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REPORT

on the proposal for a Council Framework Decision on combating the sexual exploitation of children and child pornography
(COM(2000) 854 – C5-0043/2001 – 2001/0025(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Anna Karamanou

Draftsperson on the Opinion (*):
Christa Prets, Committee on Women's Rights and Equal Opportunities

Draftsperson on the Opinion:
Elizabeth Lynne, Committee on Culture, Youth, Education, the Media and Sport

(* Enhanced Hughes Procedure)

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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(*) Enhanced Hughes Procedure

PROCEDURAL PAGE

By letter of 7 February 2001 the Council consulted Parliament, pursuant to Article 39 paragraph 1 of the EU Treaty on the proposal for a Council decision on combating trafficking in human beings (COM(2000) 854 - 2001/0025 (CNS)).

At the sitting of 12 February 2001 the President of Parliament announced that she had referred this proposal to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Culture, Youth, Education, the Media and Sport, the Committee on Employment and Social Affairs and the Committee on Women's Rights and Equal Opportunities for their opinions (C5-0043/2001).

At the sitting of 15 February 2001 the President announced that the Committee on Women's Rights and Equal Opportunities, which had been asked for its opinion, would be involved in drawing up the report, under the Enhanced Hughes Procedure.

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Anna Karamanou rapporteur at its meeting of 27 February 2001.

At its meeting of 11 April 2001 the committee decided to include the following motions for resolutions in its report:

- B5-0496/2000, by Cristiana Muscardini, on the protection of children and measures to combat internet sites for paedophiles, referred on 13 June 2000 to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Culture, Youth, Education, the Media and Sport for its opinion;
- B5-0499/2000, by Cristiana Muscardini and others, on blocking access to paedophile sites on the Internet, referred on 13 June 2000 to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible and the Committee on Culture, Youth, Education, the Media and Sport for its opinion;

The committee considered the Commission proposal and draft report at its meetings of 11 April, 25 April and 29 May 2001.

At the last meeting it adopted the draft legislative resolution by 21 votes to 2, with 3 abstentions.

The following were present for the vote: Graham R. Watson, chairman; Robert J.E. Evans, vice-chairman; Anna Karamanou, rapporteur; Mary Elizabeth Banotti, Alima Boumediene-Thiery, Marco Cappato, Charlotte Cederschiöld, Carmen Cerdeira Morterero (for Michael Cashman), Ozan Ceyhun, Carlos Coelho, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Marianne Eriksson (for Fodé Sylla pursuant to Rule 162(2)), Pernille Frahm, Jorge Salvador Hernández Mollar, Margot Keßler, Timothy Kirkhope, Eva Klamt, Hartmut Nassauer, Elena Ornella Paciotti, Hubert Pirker, Patsy Sörensen, Joke Swiebel, Anna Terrón i Cusí, Gianni Vattimo, Christian Ulrik von Boetticher and Jan-Kees Wiebenga.

The opinions of the Committee on Culture, Youth, Education, the Media and Sport and the

Committee on Women's Rights and Equal Opportunities are attached; the Committee on Employment and Social Affairs decided on 15 February not to deliver an opinion.

The report was tabled on 31 May 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a Council decision on combating trafficking in human beings (COM(2000) 854 – C5-0043/2001 – 2001/0025(CNS))

The proposal is amended as follows:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1 Recital 4 (a) (new)

Children's right to protection and care is enshrined in Article 24 of the Charter of Fundamental Rights of the European Union proclaimed by the European institutions on 7 December 2000;

Justification

Recognition of the rights of children by the Charter of Fundamental Rights must constitute part of an overall strategy to create a long term and coherent policy in respect of children.

Amendment 2 Recital 6

The important work performed by international organisations must be complemented by that of the European Union;

The important work performed by international organisations, ***particularly the adoption of the Convention on the Rights of the Child by the United Nations and the Protocol on the sale of children, child prostitution and child pornography and the Convention on Cyber-Crime by the Council of Europe***, must be complemented by that of the European Union;

Justification

The European Union should complement the work of the international organisations. As a

¹ OJ C 62 E, 27.2.2001, p.327..

member of the international community it should not only uphold the set of agreements which make up the international frame of reference for child protection, but should encourage a more cohesive policy with the objective of ensuring a very high level of child protection under criminal law. .

Amendment 3
Article 1, paragraph b

(b) ‘*Child pornography*’ shall mean ***pornographic material that visually depicts a child engaged in sexually explicit conduct;***

(b) ‘*Child pornography*’ shall mean

(i) any audiovisual, textual and written material of whatever type, such as photographs, fake photographs, films, videos, cinema films, drawings and computer data created by electronic, mechanical or any other means and which:
- depicts a child – or creates the impression that the person depicted is a child – engaged in or witnessing sexually explicit contact;
- or is mainly concerned with exposing the genitals or pubic regions of children for sexual purposes,
(ii) any audiovisual material which seeks to:
- encourage, incite or instigate paedophilic acts,
- promote or provide information concerning children which may be used for the purpose of sexual exploitation.

Justification

Perpetrators of the crime of child pornography use various means and modern techniques to promote their activities. The various forms this crime takes must be completely covered by the definition of child pornography, so as to prevent a situation in which some forms of child pornography are not criminalised.

Amendment 4
Article 2 (a)

(a) coercing, exploiting, inducing, profiting from *or otherwise facilitating* the prostitution of a child;

(a) coercing, exploiting, inducing, ***facilitating, or receiving financial gain from and*** profiting from the prostitution of a child ***or buying, selling or transporting a child within or outside the State with the intention that the child should engage in prostitution or sexually explicit conduct in order to create pornographic material whether or not this is for profit;***

Justification

Owing to the complexity of the problem, steps must be taken to ensure that all forms of this crime are penalised.

Amendment 5
Article 2 (c) (new)

(c) Parents or those with the legal custody of a child who allow the child to engage in prostitution or sexually explicit conduct for the purpose of creating pornographic material,

Justification

Parents and persons with legal custody of children who in many cases allow the children in their care to engage in prostitution must bear a special responsibility.

Amendment 6
Article 2 (d) (new)

(d) Any person who hears of a circumstance which makes him suspect that a child has fallen victim to sexual exploitation and who fails to notify the law enforcement authorities, even though he has a special legal obligation to do so.

Justification

A failure to report this crime to the law enforcement authorities by persons having a special legal obligation to do so must be penalised: these include persons who have assumed responsibility for the physical care of the child or have a relation of trust with the child in their professional capacity (educators, social workers etc.). Internet distribution and provider companies have the same legal obligation: given their inability to control the overall use of their services, they must develop protection mechanisms to make the Internet safer to use and notify the law enforcement authorities if any material of this kind comes to their attention.

Amendment 7
Article 3, paragraph 1 (a)

(a) production of child pornography, or

(a) production **and processing** of child pornography, or

Justification

Also the processing of child pornography should be punishable.

Amendment 8
Article 3, paragraph 1 (b)

(b) **distribution, dissemination, or transmission** of child pornography, or

(b) **importing, exporting, purchasing, selling and distributing** child pornography
or

Justification

The Commission text is not far-reaching enough.

Amendment 9
Article 3, paragraph 1, (e) to (g) (new)

(e) distribution, dissemination or

*transmission of child pornography, or
(f) inducement or facilitating the above
acts,*

*(g) acquisition and possession of child
pornography which shall be punishable
only where it is conscious or deliberate or
where possession is continued
intentionally. Acquisition and possession
of child pornography with the aim of
handing it over to the law enforcement
authorities shall not constitute a criminal
offence.*

Justification

In particular receipt and possession for personal use must be punished on the basis of specific criteria and circumstances, in accordance with the provisions of the Kirkhope report (Article 1(1)) on the initiative of the Republic of Austria with a view to adopting a Council decision to combat child pornography on the Internet adopted by the European Parliament on 11 April 2000.

Amendment 10 Article 3, paragraph 2

2. Each Member State shall also take the necessary measures to ensure, without prejudice to definitions otherwise provided for in this Framework Decision, that the conduct referred to in paragraph 1 is punishable when involving pornographic material that visually represents a child engaged in sexually explicit conduct, ***unless it is established that the person representing a child was over the age of eighteen years at the time of the depiction.***

2. Each Member State shall also take the necessary measures to ensure, without prejudice to definitions otherwise provided for in this Framework Decision, that the conduct referred to in paragraph 1 is punishable when involving pornographic material that visually represents a child engaged in sexually explicit conduct.

Justification

The purpose of this Framework Decision is to penalise the depiction of children – or the creation of the impression that the person being depicted is a child – taking part in or witnessing explicitly sexual acts. A tolerant approach to this crime would therefore tend to

undermine the purpose of the Framework Decision.

Amendment 11
Article 4, paragraph 1

1. Each Member State shall take the necessary measures to ensure that the instigation of, aiding or abetting an offence referred to in Articles 2 and 3 is punishable.

