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Committee on Women's Rights and Gender Equality

2010/0064(COD)

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DRAFT OPINION

of the Committee on Women's Rights and Gender Equality

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 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: Marina Yannakoudakis

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SHORT JUSTIFICATION

Background information

Children's vulnerability puts them at greater risk of being maltreated or sexually abused. According to UNICEF, the child pornography industry generates 20 billion Euro and 1 million children are used for this horrendous purpose.¹ Sexual abuse and sexual exploitation of children are particularly serious forms of crime and can produce long-term physical, psychological and social harm to victims, their families and the families of the perpetrators.

Definitions

In view of this report being part of the Ordinary Legislative Procedure it is important that the definition of a 'child' is incorporated. Children's charities recommend that a 'child' is any person under the age of consent in the Member State, while a 'adolescent' shall mean any person above the age of consent in the Member State, and below the age of 18 years². This is an important distinction from a legal perspective, as a 'child' who is under the age of consent, and a 'adolescent' who is over the age of consent but under the age of 18, still has a right to be protected from sexual exploitation.

The draftsman feels the term 'child pornography' should be used as opposed to 'child abuse image'. 'Child abuse image' is a broad term used to describe images from a diverse range of criminal acts, which may not necessarily be sexual in nature. The term 'child pornography' has a wider legal scope in current protocols and conventions, and is widely known to be valid in all interpretations.

The Gender Perspective

Due to the sensitivity of this issue acquiring accurate data on the numbers of male and female child victims is problematic. However, it is known that a higher number of girls report sexual abuse than boys. This Opinion argues that sexual abuse and exploitation can occur in both sexes, and is not a female centred issue. This Opinion also recognises that women, as the predominant care givers in the family, are invaluable in the successful care of a victim or a perpetrator.

The Victims

Children who have been victims of sexual abuse can carry the scars of this experience throughout their lives, well into adulthood. Children who have been subject to this abuse can become repeated victims as images on the internet will remain long after the act has taken place.

The perpetrators

¹ http://www.europarl.europa.eu/comparl/libe/elsj/zoom_in/36_en.htm

² National Society for the Prevention of Cruelty to Children, June 2010 and EPP Group Hearing on Sexual Abuse of Children on the Internet, 2010

It is important to stop offenders reoffending. Evidence suggests that this needs to be carried out at national level through a variety of holistic measures. One such measure, is the recommended implementation of a telephone hotline for an individual who is thinking about committing child sexual abuse. Research has shown time and time again that if individuals are able to discuss their thoughts with a trained counsellor then they may be deterred from recidivism. This Opinion also recommends that Member States offer accredited sex offender treatment programmes which can aid rehabilitation

An issue that is often forgotten, is the need to provide support and advice to the family of the perpetrator.¹ The immediate members of the offender's family are often the quiet victims who face daily turmoil internally within the family unit and externally within the wider community.

Content deletion and blocking

There is strong debate within stakeholders over the issue of content deletion and blocking. In considering this approach there needs to be a careful balance between democratic regulation of the internet, through freedom of speech, and the protection and well-being of our children. Member States have a duty to work with Internet Service Providers to ensure that children are protected from the illegal activity of child sexual abuse. The obligation to set up controls and safety checks to protect children is also an important consideration.

In a number of Member States the blocking of sites at local level has proven to be successful². For this reason, it is of the utmost importance for Member States to obtain the deletion of internet pages containing or disseminating child pornography in the first instance, and the blocking of access by internet users in their territory to internet pages containing or disseminating child pornography, as a cause of action if deletion is not possible. Outside the EU's jurisdiction, and where such controls fail, blocking over deletion may be the only viable option.

This Opinion urges Member States to work with the IT industry and Internet Service Providers to share best practice and exchange information in a collaborative manner.

Summary

This Opinion has taken a balanced and reasoned approach to this issue and has aimed to remain within the competencies of the Women's Rights and Gender Equality Committee, and that of the European Union as present within the Treaty of Lisbon.

It is clear that it is right to take an approach which seeks to address the root causes of the problem with a view to eliminating the crime. A society which values the vulnerable, such as children, will take a strong move towards creating a culture in which the sexual abuse and exploitation of children becomes unacceptable.

