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Committee on Culture and Education

2010/0064(COD)

18.11.2010

OPINION

of the Committee on Culture and Education

for the Committee on Civil Liberties, Justice and Home Affairs

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

Rapporteur: Petra Kammerevert

PA_Legam

SHORT JUSTIFICATION

1. The European Commission is seeking by means of this Directive to make progress in combating sexual abuse and sexual exploitation and the depiction of sexual acts involving persons under the age of 18 years.
2. The proposal assumes that criminal offences in this area are on the increase, that the development of modern communications is exacerbating this problem and the regulations in the EU Member States are neither tough enough nor coherent enough.
3. The proposal contains provisions defining criminal offences and sanctions which are to serve to achieve the aims set out in paragraph 1.
4. It is questionable whether this proposal will accomplish these aims:
 - a) Electronic media content depicting sexual acts involving persons under the age of 18 years must be removed as rapidly as possible. It is evident that the measures to block access to such content put in place in some Member States can easily be circumvented by users. Blocking mechanisms are not an effective means of combating such depictions. They are of limited efficiency, imprecise and easily bypassed. Blocking does not lead to the elimination of the content, only to their relative non-availability, which does not put an end to the infringement involved in their being 'made available'.
 - b) The EU Member States and the telecommunications operators active in them have functioning transnational networks which as a rule guarantee rapid deletion of content. Recent publications about Scandinavian blocking lists show that a large number of such servers are located in the USA, Australia, the Netherlands and Germany. There is as yet no proof that providers of such content are migrating to countries in which deletion is impossible or only takes place after a considerable lapse of time.
 - c) Establishing technical blocking mechanisms enables large-scale monitoring of communication flows and arouses appetites for other prohibited or otherwise merely undesirable content. Once the internet blocking instrument has been established, it will not be used only as a measure to combat the depiction on the internet of sexual acts involving persons under the age of 18 years. Blocking of access represents a risk of a fundamental shift away from the principle of net neutrality.
 - d) A multidimensional strategy is required that will strengthen and enhance the cooperation between police forces, internet businesses, existing internet complaints bodies and the INHOPE provider network.
 - e) Access blocking mechanisms undermine confidence in the freedom of information and communication on the internet. Accordingly it is not possible to accept the maxim 'deletion rather than blocking', since this too will require the establishment of a blocking infrastructure. It is to be expected that only occasional offenders will be deterred by means of blocking, which cannot justify such a far-reaching interference with the freedom of information.

- f) Measures to combat the depiction of sexual acts involving persons under the age of 18 years cannot be limited to web servers. An approach is needed which also encompasses the exchange of such content by FTP, e-mail, peer to peer networks and mobile telephony.
- g) The need to protect children and young people during their sexual maturing process must be assessed in differentiated fashion specifically in criminal law on sex offences. Without such differentiation, the area of criminal offences relating to sexual exploitation would be very considerably expanded in several EU Member States.
- h) An overall global strategy is needed to deal with the sexual exploitation of young people. To this end, it would be desirable for the Commission, in so far as it can, to take the initiative to bring about international binding agreements.
5. For the above reasons there are considerable doubts as to whether the objectives set out in the proposal for a directive can be achieved by means of the measures proposed.

The key points of your rapporteur's proposal are therefore as follows:

- *Rejection of specific provisions for the establishment of internet blocking mechanisms and encouragement Europe-wide for deletion of the content targeted by the Directive.*
- *Abandonment of a Europe-wide definition of the terms 'child' and 'child pornography'.*
- *No introduction of criminal liability for legal persons.*
- *No introduction of an obligation to report suspected sexual exploitation or sexual abuse.*
- *Abandonment of specifically determined punishments for the defined offences.*
- *Reinforced protection for victims and reinforced prevention measures both at EU level and at the level of the Member States.*
- *Reinforcement and up-to-date organisation of international cooperation arrangements for the deletion of content, the prosecution of offences, the protection of victims and prevention.*

AMENDMENTS

The Committee on Culture and Education calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive

Title

Text proposed by the Commission

Proposal for a directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of *children* and *child pornography*, repealing Framework Decision 2004/68/JHA

Amendment

Proposal for a directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of *persons under the age of 18 years* and *the depiction of sexual acts involving such persons*, and repealing Framework Decision 2004/68/JHA

Amendment 2

Proposal for a directive
Recital 1

Text proposed by the Commission

(1) Sexual abuse and sexual exploitation of *children*, including *child pornography* constitute serious violations of fundamental rights, in particular the rights of the child to protection and care as is necessary for his or her well-being as stipulated by the UN Convention on the Rights of the Child and the Charter of Fundamental Rights of the European Union.

Amendment

(1) Sexual abuse and sexual exploitation of *persons under the age of 18 years*, including *the depiction of sexual acts involving such persons*, constitute serious violations of fundamental rights, in particular the rights of the child to protection and care as is necessary for his or her well-being as stipulated by the UN Convention on the Rights of the Child and the Charter of Fundamental Rights of the European Union.

Amendment 3

Proposal for a directive
Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) Due note should be taken, in that connection, of the importance of the United Nations Convention on the Rights of the Child of 20 November 1989, and in particular Articles 19 and 34 thereof, and of the Optional Protocol of 25 May 2000 to that Convention on the Sale of Children, Child Prostitution and Child

Pornography.

Amendement 4

Proposal for a directive

Recital 1 b (new)

Text proposed by the Commission

Amendment

(1b) Due note should be taken, in that connection, of the importance of Article 16 of the Treaty on the Functioning of the European Union, which lays down the right to protection of personal data.

Amendement 5

Proposal for a directive

Recital 1 c (new)

Text proposed by the Commission

Amendment

(1c) Due note should be taken, in that connection, of the importance of Articles 7, 8, 11 and 24 of the Charter of Fundamental Rights of the European Union, which lay the right to respect for private and family life, the right to protection of personal data, the right to freedom of expression and information and the rights of the child.

Amendement 6

Proposal for a directive

Recital 1 d (new)

Text proposed by the Commission

Amendment

(1d) Due note should be taken in that connection, of the importance of Articles 8 and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which lay down the right to respect for private and family

life and the right to freedom of expression.

Amendment 7

Proposal for a directive Recital 2

Text proposed by the Commission

(2) **Child pornography, which consists of images of child sex abuse**, and other **particularly serious** forms of sexual abuse and sexual exploitation of **children** are increasing and spreading through the use of new technologies and the internet.

Amendment

(2) **The depiction of sexual acts involving persons under the age of 18 years** and other forms of sexual abuse and sexual exploitation of **persons under the age of 18 years** are increasing and spreading through the use of new technologies and the internet.

Amendment 8

Proposal for a directive Recital 3

Text proposed by the Commission

(3) Council Framework Decision 2004/68/JHA on combating the sexual exploitation of children and child pornography approximates Member States' legislation to criminalise the most serious forms of **child** sexual abuse and sexual exploitation, to extend domestic jurisdiction, and to provide for a minimum level of assistance for victims. Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings establishes a set of victims' rights in criminal proceedings, including the right to protection and compensation. Moreover, the coordination of prosecution of cases of sexual abuse, sexual exploitation of **children** and **child pornography** will be facilitated by the adoption of Council Framework Decision 2009/948/JHA on prevention and settlement of conflict of jurisdiction in criminal proceedings.

