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REPORT

on the proposal for a directive of the European Parliament and of the Council on combating the 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

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United in diversity

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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 the 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 Articles 82(2) and 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 Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 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 (A7-0294/2011),
1. Adopts its position at first reading hereinafter set out;
 2. Approves the joint statement by Parliament and the Council annexed to this resolution;
 3. 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;
 4. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

POSITION OF THE EUROPEAN PARLIAMENT

AT FIRST READING*

DIRECTIVE 2011/.../EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on combating the sexual abuse, sexual exploitation of children and child pornography, **and replacing** Framework Decision 2004/68/JHA

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2) and 83(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure³,

Whereas:

(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 ***United Nations*** Convention on the Rights of the Child and the Charter of Fundamental Rights of the European Union.

(1a) In accordance with Article 6 of the Treaty of the European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights, which in its article 24 (2) provides that in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. Moreover, the multiannual Stockholm Programme - an open and Secure Europe Serving and Protecting Citizens, adopted by the European Council - gives a clear priority to combating the sexual abuse and sexual

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■**.

¹ Opinion of 15 September 2010 (not yet published in the Official Journal).

² OJ C , , p. .

³ Position of the European Parliament of xx July 2011.

exploitation of children, and child pornography.

- (2) Child pornography, which consists of images of child sex abuse, and other particularly serious forms of sexual abuse and sexual exploitation of children are increasing and spreading through the use of new technologies and the internet.
- (2a) *In the context of criminalising acts related to pornographic performance, this Directive refers to such acts which consist of an organised live exhibition, aimed at an audience, thereby excluding personal face-to-face communication between consenting peers, as well as children over the age of consent and their partners from the definition.***
- (3) Council Framework Decision 2004/68/JHA on combating the sexual exploitation of children and child pornography¹ approximates Member States' legislation to criminalise the most serious forms of child sexual abuse and sexual exploitation, to extend domestic jurisdiction, and to provide for a minimum level of assistance for victims. Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings² establishes a set of victims' rights in criminal proceedings, including the right to protection and compensation. Moreover, the coordination of prosecution of cases of sexual abuse, sexual exploitation of children and child pornography will be facilitated by the adoption of Council Framework Decision 2009/948/JHA on prevention and settlement of conflict of jurisdiction in criminal proceedings³.
- (4) According to Article 34 of the *United Nations* Convention on the Rights of the Child, States Parties undertake to protect the child from all forms of sexual abuse. The *United Nations* Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography and, in particular, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse⁴ are crucial steps in the process of enhancing international cooperation in this field.
- (5) Serious criminal offences such as the sexual exploitation of children and child pornography require a comprehensive approach covering the prosecution of offenders, the protection of child victims, and prevention of the phenomenon. The child's best interests must be a primary consideration when carrying out any measures to combat these offences in accordance with the Charter of Fundamental Rights of the European Union and the *United Nations* Convention on the Rights of the Child. Framework Decision 2004/68/JHA should be replaced by a new instrument providing such comprehensive legal framework to achieve that purpose.

(5a) *This Directive should be fully complementary with Directive 2011/36/EU of the*

¹ OJ L 13, 20.1.2004, p. 14.

² OJ L 82, 22.3.2001, p. 1.

³ OJ L 328, 15.12.2009, p. 42.

⁴ Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, opened for signature in Lanzarote, 25.10.2007, Council of Europe Treaty Series No. 201.

European Parliament and the of the Council of 5 April 2011 on preventing and combating trafficking in human beings, and protecting victims, and replacing Framework Decision 2002/629/JHA¹, as some victims of human trafficking have also been child victims of sexual abuse and sexual exploitation.

