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Committee on Civil Liberties, Justice and Home Affairs

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16.12.2010

*****I**

DRAFT REPORT

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))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Roberta Angelilli

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

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

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2010)0094),
 - having regard to Article 294(2), and Article 82(2) and Article 83(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0088/2010),
 - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rules 55 and 37 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Culture and Education and the Committee on Women's Rights and Gender Equality (A7-0000/2010),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

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

Amendment

(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.

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 its Optional Protocols thereto, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* and the Charter of Fundamental Rights of the European Union (*Charter*).

Or. en

Justification

Additional internal instruments have to be listed here, especially the 2007 Council of Europe Convention on the Protection of children against Sexual Exploitation and Sexual Abuse as the most modern international instrument in that field.

Amendment 2

Proposal for a directive Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) The legally binding nature of the provisions of the Charter, in accordance with Article 6 of the Treaty on European Union, introduced a new stage in the level of protection of children, as Article 24(2) of the Charter provides for the mainstreaming of child protection. Moreover, the multiannual Stockholm Programme - an open and Secure Europe Serving and Protecting Citizens¹, adopted by the European Council, gives a clear priority to combating the sexual abuse and sexual exploitation of children, and child pornography.

¹ OJ L 115, 4.5.2010, p. 1.

Or. en

Justification

With the entry into force of the Treaty of Lisbon the EU Charter of Fundamental Rights acquired full legally binding nature, whereby Article 24 of the Charter demands do take into account the child's best interest in all activities related to children undertaken by public authorities or private institutions.

Amendment 3

Proposal for a directive

Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) Rights of child victims in criminal proceedings should be strengthened, including, in addition to the rights set out in Framework Decision 2001/220/JHA, rights such as obligatory and free legal counselling and representation in all cases of sexual abuse and sexual exploitation of children.

Or. en

Justification

The legal counselling to and representation of child victims of sexual abuse and exploitation should be mandatory and free of costs in all cases, as a child needs such counselling and representation to fully understand and use his rights.

Amendment 4

Proposal for a directive

Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) Member States should ensure the promotion and protection of children's rights against any form of sexual abuse and sexual exploitation by reaching the highest level of prevention. This directive should be seen as part of integrated action to ensure prevention, in particular

through appropriate school education programmes, including in the framework of the regular educational system, awareness-raising campaigns, research, exchanges of best practices and cooperation between public authorities and non-governmental organisations, service providers and tour operators, as regards the danger of sexual abuse, sexual exploitation and child pornography, as well as regards the rights of victims and steps to be taken in the case of such abuse or suspected abuse. Those measures should be addressed to all parties concerned, including children, parents and education practitioners. The same objectives should be considered as an integral part of Union negotiations with third countries.

Or. en

Justification

The provisions which cover the criminal aspects and the preventive measures for the defence of children against abuse should be seen as part of an integrated approach to reach objectives in line with the 2007 Council of Europe Lanzarote Convention to encourage awareness of the protection and rights of children among persons who have regular contacts with children in the education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities.

Amendment 5

Proposal for a directive

Recital 8

Text proposed by the Commission

(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,

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.

Member States should encourage any person who has, in good faith, a suspicion or knowledge about sexual abuse or exploitation of a child, to report the matter to the competent services. Regarding the system of reporting sexual abuse and sexual exploitation of children and helping children in need, Union hotlines under the number 116 000 for missing children, 116 006 for victims of crime and 116 111 for children, as introduced by Commission Decision 2007/116/EC of 15 February 2007 on reserving the national numbering beginning with 116 for harmonised numbers for harmonised services of social value¹ as amended by Decision 2009/884/EC of 30 November 2009², should be promoted and experience with their functioning taken into account.

¹ OJ L 49, 17.2.2007, p. 30.

² OJ L 317, 3.12.2009, p. 46.

Or. en

Justification

Encouragement of reporting cases of sexual abuse and exploitation of children should be highlighted. In that regard existing EU mechanisms (telephone numbers of social value) have to be analysed and taken into account.

