EUROPEAN PARLIAMENT

2004 *2009*

Committee on Civil Liberties, Justice and Home Affairs

21.10.2005 PE 364.770v01-00

AMENDMENTS 10-14

Draft report **(PE 365.848v01-00)**
Bogusław Sonik
The initiative by the Kingdom of Belgium with a view to the adoption by the Council of a framework decision on the recognition and enforcement in the European Union of prohibitions arising from convictions for sexual offences committed against children

Initiative (14207/2004 – C6-0244/2004 – 2004/0818(CNS))

Draft legislative resolution

Amendment by Fausto Correia and Rosa Díez González

Amendment 10
Recital 4 a (new)

4a. whereas the proposed framework decision refers only to a prohibition on exercising professional activities related to the supervision of children and does not cover other measures which are essentially civil in nature and for which provision is already made in some Member States, such as withdrawal of parental authority; whereas these measures should be recognised automatically, and whereas a parallel provision should be enacted with Article 65(a) of the Treaty establishing the European Community as its legal basis, given the clear intersection between issues linked to judicial cooperation in criminal and in civil matters,

Or. pt

Initiative by the Kingdom of Belgium

Text proposed by the Kingdom of Belgium	Amendments by Parliament

Amendment by Fausto Correia and Rosa Díez González

Amendment 11
Article 1, paragraph 1

1. This Framework Decision applies to the ***offences covered in Articles 2, 3 and 4*** of Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography.	1. This Framework Decision applies to the ***prohibitions laid down on the basis of Article 5(3)*** of Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography.

Or. pt

Justification

The wording of Article 1(1) and (2) should be changed in the interests of clarity, since the initiative relates not to the provisions of Articles 2, 3 and 4 of the Framework Decision but to measures adopted on the basis of Article 5, and does not relate to criminal penalties for such offences but to what appear to be accessory penalties which constitute genuine prohibitions (non facere rather than constraints, which are considered in terms of disclosure obligations).

Amendment by Maria Carlshamre

Amendment 12
Article 2, point c

(c) "prohibition" shall mean a temporary or permanent ban on exercising professional activities related to the supervision of children, referred to in Article 5(3) of Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography, arising from a conviction for an offence under Article 1(1);	(c) "prohibition" shall mean a temporary or permanent ban on exercising professional activities ***or commercial activities as a legal person*** related to the supervision of children, referred to in Article 5(3) ***and Article 7(1)*** of Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography, arising from a conviction for an offence under Article 1(1);

Or. sv

Justification

It must be made explicit in the legislation that it also prohibits convicted persons from conducting commercial activities involving children.

Amendment by Stavros Lambrinidis

Amendment 13
Article 5

Where application is made in the framework of this Framework Decision for the criminal records of a Member State, in accordance with national law, with a view to obtaining information on a national ***of*** another Member State, an application shall always be made to the central authority of the Member State of which the person concerned is a national.	Where application is made in the framework of this Framework Decision for the criminal records of a Member State, in accordance with national law, with a view to obtaining information on a national ***or on a person residing in*** another Member State, an application shall always be made to the central authority of the Member State of which the person concerned is a national ***or has been a resident***.

Or. en

Justification

The provision of Article 5 of the proposed Framework Decision leaves a lacuna in respect of non-EU nationals who may, nevertheless, be living within the EU.

Draft report

Text proposed in the draft report	Amendment

Amendment by Fausto Correia and Rosa Díez González

Amendment 14
Article 9, paragraph 1

1. Each Member State shall put in place the necessary arrangements to ensure that the convicted person has a suspensive legal remedy against the recognition and enforcement of a prohibition pursuant to Article 6. The action shall be brought before a court in the enforcing State in accordance with the national law of that State.	1. Each Member State shall put in place the necessary arrangements to ensure that the convicted person has a ***non-***suspensive legal remedy against the recognition and enforcement of a prohibition pursuant to Article 6. The action shall be brought before a court in the enforcing State in accordance with the national law of that State.

Or. pt

Justification

The amendment relates to the new wording of this provision in the draft report. That justification argues that suspensive remedies are necessary to ensure the effectiveness of the prohibition and prevent children from remaining unprotected if prohibitions are not recognised. In fact, the effects of such a measure would be the opposite to those intended. It is not the prohibition which is suspended but recognition thereof, which means that if it did not take effect, there would be no prohibition in the country ad quem. It is therefore proposed that the original wording of this article, according to which the procedure concerned should be non-suspensive in relation to the (automatic) recognition of a prohibition, should be maintained.