- (5b) *Child pornography frequently includes images recording the sexual abuse of children by adults. It may also include images of children involved in sexually explicit conduct, or of their sexual organs, where such images are produced or used for primarily sexual purposes and exploited with or without the child's knowledge. Furthermore, the concept of child pornography also covers realistic images of a child, where a child is engaged or depicted as being engaged in sexually explicit conduct, for primarily sexual purposes.*
- (5c) *In adopting legislation on substantive criminal law, the Union should ensure consistency of this overall legislation in particular with regard to the level of penalties. The Council conclusions of April 2002 on the approach to apply regarding the approximation of penalties which indicate four levels of penalties should be kept in mind, in the light of the Lisbon Treaty. This Directive, because it contains an exceptionally high number of different offences, requires, in order to reflect the various degrees of seriousness, a differentiation in the level of penalties which goes further than what should usually be provided in Union legal instruments.*
- (6) Serious forms of child sexual abuse and sexual exploitation should be subject to effective, proportionate and dissuasive sanctions. This includes, in particular, various forms of sexual abuse and sexual exploitation facilitated by the use of information and communication technology, *such as the online solicitation of children for sexual purposes via social networking websites and chat rooms.* The definition of child pornography should also be clarified and brought closer to that contained in international instruments.
- (6a) *Disability, by itself, does not automatically constitute an impossibility to consent to sexual relations. However, the abuse of the existence of such a disability in order to engage in sexual activities with a child should be criminalised.*
- (6b) *The maximum term of imprisonment provided for in this Directive for the offences referred to therein should apply at least to the most serious forms of such offences.*
- (6c) *In order to reach the maximum term of imprisonment provided for in this Directive in offences concerning sexual abuse, sexual exploitation and child pornography, Member States may combine, taking into account their national law, the imprisonment terms provided for in national legislation in respect of these offences.*
- (6d) *This Directive obliges Member States to provide for criminal penalties in their national legislation in respect of provisions of Union law on combating sexual abuse, sexual exploitation of children and child pornography. This Directive creates no obligations regarding the application of such penalties, or any other available system*

¹ *OJ L 101, 15.4.2011, p. 1.*

of law enforcement, in individual cases.

- (6e)** *Especially for those cases where the criminal offences described in this directive are committed with the purpose of financial gain, Member States are invited to consider providing for the possibility to impose financial penalties in addition to imprisonment.*
- (6f)** *In the context of child pornography, the term "without right" allows Member States to provide a defence in respect of conduct related to "pornographic material" having for example medical, scientific or similar purpose. It also allows activities carried out under domestic legal powers, such as the legitimate possession of child pornography by the authorities in order to conduct criminal proceedings or to prevent, detect or investigate crimes. Furthermore, it does not exclude legal defences or similar relevant principles that relieve a person of responsibility under specific circumstances, for example where telephone or internet hotlines carry out activities to report those cases.*
- (6g)** *Knowingly obtaining access, by means of information and communication technology, to child pornography should be criminalised. To be liable, the person should both intend to enter a site where child pornography is available and know that such images can be found there. Sanctions should not be applied to persons inadvertently accessing sites containing child pornography. The intentional nature of the offence may notably be deduced from the fact that it is recurrent or that the offences were committed via a service in return for payment.*
- (6h)** *Solicitation of children for sexual purposes is a threat with specific characteristics in the context of the Internet, as the latter provides unprecedented anonymity to users, thus an opportunity to conceal one's real identity and personal characteristics, such as age. At the same time, Member States acknowledge the importance of also combating the solicitation of a child outside the context of the internet, notably where such solicitation is not carried out by using information and communication technology. Member States are encouraged to criminalise the conduct where the solicitation of the child to meet the offender for sexual purposes takes place in the presence or proximity of the child, for instance in the form of a special preparatory offence, attempt to commit the crimes described by this directive or as a special form of sexual abuse. Whichever legal solution is chosen to criminalise off-line grooming, Member States should ensure that they prosecute the perpetrators of such offences one way or another.*
- (7)** *This Directive does not govern Member States' policies with regard to consensual sexual activities in which children may be involved and which can be regarded as the normal discovery of sexuality in the course of human development, taking account of the different cultural and legal traditions and of new forms of establishing and maintaining relations among children and adolescents, including through information and communication technologies. These issues fall outside of the scope of this Directive. Member States, which avail themselves of the possibilities referred to in Article 5 and 8, do so in the exercise of their competences.*

(7a) *Member States should provide for aggravating circumstances in their national law in*

line with the applicable rules established by their legal system on aggravating circumstances and should ensure that those aggravating circumstances are available for judges to consider when sentencing offenders, although there is no obligation on judges to apply them. Those circumstances should not be provided for by Member States in national legislation when irrelevant taking into account the nature of the specific offence. The relevance of the various aggravating circumstances provided for in this Directive should be evaluated at national level for each of the offences referred to in this instrument.