Amendment

(3) Council Framework Decision 2004/68/JHA on combating the sexual exploitation of children and child pornography approximates Member States' legislation to criminalise the most serious forms of sexual abuse and sexual exploitation **of persons under the age of 18 years**, to extend domestic jurisdiction, and to provide for a minimum level of assistance for victims. Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings establishes a set of victims' rights in criminal proceedings, including the right to protection and compensation. Moreover, the coordination of prosecution of cases of sexual abuse, sexual exploitation of **persons under the age of 18 years and the depiction of sexual acts involving such persons** will be facilitated by the adoption of Council Framework Decision

Amendment 9

Proposal for a directive Recital 5

Text proposed by the Commission

(5) Serious criminal offences such as the sexual exploitation of **children** and **child pornography** require a comprehensive approach covering the prosecution of offenders, the protection of **child** victims, and prevention of the phenomenon. The **child's** best interests must be **a primary** consideration when carrying out any measures to combat these offences in accordance with the Charter of Fundamental Rights of the European Union and the UN Convention on the Rights of the Child. Framework Decision 2004/68/JHA should be replaced by a new instrument providing such comprehensive legal framework to achieve that purpose.

Amendment

(5) Serious criminal offences, such as the **sexual abuse and the** sexual exploitation of **persons under the age of 18 years** and **the depiction of sexual acts involving persons under the age of 18 years**, require a comprehensive approach covering the prosecution of offenders, the protection of victims **under the age of 18 years**, and prevention of the phenomenon. The best interests **of victims under the age of 18 years** must be **an important** consideration when carrying out any measures to combat these offences in accordance with the Charter of Fundamental Rights of the European Union and the UN Convention on the Rights of the Child. Framework Decision 2004/68/JHA should be replaced by a new instrument providing such comprehensive legal framework to achieve that purpose.

Amendment 10

Proposal for a directive Recital 6

Text proposed by the Commission

(6) Serious forms of **child** sexual abuse and sexual exploitation should be subject to effective, proportionate **and dissuasive** sanctions. **This includes, in particular,** various forms of sexual abuse and sexual exploitation **facilitated by the use of**

Amendment

(6) Serious forms of sexual abuse and sexual exploitation **of persons under the age of 18 years, and the depiction of such activities, including by means of information and communication technologies**, should be subject to effective

information and communication technology. ***The definition of child pornography should also be clarified and brought closer to that contained in international instruments.***

and proportionate sanctions. ***The approach taken by Member States to the various forms of sexual abuse and sexual exploitation must reflect advances in information and communication technology, and the role such outlets can potentially play in producing and disseminating such materials.***

Amendment 11

Proposal for a directive Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) If the sexual abuse and sexual exploitation of persons under the age of 18 years and the depiction of sexual acts involving such persons is to be combated effectively, a holistic approach is needed which combines punishment of the perpetrators with comprehensive protection of the victims and effective preventive measures in the Member States. The preventive approach should, above all, have a clear and lasting impact on the way people are taught to use new means of communication, e.g. the internet.

Amendment 12

Proposal for a directive Recital 7

Text proposed by the Commission

Amendment

(7) This Directive does not govern Member States' policies with regard to consensual sexual activities ***in which children may be involved*** and which can be regarded as the normal discovery of sexuality in the course of human development, taking account of

(7) This Directive does not govern Member States' policies with regard to consensual sexual activities ***involving persons of comparable age, at least one of whom is under the age of 18 years***, and which can be regarded as the normal discovery of

the different cultural and legal traditions and of new forms of establishing and maintaining relations among *children and adolescents*, including through information and communication technologies.

sexuality in the course of human development, taking account of the different cultural and legal traditions and of new forms of establishing and maintaining relations among *young people*, including through information and communication technologies.

Amendment 13

Proposal for a directive Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) At the same time, it should be pointed out that differing cultural and legal traditions cannot justify the sexual harassment of persons under the age of 18 years or the depiction of sexual acts involving them.

Amendment 14

Proposal for a directive Recital 8

Text proposed by the Commission

Amendment

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

(8) Investigating offences and bringing charges in criminal proceedings should be facilitated, to take into account the difficulty for child victims of denouncing abuse and the anonymity of offenders in cyberspace. To ensure successful investigations and prosecutions of the offences referred to in this Directive, effective investigation tools, ***including the activation of early warning systems,*** should be made available to those responsible for the investigation and prosecutions of such offences. These ***investigations should be subject to prior authorisation by the relevant judicial authority in the Member State concerned and should be carried out under the supervision of that authority.***

Amendment 15

Proposal for a directive Recital 9

Text proposed by the Commission

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

Amendment

(9) Rules on jurisdiction should be amended to ensure that sexual abusers or exploiters ***of persons under the age of 18 years*** from the European Union face prosecution even if they commit their crimes outside the European Union, in particular via so-called sex tourism.

Amendment 16

Proposal for a directive Recital 10

Text proposed by the Commission

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

Amendment

(10) Measures to protect victims ***under the age of 18 years*** should be adopted in their best interest, taking into account an assessment of their needs. ***Those*** victims should have easy access to legal remedies, including free legal counselling and representation and measures to address conflicts of interest where abuse occurs in the family. Moreover, victims ***under the age of 18 years*** should be protected from sanctions, for example under national legislation on immigration or prostitution, if they bring their case to the attention of competent authorities. Furthermore, participation in criminal proceedings by victims ***under the age of 18 years*** should not cause additional trauma as a result of interviews or visual contact with offenders.

Amendment 17

Proposal for a directive Recital 11

Text proposed by the Commission

(11) To prevent and minimise recidivism, offenders should be subject to an assessment of the danger posed by the offenders and the possible risks of repetition of sexual offences against **children, and** should have access to **effective intervention** programmes **or measures** on a voluntary basis.

Amendment

(11) To prevent and minimise recidivism, offenders should be subject to an assessment of the danger posed by the offenders and the possible risks of repetition of sexual offences against **persons under the age of 18 years. At all events, an order to that effect should be made when offenders are sentenced; it should take account of the offender's rights under Articles 5(1) and 7(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In addition, offenders** should have access to **support or treatment** programmes on a voluntary basis.

Amendment 18

Proposal for a directive Recital 12

Text proposed by the Commission

(12) Where the danger posed by the offenders and the possible risks of repetition of the offences make it appropriate, convicted offenders should be temporarily or permanently prevented from exercising activities involving regular contacts with **children**, where appropriate. Implementation of such prohibitions throughout the EU should be facilitated.