Amendment 6

Proposal for a directive Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) Effective investigation tools and full cross-border cooperation to ensure rapid and efficient access to criminal records and international child abuse databases should be made available to those responsible for the investigation and

prosecutions of such offences, as children are entitled, as confirmed by the European Court of Human Rights, to State protection, in the form of effective deterrence, from such grave types of interference with essential aspects of their private lives. Such tools may include disclosure of identity of internet users, covert operations, interception of communications, covert surveillance including electronic surveillance, monitoring of bank accounts or transfers or other financial investigations, taking into account the principle of proportionality and subject to judicial overview.

Or. en

Justification

The application of investigation tools should be placed in a separate recital, indicating their limits in accordance with basic human rights principles, such as proportionality and judicial overview. Because of the nature of the crimes and of the several cases of lack of communication in identifying paedophiles between Member States, a cross border intelligence system for the national police should be promoted to ensure full cooperation in the investigation systems to prevent risks, ensure identification of offenders and identification and protection of the victims.

Amendment 7

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 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 ***child sex tourism. Offences committed against children in the context of travel abroad should be considered as having been committed in aggravating circumstances.***

Justification

Child sex tourism grows at an alarming rate and inflicts devastating consequences on millions of children around the globe. In the recital it should be already stressed that in order to strengthen the prevention of this practice it is essential to reinforce deterrence by providing higher sanctions for the crimes if committed abroad in the context of travelling.

Amendment 8

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 child victims ***and measures to adapt the justice system dealing with them*** should be adopted in their best interest, taking into account an assessment of their needs, ***and of their right to be protected against the risk of repeated victimisation, especially through violation of their privacy, and giving their opinions and views due weight, as envisaged, for example, in the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime and in the Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice.*** 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. ***In that regard they should be fully informed about their rights, the services at their disposal, the progress and outcome of the proceedings, and legal counselling and representation should also be provided for claiming compensation.*** 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.

Or. en

Justification

Secondary victimisation has to be avoided. It should be also highlighted that justice dealing with children and especially with child victims has to be adapted to their needs, as envisaged by the recently adopted Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, welcomed by the European Commission and the EU Fundamental Rights Agency.

Amendment 9

**Proposal for a directive
Recital 10 a (new)**

Text proposed by the Commission

Amendment

(10a) Child victims of sexual abuse and sexual exploitation should receive short and long-term assistance. Any harm caused by the sexual abuse and sexual exploitation of a child is significant and should be addressed. Because of the nature of the harm caused by sexual abuse and sexual exploitation, such assistance should continue for as long as necessary for the child's complete physical and psychological recovery and may last into adulthood if necessary.

Or. en

Justification

The long-term need of aid for victims of sexual abuse and exploitation of children has to be highlighted.

Amendment 10

Proposal for a directive Recital 10 b (new)

Text proposed by the Commission

Amendment

(10b) Member States should put in place preventive protection measures in accordance with their national law to avoid contact between the child victims and the offenders after the start of criminal proceedings, even before conviction. Child victims and their families should have the benefit of cross-border protection against their offenders within the framework of a European Protection Order.

Or. en

Justification

It is important to stress the need for children's protection and of their families already at the moment of the reporting of the crime before the conviction.

Amendment 11

Proposal for a directive Recital 13

Text proposed by the Commission

Amendment

(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

(13) Child pornography, which constitutes ***child abuse material***, is a specific type of content which cannot be construed as the expression of an opinion. To combat it, it is necessary to ***ensure the full removal of the images from the source of the web. In addition, Member States may proceed with the means they consider most appropriate for an immediate intervention to stop further viewing and downloading of the image to prevent further damages to the victim. In any event, they should start immediately procedures to reach***

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 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.

complete removal of the images from the source and to identify the offenders. 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 *supporting judicial and police authorities in accessing the most advanced investigative techniques, such as picture DNA and favouring the exchange of best practices.* Internet Service Providers *should be encouraged* on a voluntary basis to develop codes of conduct and guidelines for blocking access to Internet pages *containing child pornography.* 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 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.