- (7b) *Physical or mental incapacity under this Directive should be understood as also including the state of physical or mental incapacity caused by the influence of drugs and alcohol.*
- (7c) *In combating sexual exploitation of the children, full use should be made of existing instruments on the seizure and confiscation of the proceeds of crime, such as the United Nations Convention against Transnational Organized Crime and the Protocols thereto, the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime, and Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime Related Proceeds, Instrumentalities and Property. The use of seized and confiscated instrumentalities and the proceeds from the offences referred to in this Directive to support victims' assistance and protection should be encouraged.*
- (7d) *Secondary victimisation should be avoided for victims of offences referred to in this Directive. In Member States where prostitution or the appearance in pornography is punishable under national criminal law, it should be possible not to prosecute or impose penalties under those laws where the child concerned has committed those acts as a result of being victim of sexual exploitation or where the child was compelled to participate in child pornography.*
- (7e) *As an instrument of approximation of criminal law, this Directive provides for levels of penalties which should apply without prejudice to the specific criminal policies of the Member States concerning child offenders.*
- (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, *their initiation should not depend, in principle, on reporting or accusation by the victim. The length of the sufficient period of time for prosecution should be determined in accordance with respective national law.*
- (8a) Effective investigation tools should be made available to those responsible for the investigation and prosecutions of such offences. These tools may include **■** interception of communications, covert surveillance including electronic surveillance, monitoring of bank accounts or other financial investigations, *taking into account, inter alia, the*

principle of proportionality and the nature and seriousness of the offences under investigation. Where appropriate and in accordance with national law, such tools should also include the possibility for law enforcement authorities to use a concealed identity on the Internet.

- (8b) *Member States should encourage any person who has knowledge or suspicion of sexual exploitation or abuse of a child to report to the competent services. It is the responsibility of each Member State to determine the competent authorities to which such suspicions may be reported. These competent authorities should not be limited to child protection services or relevant social services. The requirement of suspicion "in good faith" should be aimed at preventing the provision being invoked to authorise the denunciation of purely imaginary or untrue facts carried out with malicious intent.*
- (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. *Child sex tourism should be understood as the sexual exploitation of children by a person or persons who travel from their usual environment to a destination abroad where they have sexual contact with children. Where child sex tourism takes place outside the EU, Member States are encouraged to seek through the available national and international instruments, including bilateral or multilateral treaties on extradition, mutual assistance or transfer of proceedings, to increase co-operation with third countries and international organisations, with a view to combating sex tourism. Member States should foster open dialogue and communication with countries outside the Union in order to be able to prosecute perpetrators, under the relevant national legislation, who travel outside Union borders for the purposes of child sex tourism.*
- (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 and measures to address conflicts of interest where abuse occurs in the family. *When a special representative should be appointed for a child during a criminal investigation or proceeding, this role may be also carried out by a legal person, an institution or an authority.* Moreover, child victims should be protected from sanctions, for example under national legislation on 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 *to the extent possible*, as a result of interviews or visual contact with offenders. *A good understanding of children and how they behave when faced with traumatic experiences will help to ensure a high quality of evidence-taking and also reduce the stress placed on children when carrying out the necessary measures.*
- (10a) *Member States should consider giving short and long term assistance to child victims. 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 physical and psychological recovery and may last into adulthood if*

necessary. Assistance and advice should be considered to be extended to parents or guardians of the child in cases, where they are not implicated as suspects in relation to the offence concerned, in order to help them to assist their child throughout the proceedings.