1. Each Member State shall take the necessary measures to ensure that the instigation of, aiding or abetting an offence referred to in Articles 2 and 3, ***in particular arranging the perpetration of an offence or instructing others to perpetrate it*** is punishable.

Justification

As child pornography and the sexual exploitation of children very often occur in the context of organised crime, it must be ensured that all those who collaborate in the perpetration of such offences, from the actual perpetrators to the wire-pullers behind the scenes, are liable to prosecution.

Amendment 12
Article 5, paragraph 1

1. Each Member State shall take the necessary measures to ensure that an offence referred to in Articles 2, 3(1)(a) to (c) and Article 4 is punishable by effective, proportionate and dissuasive penalties, including by terms of imprisonment with a maximum penalty that is not less than four years and, as regards an offence referred to in Article 3(1)(d) not less than one year.

1. Each Member State shall take the necessary measures to ensure that an offence referred to in Articles 2, 3(1)(a) to (f) and Article 4 is punishable by effective, proportionate and dissuasive penalties, ***even in the case of minimum penalties***, including by terms of imprisonment with a maximum penalty that is not less than four years and, as regards an offence referred to in Article 3(1)(g) not less than one year.

Justification

It is not sufficient to lay down a maximum penalty; a minimum penalty should also be established to provide an effective deterrent.

Amendment 13
Article 5, paragraph 1 (a) (new)

(1a) In addition, these penalties should be complemented by sufficient psychiatric treatment, which could continue, as an additional form of supervision, once the sentence is served.

Justification

Paedophilic crimes must be punished with effective, proportionate and dissuasive sanctions. In addition it must be recognised that a term of imprisonment will not necessarily rehabilitate the offender; additional psychiatric treatment and care is necessary, and this must be emphasised.

Amendment 14
Article 5, paragraph 1(b) (new)

Each Member State shall take the necessary measures to ensure that the condemnation of an offender is accompanied by the tracing, seizure and confiscation of all movable and immovable assets which are proceeds of the offences referred to in Articles 2, 3 and 4.

Justification

The principle of confiscating the proceeds of crime has been established at European level through the Convention of the Council of Europe on laundering, search, seizure and confiscation of the proceeds from crime and the Joint Action of 3 December 1998. It must therefore also be applied to the crimes covered by this Framework Decision.

Amendment 15
Article 5, paragraph 2, first indent

- it involves a child below the age of **ten** years, or

- it involves a child below the age of **sixteen** years, or

Justification

It is arbitrary to have a difference at the age of ten, as it will lead to the increased targeting of children only a few months older than ten years. The definition of child is under the age of eighteen so passing this amendment would mean that someone who exploits a young person between the ages of sixteen and eighteen would not be punished as severely as if the child was under sixteen.

Amendment 16
Article 5, paragraph 2, third indent

- it generates substantial proceeds, or **deleted**

Justification

If the generation of (substantial) proceeds is included as an aggravating circumstance, a Member State runs the risk of being unable to punish an offender and/or organisation where the amount of proceeds from trading in child pornography is small, and this is extremely undesirable.

Amendment 17
Article 5, paragraph 2, fifth indent (new)

- it involves children with physical or mental disabilities

Justification

It is important that we include children with physical or mental disabilities in this proposal, as a number of them would be in special need of protection.

Amendment 18
Article 5, paragraph 3, first indent

- it involves a child below the age of *ten* years, or **- it involves a child below the age of *sixteen* years, or**

Justification

It is arbitrary to have a difference at the age of ten, as it will lead to the increased targeting of children only a few months older than ten years. The definition of child is under the age of eighteen so passing this amendment would mean that someone who exploits a young person between the ages of sixteen and eighteen would not be punished as severely as if the child was under sixteen.

Amendment 19
Article 5, paragraph 3, third indent (new)

- it involves children with physical or mental disabilities

Justification

It is important that we include children with physical or mental disabilities in this proposal, as a number of them would be in special need of protection.

Amendment 20
Article 5, paragraph 4, introduction

Without prejudice to additional definitions in the Member States' legislation, each Member State shall take the necessary measures to ensure that an offence referred to in Articles 3(1)(a) to (c) and 4 in that respect is punishable by terms of imprisonment with a maximum penalty that is not less than eight years when:

Without prejudice to additional definitions in the Member States' legislation, each Member State shall take the necessary measures to ensure that an offence referred to in Articles 3(1)(a) to (f) and 4 in that respect is punishable by terms of imprisonment with a maximum penalty that is not less than eight years when:

Justification

See amendment 9.

Amendment 21

Article 5, paragraph 4, first indent

- it involves a child below the age of **ten** years, or

- it involves a child below the age of **sixteen** years, or

Justification

It is arbitrary to have a difference at the age of ten, as it will lead to the increased targeting of children only a few months older than ten years. The definition of child is under the age of eighteen so passing this amendment would mean that someone who exploits a young person between the ages of sixteen and eighteen would not be punished as severely as if the child was under sixteen.

Amendment 22

Article 7, introductory part

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions such as:

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and **confiscation of all proceeds gained from child pornography and the sexual exploitation of children. Member States shall redirect these amounts to the protection and rehabilitation of the victims.** They may include other sanctions such as:

Justification

The principle of the confiscation of the proceeds from criminal offences has already been well established at the European level through the Council of Europe (see Convention on laundering, search, seizure and confiscation of the proceeds from crime and through the Joint Action of 3 December 1998). Furthermore, the redirection of the criminal gains into prevention and care for the victims is essential.

Amendment 23

Article 8, paragraph 1 (b)

(b) the offender is one of its nationals; or

(b) the offender is one of its nationals, **or resides permanently or temporarily on the territory of the Member State concerned**; or

Justification

The grounds for establishing a Member State's jurisdiction should not refer exclusively to the citizens of the State in question, but should be extended to include those residing in this State. A whole range of countries have adopted initiatives to revise their legislative framework. This proposal is in line with the text of the Joint Action of the Council of the European Union of 1997. .

Amendment 24
Article 8, paragraph 1 (c)

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

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

Justification

Member States shall take the necessary measures to establish their jurisdiction over the offences referred to, where the offence is committed for the benefit of all persons established in the territory of that Member State. That includes legal and natural persons.

Amendment 25
Article 8, paragraph 2

2. A Member State may decide that it will not apply or that it will apply only in specific cases or circumstances, the jurisdiction rules set out in paragraphs 1 (b) and 1 (c) as far as the offence is committed outside its territory.

2. On the basis of the principles governing this Framework Decision, offences committed in third countries by a national of the European Union should be punishable in accordance with the national law of the individual's Member State.

Justification

If a crime of sexual exploitation of children is committed in a third country by an EU national then they should be prosecuted by and in their Member State. There should be no derogation to allow them to opt out of this responsibility.

Amendment 26
Article 8, paragraph 3 (a) (new)

Where a Member State maintains the requirement of double criminality, it shall keep its law under review, with a view to ensuring that this requirement is not an obstacle to effective measures against its nationals or habitual residents who are suspected of engaging in the offences referred to in Articles 2, 3 and 4.

Justification

This amendment reproduces the wording of the Joint Action of the Council of the European union of 1997. The criminal prosecution of related crimes must not be hampered by procedural provisions in the legislation of the Member States. .

Amendment 27
Article 8, paragraph 3 (b) (new)

The Member States must review their legislation on the extradition of any of their nationals suspected of committing offences similar to those in this Framework Decision, in order to ensure that crimes committed in non-member States do not escape prosecution.

Justification

The reluctance of Member States to extradite their citizens should not obstruct the prosecution of similar crimes. If the Member States take initiatives on this issue, it will represent significant progress in efforts to eradicate sexual tourism, both within and outside European Union territory.

Amendment 28
Article 9

Each Member State shall ensure that a victim of an offence provided for in this

Each Member State shall ensure that a victim of an offence provided for in this

Framework Decision is given the adequate legal protection and the standing in judicial proceedings. In particular Member States' shall ensure that criminal investigations and judicial proceedings do not cause any additional damage *for a* victim.

Framework Decision is given the adequate legal protection and the standing in judicial proceedings. ***Member States shall ensure that the victims and witnesses receive a proper legal advice, the support of a child psychologist and the interpretation into and from their language. Member States shall also ensure that simple, adequate and comprehensible language is used for the victims and their families to understand fully the procedures. Children shall be permitted to give evidence by video.*** In particular Member States shall ensure that criminal investigations and judicial proceedings do not cause any additional damage *to the* victim. ***For this purpose, each Member State shall protect the privacy, identity and physical safety of the victims, of their families and of the witnesses. Member States shall also ensure that victims receive the necessary social assistance with the aim of helping them overcome the traumas resulting from the incidents they have experienced and hence facilitating their reintegration into society.***

Special residence permits shall be granted to the victims who testify and to their care givers during the judicial proceedings and as long as the safety of the victim is under threat.