¹ EPP Group Hearing on Sexual Abuse of Children on the Internet, 2010

² The Internet Watch Foundation Company

The nature of this crime is changing rapidly, especially with the ongoing progression of technology and its application. Where child pornography existed in the past it was only limited to physical applications such as the post or photographs. Now, the images can be sent around the world quickly without cost. The criminal nature of this action, the abuse on the most vulnerable and our obligation to protect children means we must not hesitate to take strong and robust action.

AMENDMENTS

The Committee on Women's Rights and Gender Equality calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive

Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) It is possible for both female and male children and adolescents to be victims of sexual abuse.

Or. en

Amendment 2

Proposal for a directive

Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) Victims of human trafficking have often been victims of child abuse and sexual exploitation.

Or. en

Justification

Children are more likely to suffer from the long term consequences of sexual abuse both physically and psychologically. This can cause alienation within their family and community which can make them vulnerable to other forms of exploitation such as human trafficking.

Amendment 3

Proposal for a directive Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) Criminal justice systems are an integral part of every Member State; whilst Member States are free to set their own criminal penalties, they should apply sentences that reflect the seriousness of the crimes committed.

Or. en

Justification

Criminal law is a Member State competency and therefore Member States should set their own punitive measures.

Amendment 4

Proposal for a directive Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) Member States should foster open dialogue and communication with countries outside of the Union and work in a collaborative manner to ensure that offenders from the Union who travel outside its borders for purposes of sex tourism are, wherever possible, dealt with appropriately on their return.

Or. en

Justification

Sex tourism can only be tackled effectively by cross border cooperation amongst all countries.

Amendment 5

Proposal for a directive

Article 2 – point a

Text proposed by the Commission

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

Amendment

(a) '**child**' shall mean any person **under the age of consent applicable in the Member State**;

Or. en

Justification

A distinction must be made between a 'child' who is under the age of consent, and an "adolescent" who is over the age of consent but under the age of 18 and needs to be protected from sexual exploitation.

Amendment 6

Proposal for a directive

Article 2 – point a (new)

Text proposed by the Commission

Amendment

(aa) '**adolescent**' shall mean any person **above the age of consent applicable in the Member State and below the age of 18 years**;

Or. en

Justification

A distinction must be made between a 'child' who is under the age of consent, and an "adolescent" who is over the age of consent but under the age of 18 and needs to be protected from sexual exploitation.

Amendment 7

Proposal for a directive

Article 2 – point b

Text proposed by the Commission

(b) 'child pornography' shall mean

Amendment

(b) 'child pornography' **is a form of child**

abuse and shall mean

Or. en

Justification

Using the term 'child pornography' the accent is put on the sexual purpose of the act whereas 'child abuse image' is a broad term used to describe images from a diverse range of criminal acts, not necessarily of a sexual nature: the scope of this instrument is regarding sexual abuse, sexual exploitation of children and child pornography. Given the scope of the instrument and taking into account the current legislation and legal terminology used in the "Protocol to the Convention on the Rights of the Child and the Sale of Children, Child Prostitution and Child Pornography" and the "Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse" the drafts person advises that the word 'child pornography' is used.

Amendment 8

**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 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 term of imprisonment.

Or. en

Amendment 9

**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 child who has not reached the age of sexual consent under national law shall be punishable by a term of imprisonment.

Amendment 10

Proposal for a directive

Article 3 – paragraph 4 – point i

Text proposed by the Commission

(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

Amendment

(i) *there is* abuse of a recognised position of trust, authority or influence over the child ; or

Or. en

Amendment 11

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) *there is* abuse of the child's situation *which is* particularly vulnerable , notably because of mental or physical disability or a situation of dependence; or

Or. en

Amendment 12

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;

shall be punishable by a term of imprisonment

Or. en

Amendment 13

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 child *to participate in* sexual activities with a third party shall be punishable by a term of imprisonment.

Or. en

Amendment 14

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 child to participate in pornographic performances shall be punishable by a term of imprisonment.