- (10b) *The Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings¹ establishes a set of victims' rights in criminal proceedings, including the right to protection and compensation. In addition children, victims of sexual abuse, sexual exploitation and child pornography should be given access to legal counselling and, in accordance with the role of victims in the relevant justice systems, to legal representation, including for the purpose of claiming compensation. Such legal help could also be provided by the competent authorities for the purpose of claiming compensation from the State. The purpose of legal counselling is to enable victims to be informed and receive advice about the various possibilities open to them. Legal counselling should be provided by a person having received appropriate legal training without necessarily being a lawyer. Legal counselling and, in accordance with the role of victims in the relevant justice systems, legal representation should be provided free of charge at least when the victim does not have sufficient financial resources in a manner consistent with the internal procedures of Member States.***
- (10c) *Member States should undertake action to prevent or prohibit acts related to the promotion of abuse of children and child sex tourism. Different preventing measures could be considered such as e.g. the drawing up and reinforcement of a code of conduct and self-regulatory mechanisms in the tourism industry, the setting-up of a code of ethics or "quality labels" for tourist organisations combating child sex tourism or having explicit policy to tackle that form of tourism.***
- (10d) *Member States should establish and/or strengthen policies to prevent sexual exploitation of children, including measures to discourage and reduce the demand that fosters all forms of exploitation, and measures to reduce the risk of children becoming victims, by means of research, information, awareness-raising, and education. In such initiatives, Member States should adopt a child-rights approach. Particular care should be taken to ensure that awareness campaigns aimed at children are appropriate and sufficiently easy to understand. The establishment of help-lines/hotlines should be taken into consideration.***
- (10e) *Regarding the system of reporting sexual abuse and sexual exploitation of children and helping children in need, 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 value as amended by Decision 2009/884/EC of 30 November 2009², should be promoted and experience with their functioning should be taken into account.***

¹ OJ L 82, 22.3.2001, p. 1.

² OJ L 317, 3.12.2009, p. 46.

- (10f) Professionals likely to come into contact with child victims of sexual exploitation should be adequately trained to identify and deal with such victims. That training should be promoted for members of the following categories when they are likely to come into contact with child victims: police officers, public prosecutors, lawyers, members of the judiciary and court officials, child and health care personnel, but could also involve other groups of persons who are likely to encounter child victims of sexual exploitation in their work.**
- (10g) In order to prevent the sexual exploitation and abuse of children, intervention programmes or measures targeting sex offenders should be proposed to them. Those programs or measures should meet a broad, flexible approach focusing on the medical and psycho-social aspects and have a non-obligatory character. Those intervention programmes or measures are without prejudice to intervention programmes or measures imposed by the competent judicial authorities.**
- (10h) Intervention measures or programmes are not provided as an automatic right. It is for the Member State to decide which intervention measures or programmes are appropriate.**
- (11) To prevent and minimise recidivism, offenders should be subject to an assessment of the danger posed by the offenders and the possible risks of repetition of sexual offences against children. Modalities of such assessment, such as the type of authority competent to order and carry out the assessment or the moment in or after the criminal proceedings when this assessment should take place as well as modalities of effective intervention programmes or measures offered following this assessment should be consistent with the internal procedures of Member States. For the same objective of preventing and minimising recidivism, offenders should also have access to effective intervention programmes or measures on a voluntary basis. These intervention programmes or measures should not interfere with national schemes set up to deal with the treatment of persons suffering from mental disorders.**
- (12) Where the danger posed by the offenders and the possible risks of repetition of the offences make it appropriate, convicted offenders should be temporarily or permanently prevented from exercising at least professional activities involving direct and regular contacts with children, where appropriate. Employers when recruiting for a post involving direct and regular contact with children are entitled to be informed, of convictions for sexual offences against children entered in the criminal record, or of existing disqualifications. For the purposes of this directive, the notion of employers should also cover persons running an organisation that is active in volunteer work related to the supervision and/or care of children involving direct and regular contact with children. The way to deliver information, such as for example access via the person concerned, as well as the exact content of this information, the meaning of organised voluntary activities and direct and regular contact with children should be defined according to national legislation.**
- (12a) With due regard to the different legal traditions of the Member States, the provisions of this directive takes into account the fact that access to criminal records is allowed only either by the competent authorities or by the person concerned. This Directive**

does not establish an obligation to modify the national systems governing criminal records or the means of access to those records.