Justification

These are minimum standards which need to be pursued so that the penal proceedings are consistent, fast and effective. The possibility of granting special leave from work to care givers and special residence permits to the victims and care givers can support the prevention of revictimization and can encourage testimony. Social and medical care, a safe and anonymous shelter will also further need to be considered in an appropriate juridicial text. The experience of appearing in court can be traumatic for a child. Allowing a child to give pre-recorded video evidence away from a court with the help of someone who is specially trained, can help alleviate a child's anxiety. It is important that a child be given as much support as possible in order to prevent distress and to enable the child to give the best possible evidence.

Amendment 29
Article 9, paragraph 1 (a) (new)

The award of financial compensation shall be compulsory, regardless of the nationality of the child.

Justification

It is essential that compulsory compensation for victims should be included in this Framework Decision and that the details of implementation should be clarified in connection with the holding of the trial. Moreover, the nationality of the child should not be a criterion in awarding compensation: children from third countries must be treated in exactly the same way and enjoy the right to compensation.

Amendment 30
Article 9, paragraph 1 (b) (new)

Member States shall draw up registers of persons who have committed the offence of child pornography and/or the sexual exploitation of children. All the Member States and Europol shall have access to the information contained in the registers.

Justification

Keeping registers will make it easier to find repeat offenders. Cooperation between the Member States and Europol must translate into full access to the registers of each Member State. This proposal takes up similar proposals made in the Zimmerman report (December 1996) and the Kirkhope report (April 2000) adopted by the European Parliament.

Amendment 31
Article 10, paragraph 2

2. Where several Member States have jurisdiction over of the offences envisaged

2. Where several Member States have jurisdiction over ***any*** of the offences

by this Framework Decision, those States shall consult one another with a view to co-ordinating their action in order to prosecute effectively. Appropriate use shall be made of existing co-operation mechanisms, such as the liaison magistrates and the European Judicial Network.

envisaged by this Framework Decision, those States shall consult one another with a view to co-ordinating their action in order to prosecute effectively. Appropriate use shall be made of existing co-operation mechanisms, such as the liaison magistrates and the European Judicial Network.

Justification

Grammar

Amendment 32 Article 10, paragraph 3

3. For the purpose of exchange of information relating to the offences referred to in Articles 2, 3, and 4, and in accordance with data protection rules, Member States shall establish operational points of contact or make use of existing co-operation mechanisms. In particular, Member States shall ensure that Europol, within the limits of *its* mandate, and *the communicated points of contact under the Council Decision to combat child pornography* are fully involved.

3. For the purpose of exchange of information relating to the offences referred to in Articles 2, 3, and 4, and in accordance with data protection rules, Member States shall establish operational points of contact or make use of existing co-operation mechanisms. In particular, Member States shall ensure that Europol *and Interpol*, within the limits of *their* mandate, and *a supplementary system*, are fully involved *and use the best available techniques. Member States should also give consideration to international cooperation between the police and NGOs, inter alia by setting up and funding a common database for monitoring and tracking down child pornography on the Internet.*

Justification

The transfer and exchange of information is of fundamental importance. As those who exploit children operate both in the Member States and in countries outside the Community (the enlarged Union), it is imperative to ensure closer cooperation not only with Europol but also with Interpol. The best available technologies must be used so as to be able to tackle the structure of organised crime. As the Internet is by far and away the main source for the spread of child pornography, EU Member States must focus action to combat child

pornography on the Internet.

Amendment 33
Article 10, paragraph 3 (a) (new)

3a. Member States shall seek to ensure as rapidly as possible the involvement of the candidate countries in actions aimed at combating child pornography and the sexual exploitation of children.

Justification

The large-scale of the problem of the sexual exploitation of children and child pornography must be brought to the attention of the candidate countries so that they take appropriate action.

Amendment 34
Article 10, paragraph 4

4. Each Member State shall inform the General Secretariat of the Council and the Commission of its appointed point of contact for the purpose of exchanging information relating sexual exploitation of children and child pornography. The General Secretariat shall inform all other Member States about the appointed points of contact.

4. Each Member State shall inform the General Secretariat of the Council and the Commission of its appointed point of contact for the purpose of exchanging information relating ***to*** sexual exploitation of children and child pornography. The ***Member State shall inform all other Member States about its appointed point of contact or may request the*** General Secretariat ***to do so on its behalf.***

Justification

Grammar and subsidiarity

Amendment 35
Article 10, paragraph 4 (a) (new)

Member States shall draw up joint

strategies to prevent the sexual exploitation of children, child pornography and the spread thereof.

Justification

Preventive action in particular should be included amongst the measures used to combat the sexual exploitation of children and child pornography.

Amendment 36
Article 10, paragraph 4 (b) (new)

4 b. The Commission, in cooperation with the contact points of the Member States and Europol, should produce every two years a report assessing the effectiveness of the cooperation between Member States and must submit the report to the European Parliament. The first report shall be submitted by 31 March 2005.

Justification

Cooperation between Member States in this area is essential, but can we be sure that it is effective? Effectiveness has to be assessed by the Commission on a regular basis and a report submitted to the European Parliament so that a possible need for changes in the co-operation mechanism can be detected. As Member States must comply with the Framework Decision by 31 December 2002, a first report must be submitted by 31 March 2005.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a Council Framework Decision on combating the sexual exploitation of children and child pornography (COM(2000) 854 – C5-0043/2001 – 2000/0025(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2000) 854¹),
 - having regard to Articles 29, 31 and 34(2) of the EU Treaty,
 - having been consulted by the Council pursuant to Article 39(1) of the EU Treaty (C5-0043/2001),
 - having regard to Rules 106 and 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinions of the Committee on Culture, Youth, Education, the Media and Sport and the Committee on Women's Rights and Equal Opportunities (A5-0206/2001),
1. Approves the Commission proposal, subject to Parliament's amendments;
 2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 3. Asks to be consulted again if the Council intends to amend the Commission proposal substantially;
 4. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 62 E, 27.2.2001, P. 327.

EXPLANATORY STATEMENT

1. INTRODUCTION

On 24 February 1997 the Council adopted a Joint Action concerning action to combat trafficking in human beings and the sexual exploitation of children¹. The Joint Action covers a wide range of topics such as definitions (without prejudice to more specific definitions in the Member States' legislation), jurisdiction, criminal procedure, assistance for victims and police and judicial cooperation. Through the Joint Action the Member States undertook to review their existing laws with a view to providing that trafficking in human beings and the sexual exploitation of children were criminal offences.

Since the adoption of the Joint Action in 1997, actions and initiatives against sexual exploitation of children and child pornography have developed considerably in number and in substance at European level and at local, regional and international level. Sexual exploitation of children and child pornography have given rise to increased concern and there is now an urgent need for further action to address diverging legal approaches in the Member States.

Furthermore, Article 29 of the Treaty of Amsterdam contains an explicit reference to trafficking in persons and offences against children. The 'Vienna Action Plan'² and the Tampere European Council also clearly called for further legislative action against sexual exploitation of children. Legislative action is also indicated in the Commission's Scoreboard³. On 29 May 2000 the Council adopted a decision⁴ to combat child pornography on the Internet. However, despite these positive developments, existing divergences and delays have hampered cooperation between the judicial (and police) authorities in these fields. In order to overcome this deadlock, the Commission has proposed two Framework Decisions on combating trafficking in human beings and the sexual exploitation of children which seek to introduce in the criminal legislation of the Member States commonly accepted constituent elements of criminal acts (objective and subjective substance of crimes) and the appropriate penalties.

2. THE EUROPEAN UNION AND THE RIGHTS OF THE CHILD

In the 21st century in a European Union which has yet to draw up its own Charter of Fundamental Rights and which appears as a champion and defender of the social and economic prosperity of its peoples, initiatives must be taken directed primarily at ensuring respect for the physical and psychological integrity of persons and particularly of children who are the thread linking the present and the future of mankind. The European Union must proceed to take measures to promote human rights and effectively and directly combat the existence of circumstances and phenomena which crush the most innocent and susceptible members of society, namely children.

Unfortunately such phenomena are not restricted to particular geographical regions, and there

¹ OJ L 063, 4.3.1997.

² OJ L 138, 9.6.2000, p. 1.

³ COM(2000) 167 final, 24.3.2000.

⁴ EE L 138/1, 9.6.2000.

are many examples to prove this. The international nature of the problem means that Member States cannot be obstructive and turn a blind eye to the tragic dimensions of these phenomena.

It is particularly significant that the European Union is launching an initiative to crack down on certain forms of organised crime, given the inability of Member States to combat it effectively. The sexual exploitation of children by international networks with substantial financial resources constitutes a serious case of organised crime. The initiative of drawing up a document which will operate as a reference framework for all Member States must not be considered the culmination of efforts in this direction, but a starting point and a springboard for broader efforts and cooperation between the Member States to combat crime. Cooperation between States is of course important, but particular emphasis should also be given to the decisive role played by non-governmental organisations in an integrated and successful approach to combating the problem. Of course, promoting legislation cannot be the only solution to this entire problem. Attention must also be paid to the reasons which have led to the development and spread of this phenomenon: poverty, degradation and the lack of structures to protect children, the inadequacy of control and prevention mechanisms, the lack of education, the loosening of the social fabric both at family and interpersonal level and, above all, the existence of a market of supply and demand functioning within the European Union.

