EUROPEAN PARLIAMENT

2004 *2009*

Committee on Civil Liberties, Justice and Home Affairs

31.1.2006 PE 368.062v02-00

AMENDMENTS 15-23

Draft report **(PE 365.848v02-00)**
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))

Text proposed by the Kingdom of Belgium	Amendments by Parliament
	Amendment by Bogusław Sonik
	Amendment 15 Recital 5
(5) Combating the sexual exploitation of children and child pornography, and in particular combating risks of recidivism in this context, should be a priority for the Union. In this particular area Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography established, in accordance with the principle of subsidiarity, a minimum common EU approach to these criminal offences, in particular as regards the type of penalty and prohibition that should be provided for by national legislation. The	(5) Combating the sexual exploitation of children and child pornography, and in particular combating risks of recidivism in this context, should be a priority for the Union. In this particular area Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography established, in accordance with the principle of subsidiarity, a minimum common EU approach to these criminal offences, in particular as regards the type of penalty and prohibition that should be provided for by national legislation. The

principle of mutual recognition should be applicable to temporary or permanent prohibition from exercising professional activities related to the supervision of children, which is expressly provided for by the Framework Decision, where that prohibition is consequent upon a criminal conviction for one of the offences connected to the sexual exploitation of children and child pornography.	principle of mutual recognition should be applicable ***inter alia*** totemporary or permanent prohibition from exercising professional activities related to the supervision of children, which is expressly provided for by the Framework Decision, where that prohibition is consequent upon a criminal conviction for one of the offences connected to the sexual exploitation of children and child pornography.

Or. en

Justification

Limitation of mutual recognition only to prohibition from exercising responsibilities related to the supervision of children is not advisable. Such limitation has not been imposed by Council Framework Decision of 22 December 2003 establishing only a minimum common EU approach to defined types of criminal offences simultaneously allowing decisions concerning instruments other than those mentioned in article 5(3) of this decision (see also Framework Decision article 5(4) of 22 December 2003). It is advisable to extend the scope of recognition and enforcement of prohibitions to include prohibitions from exercising professional activities in any character in public or private institutions related to the supervision of children. For more information on prohibitions, see article 2 (c) definition of "prohibition".

Amendment by Bogusław Sonik

Amendment 16
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 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, ***and on exercising activities other than the supervision of children within a public or private institution that supervises or works with children*****,** arising from a conviction for an offence under Article (1);

Or. en

Justification

It is very important that also those prohibitions related to jobs, other activities or business activities within institutions which supervise children or work with them should be passed on to eliminate situations where for instance a person convicted for paedophilia in one country could have regular contact with children as part of their professional responsibilities other than supervision of children in such an institution in another country.

Amendment by Bogusław Sonik

Amendment 17
Article 2, point (d)

(d) "central authority" shall mean the authority appointed under ***Article 2*** of the Council Decision of […] on the exchange of information extracted from the criminal record;	(d) "central authority" shall mean the authority appointed under ***Article 1*** of the Council Decision of […] on the exchange of information extracted from the criminal record;

Or. en

Amendment by Bogusław Sonik

Amendment 18
Article 3

Member States shall take the necessary steps to ensure that any prohibition is registered in the criminal record.	Member States shall take the necessary steps to ensure that any prohibition, ***including any prohibition imposed by other Member States,*** is registered in the criminal record.

Or. en

Justification

The obligation to register in the criminal record also those prohibitions which have been passed on by other States should be expressly provided for in the Framework Decision.

Amendment by Bogusław Sonik

Amendment 19
Article 3, paragraph -1 (new)

	-1. Where the applicable international instruments on mutual legal assistance in criminal matters so allow, prohibitions imposed by third countries shall be

registered in the criminal record.

Or. en

Justification

Considering the seriousness of the offence in relation to which the prohibition has been issued, it is advisable to provide European Union citizens with a higher level of safety by obliging the Member States to register in criminal records also prohibitions issued in countries which are not Member States if it should be permitted by applicable international instruments, such as the European Convention on Mutual Assistance in Criminal Matters of 1959.[1]

[1] There may be difficulties with passing this amendment as it exceeds beyond the scope of the basis for the decision (It is based on article 31(1)(a) and (c) European Union Treaty).

Amendment by Bogusław Sonik

Amendment 20
Article 4, paragraph 1

1. When the issuing State passes on criminal record information to another Member State under the applicable international rules on mutual legal assistance in criminal matters, it shall mention the prohibition in the excerpt from the criminal record.	1. When the issuing State passes on criminal record information to another Member State under the applicable international rules on mutual legal assistance in criminal matters, ***and in accordance with Council Decision [...] related to exchange of information from criminal record apart from other information,*** it shall mention the prohibition in the excerpt from the criminal record.

Or. en

Justification

The recently adopted Council Decision on the exchange of information from criminal record supplements regulations of the Convention of 1959 by providing details on time-limitations related to passing on information about the prohibition on request of the enforcing State.

Amendment by Bogusław Sonik

Amendment 21
Article 5

Where application is made in the framework of this Framework Decision for the criminal records of a Member State, in accordance	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.	with national law, with a view to obtaining information on a national of another Member State, ***including where there are no criminal proceedings before a court against that national,*** an application shall always be made to the central authority of the Member State of which the person concerned is a national.

Or. en

Justification

Keeping in mind the accepted practice of applying the European Convention on Mutual Assistance in Criminal Matters (particularly in view of reservations expressed for article 13 of this Convention), it is crucial to state expressly in this framework decision that application for criminal record should also be considered if no criminal proceedings have been brought against the person concerned before any court. However, even such a proposal may not exceed beyond the frames of the decision. For instance applying when information from the criminal record is required to obtain a permit to exercise certain activities related to the supervision of children.

Amendment by Bogusław Sonik

Amendment 22
Article 5, paragraph 1 a (new)

	1a. 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 more than one State, such an application shall always be made to the central authority of each Member State of which the person concerned is a national.

Or. en

Justification

Persons who are nationals of two or more states should be subject to explicit regulations. This proposal is particularly important since it is not known how the information circulates between states of which the person concerned is a national, since regulation of Article 22 European Convention of 1959 exempts the State in whose territory the person concerned was convicted from notifying other States about the conviction if the convicted person is a national of the convicting country. This situation is also not improved by the recently adopted Council Decision on the exchange of information from criminal record.

Amendment by Bogusław Sonik

Amendment 23
Article 8, paragraph 1

1. To enforce a prohibition, the competent authority of the issuing State shall not require any formalities other than form ***B***, referred to in ***Article 4(2)*** of the Council Decision of […] on the exchange of information extracted from the criminal record.	1. To enforce a prohibition, the competent authority of the issuing State shall not require any formalities other than ***the*** form referred to in ***Article 3(2)*** of the Council Decision of […] on the exchange of information extracted from the criminal record.

Or. en