- (12b) The aim of the directive is not to harmonise rules concerning consent of the person concerned when exchanging information from the criminal registers, i.e. whether to require such consent or not. Whether the consent is required or not under national law, this directive does not establish any new obligation to change the national law and procedures in this respect.*
- (12c) Member States may consider adopting additional administrative measures in relation to perpetrators, such as the registration of persons convicted of offences referred to in Articles 3 to 7 in sex offender registers. The access to these registers should be subject to limitation in accordance with national constitutional principles and applicable data protection standards, for instance by limiting access to the judiciary and/or law enforcement agencies.*
- (12d) Member States are encouraged to create mechanisms for data collection or focal points, at the national or local levels and in collaboration with civil society, for the purpose of observing and evaluating the phenomenon of sexual exploitation and sexual abuse of children. In order to be able to properly evaluate the results of actions to combat sexual abuse, sexual exploitation and child pornography, the Union should continue to develop its work on methodologies and data collection methods to produce comparable statistics.*
- (12e) Member States shall take appropriate action for setting up information services in order to teach how to recognise the signs of sexual exploitation.*
- (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 and apprehend those guilty of making, distributing or downloading child abuse images. *With a view to supporting the Union's efforts in combating child pornography, Member States should do their best to cooperate with third countries in seeking to secure the removal of such content from servers in their territory.*
- (13a) However, despite such efforts, the removal of child pornography content at its source is often not possible where the original materials are not located within the Union, either because the State where the servers are hosted is not willing to cooperate or because obtaining removal of the material from the State concerned proves to be particularly long. Mechanisms may also be put in place to block access from the Union's territory to internet pages identified as containing or disseminating child pornography. It is understood that the measures undertaken by Member States in accordance with this directive in order to remove or, where appropriate, block websites containing child pornography could be based on various types of public action, such as legislative, non-legislative, judicial or other. In that context, the provisions of this directive are without prejudice to voluntary action taken by the*

internet industry to prevent misuse of their services, or to any support for such action by Member States. Whichever basis for action or method is chosen, Member States should ensure that it provides an adequate level of legal certainty and predictability to users and service providers. 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 for the Protection of Human Rights and Fundamental Freedoms 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.

- (13b) This Directive aims to amend and expand the provisions of Framework Decision 2004/68/JHA. Since the amendments to be made are of substantial number and nature, the Framework Decision should in the interests of clarity be replaced in its entirety in relation to Member States participating in the adoption of this Directive.**
- (14) Since the objective of this Directive, namely to combat sexual abuse, sexual exploitation of children and child pornography, cannot be sufficiently achieved by the Member States alone and can therefore, by reasons of the scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity *as set out* in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in *that* Article, this Directive does not go beyond what is necessary to achieve that objective.
- (15) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably human dignity, the prohibition of torture and inhuman or degrading treatment or punishment, the rights of the child, the right to liberty and security, freedom of expression and information, protection of personal data, the right to an effective remedy and to a fair trial and the principles of legality and proportionality of criminal offences and penalties. In particular, this Directive seeks to ensure full respect for those rights and has to be implemented accordingly.
- (16) In accordance with Article 3 of the Protocol (*No 21*) on the position of United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Directive.
- (16a)** In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

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

Article 2

Definitions

For the purposes of this Directive:

- (a) "child" shall mean any person below the age of 18 years;
- (aa) "age of sexual consent" shall mean the age below which it is prohibited to engage in sexual activities with a child according to national law;**
- (b) "child pornography" shall mean
 - (i) any material that visually depicts a child engaged in real or simulated sexually explicit conduct; or
 - (ii) any depiction of the sexual organs of a child for primarily sexual purposes; or
 - (iii) any material that visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appearing to be a child, for primarily sexual purposes; or
 - (iv) realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, for primarily sexual purposes;
- (c) "child prostitution" shall mean the use of a child for sexual activities where money or any other form of remuneration or consideration is given or promised as payment in exchange for the child engaging in sexual activities, regardless of whether this payment, promise or consideration is made to the child or to a third party;
- (d) "pornographic performance" shall mean the live exhibition *aimed at an audience*, including by means of information and communication technology;

- (i) of a child engaged in real or simulated sexually explicit conduct; or
 - (ii) of the sexual organs of a child for primarily sexual purposes;
- (e) "legal person" shall mean any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations."

