctioned with higher level of sanctions.*

## Amendment 19

### Proposal for a directive Article 4 – paragraph 4

*Text proposed by the Commission*

4. Knowingly attending pornographic performances involving the participation of children shall be punishable by a maximum term of imprisonment of at least **two years**.

*Amendment*

4. Knowingly attending pornographic performances involving the participation of children shall be punishable by a maximum term of imprisonment of at least **three years**.

Or. en

*Justification*

*Exploitation of abuse of children should be sanctioned with higher level of sanctions.*

## Amendment 20

### Proposal for a directive Article 4 – paragraph 6

*Text proposed by the Commission*

6. Causing a child to participate in child prostitution shall be punishable by a maximum term of imprisonment of at least **five years**.

*Amendment*

6. Causing a child to participate in child prostitution shall be punishable by a maximum term of imprisonment of at least **six years**.

Or. en

*Justification*

*Exploitation of abuse of children should be sanctioned with higher level of sanctions.*

## Amendment 21

### Proposal for a directive Article 4 – paragraph 7

*Text proposed by the Commission*

7. Profiting from or otherwise exploiting a child participating in child prostitution shall be punishable by a maximum term of imprisonment of at least **five years**.

*Amendment*

7. Profiting from or otherwise exploiting a child participating in child prostitution shall be punishable by a maximum term of imprisonment of at least **six years**.

Or. en

*Justification*

*Exploitation of abuse of children should be sanctioned with higher level of sanctions.*

## Amendment 22

### Proposal for a directive Article 4 – paragraph 8

*Text proposed by the Commission*

8. Engaging in sexual activities with a child, where recourse is made to child prostitution shall be punishable by a maximum term of imprisonment of at least

*Amendment*

8. Engaging in sexual activities with a child, where recourse is made to child prostitution shall be punishable by a maximum term of imprisonment of at least

*five years.*

*six years.*

Or. en

*Justification*

*Exploitation of abuse of children should be sanctioned with higher level of sanctions.*

**Amendment 23**

**Proposal for a directive  
Article 6**

*Text proposed by the Commission*

Member States shall take the necessary measures to ensure that the following intentional conduct is punishable:

The proposal, by means of information and communication technology, by an adult to meet a child ***who has not reached the age of sexual consent under national law***, for the purpose of committing any of the offences referred to in *Articles 3 (3) and Article 5 (6)*, where this proposal has been followed by material acts leading to such a meeting, shall be punishable by a maximum term of imprisonment of at least two years.

*Amendment*

**1.** Member States shall take the necessary measures to ensure that the following intentional conduct is punishable:

The proposal, by means of information and communication technology, by an adult to meet a child, for the purpose of committing any of the offences referred to in *Article 3 (3) and Article 5 (6)*, where this proposal has been followed by material acts leading to such a meeting, shall be punishable by a maximum term of imprisonment of at least two years.

***1a. If it is proven that the offender intentionally used technological means to target a great number of children to multiply his chances of committing the crime, Member States should ensure that, independently from previous convictions for the same crime, that practice shall be considered to be an aggravating factor and shall be subject to a higher penalty than the basic crime of solicitation of children for sexual purposes.***

Or. en

*Justification*

*This kind of "contact offences" should be punished with a higher sanction if committed systematically as a practice targeting a plurality of children to multiply chances of success.*

## Amendment 24

### Proposal for a directive Article 8

#### *Text proposed by the Commission*

The provisions of Article 3(2), with regard to witnessing sexual activities, and (3); Article 4(2) and (4) and Article 5 do not govern consensual sexual activities between children or involving persons who are close in age and degree of psychological and physical development or maturity, insofar as the acts did not involve any abuse.

#### *Amendment*

The provisions of Article 3(2), with regard to witnessing sexual activities, and (3); Article 4(2) and (4) and Article 5 do not govern consensual sexual activities between children or involving persons who are close in age and degree of psychological and physical development or maturity, insofar as the acts did not involve any abuse ***and they comply with national law concerning age of sexual consent.***

Or. en

#### *Justification*

*To respect the subsidiarity principle and since this matter is still in the remits of Member States with different approaches linked to traditions a reference to national legislation should be added.*

## Amendment 25

### Proposal for a directive Article 8 – paragraph 1 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***1a. Member States shall ensure that where offences concerning child pornography under Article 5 are committed by a child, they shall be subject to appropriate alternative measures adapted to specific re-educational needs under national law, having due regard to the age of the offender, the need to avoid criminalisation and the objective of social reintegration of the child.***

Or. en

*Justification*

*With regard to offences related to use of ICT technologies which are now growing between children already at school level and often as part of bullying practices, it is essential to sanction those behaviours with appropriate measures even if the offender is a child.*