Justification

Even if the main aim shall be the complete removal of images from the web, it corresponds to the interest of the child that images will be made inaccessible within the shortest time. Therefore, MS should be allowed, in addition to trying to remove the images from the web, to proceed as well to blocking of the images if this corresponds to the interest of the child. The latest developments of ICT allows the tracking of a small part of the same pictures in the web with a technique called pictures DNA, and it would be important that those techniques would be available and exchanged between EU MS' authorities.

Amendment 12**Proposal for a directive****Recital 13 a (new)***Text proposed by the Commission**Amendment*

(13a) Any possible personal data processed when implementing this Directive should be protected in accordance with Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters¹ and in accordance with the principles laid down in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which all Member States have ratified.

¹ OJ L 350, 30.12.2008, p. 60.

Justification

Any processing of personal data in the framework of the present directive has to fully comply with EU and Council of Europe data protection standards..

Amendment 13

Proposal for a directive Recital 13 b (new)

Text proposed by the Commission

Amendment

(13b) This Directive should be fully complementary with Directive 2011/.../EU of the European Parliament and the Council on preventing and combating trafficking in human beings, and protecting victims, replacing Framework Decision 2002/629/JHA, as some victims of human trafficking have also been child victims of sexual abuse and sexual exploitation.

Or. en

Justification

It should be highlighted that the present directive and the directive on trafficking form part of the same fight against crime, especially as trafficking can be part of sexual abuse and exploitation of children.

Amendment 14

Proposal for a directive Article 1

Text proposed by the Commission

Amendment

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

This Directive aims ***to prevent the sexual abuse and sexual exploitation of children and to*** establish minimum rules concerning the definition of criminal offences and sanctions in the area of sexual exploitation of children. It also aims to introduce common provisions to strengthen the prevention of the crime and the protection of its victims.

Or. en

Justification

Accent should be put on the need of protecting children.

Amendment 15

**Proposal for a directive
Article 2 – point a a (new)**

Text proposed by the Commission

Amendment

***(aa) 'age of sexual consent' shall mean
the legal age according to national law to
engage in sexual activities;***

Or. en

Justification

As requested by the Council of Europe Lanzarote Convention and to exactly define the content of the provisions on offences from Articles 3 to 7 it is need to clarify what the age of sexual consent is.

Amendment 16

**Proposal for a directive
Article 2 – point b – introductory part**

Text proposed by the Commission

Amendment

(b) 'child pornography' shall mean

***(b) 'child pornography' or 'child abuse
material' shall mean:***

Or. en

Justification

The use of new and more adequate terminology in the form of "child abuse material" should be added and the use of such more adequate terminology encouraged.

Amendment 17

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

Or. en

Justification

Exploitation of abuse of children should be sanctioned with higher level of sanctions.

Amendment 18

**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 child participating in pornographic performances shall be punishable by a maximum term of imprisonment of at least **three years**.

Or. en

Justification

Exploitation of abuse of children should be sanctioned with higher level of sanctions.

Amendment 19

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

Or. en

Justification

Exploitation of abuse of children should be sanctioned with higher level of sanctions.

Amendment 20

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

Amendment

6. Causing a child to participate in child prostitution shall be punishable by a maximum term of imprisonment of at least **six years**.

Or. en

Justification

Exploitation of abuse of children should be sanctioned with higher level of sanctions.

Amendment 21

Proposal for a directive Article 4 – paragraph 7

Text proposed by the Commission

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**.

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 **six years**.

Or. en

Justification

Exploitation of abuse of children should be sanctioned with higher level of sanctions.

Amendment 22

Proposal for a directive Article 4 – paragraph 8

Text proposed by the Commission

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**.

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 **six years**.

Or. en

Justification

Exploitation of abuse of children should be sanctioned with higher level of sanctions.

Amendment 23

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

1. 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, for the purpose of committing any of the offences referred to in *Article 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.