Article 3

Offences concerning sexual abuse

1. Member States shall take the necessary measures to ensure that the intentional conduct referred to in paragraphs 2 to 5 is punishable.
2. Causing, for sexual purposes, a child who has not reached the age of sexual consent ■ to witness ■ sexual activities, even without having to participate, shall be punishable by a maximum term of imprisonment of at least *one year*.
- 2a. ***Causing, for sexual purposes, a child who has not reached the age of sexual consent to witness sexual abuse, even without having to participate, shall be punishable by a maximum term of imprisonment of at least two years.***
3. Engaging in sexual activities with a child who has not reached the age of sexual consent ■ shall be punishable by a maximum term of imprisonment of at least five years.
4. Engaging in sexual activities with a child, where:
 - (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 ***if the child has not reached the age of sexual consent and of at least three years of imprisonment, if the child is over that age***; or
 - (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 ***if the child has not reached the age of sexual consent, and of at least three years of imprisonment if the child is over that age***; or
 - (iii) use is made of coercion, force or threats shall be punishable by a maximum term of imprisonment of at least ten years ***if the child has not reached the age of sexual consent, and of at least five years of imprisonment if the child is over that age***.
5. Coercing, ***forcing or threatening*** a child into sexual activities with a third party shall be punishable by a maximum term of imprisonment of at least ten years ***if the child has not reached the age of sexual consent, and of at least five years of imprisonment if the***

child is over that age.

Article 4

Offences concerning sexual exploitation

1. Member States shall take the necessary measures to ensure that the intentional conduct referred to in paragraphs 2 to **9d** is punishable.
2. Causing *or recruiting* a child to participate in pornographic performances, *or profiting from or otherwise exploiting a child for such purposes*, shall be punishable by a maximum term of imprisonment of at least **five years if the child has not reached the age of sexual consent, or of at least two years if the child is over that age.**

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9. Coercing *or forcing* a child to participate in pornographic performances, *or threatening a child for such purposes*, shall be punishable by a maximum term of imprisonment of at least eight years **if the child has not reached the age of sexual consent, or of at least five years if the child is over that age.**

9a. Knowingly attending pornographic performances involving the participation of a child shall be punishable by a maximum term of imprisonment of at least two years if the child has not reached the age of sexual consent, or of at least one year if the child is over that age.

9b. Causing or recruiting a child to participate in child prostitution, or profiting from or otherwise exploiting a child for such purposes, shall be punishable by a maximum term of imprisonment of at least eight years if the child has not reached the age of sexual consent and of at least five years of imprisonment if the child is over that age.

9c. Coercing or forcing a child into child prostitution, or threatening a child for such purposes, shall be punishable by a maximum term of imprisonment of at least ten years if the child has not reached the age of sexual consent and of at least five years of imprisonment if the child is over that age.

9d. 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 if the child has not reached the age of sexual consent and of at least two years of imprisonment if the child is over that age.

█

Article 5

Offences concerning child pornography

1. Member States shall take the necessary measures to ensure that the intentional conduct, *when committed without right*, referred to in paragraphs 2 to 6 is punishable.
2. Acquisition or possession of child pornography shall be punishable by a maximum term of imprisonment of at least one year.
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.
4. Distribution, dissemination or transmission of child pornography shall be punishable by a maximum term of imprisonment of at least two years.
5. Offering, supplying or making available child pornography shall be punishable by a maximum term of imprisonment of at least two years.
6. Production of child pornography shall be punishable by a maximum term of imprisonment of at least *three years*.
7. *It shall be within the discretion of Member States to decide whether this Article applies to cases involving child pornography, as referred to in Article 2(b)(iii), where the person appearing to be a child was in fact 18 years of age or older at the time of depiction.*
8. *It shall be within the discretion of Member States to decide whether paragraphs 2 and 6 apply to cases where it is established that pornographic material as referred to in Article 2(b)(iv) is produced and possessed by the producer solely for his or her own private use, as far as no pornographic material as referred to in Article 2(b)(i) to (iii) has been used for the purpose of its production, and provided that the act involves no risk of dissemination of the material.*

Article 6

Solicitation of children for sexual purposes

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 who has not reached the age of sexual consent **■**, 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 *one year*.

2. *Member States shall take the necessary measures to ensure that an attempt through information and communication technology to commit the offences provided for in*

Article 5(2) and (3) by an adult soliciting a child who has not reached the age of sexual consent to provide child pornography depicting that child is punishable.

Article 7

Instigation, aiding and abetting **and** attempt █

1. Member States shall take the necessary measures to ensure that the instigation of, aiding and abetting to commit any of the offences referred to in Articles 3 to 6 is punishable.
2. Member States shall take the necessary measures to ensure that attempts to commit any of the offences referred to in Article 3(3) to (5), Article 4(2), **(9), (9b), (9c), and (9d)**, and **Article 5(4), (5) and (6) are** punishable.