**Amendment 26**

**Proposal for a directive**

**Article 9 – paragraph 1 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

***(da) the offence has been committed as part of an organised activity for the main purpose of economic revenue;***

Or. en

*Justification*

*It is important to stop the economic exploitation of abused children.*

**Amendment 27**

**Proposal for a directive**

**Article 9 – paragraph 1 – point d b (new)**

*Text proposed by the Commission*

*Amendment*

***(db) the offence was committed in the context of travel abroad, where such travel was organised or undertaken for the main purpose of committing any of the offences referred to in Articles 3 to 6;***

Or. en

*Justification*

*Child sex tourism grows at an alarming rate and inflicts devastating consequences on millions of children around the globe. In the recital it should be already stressed that in order to strengthen the prevention of this practice it is essential to reinforce deterrence by providing higher sanctions for the crimes if committed abroad in the context of travelling.*

## Amendment 28

### Proposal for a directive Article 10 – paragraph 1

*Text proposed by the Commission*

1. In order to avoid the risk of repetition of offences, Member States shall take the necessary measures to ensure that a natural person who has been convicted of any of the offences referred to in Articles 3 to 7 may be temporarily or permanently prevented from exercising activities involving regular contacts with children.

*Amendment*

1. In order to avoid the risk of repetition of offences, Member States shall take the necessary measures to ensure that a natural person who has been convicted of any of the offences referred to in Articles 3 to 7 may be temporarily or permanently prevented from exercising **professional** activities involving regular contacts with children. ***The measures referred to in this paragraph shall be entered in the criminal record of the convicting Member State.***

Or. en

*Justification*

*It should be clarified that it applies to professional activities involving regular contacts with children.*

## Amendment 29

### Proposal for a directive Article 10 – paragraph 2

*Text proposed by the Commission*

2. Member States shall take the necessary measures to ensure that ***the measure referred to in paragraph 1 is entered in the criminal record of the convicting Member State.***

*Amendment*

2. Member States shall take the necessary measures to ensure that ***when recruiting for professional activities which involve contacts with children, employers shall be entitled to obtain information from competent authorities concerning the existence of convictions for an offence referred to in Articles 3 to 7 or of any additional measure related to those convictions which prevents them from exercising activities involving contacts with children. If serious suspicion should arise during working relations, employers may, in accordance with national law,***

*request such information even after the recruitment procedure. Member States authorities shall ensure, by any appropriate means and in accordance with national law, that such information may also be obtained from the criminal records held in other Member States.*

Or. en

#### *Justification*

*It is important that the employer should have full access to the criminal records bearing convictions as well as information concerning measures of disqualification either in their own country or in a different EU Member State. Moreover, if an employer should get information after recruitment that the employee hired to deal with children had been convicted for paedophilia in another Member State, he should be entitled to ask for information on this even after the recruitment.*

#### **Amendment 30**

##### **Proposal for a directive Article 10 – paragraph 3**

###### *Text proposed by the Commission*

3. By way of derogation from Articles 7(2) and 9(2) of the Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from criminal records between Member States, Member States shall ***take the necessary measures to ensure that, for the purpose of effectively implementing the measure consisting in temporarily or permanently preventing the person from exercising activities involving regular contacts with children, in particular insofar as the requesting Member State subjects access to certain activities to conditions to ensure that candidates have not been convicted of any of the offences referred to in Articles 3 to 7 of this Directive, information concerning the disqualification arising from conviction of any of the offences referred to in Articles 3 to 7 of this***

###### *Amendment*

3. By way of derogation from Articles 7(2) and 9(2) of the Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from criminal records between Member States, Member States shall ***ensure full cooperation and availability of all information when replying to requests by competent authorities of other Member States submitted according to Article 10(2).*** *Personal data concerning such disqualification provided under Article 7(2) and (4) of that Framework Decision may in any case be used for such purpose.*



***Directive is transmitted when requested under Article 6 of that Framework Decision from the central authority of the Member State of the person's nationality, and that personal data concerning such disqualification provided under Article 7(2) and (4) of that Framework Decision may in all cases be used for such purpose.***

Or. en

*Justification*

*Full cooperation and information exchange on request between Member States has to be insured.*

**Amendment 31**

**Proposal for a directive  
Article 12 – paragraph 1 – point e a (new)**

*Text proposed by the Commission*

*Amendment*

***(ea) confiscation of economic revenue arising from the offences.***

Or. en

*Justification*

*It is important to ensure that revenues deriving from commission of the crime should not remain the property of the criminal organisation or the person who committed those crimes.*

**Amendment 32**

**Proposal for a directive  
Article 15 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Member States shall take any appropriate measures to contribute to the creation of an international child sexual exploitation image database.***

*Justification*

*In order to alert police about the sexual exploitation of children and to allow victim identification, there is the need to obtain a quick alert about pages with child pornography content.*

**Amendment 33**

**Proposal for a directive**

**Article 16 – paragraph 1 – point d**

*Text proposed by the Commission*

(d) the offence is committed for the benefit of a legal person **established** in the territory of that Member State.