1a. If it is proven that the offender intentionally used technological means to target a great number of children to multiply his chances of committing the crime, Member States should ensure that, independently from previous convictions for the same crime, that practice shall be considered to be an aggravating factor and shall be subject to a higher penalty than the basic crime of solicitation of children for sexual purposes.

Or. en

Justification

This kind of "contact offences" should be punished with a higher sanction if committed systematically as a practice targeting a plurality of children to multiply chances of success.

Amendment 24

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 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 ***and they comply with national law concerning age of sexual consent.***

Or. en

Justification

To respect the subsidiarity principle and since this matter is still in the remits of Member States with different approaches linked to traditions a reference to national legislation should be added.

Amendment 25

Proposal for a directive Article 8 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall ensure that where offences concerning child pornography under Article 5 are committed by a child, they shall be subject to appropriate alternative measures adapted to specific re-educational needs under national law, having due regard to the age of the offender, the need to avoid criminalisation and the objective of social reintegration of the child.

Or. en

Justification

With regard to offences related to use of ICT technologies which are now growing between children already at school level and often as part of bullying practices, it is essential to sanction those behaviours with appropriate measures even if the offender is a child.

Amendment 26

Proposal for a directive

Article 9 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) the offence has been committed as part of an organised activity for the main purpose of economic revenue;

Or. en

Justification

It is important to stop the economic exploitation of abused children.

Amendment 27

Proposal for a directive

Article 9 – paragraph 1 – point d b (new)

Text proposed by the Commission

Amendment

(db) the offence was committed in the context of travel abroad, where such travel was organised or undertaken for the main purpose of committing any of the offences referred to in Articles 3 to 6;

Or. en

Justification

Child sex tourism grows at an alarming rate and inflicts devastating consequences on millions of children around the globe. In the recital it should be already stressed that in order to strengthen the prevention of this practice it is essential to reinforce deterrence by providing higher sanctions for the crimes if committed abroad in the context of travelling.

Amendment 28

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 **professional** activities involving regular contacts with children. ***The measures referred to in this paragraph shall be entered in the criminal record of the convicting Member State.***

Or. en

Justification

It should be clarified that it applies to professional activities involving regular contacts with children.

Amendment 29

Proposal for a directive Article 10 – paragraph 2

Text proposed by the Commission

2. Member States shall take the necessary measures to ensure that ***the measure referred to in paragraph 1 is entered in the criminal record of the convicting Member State.***

Amendment

2. Member States shall take the necessary measures to ensure that ***when recruiting for professional activities which involve contacts with children, employers shall be entitled to obtain information from competent authorities concerning the existence of convictions for an offence referred to in Articles 3 to 7 or of any additional measure related to those convictions which prevents them from exercising activities involving contacts with children. If serious suspicion should arise during working relations, employers***

may, in accordance with national law, request such information even after the recruitment procedure. Member States authorities shall ensure, by any appropriate means and in accordance with national law, that such information may also be obtained from the criminal records held in other Member States.

Or. en

Justification

It is important that the employer should have full access to the criminal records bearing convictions as well as information concerning measures of disqualification either in their own country or in a different EU Member State. Moreover, if an employer should get information after recruitment that the employee hired to deal with children had been convicted for paedophilia in another Member State, he should be entitled to ask for information on this even after the recruitment.

Amendment 30

Proposal for a directive Article 10 – paragraph 3

Text proposed by the Commission

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***

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 ***ensure full cooperation and availability of all information when replying to requests by competent authorities of other Member States submitted according to Article 10(2).*** *Personal* data concerning such disqualification provided under Article 7(2) and (4) of that Framework Decision may in ***any case*** be used for such purpose.

*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.*

Or. en

Justification

Full cooperation and information exchange on request between Member States has to be insured.

Amendment 31

**Proposal for a directive
Article 12 – paragraph 1 – point e a (new)**

Text proposed by the Commission

Amendment

(ea) confiscation of economic revenue arising from the offences.

Or. en

Justification

It is important to ensure that revenues deriving from commission of the crime should not remain the property of the criminal organisation or the person who committed those crimes.