Or. en

Amendment 15

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

Amendment

3. Profiting from or otherwise exploiting a child participating in pornographic performances shall be punishable by a term

maximum term of imprisonment **of at least two years**.

of imprisonment.

Or. en

Amendment 16

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 children shall be punishable by a term of imprisonment.

Or. en

Amendment 17

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 child to participate in pornographic performances shall be punishable by a term of imprisonment.

Or. en

Amendment 18

Proposal for a directive Article 4 – paragraph 6

Text proposed by the Commission

6. Causing a child to participate in child prostitution shall be punishable by a

Amendment

6. Causing a child to participate in child prostitution shall be punishable by a term

maximum term of imprisonment *of at least five years*.

of imprisonment.

Or. en

Amendment 19

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*.

7. Profiting from or otherwise exploiting a child participating in child prostitution shall be punishable by a term of imprisonment.

Or. en

Amendment 20

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. Engaging in sexual activities with a child where recourse is made to child prostitution shall be punishable by a term of imprisonment.

Or. en

Amendment 21

Proposal for a directive Article 4 – paragraph 9

Text proposed by the Commission

Amendment

9. Coercing a child to participate in pornographic performances shall be

9. Coercing a child to participate in pornographic performances shall be

punishable by a *maximum* term of imprisonment *of at least eight years*.

punishable by a term of imprisonment.

Or. en

Amendment 22

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. Recruiting a child to participate in child prostitution shall be punishable by a term of imprisonment.

Or. en

Amendment 23

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

11. Coercing a child into child prostitution shall be punishable by a term of imprisonment.

Or. en

Amendment 24

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 child pornography shall be punishable by a term of imprisonment.

Amendment 25

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 (*ICT*), to child pornography shall be punishable by a term of imprisonment.

Or. en

Amendment 26

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 child pornography shall be punishable by a term of imprisonment.

Or. en

Amendment 27

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 child pornography shall be punishable by a term of imprisonment.

Amendment 28

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 child pornography shall be punishable by a term of imprisonment.

Or. en

Amendment 29

Proposal for a directive Article 14 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States shall work in partnership with law enforcement agencies, judicial authorities, the Information and Communication Technology (ICT) Industry, Internet Service Providers, the banking sector and Non-Governmental Organisations.

Member States shall work collaboratively and share examples of best practice for combating child sexual exploitation in those Member States where specialised units are working effectively.

Or. en

Justification

A holistic approach that shares best practice between Member States and relevant stakeholders is essential to combat the cross border nature of this crime.

Amendment 30

Proposal for a directive Article 14 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4b. As prevention is best achieved by stopping the perpetrator, the Commission shall explore the possibility of creating a centre to combat cyber crime.

Or. en

Justification

A centre to combat cyber crime might be considered in line with the Conclusions of the General Affairs Council meeting 26 April 2010.

Amendment 31

Proposal for a directive Article 15 – paragraph 2

Text proposed by the Commission

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 to report these facts to the competent services.

2. Member States shall *adopt* the necessary measures to encourage any person who knows about *the* offences referred to in Articles 3 to 7 *or who suspects in good faith that they may have been committed* to report these facts to the competent services. ***Any person reporting such offences will be covered by Data Protection and anonymity.***

Or. en

Justification

To encourage people to come forward and report cases of child sexual abuse it is imperative to instil confidence in the informer that their anonymity will be protected at all times.

Amendment 32

Proposal for a directive Article 17 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

(2a) Member states shall put in place preventative protection for children. This shall include:

(i) Awareness raising and education campaigns that recognise the signs of sexual child abuse in both online and offline environments. Information and support should be provided to the general public to help them protect children.

(ii) Educational awareness programmes in schools and children's activity groups to educate children to recognize and avoid high risk situations.

(iii) Measures to ensure that internet social networking includes a "panic button" application so that children can alert the relevant authorities of any inappropriate sexual behaviour, since the grooming of children on the internet, via chat rooms, and social networking sites, is on the increase. It is necessary to put in place clear and coherent follow up procedures that state who the report will go to, how it will be processed and what support and assistance will be given to the child.

(iv) Robust criminal checks for all types of employment which involve working with children and young people below the age of 18 - whether voluntary or paid employment.

