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with a proposal for a European Parliament recommendation to the Council on combating the sexual exploitation of children and child pornography (2008/2144(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Roberta Angelilli

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PROPOSAL FOR A EUROPEAN PARLIAMENT RECOMMENDATION TO THE COUNCIL

on combating the sexual exploitation of children and child pornography (2008/2144(INI))

The European Parliament,

- having regard to the proposal for a recommendation to the Council by Roberta Angelilli on behalf of the UEN Group on combating the sexual exploitation of children and child pornography (B6-0216/2008),
- having regard to Article 24 of the Charter of Fundamental Rights of the European Union which enshrines children's right to protection and care,
- having regard to Article 34 of UN Convention on the Rights of the Child¹,
- having regard to Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography² ("the Framework Decision"),
- having regard to the report from the Commission issued on 16 November 2007 on the basis of Article 12 of the Framework Decision (COM(2007)0716) ("the Commission Report"),
- having regard to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse³ ("the CoE Convention"),
- having regard to the 2000 Optional Protocol to the UN Convention on the Rights of the Child on the sale of children, child prostitution and child pornography,
- having regard to its resolution of 16 January 2008: Towards an EU strategy on the rights of the child⁴,
- having regard to the findings of the Rio de Janeiro Pact to Prevent and Stop Sexual Exploitation of Children" agreed on 25-28 November 2008 at the III World Congress against the Sexual Exploitation of Children and Adolescents,
- having regard to Rule 114(3) of its Rules of Procedure,
- having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Women's Rights and Gender Equality (A6-0012/2009),

¹ Adopted and opened for signature, ratification and accession by UN General Assembly resolution 44/25 of 20 November 1989.

² OJ L 13, 20.1.2004, p. 44.

³ Adopted on 13 July 2007 by Committee of Ministers, CETS No. 201.

⁴ Texts Adopted, P6_TA(2008)0012.

- A. whereas the CoE Convention signed by twenty EU Member States is the first international legal instrument to categorise the various forms of sexual abuse of children as criminal offences, including such abuse, perpetrated inter alia with the use of force, coercion or threats, even within the family,
 - B. whereas seven Member States have still not signed the CoE Convention and eight Member States have still not ratified the Optional Protocol to the UN Convention on the Rights of the Child on the sale of children, child prostitution and child pornography,
 - C. whereas children make a constantly growing use of new technologies and whereas an increasingly significant part of the social life of children and young people takes place online where continually evolving advanced technologies and communication tools are used; whereas as a consequence the Internet is increasingly being used by potential and actual sex offenders for preparing the sexual abuse of children, in particular through grooming and child pornography,
1. Addresses the following recommendations to the Council:
- (a) encourage those Member States which have not already done so to sign, ratify and implement all relevant international conventions, first of all the CoE Convention, as it provides for additional protection of children's rights beyond the Framework Decision, but also the Optional Protocol to the UN Convention on the Rights of the Child on the sale of children, child prostitution and child pornography,
 - (b) assist Member States in improving their legislation as well as the extraterritorial cooperation among Member States in this field; call for sexual crimes against children under the age of 18 always to be classified throughout the EU as exploitation of minors, in accordance with Parliament's above-mentioned resolution of 16 January 2008 ;
 - (c) enable Member States to explicitly exclude the double criminality requirement for establishing jurisdiction for the offences established in accordance with the Framework Decision;
 - (d) urge Member States to criminalise all types of sexual abuse of children;

Implementation of the Framework Decision

- (e) assist Member States that have not yet entirely implemented the Framework Decision in implementing it as soon as possible; in particular, emphasis should be placed on adopting legislation for the definition of child pornography as set out in Article 1(b) of the Framework Decision, by providing mechanisms for the protection of victims, and by implementing Article 8(1)(b) of the Framework Decision, which deals with extraterritorial jurisdiction (sex tourism);
- (f) call for effective protection against sexual exploitation of children by regarding child sex tourism as a crime in all Member States; call for all EU citizens who commit a sex crime against children in any country within or outside the EU to be subject to uniform extraterritorial criminal legislation applicable throughout the EU;

- (g) improve, in cooperation with the Commission and Member States, the monitoring of the implementation of the Framework Decision in order to obtain timely and complete information through the creation of mechanisms that would enable Member States to list relevant information, including the definitions of crimes, in appropriate thematic fields, thus simplifying the comparison of Member States' judicial systems;
- (h) encourage the Member States to report in detail on the state of cross-border cooperation, in particular if cooperation with NGOs is provided for by law or occurs in practice;
- (i) encourage the Member States to report on the destination of assets seized in the context of a proven case of child prostitution or child pornography;