Amendment 32

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

Text proposed by the Commission

Amendment

2a. Member States shall take any

appropriate measures to contribute to the creation of an international child sexual exploitation image database.

Or. en

Justification

In order to alert police about the sexual exploitation of children and to allow victim identification, there is the need to obtain a quick alert about pages with child pornography content.

Amendment 33

Proposal for a directive

Article 16 – paragraph 1 – point d

Text proposed by the Commission

(d) the offence is committed for the benefit of a legal person *established* in the territory of that Member State.

Amendment

(d) the offence is committed for the benefit of a legal person *having the legal seat or place of establishment* in the territory of that Member State.

Or. en

Justification

Sometimes the place of establishment and the legal seat do not coincide. In both cases jurisdiction should be ensured.

Amendment 34

Proposal for a directive

Article 17 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall ensure in case of sexual abuse and sexual exploitation committed within a family context that the necessary measures are undertaken to protect and provide assistance to the child

victim as well as to other family members who were not involved in the offence.

Or. en

Justification

To underline the need to preserve the psychological balance and the right of abused children to maintain contacts with their families.

Amendment 35

Proposal for a directive

Article 19 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall guarantee the respect of privacy and image of child victims and shall prevent the public dissemination of any information relating to them that could lead to their identification.

Or. en

Justification

Child victims must be protected from all forms of violation of their private sphere.

Amendment 36

Proposal for a directive

Article 19 – paragraph 3 – point b a (new)

Text proposed by the Commission

Amendment

(ba) interviews with the child victim shall take place, as far as possible, in the absence of the offender;

Or. en

Justification

This element should be added to ensure that the child may speak without the fear of meeting again the offender.

Amendment 37

Proposal for a directive

Article 21

Text proposed by the Commission

Article 21

Blocking access to websites containing child pornography

*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.*

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

Article 21

Removal of and blocking access to websites containing child pornography

Member States shall take the necessary measures to obtain the **removal at source of the web page** containing or disseminating child pornography. **In addition, in order to protect the best interest of the child, Member States may set up procedures to block access by Internet users in their territory to Internet pages containing or disseminating child pornography in accordance with national law.** 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.

Or. en

Justification

The complete removal of images should be a priority. In the interest of the child, Member States may proceed in addition to immediate blocking when they think it corresponds to the best interest of the child.

EXPLANATORY STATEMENT

1. BACKGROUND OF THE PROPOSAL

Abusare di minori significa perpetrare orrendi delitti che colpiscono la salute fisica e psichica di bambini e adolescenti, marchiandoli a vita. Sfruttare sessualmente un minore significa ridurre un bambino o un adolescente ad un oggetto sessuale arricchendosi sulle sue sofferenze. Gli studi rivelano che in Europa una percentuale di minori compresa tra il 10% e il 20% è esposta nell'infanzia al rischio di violenze sessuali. È in continua crescita il numero di siti a contenuto pedopornografico e ogni giorno compaiono sul web 200 immagini nuove. Ma abbiamo soltanto stime. Le vittime ritratte sono sempre più giovani e il materiale diventa sempre più esplicito e violento. Il 20% circa degli autori di reati sessuali tende a commettere nuovamente il reato dopo la condanna. Molti di questi fenomeni avvengono proprio dove il bambino si dovrebbe sentire al sicuro e protetto. La pedopornografia via Internet è divenuta da fenomeno emergente, una vera e propria minaccia criminale d'ingenti proporzioni, in cui s'intrecciano pulsioni perverse ed interessi economici e che vede aumentare sempre di più la cosiddetta produzione domestica. Tale fenomeno sfrutta tutte le potenzialità tecnologiche offerte dalla rete stessa. Da una parte abbiamo siti Internet nei quali sono pubblicizzati "articoli" quali VHS, DVD e CD contenenti immagini di abusi su minori; dall'altra social networks, chat, newsgroup, mailing list utilizzate sia per creare comunità di pedofili sia per diffondere notizie finalizzate all'adescamento ed al reperimento di materiale pedopornografico. In ultimo, i servizi di peer to peer ed FTP (File Transfer Protocol) consentono di scambiare file d'ingenti dimensioni, corrispondenti a filmati ed a compilation d'immagini. A ciò si somma la diffusione di MMS (Multimedia Messaging Service) con cellulari di nuova generazione che possono trasmettere immagini e video. Con queste nuove tecnologie portatili il minore può essere raggiunto anche in momenti in cui è fuori dalla sorveglianza familiare. Attraverso i siti web, le foto ed i video di natura pedopornografica sono disponibili in server sparsi in ogni angolo del web, dai quali gli utenti possono effettuare, previo pagamento, operazioni di download sul proprio computer. Grazie a particolari software che permettono di spostare immediatamente i siti pedofili da un server host all'altro, i gestori dei siti stessi rimangono troppo spesso anonimi ed inafferrabili. Una così rapida evoluzione della minaccia richiede una altrettanto rapida evoluzione della tecnologia investigativa e della legislazione europea e nazionale.

