EUROPEAN PARLIAMENT

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Committee on Civil Liberties, Justice and Home Affairs

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28.9.2005

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DRAFT REPORT

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

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Bogusław Sonik

Symbols for procedures

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

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

Amendments to a legislative text

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

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

(Consultation procedure)

The European Parliament,

– having regard to the initiative by the Kingdom of Belgium (14207/2004)[1],

– having regard to Article 34(2)(b) and Article 31(1)(a)of the EU Treaty,

– having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,

– having regard to Article 39(1) of the EU Treaty, pursuant to which the Council consulted Parliament (C6-0244/2004),

– having regard to Rules 93, 51, 41(4) and 35 of its Rules of Procedure,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2005),

1. Approves the initiative by the Kingdom of Belgium as amended;

2. Calls on the Council to amend the text accordingly;

3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

4. Calls on the Council to consult Parliament again if it intends to amend the initiative by the Kingdom of Belgium substantially;

5. Instructs its President to forward its position to the Council and Commission, the government and Parliament of the Kingdom of Belgium and the governments and parliaments of the other Member States.

Text proposed by the Kingdom of Belgium	Amendments by Parliament
Amendment 1 Citation 1	
having regard to the Treaty on European	*having* regard to the Treaty on European

[1] OJ C ... / Not yet published in OJ.

Union, and in particular Article 31(a) and Article 34(2)(b) thereof,	Union, and in particular Article 31***(1)***(a) ***and (c)*** and Article 34(2)(b) thereof,

Justification

As the objective of the instrument is twofold: to improve access to information on prohibitions (in particular through compulsory registration of prohibitions in the criminal record) and to make it compulsory to enforce them.

Giving the fact that the criminal law varies in the Member States of the EU it is necessary to ensure a certain level of compatibility in rules applicable to criminal convictions.

Amendment 2
Recital 5

(5)	(5) ***Given that, within the same Member State and across the European Union, the range of possible prohibitions arising from criminal convictions is broad and the nature and methods of applying those sanctions can vary considerably, priority should be given to sectors where a common basis already exists between the Member States.***
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	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.	one of the offences connected to the sexual exploitation of children and child pornography.

Justification

The Member State willingness to co-operate is necessary for any strengthened co-operation in the area of criminal matters. Existing common basis is a fundamental element for any further co-operation.

Amendment 3
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 ***as defined in Article 2, point (c),*** is registered in the criminal record.

Justification

Prohibitions on which the present frame work decision will apply are limited and laid down in Article 2(c).

Amendment 4
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, it shall mention the prohibition ***among the information provided for*** in the excerpt from the criminal record.

Justification

The information given by the issuing Member State has not to be necessarily limited on prohibitions but may contain also additional information concerning criminal history of the offender.

Amendment 5
Article 7, heading

Reasons for non-recognition ***or*** non-enforcement	Reasons for non-recognition***,*** non-enforcement ***or adaptation of the prohibition***

Justification

A member State has also a possibility to adapt declared prohibition.

Amendment 6
Article 7, point (c a) (new)

	(ca) if the offence at the origin of the prohibition is covered by an amnesty in the enforcing State.

Justification

Bearing in mind respect for amnesty given in another Member State. (Application of the "ne bis in idem" principle).

Amendment 7
Article 7, paragraph 1 a (new)

	1a. If the duration of the prohibition exceeds the maximum provided for by the law of the enforcing State for the same offence, the duration of the enforced prohibition shall be reduced to that maximum.

Justification

Considering sovereignty of a Member State in criminal matters it is necessary to respect the rules of execution of offences in different Member States.

Should this paragraph be adopted, the previous paragraph should be regarded as paragraph 1.

Amendment 8
Article 8, paragraph 2

2. If the duration of the prohibition exceeds the maximum provided for by the law of the enforcing State for the same	***Deleted***

offence, the duration of the enforced prohibition shall be reduced to that maximum.

Justification

This case is already foreseen in Article 7, second indent.

Amendment 9
Article 9, paragraph 1

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.	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.

Justification

A suppressive remedy would suspend the execution of prohibition until a new decision is declared. It would have an undesirable impact on the effectiveness of the declared prohibition.