The existence of phenomena of this nature constitutes a challenge to modern civilisation: the perpetrators of this crime - crime networks and their customers – remain unpunished and manage to avoid criminal prosecution, since they frequently benefit from the lack of cooperation between countries owing to bureaucratic procedures and procedural obstacles in criminal legislation. Appalling cases such as that of M. DUTROUX in Belgium must be avoided in future. Here the inadequate legal framework means that the case has been pending for four years since the constituent elements of the case cannot be established and the trial held. Of course, Belgium is not unique. There is a whole range of countries in which legislation in this area is either inadequate (Sweden, Denmark and France) or does not exist at all (Portugal and Greece have no legislation covering child pornography).

3. LEGAL BASIS

This proposal for a Framework Decision concerns the approximation of legislation and regulative provisions of Member States in the field of police and judicial cooperation in criminal matters. It also concerns ‘minimum rules relating to the constituent elements of criminal acts and to penalties in the field of organised crime’. The legal basis referred to in the Preamble of the proposal is thus Article 29 which specifically refers to trafficking in persons and offences against children, Article 31(e) and 34(2)(b) of the Treaty on European Union.

4. ASSESSMENT OF THE PROPOSAL FOR A FRAMEWORK DECISION

Some of the main issues touched on by the report which require further comment are as follows:

(a) Definition of the word ‘child’

The word ‘child’ must be used in the broader sense of the term and include any person below

eighteen years of age; this is in line with Article 1 of the UN Convention on the Rights of the Child. The fact that in many Member States the age of *consent* to engage in sexual relations is lower does not mean that the definition of the term ‘child’ should also be set at a lower age threshold since this Framework Decision is concerned with combating the sexual exploitation of children and child pornography and not simply their sexual activity. To identify sexual exploitation with consent to engage in sexual relations would encourage a dangerous tendency towards the non-criminalisation of certain cases of criminal behaviour and we should take care to avoid this.

(b) The definition of child pornography

The definition of child pornography must take into account all the new technological developments and modern methods used by perpetrators of this crime. In order to establish an integrated framework of what constitutes punishable offences as regards the involvement and depiction of children in pornography it is necessary on the one hand to protect children as the immediate victims and on the other to prosecute any representation which gives the impression of being child pornography, even though children are not actually involved. Such material undermines the gravity of the crimes committed against children, and dupes potential customers into thinking they are not indulging their paedophilic tendencies and thus encourages the exploitation of children. The effective protection of children from pornography on the basis of criminal law can only be achieved if the definition of this offence covers not only the production of pornographic representations involving children, but also pornographic depictions of other persons who give the impression that they are children, as well as virtual pornographic material (through the merging of pictures or compositions by computer) (Amendment 1). Even if it can be proved that the persons represented in such material were not children (Amendment 6) or that the pornographic material was produced by electronic means this should not constitute grounds for considering that the act is not a criminal offence.

(c) Possession of pornographic material

Special reference should be made to the issue of *the possession of pornographic material*. Possession should be criminalised subject to a number of preconditions to ensure that persons who come across child pornography material while surfing on the Internet or in electronic or conventional mail without conscious intent or through negligence are not prosecuted.

(d) Framework for penalties

The penal framework proposed by the Commission is acceptable given that the Member States still have a long way to go before implementing a uniform framework of penalties. The sanctions imposed must be commensurate with the gravity of the crime, but it should be borne in mind that merely imposing very stiff penalties has not contributed towards bringing the crime rates down in any of the countries in which such a policy was imposed.

(e) Tackling organised groups

The purpose of the reference to facilitating, receiving financial gain and profiting from the activities in question as a form of punishable behaviour and to the confiscation of the

proceeds of crime as an accompanying measure is intended to crack down on organised groups and networks which benefit from the criminal activities of individuals.

(f) Extraterritoriality

In a number of Member States (Sweden, the Netherlands, France and Germany) extraterritorial jurisdiction applies only to a certain number of forms of the crime of sexual exploitation of children. Most Member States require the crime to be penalised both in the country in which extraterritoriality will apply and in the country in which the crime is committed (criterion of double criminality). Finally, the majority of Member States (Belgium, France, Germany, the Netherlands and Sweden) ban the extradition of their nationals, or impose substantial restrictions on such a measure. The international nature of the crime in question means that Member States must review their procedural provisions concerning *jurisdiction* and the *issue of extraterritoriality* (preconditions of double criminality, prior indictment by victim, extradition, etc.) so as to ensure that the perpetrators do not escape prosecution. The legal traditions of the Member States must not constitute an obstacle to addressing this terrible problem which must be dealt with due sensitivity.

(g) Protection of the victim

All the legal provisions concerning crimes against children should include *compensation for the victim*. The legislation of Member States does not seem to provide clear criteria governing the means of awarding compensation (for example, how compensation is awarded to minors, by what means, up to what amount and to what end), and frequently mechanisms to monitor the implementation of decisions in this area are lacking. In many cases detailed information about the rights of children is lacking and it is up to the child's counsel to submit an application for compensation. Another important issue is protection for the child-victim after the trial which is a matter left to the discretion of the Member States. Effective procedures must be created and social programmes set up to provide the necessary psychological and counselling assistance to children and their parents or guardians in line with the UN Convention on the Rights of the Child.

(h) Information and training of the bodies involved

The law enforcement authorities must be staffed by specialised personnel who are able to treat traumatised children in an appropriate manner. It has been shown that very often where judicial investigations are conducted by specialised officials, the psychological pressure on the victim is reduced. In the cases J. van der S. and L. van E. the Dutch police trained members of the Filipino police force in order to improve questioning techniques of child victims and this produced very positive results.

Members of diplomatic missions must also receive clear instructions on how to deal with such incidents and about the legal provisions which must be implemented. Previous cases show that many embassies give appropriate support to victims both by counselling and by assistance through interpretation and transport to the victim's land of origin. However, there have also been cases in which embassy staff have helped the offender escape from extraterritorial jurisdiction.

(i) *Dissuasion and prevention mechanisms*

Any legislative framework must be backed up by additional crime dissuasion and prevention measures and mechanisms. In order to prevent the sexual exploitation of children, we need therefore to address the basis causes of the problem and to develop appropriate initiatives.

Particular attention must be given to vulnerable categories of children, such as children living far from home, the children of refugees and asylum seekers, children involved the entertainment business, children who use the Internet, etc.

The Member States must develop social protection mechanisms to protect these children and at the same time conduct campaigns to provide information about their rights. To this end the participation of non-governmental and international organisations working to promote the human rights of children is also needed.

As regards child pornography on the Internet, particular emphasis should be given to Council Recommendation 98/560/EC of 24 September 1998¹ on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity. The Recommendation provides that the Commission shall examine the measures taken by the Member States, in particular in respect of self-regulation, with a view to fostering a climate of confidence by combating the circulation of illegal content offensive to human dignity in on-line audiovisual and information services.

Finally, we should always bear in mind that the unequal division of economic resources on the planet, poverty and social exclusion create a climate conducive to the formation of organised groups and criminal networks which are so driven by the desire to make a profit that they do not hesitate to convert children's bodies and souls into merchandise.

¹ OJ L 270, 7.10.1998

ANNEX I : MOTION FOR A RESOLUTION B5-0496/2000

European Parliament resolution on the protection of children and measures to combat internet sites for paedophiles

The European Parliament,

- having regard to the positions it has previously adopted on the fight against paedophilia,
 - having regard to its resolutions on children's rights and child protection,
 - having regard to the frequent cases reported in the press involving the disappearance of, or violence against, children, sometimes ending in the murder of the victims,
 - having regard to the disturbing presence on the internet of sites publishing photographs for paedophiles, addresses of clubs engaging in this criminal activity and so-called tourist destinations for trafficking in children,
1. Calls for the establishment of a committee of inquiry to determine and assess what, if anything, is being done in EU countries to curb this phenomenon, which is flooding the internet;
 2. Calls on the Union to take a clear and definite stand against the publicity given to paedophilia by the internet, with the aim of banning and preventing access to those sites that engage in this evil activity;
 3. Calls on the Member States to make available to all EU governments the list of those who have been convicted of paedophilia, in order that Interpol and national police forces may collaborate more efficiently with a view to protecting children in the fight against this abominable scourge, which is becoming increasingly widespread via the internet.