2. POSITION OF THE RAPPORTEUR

La proposta di Direttiva mira a realizzare un quadro di riferimento europeo con l'obiettivo di prevenire e perseguire tutte le forme di abuso e sfruttamento sessuale dei minori e i reati di pedopornografia. Inoltre, il testo introduce disposizioni comuni per la prevenzione dei reati e la protezione delle vittime. La proposta di direttiva riprende in gran parte le disposizioni contenute nella raccomandazione del Parlamento europeo del 3 febbraio 2009 sulla lotta contro lo sfruttamento sessuale dei bambini e la pornografia infantile sono in gran parte riprese. La presente proposta contiene altresì molte delle indicazioni della Convenzione del Consiglio d'Europa per la protezione dei bambini contro lo sfruttamento e gli abusi sessuali. Allo stato attuale, la Convenzione, pur non essendo ancora ratificata dalla maggioranza degli stati europei, costituisce uno strumento imprescindibile sul piano internazionale per

contribuire ad assicurare la protezione dei minori dagli abusi. Si introducono a livello europeo nuove fattispecie di reato, relative in particolare alle nuove minacce derivanti dallo sviluppo dei mezzi tecnologici ed informatici. Vengono definiti in termini chiari concetti come pedopornografia, materiale pedopornografico, prostituzione minorile ed esibizione pornografica. In tal modo viene uniformato un regime minimo che assicura la protezione dei minori in tutti gli Stati membri attraverso strumenti idonei. Inoltre ho ritenuto opportuno inserire la definizione di età del consenso sessuale, elemento principale di valutazione del reato ma soprattutto fondamentale per la commisurazione ed aggravio della pena. La direttiva fissa quindi sanzioni minime per 22 tipi di reato, ferma restando la possibilità per gli Stati membri di adottare misure e pene più severe.

Tra le nuove fattispecie di reato di abuso sessuale vengono ricompresi e sanzionati gli abusi commessi all'interno della famiglia, da chi esercita una posizione di fiducia, autorità o influenza. Sanzioni più elevate saranno comminate a chi commette reati su minori con disabilità fisica, psichica o in stato di dipendenza.

I bambini saranno protetti a livello europeo contro l'adescamento di minori, il c.d. "grooming". Inoltre ho inserito una specifica disposizione che riguarderà le persone che commettono un "grooming" seriale, ovvero contattano contemporaneamente più minori per moltiplicare le possibilità di adescamento. Le persone che sono state condannate per aver commesso reati contro i bambini non devono avere la possibilità di esercitare attività che comportano contatti regolari con i bambini, ad esempio trasferendosi in un altro Stato membro. I datori di lavoro, in caso di assunzione per compiti che comportano un contatto con i bambini, avranno il diritto di ottenere informazioni dalle autorità competenti circa l'esistenza di condanne per i reati previsti dalla direttiva o di qualsiasi misura aggiuntiva collegata a tali reati attraverso la consultazione dei casellari giudiziari. Tutti gli Stati membri e le autorità competenti devono collaborare per un rapido scambio di tali informazioni. Se gravi motivi di sospetto dovessero sorgere nel corso del rapporto di lavoro, i datori di lavoro devono avere il diritto di accedere a tali informazioni anche dopo l'assunzione. Per quanto riguarda la responsabilità delle persone giuridiche, ho voluto inserire come sanzione ulteriore la confisca immediata sia del materiale pornografico sia dei ricavi da esso ottenuti. Gli Stati membri devono facilitare e rafforzare la cooperazione con le banche nazionali e le principali compagnie di carte di credito per garantire la tracciabilità dei pagamenti effettuati su Internet legati allo sfruttamento dei minori.