Amendment

(12) Where the danger posed by the offenders and the possible risks of repetition of the offences make it appropriate, convicted offenders should be temporarily or permanently prevented from exercising activities involving regular contacts with **persons under the age of 18 years**, where appropriate. Implementation of such prohibitions throughout the EU - **in keeping with existing data protection rules** - should be facilitated. **Procedures should be implemented in line with the legislation in force in the Member States.**

Amendment 19

Proposal for a directive Recital 13

Text proposed by the Commission

(13) *Child pornography, which constitutes sex abuse images, is a specific type of content which cannot be construed as the expression of an opinion. To combat it, it is necessary to reduce the circulation of child abuse material by making it more difficult for offenders to upload such content onto the publicly accessible Web. Action is therefore necessary to remove the content at source and apprehend those guilty of making distributing or downloading child abuse images. The EU, in particular through increased cooperation with third countries and international organisations, should seek to facilitate the effective removal by third country authorities of websites containing child pornography, which are hosted in their territory. However as, despite such efforts, the removal of child pornography content at its source proves to be difficult where the original materials are not located within the EU, mechanisms should also be put in place to block access from the Union's territory to internet pages identified as containing or disseminating child pornography. For that purpose, different mechanisms can be used as appropriate, including facilitating the competent judicial or police authorities to order such blocking, or supporting and stimulating Internet Service Providers on a voluntary basis to develop codes of conduct and guidelines for blocking access to such Internet pages. Both with a view to the removal and the blocking of child abuse content, cooperation between public authorities should be established and strengthened, particularly in the interest of ensuring that national lists of websites containing child pornography material*

Amendment

(13) *The depiction of sexual acts involving persons under the age of 18 years constitutes a type of content whose making, dissemination, reproduction or purchase are not protected as fundamental rights. The use of the term 'depiction of sexual acts' is intended to widen the concept of abuse to cover all sexual acts involving persons under the age of 18 years, even in cases where the latter are forced to perform the acts on themselves. Action is therefore necessary to remove the content at source as quickly as possible and apprehend and subject to the due process of law those guilty of making distributing or downloading such content. The EU, in particular through increased cooperation with third countries and international organisations and on the basis of bilateral or multilateral agreements, should seek to facilitate the effective removal by third country authorities of websites containing depictions of sexual acts involving persons under the age of 18 years, which are hosted in their territory. Cooperation with the International Association of Internet Hotlines (INHOPE) should be stepped up. In order to avoid duplication of work, cooperation between public authorities should be established and strengthened. Any such developments must take account of the rights of the end users, adhere to existing legal and judicial procedures and comply with the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. The Safer Internet Programme has set up a network of hotlines whose goal is to collect information and to ensure coverage and*

are as complete as possible and of avoiding duplication of work. Any such developments must take account of the rights of the end users, adhere to existing legal and judicial procedures and comply with the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. The Safer Internet Programme has set up a network of hotlines whose goal is to collect information and to ensure coverage and exchange of reports on the major types of illegal content online.

exchange of reports on the major types of illegal content online.

Amendment 20

Proposal for a directive Recital 14

Text proposed by the Commission

(14) Since the objective of this Directive, namely to combat sexual abuse, sexual exploitation of *children* and *child pornography*, cannot be sufficiently achieved by the Member States alone and can therefore, by reasons of the scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principles of subsidiarity as referred to in *Article 3 and Article 5* of the Treaty on European Union. In accordance with the principle of proportionality, as set out in *the latter* Article, this Directive does not go beyond what is necessary to achieve that objective.

Amendment

(14) Since the objective of this Directive, namely to combat sexual abuse, sexual exploitation of *persons under the age of 18 years* and *the depiction of sexual acts involving persons under the age of 18 years*, cannot be sufficiently achieved by the Member States alone and can therefore, by reasons of the scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principles of subsidiarity as referred to in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in *that* Article, this Directive does not go beyond what is necessary to achieve that objective.

Amendment 21

Proposal for a directive Recital 15

Text proposed by the Commission

(15) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably human dignity, the prohibition of torture and inhuman or degrading treatment or punishment, the rights of the child, the right to liberty and security, freedom of expression and information, protection of personal data, the right to an effective remedy and to a fair trial and the principles of legality and proportionality of criminal offences and penalties. In particular, this Directive *seeks to ensure* full respect for those rights and has to be implemented accordingly.

Amendment

(15) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably human dignity, the prohibition of torture and inhuman or degrading treatment or punishment, the rights of the child, the right to liberty and security, freedom of expression and information, protection of personal data, the right to an effective remedy and to a fair trial and the principles of legality and proportionality of criminal offences and penalties. In particular, this Directive *ensures* full respect for those rights and has to be implemented accordingly.

Amendment 22

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

Text proposed by the Commission

Amendment

(13a) Preventing the sexual exploitation, sexual abuse or sexual assault of persons under the age of 18 years on the internet is an ethical and educational priority, with the upholding of persons under the age of 18 years' rights forming a basis for any preventive action.

Amendment 23

**Proposal for a directive
Article 1**

Text proposed by the Commission

This Directive aims to establish minimum rules concerning the definition of criminal offences and sanctions in the area of sexual exploitation of *children*. It also aims to

Amendment

This Directive aims to establish minimum rules concerning the definition of criminal offences and sanctions in the area of *the sexual abuse and* sexual exploitation of

introduce common provisions to strengthen the prevention of the crime and the protection of its victims.

persons under the age of 18 years, and of the depiction of sexual acts involving such persons. It also aims to introduce common provisions to strengthen the prevention of the crime and the protection of its victims.

Justification

The Directive should refer consistently to 'sexual abuse, sexual exploitation and the depiction of sexual acts involving persons under the age of 18 years'. Minimum thresholds for sentences should not be set, since the arrangements laid down call into question the systems of penalties in the Member States.

Amendment 24

Proposal for a directive

Article 2 – point a

Text proposed by the Commission

Amendment

(a) 'child' shall mean any person under the age of 18 years years; ***deleted***

Justification

The proposal for a directive is closely concerned with the organisation of individual sectors of criminal law in the Member States. In particular it should not dispense with the three-tiered classification, used in many Member States, defining 'child' (below 14), 'young person' (14-18) and 'adolescent' (18-21). A Europe-wide definition of 'child' should therefore be avoided.

Amendment 25

Proposal for a directive

Article 2 – point b - introductory part

Text proposed by the Commission

Amendment

(b) 'child pornography' shall mean ***(b) 'the depiction of sexual acts involving persons under the age of 18 years' means:***

Amendment 26

Proposal for a directive

Article 2 – point b – point i

Text proposed by the Commission

Amendment

(i) any material that visually depicts a **child** engaged in real or simulated sexually explicit conduct; or

(i) any material that visually depicts a **person under the age of 18 years** engaged in real or simulated sexually explicit conduct; or

Amendment 27

Proposal for a directive

Article 2 – point b – point ii

Text proposed by the Commission

Amendment

(ii) any depiction of the sexual organs of a **child** for primarily sexual purposes; **or**

(ii) any depiction for primarily sexual purposes of the sexual organs of a **person under the age of 18 years**,

Amendment 28

Proposal for a directive

Article 2 – point b – point iii

Text proposed by the Commission

Amendment

(iii) any material that visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appearing to be a child, for primarily sexual purposes; or

deleted

Justification

Linking criminality with constituent elements such as ‘appearing to be a child’ and ‘realistic images’ means it becomes greatly extended. The constituent elements seem too vague, as everyone has their own idea of ‘appearing to be a child’ and ‘realistic’ or ‘true-to-life’. Acts committed against persons and their sexual self-determination, and not against a concept of such, should be punished.