ANNEX II : MOTION FOR A RESOLUTION B5-0499/2000

Motion for a European Parliament resolution on blocking access to paedophile sites on the Internet

The European Parliament,

- A. whereas pages containing illegal content, such as child pornography and details and addresses of places where paedophilia is practised, are published on the Internet,
 - B. having regard to the resolutions already adopted on the protection of minors and on children's rights,
 - C. whereas the number of sites dedicated to criminal activities of this kind is steadily growing,
 - D. whereas the content of such web pages is illegal in many EU Member States,
 - E. whereas a recent document from the Swiss federal police assigns criminal liability to service providers and calls on the authorities to inform the judicial authorities of any suspicion of crime and to pass on such information to the judicial authorities of the various countries with a view to investigating such crimes and prosecuting their perpetrators,
1. Calls for service providers to be made criminally liable for illegal content carried on the Internet in the same way as editors of newspapers and magazines are held to be directly liable for the content of their publications;
 2. Calls for access to sites deemed illegal under the national laws of the EU Member States to be blocked;
 3. Calls for hosting providers (who provide memory space on web servers) to cancel or otherwise block access to illegal content carried on their servers.

16 May 2001

OPINION OF THE COMMITTEE ON CULTURE, YOUTH, EDUCATION, THE MEDIA AND SPORT

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal for a Council framework decision on combating the sexual exploitation of children and child pornography
(COM(2000) 854 – C5-0043/2001 – 2001/0025((CNS))

Draftsman: Elizabeth Lynne

PROCEDURE

The Committee on Culture, Youth, Education, the Media and Sport appointed Elizabeth Lynne draftsman at its meeting of 6 March 2001.

It considered the draft opinion at its meeting(s) of 10 April 2001, 24 and 25 April 2001 and 15 May 2001.

At the last meeting it adopted the following amendments by 19 votes with 1 abstention.

The following were present for the vote: Giuseppe Gargani, chairman; Vasco Graça Moura, vice-chairman; Elizabeth Lynne, draftsman; Ole Andreasen, Pedro Aparicio Sánchez, Thierry de La Perriere, Geneviève Fraisse, Lissy Gröner, Lucio Manisco, Maria Martens, Doris Pack, Roy Perry, Christa Prets, Marieke Sanders-ten Holte, Kathleen Van Brempt, Luckas Vander Taelen, Eurig Wyn, Sabine Zissener, Janelly Fourtou (for Christine de Veyrac) and Dana Rosemary Scallon (for Theresa Zabell).

SHORT JUSTIFICATION

The Commission proposals aim to improve the 1997 Joint Action to tackle the exploitation of children and child pornography. The Joint Action failed to achieve its objectives because of the absence of commonly adopted definitions and sanctions in Member States' penal legislation. The aim of the Commission proposals is to combat this unsatisfactory situation and ensure that there is no safe haven for child sex offenders throughout the European Union.

Child pornography and child exploitation is abhorrent. The Internet is the principal means today for exchanging child pornography. The Internet is world wide and covers every Member State of the European Union. It therefore presents an entire new set of problems never before faced by the law enforcement agencies of each Member State. We need to adopt common definitions and penalties to tackle this crime and encourage co-operation.

It is difficult to define what constitutes child pornography. It is certainly my opinion that within the context of the Internet, child pornography cannot simply mean visual depictions. Audio and text must also be covered, this is particularly important because Internet chat lines have been used by paedophiles to target children, as seen in the example of the Wonderland Internet Paedophile case. The definition of child pornography should not be limited to children engaged in sexually explicit conduct. It should also include material that depicts children in a way designed to encourage or incite sexual feelings towards them.

Certain areas of child exploitation and child pornography must be met with harsh penalties. The maximum penalty should be increased to ten years to reflect the extreme seriousness of these particular examples of exploitation.

In the Commission text the proposed maximum penalty would be applicable to exploitation of children below the age of ten years. This age seems rather arbitrary, and could lead to the exploitation of children just over ten years. It would be more sensible to increase the age to sixteen. This would leave the lesser sentence to be applied to exploitation of young people between the ages of sixteen and eighteen years, an age at which they have begun to make decisions about engaging in sexual activities. They should still be protected from exploitation, and the lesser sentence of four years would be a deterrent. The maximum penalty of ten years must also apply to disabled children, as a number of them would be in special need of protection such as those with learning difficulties, where the mental age is generally lower than their physical age.

Member States must also take responsibility and prosecute their nationals who sexually exploit children, even if that exploitation takes place outside the European Union. There should be no derogation to allow Member States to opt out of this responsibility. Child pornography and child exploitation is an international problem not simply a European one, and should be treated accordingly.

AMENDMENTS

The Committee on Culture, Youth, Education, the Media and Sport calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1

Article 1, paragraph (b)

(b) '*Child pornography*' shall mean ***pornographic material that visually depicts a child engaged in sexually explicit conduct;***

(b) '*Child pornography*' shall mean ***audio, visual or textual material depicting children, or representations of children, including a virtual child, in a sexually abusive context, or for a violent, dehumanising or degrading purpose;***

Justification

Child pornography shall not be limited to visual material, it should also include audio or text material dedicated to the exploitation of children. The definition of child pornography should not be limited to children engaged in sexually explicit conduct. It should also include any material that is used to depict children with the intention of exciting sexual feelings. Furthermore, representations of children should be encompassed within the definition in order to prohibit material that does not involve real children but seeks to represent children, for example by using digital manipulation.

Amendment 2

Article 2, paragraph (a)

(a) coercing, exploiting, inducing, profiting from or otherwise facilitating the prostitution of a child;

(a) coercing, exploiting, inducing, profiting from or otherwise facilitating the prostitution of a child. ***Special attention shall be paid to the role of the media in publishing and distributing child pornographic material;***

Justification

Media publishing child pornography should be observed and punished accordingly.

¹ OJ C 062 of 27.02.2001

Amendment 3
Article 3, paragraph 1(a)

(a) production of child pornography, or

(a) production of **actual or virtual** child pornography, or

Justification

Technological advances promote virtual images so accurate that it appears to be sexually explicit conduct by an actual child. It has also been found that virtual child porn can 'desensitize the viewer to the pathology of sexual abuse or exploitation of children' (US Congress: the Child Pornography Prevention Act, 1996).

Amendment 4
Article 3, paragraph 1

1. Each Member State shall take the necessary measures to ensure that the following intentional conduct, whether undertaken by means of a computer system or not, is punishable:

- (a) production of child pornography, or
- (b) distribution, dissemination, or transmission of child pornography, or
- (c) offering or otherwise making child pornography available, or
- (d) acquisition and possession of child pornography.

1. Each Member State shall take the necessary measures to ensure that the following intentional conduct, whether undertaken by means of a computer system or not, is punishable:

- (a) production of child pornography, or
- (b) **promotion**, distribution, dissemination, or transmission of child pornography, or
- (c) offering or otherwise making child pornography available, or
- (d) acquisition and possession of child pornography.

Justification

The promotion of child pornography, i.e. via a website link, should be punishable, even if the person promoting child pornography does not make it available himself.

Amendment 5
Article 3, paragraph 1 (b)

(b) distribution, dissemination, or

(b) distribution, dissemination, or

transmission of child pornography, or

transmission of **actual or virtual** child pornography, or

Justification

Technological advances promote virtual images so accurate that it appears to be sexually explicit conduct by an actual child. It has also been found that virtual child porn can 'desensitize the viewer to the pathology of sexual abuse or exploitation of children' (US Congress: the Child Pornography Prevention Act, 1996).

Amendment 6
Article 3, paragraph 1(c)

(c) offering or otherwise making child pornography available, or

(c) offering or otherwise making **actual or virtual** child pornography available, or

Justification

Technological advances promote virtual images so accurate that it appears to be sexually explicit conduct by an actual child. It has also been found that virtual child porn can 'desensitize the viewer to the pathology of sexual abuse or exploitation of children' (US Congress: the Child Pornography Prevention Act, 1996).

Amendment 7
Article 3, paragraph 1 (d)

(d) acquisition and possession of child pornography.

(d) acquisition and possession of **actual or virtual** child pornography.

Justification

Technological advances promote virtual images so accurate that it appears to be sexually explicit conduct by an actual child. It has also been found that virtual child porn can 'desensitize the viewer to the pathology of sexual abuse or exploitation of children' (US Congress: the Child Pornography Prevention Act, 1996).

Amendment 8

Article 5, paragraph 1

1. Each Member State shall take the necessary measures to ensure that an offence referred to in Articles 2, 3(1)(a) to (c) and Article 4 is punishable by effective, proportionate and dissuasive penalties, including by terms of imprisonment with a maximum penalty that is not less than four years and, as regards an offence referred to in Article 3(1)(d) not less than one year.

1. Each Member State shall take the necessary measures to ensure that an offence referred to in Articles 2, 3(1)(a) to (c) and Article 4 is punishable by effective, proportionate and dissuasive penalties, ***even in the case of minimum penalties***, including by terms of imprisonment with a maximum penalty that is not less than four years and, as regards an offence referred to in Article 3(1)(d) not less than one year.