Revision of the Framework Decision

- (j) revise the Framework Decision on the basis of the proposal submitted by the Council Presidency, any other Member State or alternatively by the Commission, thus raising the level of protection to at least the level provided by the CoE Convention and by tightening the focus on abuses related to the Internet and other communication technologies; recommends that the proposal includes the following provisions:
 - creation of national management systems for sex offenders that would include risk assessment, as well as intervention programmes to prevent or minimise the risk of repeat offences, and therapies available to sex offenders; Such intervention programmes and voluntary therapy could be funded from the general budget of the EU to ensure that the children's welfare is the focal point throughout the EU;
 - strengthening of the human rights-based and victim-centred approach;
 - criminalisation of grooming (soliciting children for sexual purposes) and the use of a definition of grooming based on Article 23 of the CoE Convention;
 - criminalisation of engaging in sexual activities with an individual below and above the age of consent but below the age of 18 where use is made of coercion, force or threats, or abuse is made of a recognised position of trust, authority or influence over the child, including within the family, or abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence, or where money or other forms of remuneration or consideration is given as payment in exchange for the child engaging in sexual activities;
 - criminalisation of coercing a child into a forced marriage;
 - criminalisation of knowingly attending pornographic performances involving children and intentionally causing children to witness sexual abuse or activities;
 - criminalisation of providers of paedophile chat rooms or Internet paedophile fora;
 - measures to ensure that the Member States, in the context of a comprehensive

strategy of international diplomatic, administrative and law enforcement cooperation, take appropriate steps to have illegal child abuse materials taken offline at source, thereby giving victims maximum protection, and work with Internet providers to disable websites which are used to commit, or to advertise the possibility of committing, offences established in accordance with the Framework Decision;

- allowing the national enforcement agencies to require Internet providers to block access to websites which are used to commit, or to advertise the possibility of committing, offences established in accordance with the Framework Decision and, if they fail to do so, to require the deletion of the registered domain names which are used for those purposes;
- supporting the Commission's efforts in cooperation with the major credit card companies to investigate whether it is technically feasible to close down or otherwise obstruct the Internet-based payment system for websites involved in the sale over the Internet of child pornography; also encouraging other economic players, such as banks, bureaux de change, Internet providers and search engine companies, to take an active part in efforts to combat child pornography and other forms of commercial sexual exploitation of children;
- encouraging Member States to provide parents with easily manageable programmes allowing them to block children's access to pornographic websites;
- adopt measures in order to encourage the victims of sexual exploitation to file criminal and civil claims in the national courts against sex offenders;
- revision of Article 5(3) of the Framework Decision, which provides only a minimal basis for preventing convicted sex offenders from gaining access to children through employment or voluntary activities involving regular contact with children, inter alia by considering an obligation of Member States to ensure that applicants to certain posts working with children undergo criminal records checks, including setting up clear rules or guidelines for employers on their obligations in this regard;
- facilitating international cooperation by the use of the instruments provided for by Article 38 of the CoE Convention;
- releasing specific professional groups from the obligation of confidentiality, when a person encounters information about an offence established in accordance with the Framework Decision or has serious reason to believe that such an offence could have been committed, in cases where the information comes directly from a victim of sexual exploitation;
- obligation for those whose work involves regular contact with children to report situations where they have reasonable grounds for suspecting abuse;
- improving the identification of abused children through training of personnel having regular contact with them and by training law enforcement personnel who

might have contact with abused children;

- ensuring the strongest protection of children in court proceedings as well as during investigations, in order to avoid trauma by providing for specific arrangements on the way of collecting evidence from child victims;
- prohibiting advertisements encouraging the commission of offences established in accordance with the Framework Decision;
- criminalisation of the instigation, aiding, abetting and attempting of all the offences established in accordance with the Framework Decision;
- encouraging Member States to take every necessary measure to prevent discrimination against the victims of child abuse and their stigmatisation,
- expand the catalogue of aggravating circumstances in determining the sanctions in relation to offences established by the Framework Decision with a list of aggravating circumstances as established by Article 28 of the CoE Convention;
- establish the exploitation of the superior position of an offender (in family, in education, in professional relations, when illegal migration takes place, etc.) as an aggravating circumstance;

(k) encourage all Member States to set up the Missing Child Alert System to improve cooperation at European level;

(l) set up together with the Member States and the Commission an action programme which would be aimed at providing the children who were identified as being sexually abused in pornographic images with adequate protection and support;

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2. Instructs its President to forward this recommendation to the Council, and, for information, to the Commission and to the Members States.