Gli Stati membri avranno precisi obblighi di legge per punire i crimini contro i minori commessi all'estero da cittadini europei o residenti abitualmente in uno Stato membro, il c.d. turismo sessuale. Inoltre, ho inserito un riferimento nelle aggravanti qualora i reati previsti dalla direttiva siano commessi nel contesto del turismo sessuale. Ogni volta che qualcuno scarica e guarda immagini e materiale pedopornografico, è come se commettesse di nuovo l'abuso sul bambino. L'obiettivo della direttiva è quello di rimuovere immediatamente il materiale on line. Quando questo non può essere fatto immediatamente (per i casi in cui l'eliminazione alla fonte risulta più complicata, per esempio quando i provider sono ubicati in paesi terzi e in assenza di accordo di cooperazione con l'UE) deve essere consentito, come opzione a disposizione degli Stati membri, lo strumento del blocco dei siti. Tale blocco deve essere effettuato conformemente alle disposizioni nazionali e attraverso tutti gli strumenti di garanzia della privacy. È quindi opportuna un'azione sinergica di tutti gli attori della "rete": istituzioni, polizia informatica e postale, providers, banche, fornitori di servizi di

intermediazione finanziaria, utenti privati ed associazioni. L'utilizzo di tecnologie e software all'avanguardia è essenziale in questo settore di attività. È necessario mettere in campo tutti gli strumenti disponibili (da ultimo il photoDNA), avvalendosi anche del lavoro della coalizione finanziaria europea per combattere la diffusione di immagini pedopornografiche su Internet e la collaborazione internazionale delle forze di polizia e degli istituti bancari (ad esempio per il tracciamento dei pagamenti).

È necessario garantire alle vittime protezione, assistenza e sostegno nella fase investigativa, durante il procedimento così come nella fase successiva, tenendo in considerazione il parere, le esigenze e le paure del minore. L'accesso ai mezzi di impugnazione deve essere agevole senza subire da parte delle giovani vittime ulteriori traumi derivanti dalla partecipazione al procedimento, la c.d. doppia vittimizzazione. Di altrettanta importanza sono le misure tese a fornire assistenza e sostegno alla famiglia della vittima. D'altro canto, qualora il reato sia commesso all'interno dell'ambiente familiare, il minore deve essere tutelato e deve essere presa la decisione più idonea in merito alla sua residenza, tenendo in debita considerazione il suo superiore interesse ed il suo parere. Gli strumenti di protezione e assistenza devono altresì ricomprendere misure a sostegno di quelle che si presume siano vittime di abuso o sfruttamento. È essenziale una formazione specifica degli operatori del settore che andranno ad affiancare il minore in tutte le fasi del procedimento e del personale che comunque sarà in contatto con le vittime. È necessario anche prevenire i reati con programmi d'intervento e trattamento appositi. Un sistema giudiziario a misura e a portata di bambino costituisce la vera chiave di volta della presente direttiva. Gli Stati membri devono adottare tutte le misure necessarie per stabilire efficaci sistemi di protezione dell'infanzia anche attraverso la realizzazione di strutture multidisciplinari per garantire la necessaria assistenza alle vittime nel breve e lungo termine, sia attraverso il training del personale sia avvalendosi delle ONG che hanno esperienza nel settore di assistenza alle vittime di abusi e sfruttamento sessuale. Un particolare compito spetterà alla società civile, a cui saranno rivolte campagne di informazione e sensibilizzazione specifiche sul tema.