Amendment 29

Proposal for a directive

Article 2 – point b – point iv

Text proposed by the Commission

Amendment

(iv) realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, regardless of the actual existence of such child, for primarily sexual purposes; **deleted**

Justification

Linking criminality with constituent elements such as ‘appearing to be a child’ and ‘realistic images’ means it becomes greatly extended. The constituent elements seem too vague, as everyone has their own idea of ‘appearing to be a child’ and ‘realistic’ or ‘true-to-life’. Acts committed against persons and their sexual self-determination, and not against a concept of such, should be punished.

Amendment 30

Proposal for a directive

Article 2 – point d – point i

Text proposed by the Commission

Amendment

(i) of a **child** engaged in real or simulated sexually explicit conduct; or

(i) of a **person under the age of 18 years** engaged in real or simulated sexually explicit conduct; or

Amendment 31

Proposal for a directive

Article 2 – point d – point ii

Text proposed by the Commission

Amendment

(ii) of the sexual organs of a **child** for primarily sexual purposes;

(ii) of the sexual organs of a **person under the age of 18 years** for primarily sexual purposes;

Amendment 32

Proposal for a directive Article 2 – point e

Text proposed by the Commission

Amendment

***(e) ‘legal person’ shall mean any entity deleted
having legal personality under the
applicable law, except for States or public
bodies in the exercise of State authority
and for public international
organisations.***

Justification

The introduction of criminal responsibility for legal persons is alien to the criminal justice systems of most Member States and must therefore be rejected. There is thus no need for a definition of ‘legal person’ in substantive criminal law.

Amendment 33

Proposal for a directive Article 3 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall take the necessary measures to ensure that the intentional conduct ***referred to in paragraphs 2 to 5 is punishable.***

1. ***Since criminal law systems are an integral aspect of the legal order of each individual Member State,*** Member States shall take the necessary measures to ensure that the ***forms of*** intentional conduct ***described below are laid down in law as criminal offences and, in accordance with their systems of criminal penalties, are punished by means of the imposition of sentences which reflect their seriousness.***

Amendment 34

Proposal for a directive Article 3 – paragraph 2

Text proposed by the Commission

2. Causing, for sexual purposes, a **child** who has not reached the age of sexual consent under national law to witness sexual abuse or sexual activities, even without having to participate, **shall be punishable by a maximum term of imprisonment of at least two years.**

Amendment

2. Causing, for sexual purposes, a **person** who has not reached the age of sexual consent under national law to witness sexual abuse or sexual activities, even without having to participate, **shall constitute conduct as referred to in paragraph 1.**

Amendment 35

Proposal for a directive Article 3 – paragraph 3

Text proposed by the Commission

3. Engaging in sexual activities with a **child** who has not reached the age of sexual consent under national law **shall be punishable by a maximum term of imprisonment of at least five years.**

Amendment

3. Engaging in sexual activities with a **person** who has not reached the age of sexual consent under national law **shall constitute conduct as referred to in paragraph 1.**

Amendment 36

Proposal for a directive Article 3 – paragraph 4 - introductory part

Text proposed by the Commission

4. Engaging in sexual activities with a **child**, where:

Amendment

4. Engaging in sexual activities with a **person under the age of 18 years**, where:

Amendment 37

Proposal for a directive Article 3 – paragraph 4 – point i

Text proposed by the Commission

(i) abuse is made of a recognised position

Amendment

(i) abuse is made of a recognised position

of trust, authority or influence over the *child shall be punishable by a maximum term of imprisonment of at least eight years*; or

of trust, authority or influence over the *person*; or

Amendment 38

Proposal for a directive

Article 3 – paragraph 4 – point ii

Text proposed by the Commission

(ii) abuse is made of a particularly vulnerable situation of the *child*, notably because of a mental or physical disability or a situation of dependence *shall be punishable by a maximum term of imprisonment of at least eight years*; or

Amendment

(ii) abuse is made of a particularly vulnerable situation of the *person*, notably because of a mental or physical disability or a situation of dependence; or

Amendment 39

Proposal for a directive

Article 3 – paragraph 4 – point iii

Text proposed by the Commission

(iii) use is made of coercion, force or threats *shall be punishable by a maximum term of imprisonment of at least ten years*.

Amendment

(iii) use is made of coercion, force or threats,

Amendment 40

Proposal for a directive

Article 3 – paragraph 4 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

constitutes conduct as referred to in paragraph 1.

Amendment 41

Proposal for a directive Article 3 – paragraph 5

Text proposed by the Commission

5. Coercing a **child** into sexual activities with a third party ***shall be punishable by a maximum term of imprisonment of at least ten years.***

Amendment

5. Coercing a **person under the age of 18 years** into sexual activities with a third party ***constitutes conduct as referred to in paragraph 1.***

Amendment 42

Proposal for a directive Article 4 – paragraph 1

Text proposed by the Commission

1. Member States shall take the necessary measures to ensure that the intentional conduct ***referred to in paragraphs 2 to 11 is punishable.***

Amendment

1. ***Since criminal law systems are an integral aspect of the legal order of each individual Member State,*** Member States shall take the necessary measures to ensure that the ***forms of*** intentional conduct ***described below are laid down in law as criminal offences and, in accordance with their systems of criminal penalties, are punished by means of the imposition of sentences which reflect their seriousness.***

Amendment 43

Proposal for a directive Article 4 – paragraph 2

Text proposed by the Commission

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

Amendment

2. Causing a **person under the age of 18 years** to participate in pornographic performances ***constitutes conduct as referred to in paragraph 1.***

Amendment 44

Proposal for a directive Article 4 – paragraph 3

Text proposed by the Commission

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

Amendment

3. Profiting from or otherwise exploiting a ***person under the age of 18 years*** participating in pornographic performances ***constitutes conduct as referred to in paragraph 1.***

Amendment 45

Proposal for a directive Article 4 – paragraph 4

Text proposed by the Commission

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

Amendment

4. Knowingly attending pornographic performances involving the participation of ***persons under the age of 18 years*** constitutes conduct as referred to in ***paragraph 1.***

Amendment 46

Proposal for a directive Article 4 – paragraph 5

Text proposed by the Commission

5. Recruiting a **child** to participate in pornographic performances ***shall be punishable by a maximum term of imprisonment of at least five years.***

Amendment

5. Recruiting a ***person under the age of 18 years*** to participate in pornographic performances ***constitutes conduct as referred to in paragraph 1.***

Amendment 47

Proposal for a directive Article 4 – paragraph 6

Text proposed by the Commission

6. ***Causing a child to participate in child***

Amendment

6. ***Any individual who causes a person***

prostitution shall be punishable by a maximum term of imprisonment of at least five years.

under the age of 18 years to become involved in sexual activities or who exploits that involvement where money or other forms of remuneration or consideration are given or promised in exchange, regardless of whether this payment, promise or consideration is made to the person under the age of 18 years or to a third party, shall be guilty of intentional conduct within the meaning of paragraph 1.