EXPLANATORY STATEMENT

The sexual exploitation of children and child pornography are an extremely serious violation of human rights.

The Commission report implies that not all Member States have complied with the provisions of Council Framework Decision 2004/68/JHA of 22 December 2003.

However, despite the fact that the legal systems of Member States provide for penalties and a fairly high level of protection against the sexual exploitation and abuse of children and child pornography, the rapporteur takes the view that the 2004 framework decision should be updated; this should be done to increase the level of protection for children, also in view of the constant development of new technologies, in particular the Internet, and the use of new forms of online grooming of children by paedophiles.

In addition, the following action should be taken:

- the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 25 October 2007 should be ratified;
- the online grooming of children should be considered a criminal offence;
- the definition of ‘grooming’ should be based on Article 23 of the aforementioned Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of October 2007;
- participation in sexual activity with a child below or above a certain age should be considered a criminal offence in all cases for which provision is made in the Framework Directive, but also in those cases provided for in the aforementioned Council of Europe Convention;
- Member States should be bound to exchange the information contained in criminal records relating to sexual abuse convictions, in order to ban access to jobs or voluntary work which involve direct contact with children;
- extra-territorial cooperation should be improved and Member States should be asked to refrain from applying the principle of double criminality;
- perpetrators of sexual abuse should be denied the opportunity to pursue professional activities which involve contact with children;
- victim protection should be improved during an investigation and before and after a trial.

PROPOSAL FOR A RECOMMENDATION (B6-0216/2008)

pursuant to Rule 114(1) of the Rules of Procedure

by Roberta Angelilli

on behalf of the UEN Group

on combating the sexual exploitation of children and child pornography

The European Parliament,

- having regard to Council framework decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography,
 - having regard to the report from the Commission on the basis of Article 12 of Council framework decision 2004/68/JHA of 22 December 2003,
 - having regard to Rule 114(1) of its Rules of Procedure,
- A. whereas, pursuant to Article 12(1) of Council framework decision 2004/68/JHA, Member States should have adopted the necessary measures to implement that Decision by 20 January 2006,
- B. whereas, at the end of April 2007, three Member States had not yet implemented Council framework decision 2004/68/JHA,
1. Addresses the following recommendations to the Council:
- (a) call on Member States that have not yet implemented the above-mentioned framework Decision to do so as soon as possible;
 - (b) call on Member States that have not yet adopted legislation on the definition of child pornography as set out in Article 1(b) of the framework Decision to do so as soon as possible;
 - (c) call on Member States that have not yet forwarded the relevant documentation for the evaluation of their legislation on the definition of ‘computer system’ to do so as soon as possible;
 - (d) call on Member States that have not yet complied with the minimum requirement of criminalisation of child pornography to do so as soon as possible;

- (e) call on Member States that have not yet complied with the rule on extra-territorial jurisdiction when the offender is one of the nationals of the country concerned, to do so as soon as possible;
 - (f) call on Member States that have not yet adopted legislation to strengthen protection of, and assistance to, child victims of sexual exploitation to do so as soon as possible;
2. Instructs its President to forward this recommendation to the Council and, for information, to the Commission and the relevant committee of the European Parliament.

8.10.2008

OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND GENDER EQUALITY

for the Committee on Civil Liberties, Justice and Home Affairs

on Combating sexual exploitation of children and child pornography
(2008/2144(INI))

Rapporteur: Lissy Gröner

SUGGESTIONS

The Committee on Women's Rights and Gender Equality calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Notes with concern the increased distribution of child pornography via the internet, involving ever younger children; calls on all Member States to make the blocking of access to child pornography websites a legally binding obligation, so that companies providing access to the internet are obliged to block such criminal sites;
2. Calls on the Commission, in the framework of international cooperation, to strengthen efforts on filtering and closing down websites displaying child pornography;
3. Calls on the Member States to report on the state of play of the dialogue with stakeholders on closing down illegal websites; calls on the Commission to intensify talks with national authorities and stakeholders, in order to build-up an integrated strategy aiming at closing down such websites;
4. Stresses in particular the need to develop awareness-raising campaigns for parents and teenagers concerning the dangers of child pornography on the internet and especially concerning the risk of sexual exploitation in chat-rooms and forums; congratulates Member States which have already launched such campaigns;
5. Pays tribute to European NGOs and professional organisations which have already developed campaigns aimed at parents and children;
6. Calls on the Member States to give appropriate support to the victims and their families,

and to inform the Commission of what precise measures have been taken in that respect, in particular as regards language support, legal and psycho-social counselling, special residence permits granted and assistance in criminal proceedings;