Justification

It is not sufficient to lay down a maximum penalty; a minimum penalty should also be established to provide an effective deterrent.

Amendment 9

Article 5, paragraph 2

2. Without prejudice to additional definitions in the Member States' legislation, each Member State shall take the necessary measures to ensure that an offence referred to in Articles 2(a) and 4 in that respect is punishable by terms of imprisonment with a maximum penalty that is not less than ***eight*** years when:

- it involves a child below the age of ***ten*** years, or
- ***it involves particular ruthlessness, or***
- it generates substantial proceeds, or
- it is committed within the framework of a criminal organisation.

2. Without prejudice to additional definitions in the Member States' legislation, each Member State shall take the necessary measures to ensure that an offence referred to in Articles 2(a) and 4 in that respect is punishable by terms of imprisonment with a maximum penalty that is not less than ***ten*** years when:

- it involves a child below the age of ***sixteen*** years, or

- it generates substantial proceeds, or
- it is committed within the framework of a criminal organisation, ***or***
- ***it involves a disabled child, especially one with learning disabilities.***

Justification

Penalties for the exploitation of the prostitution of a child under such aggravating circumstances should be sufficiently severe to reflect the seriousness of the crime and to be

dissuasive. Ten years maximum penalty therefore seem to be more appropriate than eight years. This is also the maximum sentence that has been set in the proposal for a Council decision on trafficking of human beings.

It is arbitrary to have a difference at the age of ten, as it will lead to the increased targeting of children only a few months older than ten years. The definition of child is under the age of eighteen so passing this amendment would mean that someone who exploits a young person between the ages of sixteen and eighteen would not be punished as severely as if the child was under sixteen. It is important that we include disabled children in this proposal, as a number of them would be in special need of protection such as those with learning difficulties (this was in the past referred to as mentally handicapped where the mental age is generally lower than their physical age).

All sexual exploitation of children is particularly ruthless.

Amendment 10
Article 5, paragraph 3

3. Without prejudice to additional definitions in the Member States' legislation, each Member State shall take the necessary measures to ensure that an offence referred to in Articles 2(b) and 4 in that respect is punishable by terms of imprisonment with a maximum penalty that is not less than **eight** years when:

- it involves a child below the age of **ten** years, or

- **it involves particular ruthlessness.**

3. Without prejudice to additional definitions in the Member States' legislation, each Member State shall take the necessary measures to ensure that an offence referred to in Articles 2(b) and 4 in that respect is punishable by terms of imprisonment with a maximum penalty that is not less than **ten** years when:

- it involves a child below the age of **sixteen** years. **Member States shall be free to set a higher age limit,** or

- **it involves a disabled child, especially one with learning disabilities.**

Justification

Penalties for sexual abuse of children under such aggravating circumstances should be sufficiently severe to reflect the seriousness of the crime and to be dissuasive. Ten years maximum penalty therefore seem to be more appropriate than eight years. This is also the maximum sentence that has been set in the proposal for a Council decision on trafficking of human beings.

It is arbitrary to have a difference at the age of ten, as it will lead to the increased targeting of children only a few months older than ten years. The definition of child is under the age of eighteen so passing this amendment would mean that someone who exploits a young person between the ages of sixteen and eighteen would not be punished as severely as if the child was

under sixteen. It is important that we include disabled children in this proposal, as a number of them would be in special need of protection such as those with learning difficulties (this was in the past referred to as mentally handicapped where the mental age is generally lower than their physical age).

All sexual exploitation of children is particularly ruthless.

Amendment 11
Article 5, paragraph 4

4. Without prejudice to additional definitions in the Member States' legislation, each Member State shall take the necessary measures to ensure that an offence referred to in Articles 3(1)(a) to (c) and 4 in that respect is punishable by terms of imprisonment with a maximum penalty that is not less than **eight** years when:

- it involves depictions of a child below the age of **ten** years, or
- it involves depictions of a child being exposed to violence or force, or
- it generates substantial proceeds, or
- it is committed within the framework of a criminal organisation.

4. Without prejudice to additional definitions in the Member States' legislation, each Member State shall take the necessary measures to ensure that an offence referred to in Articles 3(1)(a) to (c) and 4 in that respect is punishable by terms of imprisonment with a maximum penalty that is not less than **ten** years when:

- it involves depictions of a child below the age of **sixteen** years. **Member States shall be free to set a higher age limit**, or
- it involves depictions of a child being exposed to violence or force, or
- it generates substantial proceeds, or
- it is committed within the framework of a criminal organisation, **or**
- **it involves a disabled child, especially one with learning disabilities.**

Justification

Penalties for the production, dissemination and offering of child pornography under such aggravating circumstances should be sufficiently severe to reflect the seriousness of the crime and to be dissuasive. Ten years maximum penalty therefore seem to be more appropriate than eight years. This is also the maximum sentence that has been set in the proposal for a Council decision on trafficking of human beings.

It is arbitrary to have a difference at the age of ten, as it will lead to the increased targeting of children only a few months older than ten years. The definition of child is under the age of eighteen so passing this amendment would mean that someone who exploits a young person between the ages of sixteen and eighteen would not be punished as severely as if the child was under sixteen. It is important that we include disabled children in this proposal, as a number of them would be in special need of protection such as those with learning difficulties (this was in the past referred to as mentally handicapped where the mental age is generally lower

than their physical age).

Amendment 12
Article 7

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and **may include other sanctions such as:**

- (a) exclusion from entitlement to public benefits or aid, or
- (b) temporary or permanent disqualification from the practice of commercial activities, or
- (c) placing under judicial supervision, or
- (d) a judicial winding-up order, or
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and **confiscation of all proceeds gained from child pornography and the sexual exploitation of children. Member States shall redirect these amounts to the protection and rehabilitation of the victims. They may include other sanctions such as:**

- (a) exclusion from entitlement to public benefits or aid, or
- (b) temporary or permanent disqualification from the practice of commercial activities, or
- (c) placing under judicial supervision, or
- (d) a judicial winding-up order, or
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

Justification

The principle of the confiscation of the proceeds from criminal offences has already been well established on the European level through the Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime and through the Joint Action of 3 December 1998 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime (OJ L 333 of 09.12.98, p. 1). It shall also apply to the crimes that fall into the remit of this Framework Decision. Furthermore, the redirection of the criminal gains into prevention and care for the victims is essential.

Amendment 13
Article 8, paragraph 1

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in

Articles 2, 3, and 4 where:
(a) the offence is committed in whole or in part within its territory; or
(b) the offender is one of its nationals; or
(c) the offence is committed for the benefit of a legal person established in the territory of that Member State.

Articles 2, 3, and 4 where:
(a) the offence is committed in whole or in part within its territory; or
(b) the offender is one of its nationals; or
(c) the offence is committed for the benefit of a legal *or natural* person established in the territory of that Member State.

Justification

Member States shall take the necessary measures to establish their jurisdiction over the offences referred to, where the offence is committed for the benefit of all persons established in the territory of that Member State. That includes legal and natural persons.

Amendment 14 Article 8, paragraph 2

2. A Member State may decide that it will not apply or that it will apply only in specific cases or circumstances, the jurisdiction rules set out in paragraphs 1 (b) and 1 (c) as far as the offence is committed outside its territory.

2. Offences committed in third countries by a national of the European Union should be punishable in accordance with the national law of the individual's Member State.

Justification

If a crime of sexual exploitation of children is committed in a third country by an EU national then they should be prosecuted by and in their Member State. There should be no derogation to allow them to opt out of this responsibility.

Amendment 15 Article 8, paragraph 4

4. Member States shall inform the General Secretariat of the Council and the Commission accordingly where they decide to apply paragraph 2, where appropriate with an indication of the specific cases or circumstances in which the decision applies.

delete

Justification

If the exception provided for in Article 8 paragraph 2 of the Commission proposal will no longer be allowed (compare Amendment 8), this paragraph has to be deleted.

Amendment 16

Article 9

Each Member State shall ensure that a victim of an offence provided for in this Framework Decision is given the adequate legal protection and the standing in judicial proceedings. In particular Member States shall ensure that criminal investigations and judicial proceedings do not cause any additional damage for **a victim**.

Each Member State shall ensure that a victim of an offence provided for in this Framework Decision is given the adequate legal protection and the standing in judicial proceedings. In particular Member States shall ensure that criminal investigations and judicial proceedings do not cause any additional damage for **victims and for their family**.

Justification

Sexual abuse of children frequently takes place within the family or is committed by persons who have a personal relation with the children and their family. The family is in these cases particularly concerned by the abuse and must be protected from additional damage.

Amendment 17

Article 10, paragraph 2

2. Where several Member States have jurisdiction over of the offences envisaged by this Framework Decision, those States shall consult one another with a view to co-ordinating their action in order to prosecute effectively. Appropriate use shall be made of existing co-operation mechanisms, such as the liaison magistrates and the European Judicial Network.