Amendment 48

Proposal for a directive Article 4 – paragraph 7

Text proposed by the Commission

Amendment

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

deleted

Amendment 49

Proposal for a directive Article 4 – paragraph 8

Text proposed by the Commission

Amendment

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

8. Any individual who engages in sexual activities with a person under the age of 18 years and in exchange offers or promises money or other forms of remuneration or consideration, regardless of whether this payment, promise or consideration is made to the person under the age of 18 years or to a third party, shall be guilty of intentional conduct within the meaning of paragraph 1.

Amendment 50

Proposal for a directive Article 4 – paragraph 9

Text proposed by the Commission

9. Coercing a *child* to participate in pornographic performances *shall be punishable by a maximum term of imprisonment of at least eight years.*

Amendment

9. Coercing a *person under the age of 18 years* to participate in pornographic performances *constitutes conduct as referred to in paragraph 1.*

Amendment 51

Proposal for a directive Article 4 – paragraph 10

Text proposed by the Commission

10. *Recruiting a child to participate in child prostitution shall be punishable by a maximum term of imprisonment of at least eight years.*

Amendment

10. *Any individual who recruits or forces a person under the age of 18 years to become involved in sexual activities where money or other forms of remuneration or consideration are given or promised in exchange, regardless of whether this payment, promise or consideration is made to the person under the age of 18 years or to a third party, shall be guilty of intentional conduct within the meaning of paragraph 1.*

Amendment 52

Proposal for a directive Article 4 – paragraph 11

Text proposed by the Commission

11. *Coercing a child into child prostitution shall be punishable by a maximum term of imprisonment of at least ten years.*

Amendment

deleted

Amendment 53

Proposal for a directive Article 5 – title

Text proposed by the Commission

Offences concerning *child pornography*

Amendment

Offences concerning *the depiction of sexual acts involving persons under the age of 18 years*

Amendment 54

Proposal for a directive Article 5 – paragraph 1

Text proposed by the Commission

1. Member States shall take the necessary measures to ensure that the intentional conduct *referred to in paragraphs 2 to 6 is punishable*.

Amendment

1. *Since criminal law systems are an integral aspect of the legal order of each individual Member State*, Member States shall take the necessary measures to ensure that the *forms of intentional conduct described below are laid down in law as criminal offences and, in accordance with their systems of criminal penalties, are punished by means of the imposition of sentences which reflect their seriousness*.

Amendment 55

Proposal for a directive Article 5 – paragraph 2

Text proposed by the Commission

2. Acquisition or possession of *child pornography shall be punishable by a maximum term of imprisonment of at least one year*.

Amendment

2. Acquisition or possession of *material concerning the depiction of sexual acts involving persons under the age of 18 years constitutes conduct as referred to in paragraph 1*.

Amendment 56

Proposal for a directive Article 5 – paragraph 3

Text proposed by the Commission

3. Knowingly obtaining access, by means of information and communication technology, to ***child pornography shall be punishable by a maximum term of imprisonment of at least one year.***

Amendment

3. Knowingly obtaining access, by means of information and communication technology, to ***the depiction of sexual acts involving persons under the age of 18 years constitutes conduct as referred to in paragraph 1.***

Amendment 57

Proposal for a directive Article 5 – paragraph 4

Text proposed by the Commission

4. Distribution, dissemination or transmission of ***child pornography shall be punishable by a maximum term of imprisonment of at least two years.***

Amendment

4. Distribution, dissemination or transmission of ***the depiction of sexual acts involving persons under the age of 18 years constitutes conduct as referred to in paragraph 1.***

Amendment 58

Proposal for a directive Article 5 – paragraph 5

Text proposed by the Commission

5. Offering, supplying or making available ***child pornography shall be punishable by a maximum term of imprisonment of at least two years.***

Amendment

5. Offering, supplying or making available ***the depiction of sexual acts involving persons under the age of 18 years constitutes conduct as referred to in paragraph 1.***

Amendment 59

Proposal for a directive Article 5 – paragraph 6

Text proposed by the Commission

6. Production of ***child pornography shall be punishable by a maximum term of imprisonment of at least five years.***

Amendment

6. Production of ***the depiction of sexual acts involving persons under the age of 18 years constitutes conduct as referred to in paragraph 1.***

Amendment 60

Proposal for a directive Article 6

Text proposed by the Commission

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

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

Amendment

Member States shall take the necessary measures to ensure that the following intentionally committed conduct is punishable ***and that, in accordance with their system of criminal penalties, the crime is punished by means of the imposition of a sentence which reflects its seriousness:***

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

Amendment 61

Proposal for a directive Article 7 – paragraph 1

Text proposed by the Commission

1. Member States shall take the necessary measures to ensure that the instigation of,

Amendment

1. Member States shall take the necessary measures to ensure that the instigation of,

aiding and abetting to commit any of the offences referred to in Articles 3 to 6 **is punishable**.

aiding and abetting to commit any of the offences referred to in Articles 3 to 6 **are laid down in law as criminal offences and, in accordance with their systems of criminal penalties, are punished by means of the imposition of sentences which reflect their seriousness**.

Amendment 62

Proposal for a directive

Article 7 – paragraph 2

Text proposed by the Commission

2. Member States shall take the necessary measures to ensure that attempts to commit any of the offences referred to in Article 3 (3) to (5), and (2) with regard to witnessing sexual abuse; Article 4 (2) to (3) and (5) to (11); and Article 5 (2) and (4) to (6) **is punishable**.

Amendment

2. Member States shall take the necessary measures to ensure that attempts to commit any of the offences referred to in Article 3 (3) to (5), and (2) with regard to witnessing sexual abuse; Article 4 (2) to (3) and (5) to (11); and Article 5 (2) and (4) to (6) **are laid down in law as criminal offences and, in accordance with their systems of criminal penalties, are punished by means of the imposition of sentences which reflect their seriousness**.

Amendment 63

Proposal for a directive

Article 7 – paragraph 3 – introductory part

Text proposed by the Commission

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

Amendment

3. Member States shall take the necessary measures to **prevent or prohibit** the following forms of intentional conduct **and lay them down in law as criminal offences and, in accordance with their systems of criminal penalties, punish them by means of the imposition of sentences which reflect their seriousness**:

Amendment 64

Proposal for a directive Article 8

Text proposed by the Commission

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

Amendment

The provisions of Article 3 (2), with regard to witnessing sexual activities, and (3); Article 4 (2) and (4) and Article 5 do not govern consensual sexual activities between **persons at least one of whom is under the age of 18 years** or involving persons who are **similar** in age and degree of psychological and physical development or maturity, insofar as the acts did not involve any abuse.