*Amendment*

(d) the offence is committed for the benefit of a legal person **having the legal seat or place of establishment** in the territory of that Member State.

*Justification*

*Sometimes the place of establishment and the legal seat do not coincide. In both cases jurisdiction should be ensured.*

**Amendment 34**

**Proposal for a directive**

**Article 17 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. Member States shall ensure in case of sexual abuse and sexual exploitation committed within a family context that the necessary measures are undertaken to protect and provide assistance to the child victim as well as to other family members who were not involved in the offence.**

*Justification*

*To underline the need to preserve the psychological balance and the right of abused children to maintain contacts with their families.*

**Amendment 35**

**Proposal for a directive**

**Article 19 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Member States shall guarantee the respect of privacy and image of child victims and shall prevent the public dissemination of any information relating to them that could lead to their identification.***

Or. en

*Justification*

*Child victims must be protected from all forms of violation of their private sphere.*

**Amendment 36**

**Proposal for a directive**

**Article 19 – paragraph 3 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(ba) interviews with the child victim shall take place, as far as possible, in the absence of the offender;***

Or. en

*Justification*

*This element should be added to ensure that the child may speak without the fear of meeting again the offender.*

## Amendment 37

### Proposal for a directive Article 21

*Text proposed by the Commission*

#### Article 21

Blocking access to websites containing child pornography

1. Member States shall take the necessary measures to obtain the **blocking of access by Internet users in their territory to Internet pages** containing or disseminating child pornography. The blocking of access shall be subject to adequate safeguards, in particular to ensure that the blocking is limited to what is necessary, that users are informed of the reason for the blocking and that content providers, as far as possible, are informed of the possibility of challenging it.

2. **Without prejudice to the above, Member States shall take the necessary measures to obtain the removal of internet pages containing or disseminating child pornography**

*Amendment*

#### Article 21

**Removal of and** blocking access to websites containing child pornography

Member States shall take the necessary measures to obtain the **removal at source of the web page** containing or disseminating child pornography. **In addition, in order to protect the best interest of the child, Member States may set up procedures to block access by Internet users in their territory to Internet pages containing or disseminating child pornography in accordance with national law.** The blocking of access shall be subject to adequate safeguards, in particular to ensure that the blocking is limited to what is necessary, that users are informed of the reason for the blocking and that content providers, as far as possible, are informed of the possibility of challenging it.

Or. en

#### *Justification*

*The complete removal of images should be a priority. In the interest of the child, Member States may proceed in addition to immediate blocking when they think it corresponds to the best interest of the child.*

## **EXPLANATORY STATEMENT**

### **1. BACKGROUND OF THE PROPOSAL**

Child abuse entails the perpetration of horrendous crimes striking at the physical and mental health of children and adolescents and marking them for life. Sexual exploitation of children reduces children or adolescents to sexual objects, profiting from their suffering. Studies show that in Europe between 10 % and 20 % of minors may be sexually assaulted during their childhood. The number of child pornography websites is constantly rising and 200 new images appear on the Internet every day. But these are only estimates. The victims portrayed are getting younger and younger while the material is becoming more and more explicit and violent. Some 20% of people convicted of sexual crimes reoffend. Many of these crimes take place precisely where the child should feel secure and protected. Child pornography on the Internet has become a new phenomenon, a huge and very real criminal threat, weaving together perverse tastes and financial interests, and with an ever rising 'home' production. This phenomenon exploits every technological opportunity offered by the Internet. On the one hand there are Internet sites advertising 'goods' such as videos, DVDs and CDs containing child abuse images; on the other, social networks, chat forums, newsgroups, mailing lists used either to set up paedophile communities or to spread information with the aim of soliciting and locating child pornography. Lastly, enormous IT files filled with videos and compilations of images can be exchanged via peer-to-peer and FTP (File Transfer Protocol) services. To all of this can be added the spread of MMS (Multimedia Messaging Service) with new generation mobile phones that can send images and videos. With this new mobile technology, children can even be reached when their family is not watching over them. Child pornography photos and videos are available on website servers scattered all across the Internet and users can pay to download them onto their own computer. Thanks to special software that can move paedophile sites immediately from one host server to another, managers of these websites all too often remain anonymous and elusive. The speed with which this threat is developing calls for an equally rapid development of investigative technology and EU and national legislation.