(v) Measures exploring the possibility of implementing a 'red alert' system whereby information/data on the most dangerous child sex offenders is communicated between Member States as the offender travels through the EU. This information/data shall be subject to all current EU and national data protection laws.

Or. en

Amendment 33

Proposal for a directive Article 18 – paragraph 4

Text proposed by the Commission

4. Member States shall take measures, *where appropriate and possible*, to provide assistance and support to the victim's family. In particular, Member States shall, *where appropriate and possible*, apply Article 4 of Council Framework Decision 2001/220/JHA to the family.

Amendment

4. *Where appropriate and possible*, Member States shall take measures to provide assistance and support to the victim's family ***that recognises women as the predominant care givers within the family unit***. In particular, Member States shall apply Article 4 of Council Framework Decision 2001/220/JHA to the family.

Or. en

Amendment 34

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

Text proposed by the Commission

Amendment

4a. Member States shall employ existing structures to prevent and combat the activities of criminal networks involved in the production, sale or distribution of child pornography, for example, Europol's Analytical work framework, and implement the necessary legislation or other measures to encourage and support the setting up of information services, such as telephone or internet help lines to provide advice to callers confidentially and with due regard for their anonymity.

Or. en

Justification

Information services such as telephone help lines can be a vital tool in combating child sexual

abuse. The Council of Europe's Convention on Sexual Abuse, Article 13 recognises this.

Amendment 35

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 ***accredited sex offender treatment programmes*** are made available *or measures put in place* with a view to preventing and minimising the risks of repeated offences of a sexual nature against children. These ***accredited sex offender treatment*** programmes or measures shall be accessible at any time during the criminal proceedings, inside and outside prison, *in accordance with* the conditions laid down in national law. ***Member States shall offer counselling and advice programmes to support the perpetrator's immediate family.***

Or. en

Justification

Member States should have accredited programmes which assist the offender in understanding their actions and responsibilities with an emphasis on reintegration into the wider community.

Amendment 36

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 below the age of criminal responsibility.

Amendment

Such intervention programmes or measures shall be adapted to meet the specific developmental needs for children who sexually offend ***other children***, including those who are below the age of criminal responsibility. ***Member States shall provide a consistent assessment and***

referral process which responds to the problem of the offending child's sexual behaviour.

Or. en

Justification

It is important to ensure that children who sexually harm other children are not dealt with in the same way as adult abusers. Although children may themselves perpetrate sexually harmful behaviour it is important to consider that children who engage in this behaviour are highly vulnerable themselves, and have often been abused. It must be understood that children are more likely to change and develop out of offending behaviour than adults.

Amendment 37

Proposal for a directive

Article 20 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. As prevention is best achieved by stopping the perpetrator, Member States shall consider the possibility of implementing an EU-wide telephone number made available to anyone who is thinking about committing child sexual abuse. The anonymity of the individual must be ensured.

Or. en

Justification

As a preventative measure current and potential perpetrators should have access to a helpline that can offer support and counselling. Someone worried about their thoughts or behaviour towards children should be able to ring a confidential helpline in anonymity. This helpline has been successfully implemented in the United Kingdom.

Amendment 38

Proposal for a directive

Article 21 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall take the *necessary* measures to *obtain* the blocking of access

1. Member States shall take the measures *necessary to secure, in the first instance,*

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*.

the deletion of Internet pages containing or disseminating child pornography and, as a final course of action if deletion is not successful, 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 to ensure, in particular that the blocking is limited to what is necessary in order to guarantee democratic accountability, that users are informed of the reasons for the blocking and that content providers are informed as far as possible of any right to challenge that blocking through an appeal mechanism.

Or. en

Justification

Research indicates that it creates additional distress for the child to have to live with the knowledge that once an image has been uploaded on the internet it may be replicated and downloaded an unlimited number of times. Therefore, the ultimate aim is to remove the site, but where this is not immediately possible, blocking should be implemented. Blocking should be seen as 'one tool in the arsenal' for tackling this horrendous crime.

Amendment 39

Proposal for a directive Article 21 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall make an active effort to address the issue of Peer-to-Peer software and the re-emergence of Usenet Newsgroups.

Or. en