Amendment 65

Proposal for a directive Article 9 – paragraph 1 – introductory part

Text proposed by the Commission

1. ***In so far as*** the following circumstances do not already form part of the constituent elements of the offences referred to in Articles 3 to 7, ***they shall*** be considered as aggravating circumstances ***for the purposes of this Directive***:

Amendment

1. ***Member States shall take the legislative or other measures required to ensure that*** the following circumstances, if they do not already form part of the constituent elements of the offences referred to in Article 3 to 7, ***can*** be considered as aggravating circumstances:

Amendment 66

Proposal for a directive Article 9 – paragraph 1 – point a

Text proposed by the Commission

(a) the **child** has not reached the age of sexual consent under national law;

Amendment

(a) the **victim** has not reached the age of sexual consent under national law;

Amendment 67

Proposal for a directive

Article 9 – paragraph 1 – point b

Text proposed by the Commission

(b) the offence was committed against a **child** in a particularly vulnerable situation, notably because of a mental or physical disability or a situation of dependence;

Amendment

(b) the offence was committed against a **victim** in a particularly vulnerable situation, notably because of a mental or physical disability or a situation of dependence;

Amendment 68

Proposal for a directive

Article 9 – paragraph 1 – point c

Text proposed by the Commission

(c) the offence was committed by a member of the family, a person cohabiting with the **child** or a person having abused their authority;

Amendment

(c) the offence was committed by a member of the family, a person cohabiting with the **victim** or a person having abused their authority;

Amendment 69

Proposal for a directive

Article 9 – paragraph 1 – point g

Text proposed by the Commission

(g) the offence endangered the life of the **child**;

Amendment

(g) the offence endangered the life of the **victim**;

Amendment 70

Proposal for a directive

Article 9 – paragraph 1 – point h

Text proposed by the Commission

(h) the offence involved serious violence or caused serious harm to the **child**.

Amendment

(h) the offence involved serious violence or caused serious harm to the **victim**.

Amendment 71

Proposal for a directive Article 9 – paragraph 2

Text proposed by the Commission

2. Where at least one of the aggravating circumstances referred to in paragraph 1 are present, Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 to 6 are punishable by effective, proportionate and dissuasive penalties which are more severe than those foreseen in Articles 3 to 6 for the basic offence.

Amendment

2. Where at least one of the aggravating circumstances referred to in paragraph 1 are present, Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 to 6 are punishable by effective, proportionate and dissuasive penalties which are more severe than those foreseen in Articles 3 to 6 for the basic offence ***which are legally available to Member States in accordance with their criminal penalty and sentencing systems and which reflect the seriousness of the offences involved.***

Amendment 72

Proposal for a directive Article 10 – paragraph 1

Text proposed by the Commission

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

Amendment

1. In order to avoid the risk of repetition of offences, Member States shall take the necessary measures to ensure that a natural person who has been convicted of any of the offences referred to in Articles 3 to 7 may be temporarily or permanently prevented from exercising activities involving regular contacts with ***persons under the age of 18 years***.

Amendment 73

Proposal for a directive Article 10 – paragraph 3

Text proposed by the Commission

3. By way of derogation from Articles 7 (2)

Amendment

3. By way of derogation from Articles 7 (2)

and 9 (2) of the Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from criminal records between Member States, Member States shall take the necessary measures to ensure that, for the purpose of effectively implementing the measure consisting in temporarily or permanently preventing the person from exercising activities involving regular contacts with **children**, in particular insofar as the requesting Member State subjects access to certain activities to conditions to ensure that candidates have not been convicted of any of the offences referred to in Articles 3 to 7 of this Directive, information concerning the disqualification arising from conviction of any of the offences referred to in Articles 3 to 7 of this Directive is transmitted when requested under Article 6 of that Framework Decision from the central authority of the Member State of the person's nationality, and that personal data concerning such disqualification provided under Article 7(2) and (4) of that Framework Decision may in all cases be used for such purpose.

and 9 (2) of the Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from criminal records between Member States, Member States shall take the necessary measures to ensure that, for the purpose of effectively implementing the measure consisting in temporarily or permanently preventing the person from exercising activities involving regular contacts with **persons under the age of 18 years**, in particular insofar as the requesting Member State subjects access to certain activities to conditions to ensure that candidates have not been convicted of any of the offences referred to in Articles 3 to 7 of this Directive, information concerning the disqualification arising from conviction of any of the offences referred to in Articles 3 to 7 of this Directive is transmitted when requested under Article 6 of that Framework Decision from the central authority of the Member State of the person's nationality, and that personal data concerning such disqualification provided under Article 7(2) and (4) of that Framework Decision may in all cases be used for such purpose.

Amendment 74

Proposal for a directive

Article 11 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States shall take the necessary measures to ensure that legal persons may be held liable for any of the offences referred to in Articles 3 to 7 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on one of the following:

Amendment

1. Member States shall take the necessary measures to ensure that legal persons may be held liable for any of the offences referred to in Articles 3 to 7 committed for their benefit by any **natural** person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on one of the following:

Amendment 75

Proposal for a directive Article 12

Text proposed by the Commission

Amendment

Article 12

deleted

Sanctions on legal persons

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 11 (1) is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, for example:

(a) exclusion from entitlement to public benefits or aid;

(b) temporary or permanent disqualification from the practice of commercial activities;

(c) placing under judicial supervision;

(d) judicial winding-up;

(e) temporary or permanent closure of establishments which have been used for committing the offence.

2. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 11 (2) is punishable by penalties or measures which are effective, proportionate and dissuasive.

Amendment 76

Proposal for a directive Article 13

Text proposed by the Commission

Amendment

Member States shall provide for the possibility of not prosecuting or imposing penalties on **child** victims of the offences referred to in Articles 4 and Article 5 (4) to (6) for their involvement in unlawful activities as a direct consequence of being subjected to those offences.

Member States shall provide for the possibility of not prosecuting or imposing penalties on **persons who are** victims of the offences referred to in Articles 4 and Article 5 (4) to (6) for their involvement in unlawful activities as a direct consequence of being subjected to those offences.

Amendment 77

Proposal for a directive Article 14 – paragraph 3

Text proposed by the Commission

3. Member States shall take the necessary measures to ensure that effective investigative tools are available to persons, units or services responsible for investigating or prosecuting offences referred to in Articles 3 to 7, allowing the possibility of covert operations at least in those cases where the use of information and communication technology is involved.

Amendment

3. Member States shall take the necessary measures to ensure that effective investigative tools are available to persons, units or services responsible for investigating or prosecuting offences referred to in Articles 3 to 7, allowing the possibility of covert operations at least in those cases where the use of information and communication technology is involved. ***Those investigations shall be subject to prior authorisation by the relevant judicial authority in the Member State concerned and shall be carried out under the supervision of that authority.***

Amendment 78

Proposal for a directive Article 14 – paragraph 4

Text proposed by the Commission

4. Member States shall take the necessary measures to enable investigative units or services to attempt to identify the victims of the offences referred to in Articles 3 to 7, in particular by analysing ***child pornography*** material, such as photographs and audiovisual recordings transmitted or made available by means of information and communication technology.

Amendment

4. Member States shall take the necessary measures to enable investigative units or services to attempt to identify the victims of the offences referred to in Articles 3 to 7, in particular by analysing material, such as photographs and audiovisual recordings transmitted or made available by means of information and communication technology.

Amendment 79

Proposal for a directive Article 15 – paragraph 1

Text proposed by the Commission

1. Member States shall take the necessary measures to ensure that the confidentiality rules imposed by national law on certain professionals ***called upon*** to work in contact with ***children*** do not constitute an obstacle to the possibility, for those professionals, of their reporting to the services responsible for child protection any situation where they have reasonable grounds for believing that a ***child*** is the victim of offences referred to in Articles 3 to 7.