2. Where several Member States have jurisdiction over **any** of the offences envisaged by this Framework Decision, those States shall consult one another with a view to co-ordinating their action in order to prosecute effectively. Appropriate use shall be made of existing co-operation mechanisms, such as the liaison magistrates and the European Judicial Network.

Justification

Grammar

Amendment 18
Article 10, paragraph 3

3. For the purpose of exchange of information relating to the offences referred to in Articles 2, 3, and 4, and in accordance with data protection rules, Member States shall establish operational points of contact or make use of existing co-operation mechanisms. In particular, Member States shall ensure that Europol, within the limits of ***its mandate, and the communicated points of contact under the Council Decision to combat child pornography*** are fully involved.

3. For the purpose of exchange of information relating to the offences referred to in Articles 2, 3, and 4, and in accordance with data protection rules, Member States shall establish operational points of contact or make use of existing co-operation mechanisms. In particular, Member States shall ensure that Europol ***and Interpol***, within the limits of ***their mandates, are*** fully involved.

Justification

The circulation and sharing of information are fundamental. Since exploiters of children operate both within the Member States and in countries outside the (enlarged) Union, it is crucial that intensified cooperation is secured not only with Europol, but also with Interpol.

Amendment 19
Article 10, paragraph 4

4. Each Member State shall inform the General Secretariat of the Council and the Commission of its appointed point of contact for the purpose of exchanging information relating sexual exploitation of children and child pornography. The General Secretariat shall inform all other Member States about the appointed points of contact.

4. Each Member State shall inform the General Secretariat of the Council and the Commission of its appointed point of contact for the purpose of exchanging information relating ***to*** sexual exploitation of children and child pornography. The ***Member State shall inform all other Member States about its appointed point of contact or may request the*** General Secretariat ***to do so on its behalf.***

Justification

Grammar and subsidiarity

Amendment 20

Article 10, paragraph 4a (new)

4a. Member States shall establish registers of persons convicted of the distribution of child pornography and the sexual abuse of children. The information in these registers shall be accessible to all Member States and Europol.

Justification

These registers will facilitate the tracing of repeat offenders. In the light of Europol's mandate and with a view to international cooperation all other Member States and Europol should be given access to these registers.

Amendment 21

Article 10, paragraph 4b (new)

4 b. The Commission, in cooperation with the contact points of the Member States and Europol, should produce every two years a report assessing the effectiveness of the cooperation between Member States and must submit the report to the European Parliament. The first report shall be submitted by 31 March 2005.

Justification

Cooperation between Member States in this area is essential, but can we be sure that it is effective? Effectiveness has to be assessed by the Commission on a regular basis and a report submitted to the European Parliament so that a possible need for changes in the co-operation mechanism can be detected. As Member States must comply with the Framework Decision by 31 December 2002, a first report must be submitted by 31 March 2005.

28 May 2001

OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND EQUAL OPPORTUNITIES (*)

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the proposal for a Council framework decision on combating the sexual exploitation of children and child pornography
(COM(2000) 854 – C5-0043/2001 – 2001/0025(CNS))

Draftsperson: Christa Prets

PROCEDURE

The Committee on Women's Rights and Equal Opportunities appointed Christa Prets draftsperson at its meeting of 27 February 2001.

It considered the draft opinion at its meetings of 19 March 2001, 23 April 2001 and 28 May 2001.

At the last meeting it adopted the following amendments unanimously with one abstention.

The following were present for the vote: Maj Britt Theorin, chairperson; Marianne Eriksson, vice-chairperson; Jillian Evans, vice-chairperson; Christa Prets, draftsperson; María Antonia Avilés Perea, Carlo Fatuzzo (for Amalia Sartori pursuant to Rule 153(2)), Fiorella Ghilardotti, Lissy Gröner, Mary Honeyball, Anna Karamanou, Rodi Kratsa-Tsagaropoulou, Astrid Lulling, Thomas Mann, Karin Scheele, Olle Schmidt (for Marieke Sanders-ten Holte), Miet Smet and Patsy Sørensen.

SHORT JUSTIFICATION

The Committee on Women's Rights and Equal Opportunities welcomes the European Commission's proposal for a Council Framework Decision on Sexual Exploitation of Children and Child Pornography. In the spirit of the 1989 United Nations Convention on the Rights of the Child, the best interest of the child shall be a primary consideration. The Committee also welcomes the signature of the United Nations Convention against Transnational Organized Crime by all European Union Member States.

Sexual exploitation of children is a complex phenomenon. It is important that all relevant legislation is based on an operational and broad definition of sexual exploitation of children and child pornography, which must go beyond the mere notion of 'sexually explicit conduct' and the production of material showing sexually explicit conduct. In the case of children, in order to guarantee them adequate protection, the aspect of being uninformed and thus not able to consent, is crucial. Furthermore, the physical and psychological damage resulting from sexual exploitation is different in children than in adults and thus needs not only specific treatment but also specific prevention based on a broad definition of sexual exploitation of children and child pornography.

The Committee on Women's Rights and Equal Opportunities believes that one of the major causes of the problem of sexual exploitation of children and child pornography is social discrimination and poverty in women. It should be considered that one of the scenarios leading to sexual exploitation of children is a marriage where an exploiter takes advantage of the socially and financially weak position of a woman with children. Also, the adoption of children from third countries is sometimes linked to sexual exploitation of children and the production of child pornography. In this respect, the Committee likes to point out the complex link between sexual exploitation of children and trafficking in women and children. In this sense, the European Union must strive to positively influence third countries which are affected by sexual exploitation of children. Especially, since the European Union cannot guarantee the protection of victims and their families in third countries, it is crucial to have the possibility of granting special residence permits to victims and their care givers (mothers, fathers) from third countries in order to come forward and testify. These are minimum standards which need to be pursued so that the penal proceedings are consistent, fast and effective; social and medical care, a safe and anonymous shelter will also further need to be considered in an appropriate juridical text

It is of great importance that sexual exploitation of children and child pornography are not only combated by actions from the police, but that civil society is also involved. The relevant programmes like STOP and DAPHNE have to be recognised as important parts in combating sexual exploitation of children and child pornography. Member States should be urged to make sure that financial means are provided for the activities of non-governmental organisations and also for organisations that actively work in favour of victims of sexual exploitation to give them the chance of a new life in dignity.

Additionally, gains obtained by exploiters and all other actors involved in sexual exploitation of children should be confiscated and collected in a fund for victims of crimes and relevant NGOs dealing with children's rights.

The Committee on Women's Rights and Equal Opportunities believes that only by strictly

punishing organised crime, is it possible to combat the crimes of sexual exploitation of children and child pornography. The circulation and sharing of information are fundamental. Since exploiters of children operate both within the Member States and in countries outside the (enlarged) Union, it is crucial that intensified cooperation is secured not only with Europol, but also with Interpol. In order to keep up with the structures of organised crime, it is essential that they work with the best technologies available. Furthermore, only by efficiently protecting the victim is it possible to grant the best practice in juridical proceedings.

AMENDMENTS

The Committee on Women's Rights and Equal Opportunities calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1 Recital 6

(6) The important work performed by international organisations must be complemented by that of the European Union;

(6) The important work performed by international organisations, ***in particular by the United Nations, with its Protocol to the Convention on the Rights of the Child and the future Convention on crime in cyberspace,*** must be complemented by that of the European Union.

Justification

More specific.

Amendment 2 Article 1(b)

(b) "*Child pornography*" shall mean ***pornographic*** material that ***visually depicts a child engaged in sexually explicit conduct,***

(b) "*Child pornography*" shall mean ***audio, visual or textual material depicting children in a sexually abusive context, or for a violent, dehumanising or degrading purpose;***

¹ OJ C 62E, 27.02.01, p.327.

Justification

Not only visual but also audio and textual child pornographic material must fall within the scope of the legislation. Furthermore, the definition of pornography has to be enlarged to cover material arousing sexual feelings and not be confined to material showing explicit sexual conduct.

Amendment 3
Article 2(a)

(a) coercing, exploiting, inducing, profiting from or otherwise facilitating the prostitution of a child;

(a) coercing, exploiting, inducing, profiting from or otherwise facilitating the prostitution of a child. ***Special attention shall be paid to the role of the media in publishing and distributing child pornographic material;***

Justification

Media publishing child pornography shall be observed and punished accordingly.

Amendment 4
Article 2, point (b)a (new)

(b)a any activity aimed at promoting or encouraging practices involving the sexual exploitation of children, within or outside its territory;

Justification

Activities which encourage the sexual exploitation of children, notably those of agencies promoting sex tourism, must be investigated and punished.

Amendment 5
Article 3, paragraph 1, introductory sentence

1. Each Member State shall take the

1. Each Member State shall take the

necessary measures to ensure that the following **intentional** conduct, whether undertaken by means of a computer system or not, is punishable:

necessary measures to ensure that the following conduct, whether undertaken by means of a computer system or not, is punishable:

Justification

The reference to 'intentional' conduct for the purposes of punishment could give rise to subjective interpretations and cause the existence of 'unintentional' conduct to be regarded as conceivable and admissible. This is in no way acceptable in this situation.