### **2. POSITION OF THE RAPPORTEUR**

The proposal for a directive seeks to create an EU reference framework to prevent and prosecute all forms of child sexual abuse and exploitation and offences involving child pornography. In addition to this, the proposal introduces common provisions to prevent the crimes and protect the victims. To a large extent the proposal for a directive reiterates Parliament's recommendation of 3 February 2009 on combating the sexual exploitation of children and child pornography. The proposal also contains many of the points made in the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse. The Convention has not yet been ratified by a majority of the EU States, but it does nonetheless constitute a vital international tool to help ensure children are protected from abuse. New Europe-wide criminal offences, relating in particular to the new threats posed by developments in IT and technology, are introduced. Concepts such as child pornography, child pornography materials, child prostitution and the display of pornography are clearly defined, thereby establishing a uniform minimum set of rules to ensure that appropriate instruments protecting children are in place in all Member States. In addition I felt that a definition for the age of sexual consent should be inserted; this is a primary factor in assessing

the crime but more than that it is a fundamental factor in sentencing and in increasing the sentence for these crimes. The directive establishes minimum sentences for 22 criminal offences, without prejudice to Member States adopting harsher measures and sentencing.

Abuse by persons in a position of authority, trust or influence within the family is included in, and punishable under, the new criminal offences. Higher sentences will be imposed on anyone committing an offence involving children with a physical or mental disability or who are dependents.

Children will be protected at a European level from grooming. I have also included a specific provision concerning people who undertake serial grooming, i.e. who are in contact with several children at the same time with a view to increasing grooming opportunities. It must not be possible for anyone convicted of offences involving children to undertake any activity entailing regular contact with children, by, for example, moving to another Member State. Employers recruiting staff for work involving contact with children will have the right to obtain from the competent authorities information held in the criminal records about convictions for offences laid down in the directive or any additional measures related to these offences. All the Member States and the competent authorities will have to cooperate in a rapid exchange of such information. If serious grounds for suspicion arise after recruitment, then employers must still have the right to obtain such information at this point. As regards the liability of legal persons, I wished to include the additional sanction of immediate confiscation of pornographic materials and of all proceeds obtained thereby. Member States must facilitate and strengthen their cooperation with national banks and the major credit card companies in order to ensure that payments made via Internet in connection with exploitation of minors can be traced.

The Member States will have specific legal obligations to punish criminal offences against children committed abroad by EU citizens or by persons who are habitually resident in one of the Member States, i.e. sexual tourism. I have also introduced a reference under aggravating circumstances in case the crimes laid down in the directive are committed in the context of sexual tourism. Each time someone downloads and retains child pornography images and materials, this is as if the child is being abused yet again. This directive aims at the immediate removal of online material. Where this cannot be achieved straightaway (in cases where destruction at source may be more complicated, for example when the providers are located in countries outside the EU and that do not have a cooperation agreement with the EU) the Member States must be allowed to have at their disposal the option of blocking the websites. The blocking of these websites must be carried out in accordance with national legislation and through the use of all privacy protection tools. Synergy is needed between all the parties in the 'network': institutions, specialist IT and postal services police, Internet providers, banks, suppliers of financial intermediation services, private users and associations. The use of cutting-edge technology and software is vital in this field. All the available tools (photoDNA being the latest) must be brought into play, including the work of the European Financial Coalition against the distribution of child pornography images on the Internet and international cooperation between police forces and banking institutions (in tracing payments, for example).

Victims must be guaranteed protection, help and support during investigations, proceedings and during the subsequent stages, with the children's opinions, needs and fears being taken into account. There must be ease of access to legal remedies, but this must not result in young victims suffering further trauma, or 'repeat victimisation', as a result of their involvement in

the proceedings. The measures to help and support the victim's family are equally important. If, however, the crime took place within the family environment, then the child must be protected and the decision on his or her place of residence must be the most appropriate one possible, with his or her best interests and opinion being duly taken into account. Furthermore all protection and assistance instruments must include measures to support alleged victims of abuse or exploitation. Specific training must be given to workers in the sector who are assigned to support children through all the stages of the proceedings and to staff who will have some form of contact with victims. Appropriate intervention and treatment programmes are also needed to prevent the offences occurring. The true keystone to this directive is an accessible child-friendly legal system. The Member States must take all the steps necessary to establish effective child protection systems, including the establishment of multidisciplinary structures in order to ensure victims receive the help they need in the short and long term, either via staff training or by availing themselves of NGOs with experience of providing assistance to victims of sexual abuse and exploitation. Information and awareness-raising campaigns on the subject will target civil society, which has a particular role to play.