█

Article 8

Consensual sexual activities █

1. ***It shall be within the discretion of Member States to decide whether Article 3(2) █ and (3) apply to consensual sexual activities between peers, who are close in age and degree of psychological and physical development or maturity, insofar as the acts did not involve any abuse.***
2. ***It shall be within the discretion of Member States to decide whether Article 4(9a) applies to a performance held within consensual relations where the child has reached the age of consent or between peers who are close in age and degree of psychological and physical development or maturity, insofar as the acts did not involve any abuse or exploitation and insofar as no money or other forms of remuneration or consideration is given as payment in exchange for the pornographic performance.***
3. ***It shall be within the discretion of Member States to decide whether Article 5(2) and (6) applies to production, acquisition or possession of material involving children having reached the age of sexual consent where this material is produced and possessed with their consent and solely for private use of the persons involved, insofar as the acts did not involve any abuse.***

Article 9

Aggravating circumstances

█ In so far as the following circumstances do not already form part of the constituent elements of the offences referred to in Articles 3 to 7, ***Member States shall take the necessary***

measures to ensure that the following circumstances may, in conformity with the relevant provisions of internal law, be regarded as aggravating circumstances, in relation to the relevant offences referred to in Articles 3 to 7:

- (b) the offence was committed against a child in a particularly vulnerable situation, *such as* a mental or physical disability or a situation of dependence *or state of physical or mental incapacity*;
- (c) the offence was committed by a member of the family, a person cohabiting with the child or a person having abused their *recognised position of trust or* authority;
- (d) the offence was committed by several people acting together;
- (e) the offences are committed within the framework of a criminal organisation within the meaning of *Council* Framework Decision 2008/841/JHA *of 24 October 2008 on the fight against organised crime*¹;
- (f) the *offender* has previously been convicted of offences of the same nature;
- (g) the *offender has deliberately or by recklessness* endangered the life of the child;
- (h) the offence involved serious violence or caused serious harm to the child.

Article 10

Disqualification arising from convictions

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 *at least professional* activities involving *direct and* regular contacts with children.
 - 1a. *Member States shall take the necessary measures to ensure that employers, when recruiting a person for professional or organised voluntary activities involving direct and regular contacts with children, are entitled to request information in accordance with national law in any appropriate way, such as access upon request or via the person concerned, of the existence of convictions for an offence referred to in Articles 3 to 7 entered in the criminal record or of any disqualification to exercise activities involving direct and regular contacts with children arising from those criminal*

¹ OJ L 300, 11.11.2008, p. 42.

convictions.

3. **Member States shall take the necessary measures to ensure that, *for the application of paragraphs 1 and 1a, information concerning the existence of criminal convictions for any of the offences referred to in Articles 3 to 7 of this Directive, or of any disqualification to exercise activities involving direct and regular contacts with children arising from those criminal convictions, is transmitted in accordance with the procedures set out in Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from criminal records between Member States¹ when requested under Article 6 of that Framework Decision with the consent of the person concerned.***

Article 10a

Seizure and Confiscation

Member States shall take the necessary measures to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in Articles 3-5.

Article 11

Liability of legal persons

1. Member States shall take the necessary measures to ensure that legal persons may be held liable for any of the offences referred to in Articles 3 to 7 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on one of the following:
 - (a) a power of representation of the legal person;
 - (b) an authority to take decisions on behalf of the legal person;
 - (c) an authority to exercise control within the legal person.
2. Member States shall also take the necessary measures to ensure that legal persons may be held liable where the lack of supervision or control by a person referred to in paragraph 1 of this Article has made possible the commission, by a person under its

¹ *OJ L 93, 7.4.2009, p. 23.*

authority, of any of the offences referred to in Articles 3 to 7 for the benefit of that legal person.

3. Liability of legal persons under paragraphs 1 and 2 of this Article shall be without prejudice to criminal proceedings against natural persons who are perpetrators of, **or inciters** or accessories to ■ the offences referred to in Articles 3 to 7.

Article 12

Sanctions on legal persons

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 11(1) is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, for example:
 - (a) exclusion from entitlement to public benefits or aid;
 - (b) temporary or permanent disqualification from the practice of commercial activities;
 - (c) placing under judicial supervision;
 - (d) judicial winding-up;
 - (e) temporary or permanent closure of establishments which have been used for committing the offence.
2. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 11(2) is punishable by penalties or measures which are effective, proportionate and dissuasive.