Amendment 6
Article 3(2)

2. Each Member State shall also take the necessary measures to ensure, without prejudice to definitions otherwise provided for in this Framework Decision, that the conduct referred to in paragraph 1 is punishable when involving **pornographic material that visually represents a child engaged in sexually explicit conduct**, unless it is established that the person representing a child was over the age of eighteen years at the time of the depiction.

2. Each Member State shall also take the necessary measures to ensure, without prejudice to definitions otherwise provided for in this Framework Decision, that the conduct referred to in paragraph 1 is punishable when involving **audio, visual or textual material depicting children in a sexually abusive context, or for a violent, dehumanising or degrading purpose**, unless it is established that the person representing a child was over the age of eighteen years at the time of the depiction.

Justification

The definition of sexual exploitation of children has to be as broad as possible in order to guarantee adequate protection of children from sexually connotated abuse.

Amendment 7
Article 4, paragraph 1

1. Each Member State shall take the necessary measures to ensure that the

1. Each Member State shall take the necessary measures to ensure that the

instigation of, aiding or abetting an offence referred to in Articles 2 and 3 is punishable.

instigation of, aiding or abetting an offence referred to in Articles 2 and 3, ***in particular arranging the perpetration of an offence or instructing others to perpetrate it*** is punishable.

Justification

As child pornography and the sexual exploitation of children very often occur in the context of organised crime, it must be ensured that all those who collaborate in the perpetration of such offences, from the actual perpetrators to the wire-pullers behind the scenes, are liable to prosecution.

Amendment 8 Article 5(2)

2. Without prejudice to additional definitions in the Member States' legislation, each Member State shall take the necessary measures to ensure that an offence referred to in Articles 2(a) and 4 in that respect is punishable by terms of imprisonment with a maximum penalty that is not less than ***eight*** years when:
- it involves a child below the age of ***ten*** years, or

2. Without prejudice to additional definitions in the Member States' legislation, each Member State shall take the necessary measures to ensure that an offence referred to in Articles 2(a) and 4 in that respect is punishable by terms of imprisonment with a maximum penalty that is not less than ***ten*** years when:
- it involves a child below the age of ***sixteen*** years, or

Justification

Penalties for the exploitation of the prostitution of a child under such aggravating circumstances should be sufficiently severe to reflect the seriousness of the crime and to be dissuasive. Ten years maximum penalty therefore seems to be more appropriate than eight years. Moreover, it is arbitrary to have a difference at the age of ten years, as it will encourage the increased targeting of children a few months older than ten years.

Amendment 9

Article 5, paragraph 2, third indent

- it generates *substantial proceeds*, or

- it generates *wealth for those involved in its perpetration*, or

Justification

Greater clarity.

Amendment 10
Article 5(3)

3. Without prejudice to additional definitions in the Member States' legislation, each Member State shall take the necessary measures to ensure that an offence referred to in Articles 2(b) and 4 in that respect is punishable by terms of imprisonment with a maximum penalty that is not less than *eight* years when:
- it involves a child below the age of *ten* years, or

3. Without prejudice to additional definitions in the Member States' legislation, each Member State shall take the necessary measures to ensure that an offence referred to in Articles 2(b) and 4 in that respect is punishable by terms of imprisonment with a maximum penalty that is not less than *ten* years when:
- it involves a child below the age of *sixteen* years, or

Justification

Penalties for the exploitation of the prostitution of a child under such aggravating circumstances should be sufficiently severe to reflect the seriousness of the crime and to be dissuasive. Ten years maximum penalty therefore seems to be more appropriate than eight years. Moreover, it is arbitrary to have a difference at the age of ten years, as it will encourage the increased targeting of children a few months older than ten years.

Amendment 11
Article 5(4)

4. Without prejudice to additional definitions in the Member States' legislation, each Member State shall take the necessary measures to ensure that an

4. Without prejudice to additional definitions in the Member States' legislation, each Member State shall take the necessary measures to ensure that an

offence referred to in Articles 3(1)(a) to (c) and 4 in that respect is punishable by terms of imprisonment with a maximum penalty that is not less than *eight* years when:
- it involves depictions of a child below the age of *ten* years, or

offence referred to in Articles 3(1)(a) to (c) and 4 in that respect is punishable by terms of imprisonment with a maximum penalty that is not less than *ten* years when:
- it involves depictions of a child below the age of *sixteen* years, or

Justification

Penalties for the exploitation of the prostitution of a child under such aggravating circumstances should be sufficiently severe to reflect the seriousness of the crime and to be dissuasive. Ten years maximum penalty therefore seems to be more appropriate than eight years. Moreover, it is arbitrary to have a difference at the age of ten years, as it will encourage the increased targeting of children a few months older than ten years.

Amendment 12

Article 5, paragraph 4, third indent

- it generates *substantial proceeds*, or

-

- it generates *wealth for those involved in its perpetration*, or

Justification

Greater clarity.

Amendment 13

Article 7, introductory part

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other

Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6 is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and *confiscation of all*

sanctions such as:

proceeds gained from child pornography and the sexual exploitation of children. Member States shall redirect these amounts to the protection and rehabilitation of the victims. They may include other sanctions such as:

Justification

The principle of the confiscation of the proceeds from criminal offences has already been well established at the European level through the Council of Europe (see Convention on laundering, search, seizure and confiscation of the proceeds from crime and through the Joint Action of 3 December 1998). Furthermore, the redirection of the criminal gains into prevention and care for the victims is essential.

Amendment 14 Article 9

Each Member State shall ensure that a victim of an offence provided for in this Framework Decision is given the adequate legal protection and the standing in judicial proceedings. In particular Member States' shall ensure that criminal investigations and judicial proceedings do not cause any additional damage ***for a*** victim.

Each Member State shall ensure that a victim of an offence provided for in this Framework Decision is given the adequate legal protection and the standing in judicial proceedings. ***Member States shall ensure that the victims and witnesses receive a proper legal advice, the support of a child psychologist and the interpretation into and from their language. Member States shall also ensure that simple, adequate and comprehensible language is used for the victims and their families to understand fully the procedures. Children shall be permitted to give evidence by video.*** In particular Member States shall ensure that criminal investigations and judicial proceedings do not cause any additional damage ***to the*** victim. ***For this purpose, each Member State shall protect the privacy, identity and physical safety of the victims, of their families and of the witnesses. Member States shall also ensure that victims receive the necessary social assistance with the aim of helping them overcome the traumas resulting from the incidents they have experienced and hence facilitating their reintegration***

into society.

Special residence permits shall be granted to the victims who testify and to their care givers during the judicial proceedings and as long as the safety of the victim is under threat.

Justification

These are minimum standards which need to be pursued so that the penal proceedings are consistent, fast and effective. The possibility of granting special leave from work to care givers and special residence permits to the victims and care givers can support the prevention of revictimization and can encourage testimony. Social and medical care, a safe and anonymous shelter will also further need to be considered in an appropriate juridicial text. The experience of appearing in court can be traumatic for a child. Allowing a child to give pre-recorded video evidence away from a court with the help of someone who is specially trained, can help alleviate a child's anxiety. It is important that a child be given as much support as possible in order to prevent distress and to enable the child to give the best possible evidence.

Amendment 15 Article 10(3)

3. For the purpose of exchange of information relating to the offences referred to in Articles 2, 3, and 4, and in accordance with data protection rules, Member States shall establish operational points of contact or make use of existing co-operation mechanisms. In particular, Member States shall ensure that Europol, within the limits of *its* mandate, and ***the communicated points of contact under the Council Decision to combat child pornography*** are fully involved.

3. For the purpose of exchange of information relating to the offences referred to in Articles 2, 3, and 4, and in accordance with data protection rules, Member States shall establish operational points of contact or make use of existing co-operation mechanisms. In particular, Member States shall ensure that Europol ***and Interpol***, within the limits of ***their*** mandate, and ***a supplementary system***, are fully involved ***and use the best available techniques. Member States should also give consideration to international cooperation between the police and NGOs, inter alia by setting up and funding a common database for monitoring and tracking down child pornography on the Internet.***

Justification

The transfer and exchange of information is of fundamental importance. As those who exploit children operate both in the Member States and in countries outside the Community (the enlarged Union), it is imperative to ensure closer cooperation not only with Europol but also with Interpol. The best available technologies must be used so as to be able to tackle the structure of organised crime. As the Internet is by far and away the main source for the spread of child pornography, EU Member States must focus action to combat child pornography on the Internet.

Amendment 16
Article 10, paragraph 4 a (new)

4 a. Member States shall draw up joint strategies to prevent the sexual exploitation of children, child pornography and the spread thereof.

Justification

Preventive action in particular should be included amongst the measures used to combat the sexual exploitation of children and child pornography.