Amendment

1. Member States shall take the necessary measures to ensure that the confidentiality rules imposed by national law on certain professionals ***whose primary task is*** to work in contact with ***persons under the age of 18 years*** do not constitute an obstacle to the possibility, for those professionals, of their reporting to the services responsible for child protection any situation where they have reasonable grounds for believing that a ***person under the age of 18 years*** is the victim of offences referred to in Articles 3 to 7.

Amendment 80

**Proposal for a directive
Article 15 – paragraph 2**

Text proposed by the Commission

2. Member States shall take the necessary measures to encourage any person who knows about or suspects, in good faith, offences referred to in Articles 3 to 7 to report these facts to the competent services.

Amendment

2. Member States shall take the necessary measures to encourage any person who knows about or suspects, in good faith, offences referred to in Articles 3 to 7 ***committed against a person under the age of 18 years*** to report these facts to the competent services.

Amendment 81

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

Text proposed by the Commission

Amendment

2a. The Member States shall take the measures necessary to create information services, such as special telephone

helplines and internet sites, to provide advice and assistance to persons under the age of 18 years.

Amendment 82

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

Text proposed by the Commission

Amendment

2b. The Member States shall take the necessary measures to ensure that prevention campaigns are mounted in primary and secondary schools with a view to enabling persons under the age of 18 years to enhance their understanding of the rights of every individual, of self-respect and respect for others, and helping them recognise awkward, intrusive or abusive situations.

Amendment 83

Proposal for a directive Article 17 – paragraph 1

Text proposed by the Commission

Amendment

1. *Victims* of the offences referred to in Articles 3 to 7 shall be provided assistance, support and protection, taking into account ***the best interests of the child.***

1. ***Persons under the age of 18 years who are the victim*** of the offences referred to in Articles 3 to 7 shall be provided assistance, support and protection, taking into account ***their*** best interests.

Amendment 84

Proposal for a directive Article 17 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall ensure that, where the age of a person subject to the offences referred to in Articles 3 to 7 is uncertain

2. Member States shall ensure that, where the age of a person subject to the offences referred to in Articles 3 to 7 is uncertain

and there are reasons to believe that the person is **a child**, the person is presumed to be **a child** in order to receive immediate access to assistance, support and protection in accordance with Article 18 and 19, pending verification of the age.

and there are reasons to believe that the person is **under the age of 18 years**, the person is presumed to be **such** in order to receive immediate access to assistance, support and protection in accordance with Article 18 and 19, pending verification of the age.

Amendment 85

Proposal for a directive Article 18 – paragraph 2

Text proposed by the Commission

2. Member States shall take the necessary measures to ensure that the specific actions to assist and support victims in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular **child** victim, taking due account of the **child's** views, needs and concerns.

Amendment

2. Member States shall take the necessary measures to ensure that the specific actions to assist and support victims in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular victim, taking due account of the **victim's** views, needs and concerns.

Amendment 86

Proposal for a directive Article 18 – paragraph 3

Text proposed by the Commission

3. **Victims** of any of the offences referred to in Articles 3 to 7 shall be considered as particularly vulnerable victims pursuant to Article 2 (2), Article 8 (4) and Article 14 (1) of Framework Decision 2001/220/JHA.

Amendment

3. **Persons under the age of 18 years who are the victim** of any of the offences referred to in Articles 3 to 7 shall be considered as particularly vulnerable victims pursuant to Article 2(2), Article 8(4) and Article 14(1) of Framework Decision 2001/220/JHA.

Amendment 87

Proposal for a directive Article 18 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States shall take the necessary measures to launch information campaigns and other campaigns aimed at preventing the risks of the depiction of sexual acts involving persons under the age of 18 years, focusing in particular on the ways of detecting and preventing offences.

Amendment 88

Proposal for a directive Article 18 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4b. Member States shall take the necessary measures to help and encourage teachers, social workers, youth leaders and all those working with persons under the age of 18 years to develop, within their syllabuses or activities, media and internet education in order to teach persons under the age of 18 years to react in ways that might save them from harm. It is vital that persons under the age of 18 years be taught how to navigate the internet safely.

Amendment 89

Proposal for a directive Article 18 – paragraph 4 c (new)

Text proposed by the Commission

Amendment

4c. Member States shall take the necessary measures to ensure that educational measures are included in the aims and values that underpin all levels of primary and secondary schooling. It is vital to develop attitudes that are shaped by respect and justice, enabling persons

under the age of 18 years to develop self-respect and respect for others, as well as respect for institutions and for their environment. Only if someone is ready to listen to them will persons under the age of 18 years be able to become aware of any abuse they may have been subjected to or recognise an awkward or intrusive situation they may have experienced.

Amendment 90

Proposal for a directive

Article 19 – title

Text proposed by the Commission

Protection of **child** victims in criminal investigations and proceedings

Amendment

Protection of victims in criminal investigations and proceedings

Amendment 91

Proposal for a directive

Article 19 – paragraph 1

Text proposed by the Commission

1. Member States shall take the necessary measures to ensure that in criminal investigations and proceedings, judicial authorities appoint a special representative for the child victim where, by national law, the holders of parental responsibility are precluded from representing the **child** as a result of a conflict of interest between them and the **child** victim, or where the **child** is unaccompanied or separated from the family.

Amendment

1. Member States shall take the necessary measures to ensure that in criminal investigations and proceedings, judicial authorities appoint a special representative for the child victim where, by national law, the holders of parental responsibility are precluded from representing the **person under the age of 18 years** as a result of a conflict of interest between them and the victim, or where the **victim under the age of 18 years** is unaccompanied or separated from the family. **The victim shall be consulted before the decision is taken.**

Amendment 92

Proposal for a directive Article 19 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that **child** victims have immediate access to free legal counselling and to free legal representation, including for the purpose of claiming compensation

Amendment

2. Member States shall ensure that victims **under the age of 18 years** have immediate access to free legal counselling and to free legal representation, including for the purpose of claiming compensation.

Amendment 93

Proposal for a directive Article 19 – paragraph 3 – point a

Text proposed by the Commission

(a) interviews with the **child** victim take place without unjustified delay after the facts have been reported to the competent authorities;

Amendment

(a) **in principle**, interviews with the victim **under the age of 18 years** take place without unjustified delay after the facts have been reported to the competent authorities;

Amendment 94

Proposal for a directive Article 19 – paragraph 3 – point b

Text proposed by the Commission

(b) interviews with the **child** victim take place, **where necessary**, in premises designed or adapted for this purpose;

Amendment

(b) **in principle**, interviews with the victim **under the age of 18 years** take place in premises designed or adapted for this purpose;

Amendment 95

Proposal for a directive Article 19 – paragraph 3 – point c

Text proposed by the Commission

(c) interviews with the **child** victim are

Amendment

(c) **in principle**, interviews with the victim

carried out by or through professionals trained for this purpose;

under the age of 18 years are carried out by or through professionals trained for this purpose;

Amendment 96

Proposal for a directive

Article 19 – paragraph 3 – point d

Text proposed by the Commission

(d) the same persons, ***if possible and where appropriate***, conduct all interviews with the ***child*** victim;

Amendment

(d) ***in principle***, the same persons conduct all interviews with the victim ***under the age of 18 years***;

Amendment 97

Proposal for a directive

Article 19 – paragraph 3 – point f

Text proposed by the Commission

(f) the ***child*** victim may be accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.