7. Calls on the Member States to improve the protection of children abused by family members;
8. Calls on the Member States to report in detail on the state of cross-border cooperation, in particular if cooperation with NGO's is foreseen either by law or in practice;
9. Calls on EUROPOL to set up a specific unit which deals with child pornography and child prostitution, is composed of experts trained in gender specific issues, and with a view to cooperation with the Virtual Global Taskforce (VGT); calls for close cooperation between this specific unit and the police authorities in the Member States and third countries with competence in the field of child pornography and child prostitution, thus establishing a trans-national network to tackle these issues;
10. Calls on the Member States to report on the destination of assets seized in the context of a proven case of child prostitution or child pornography;
11. Calls on the Member States to review their procedural provisions concerning jurisdiction and the issue of extraterritoriality so as to ensure that the perpetrators do not escape prosecution; invites the competent authorities to exchange information in this regard;
12. Calls on the Commission, in cooperation with Member States and relevant international bodies, to present regular studies analysing gender-disaggregated data, focusing in particular on:
 - the origin of victims;
 - the social and family environment;
 - the possible links with international trafficking;
 - the role of the family in cases of prostitution or child pornography;
 - cases of multiple victims;
 - job advertisements, especially in the services sector, aimed at under-age girls;
13. Calls on the Member States to check whether their child protection laws still adequately ensure protection against the sexual exploitation of children and teenagers, in the light of the rising incidence of sexual exploitation and harassment in new media and communication technologies and the general trend of sexualisation of children and teenagers;
14. Calls on the Commission to assess further needs in terms of protection of the victim and their family, taking into account alternative forms of families.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	7.10.2008
Result of final vote	+: 25 -: 1 0: 0
Members present for the final vote	Edit Bauer, Emine Bozkurt, Ilda Figueiredo, Věra Flasarová, Claire Gibault, Lissy Gröner, Zita Gurmai, Esther Herranz García, Anneli Jäätteenmäki, Lívia Járóka, Piia-Noora Kauppi, Rodi Kratsa-Tsagaropoulou, Roselyne Lefrançois, Siiri Oviir, Marie Panayotopoulos-Cassiotou, Zita Pleštinšká, Christa Prets, Teresa Riera Madurell, Raül Romeva i Rueda, Eva-Britt Svensson, Britta Thomsen, Anne Van Lancker, Anna Záborská
Substitute(s) present for the final vote	Mary Honeyball, Marusya Ivanova Lyubcheva, Maria Petre, Petya Stavreva

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	21.1.2009
Result of final vote	+: 45 -: 0 0: 7
Members present for the final vote	Alexander Alvaro, Roberta Angelilli, Mario Borghezio, Catherine Boursier, Emine Bozkurt, Philip Bradbourn, Mihael Brejc, Kathalijne Maria Buitenweg, Maddalena Calia, Michael Cashman, Giusto Catania, Jean-Marie Cavada, Carlos Coelho, Elly de Groen-Kouwenhoven, Gérard Deprez, Agustín Díaz de Mera García Consuegra, Bárbara Dührkop Dührkop, Claudio Fava, Urszula Gacek, Kinga Gál, Patrick Gaubert, Roland Gewalt, Jeanine Hennis-Plasschaert, Ewa Klamt, Magda Kósáné Kovács, Stavros Lambrinidis, Henrik Lax, Roselyne Lefrançois, Baroness Sarah Ludford, Viktória Mohácsi, Claude Moraes, Javier Moreno Sánchez, Rareș-Lucian Niculescu, Martine Roure, Sebastiano Sanzarello, Inger Segelström, Csaba Sógor, Vladimir Urutchev, Ioannis Varvitsiotis, Manfred Weber, Tatjana Ždanoka
Substitute(s) present for the final vote	Edit Bauer, Simon Busuttil, Iratxe García Pérez, Elisabetta Gardini, Genowefa Grabowska, Ona Juknevičienė, Antonio Masip Hidalgo, Nicolae Vlad Popa, Luca Romagnoli, Eva-Britt Svensson, Stefano Zappalà