Amendment

(f) the victim ***under the age of 18 years*** may be accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.

Amendment 98

Proposal for a directive

Article 19 – paragraph 4

Text proposed by the Commission

4. Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 3 to 7 all interviews with the ***child*** victim or, where appropriate, with a ***child*** witness, may be videotaped and that these videotaped interviews may be used as evidence in criminal court proceedings, according to the rules under its national law.

Amendment

4. Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 3 to 7 all interviews with the victim ***under the age of 18 years*** or, where appropriate, with a witness ***under the age of 18 years***, may be videotaped and that these videotaped interviews may be used as evidence in criminal court proceedings, according to

the rules under its national law.

Amendment 99

Proposal for a directive

Article 19 – paragraph 5 – point b

Text proposed by the Commission

(b) the **child** victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies.

Amendment

(b) the victim ***under the age of 18 years*** may be heard in the courtroom without being present ***directly***, notably through the use of appropriate communication technologies.

Amendment 100

Proposal for a directive

Article 20 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Member States shall take the necessary measures to ensure that effective intervention programmes or measures are made available with a view to preventing and minimising the risks of repeated offences of a sexual nature against **children**. These programmes or measures shall be accessible at any time during the criminal proceedings, inside and outside prison, according to the conditions laid down in national law.

Amendment

2. Member States shall take the necessary measures to ensure that effective intervention programmes or measures are made available with a view to preventing and minimising the risks of repeated offences of a sexual nature against ***persons under the age of 18 years***. These programmes or measures shall be accessible at any time during the criminal proceedings, inside and outside prison, according to the conditions laid down in national law.

Amendment 101

Proposal for a directive

Article 20 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Such intervention programmes or measures shall be adapted to meet the specific developmental needs for **children** who sexually offend, including those who are

Amendment

Such intervention programmes or measures shall be adapted to meet the specific developmental needs for ***persons*** who sexually offend, including those who are

below the age of criminal responsibility.

below the age of criminal responsibility.

Amendment 102

Proposal for a directive Article 20 a (new)

Text proposed by the Commission

Amendment

Article 20a

Preventive measures

1. Member States shall take the necessary measures to promote the protection of the rights of persons under the age of 18 years among those working with such persons in the areas of education, health, social welfare, justice and law enforcement, and in areas relating to sport, culture and leisure. These measures shall include instruction in the use of new media, starting in early childhood, which enables persons under the age of 18 years to use information and communication technologies safely and makes them aware of the risks involved. Parents, teachers and other educators shall also be involved in providing this instruction.

2. Member States shall encourage the media to become involved in this instruction process, in keeping with their remit to provide education and information.

3. Member States shall encourage the private sector, particularly the fields of information technology, communication, tourism, banking and finance, and civil society to take part in the drawing-up and implementation of policies to prevent and combat the sexual exploitation and abuse of persons under the age of 18 years, by means of rules on self-regulation and exchange of information with the competent authorities.

4. Member States shall provide the necessary finance through the

establishment of special funds for the implementation of projects and programmes to prevent, and protect persons under the age of 18 years from, sexual exploitation and abuse.

5. In the context of a structured dialogue, the Commission shall support the Member States in their efforts and shall ensure that they regularly exchange information about the measures they have taken. In this way it shall make a contribution to the dissemination of best-practice models.

Amendment 103

Proposal for a directive

Article 20 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Member States shall take the necessary measures to ensure that, during primary and secondary education, pupils and their teachers are given information on the risks relating to the sexual exploitation and abuse of persons under the age of 18 years, and on existing protection instruments. That information, which shall form part of the general information on sexuality, with particularly reference to the risks relating to the use of information and communication technology.

Amendment 104

Proposal for a directive

Article 21 – paragraph 1

Text proposed by the Commission

Amendment

Article 21

Article 21

Blocking access to websites containing child pornography

Measures in connection with information and communication services

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

1. Member States shall take the necessary measures to obtain the ***immediate removal of depictions of sexual acts involving persons under the age of 18 years in information and communication services***. The ***removal of such content*** shall be *undertaken in accordance with national procedures and with adequate safeguards to ensure that it is confined to what is strictly necessary. In addition, the European Union shall conduct negotiations with third countries with the aim of securing the prompt removal of such content from servers on their territory. Furthermore, the Member States and institutions of the Union and Europol shall step up cooperation with international hotlines, such as INHOPE, with the aim of securing the prompt removal of such content.*

Amendment 105

Proposal for a directive Article 21 – paragraph 2

Text proposed by the Commission

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

Amendment

2. ***Other measures to prevent such content from becoming available, such as Internet blocking mechanisms, shall be a matter for the Member States. They may be taken only once all measures to secure the removal of content have been exhausted and it is clear, on that basis, that removal is impossible. In addition, the measures must be confined to what is strictly necessary, shall be subject to review by a judge, and the persons affected by such a measure shall be informed of the reasons for the decision. Persons affected shall have the right to seek legal remedy.***

Amendment 106

Proposal for a directive Article 21 a (new)

Text proposed by the Commission

Amendment

Article 21a

Reporting

The Commission shall submit to the European Parliament an annual report on the measures taken in the Member States and at European and international level to curb the sexual abuse and sexual exploitation of persons under the age of 18 years, to eliminate material depicting such acts, to identify the perpetrators and to prosecute and sentence the producers and users of such material. This report shall also contain details of the measures taken at all political levels in the areas of prevention and the protection of and care and assistance for victims.

Justification

It is crucial to improve the actions of Member States individually and collectively in this area. A reporting obligation would assist Member States in completing their five-yearly reports to the United Nations and ensure that efforts in this area are more transparent and coordinated more effectively.

PROCEDURE

Title	Sexual abuse and sexual exploitation of children and child pornography (repeal of Framework Decision 2004/68/JHA)
References	COM(2010)0094 – C7-0088/2010 – 2010/0064(COD)
Committee responsible	LIBE
Opinion by Date announced in plenary	CULT 21.4.2010
Rapporteur Date appointed	Petra Kammerevert 3.5.2010
Discussed in committee	14.7.2010
Date adopted	27.10.2010
Result of final vote	+ : 25 - : 0 0 : 0
Members present for the final vote	Magdi Cristiano Allam, Maria Badia i Cutchet, Zoltán Bagó, Malika Benarab-Attou, Lothar Bisky, Piotr Borys, Jean-Marie Cavada, Silvia Costa, Santiago Fisas Ayxela, Petra Kammerevert, Morten Løkkegaard, Marek Henryk Migalski, Doris Pack, Chrysoula Paliadeli, Marie-Thérèse Sanchez-Schmid, Marietje Schaake, Marco Scurria, Joanna Senyszyn, Emil Stoyanov, Hannu Takkula, Sabine Verheyen, Milan Zver
Substitute(s) present for the final vote	Ivo Belet, Luigi Berlinguer, Knut Fleckenstein, Nadja Hirsch, Oriol Junqueras Vies, Seán Kelly, Timothy Kirkhope, Iosif Matula, Mitro Repo, Monika Smolková, Rui Tavares, Róza Gräfin von Thun und Hohenstein