Article 13

Non prosecution or non-application of penalties to the victim

Member States shall, ***in accordance with the basic principles of their legal systems take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose*** penalties on child victims of ***sexual abuse and sexual exploitation*** for their involvement in ***criminal*** activities, ***which they have been compelled to commit*** as a direct consequence of being subjected to ***any of the acts referred to in Article 4(2), (9), (9b) and (9c), as well as in Article 5(6)***.

Article 14

Investigation and prosecution

1. Member States shall take the necessary measures to ensure that investigations into or the prosecution of the offences referred to in Articles 3 to 7 are not dependent on a report or accusation being made by the victim *or by its representative*, and that the criminal proceedings may continue even if *that person* has withdrawn *his* statements.
2. Member States shall take the necessary measures to enable the prosecution of any of the offences referred to in Article 3, Article 4(2), (9), (9b), (9c) and (9d), and of any serious offences referred to in Article 5(6) when pornographic material as defined in Article 2(b)(i) to (ii) has been used, for a sufficient period of time after the victim has reached the age of majority and which is commensurate with the gravity of the offence concerned.
3. Member States shall take the necessary measures to ensure that effective investigative tools, *such as those which are used in organised crime or other serious crime cases* are available to persons, units or services responsible for investigating or prosecuting offences referred to in Articles 3 to 7 .
4. Member States shall take the necessary measures to enable investigative units or services to attempt to identify the victims of the offences referred to in Articles 3 to 7, in particular by analysing child pornography material, such as photographs and audiovisual recordings transmitted or made available by means of information and communication technology.

Article 15

Reporting suspicion of sexual exploitation or sexual abuse

1. Member States shall take the necessary measures to ensure that the confidentiality rules imposed by national law on certain professionals *with the main duty* to work with children do not constitute an obstacle to the possibility, for those professionals, of their reporting to the services responsible for child protection any situation where they have reasonable grounds for believing that a child is the victim of offences referred to in Articles 3 to 7.
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.

Article 16

Jurisdiction and coordination of prosecution

1. Member States shall take the necessary measures to establish its jurisdiction over the offences referred to in Articles 3 to 7 where:

- (a) the offence is committed in whole or in part within its territory; or
- (b) the offender is one of its nationals ■ .

■

1a. Member States shall inform the Commission where they decide to establish further jurisdiction over an offence referred to in Articles 3 to 7 committed outside of its territory e.g. where:

- (a) the offence is committed against one of their nationals or a person who has his or her habitual residence in the territory of that Member State; or**
- (b) the offence is committed for the benefit of a legal person established in the territory of that Member State; or**
- (c) the offender has his or her habitual residence in the territory of that Member State.**

2. Member States shall ensure that its jurisdiction includes situations where an offence referred to in Articles 5 and 6, and insofar as is relevant, in Articles 3 and 7, is committed by means of information and communication technology accessed from its territory, whether or not it is based on its territory.

■

4. For the prosecution of any of the offences referred to in **Article 3(3), (4) and (5), Article 4(2), (9), (9b), (9c) and (9d), and Article 5(6)** committed outside the territory of the State concerned, as regards paragraph 1(b) of this Article, Member States shall take the necessary measures to ensure that its jurisdiction is not subordinated to the condition ■ that the acts are a criminal offence at the place where they were performed ■ .

5. **For the prosecution of any of the offences referred to in Articles 3 to 7 committed outside the territory of the State concerned, as regards paragraph 1 (b) of this Article, Member States shall take the necessary measures to ensure that its jurisdiction is not subordinated to the condition** that the prosecution can only be initiated following a report made by the victim in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed.

Article 17

General provisions on assistance, support and protection measures for *child* victims

1. **Child** victims of the offences referred to in Articles 3 to 7 shall be provided assistance, support and protection **in accordance with Article 18 and 19**, taking into account the best interests of the child.

- 1a. **Member States shall take the necessary measures to ensure that a child is provided with assistance and support as soon as the competent authorities have reasonable grounds indication for believing that the child may have been subject to an offence provided for in Articles 3 to 7.**
2. Member States shall ensure that, where the age of a person subject to the offences referred to in Articles 3 to 7 is uncertain and there are reasons to believe that the person is a child, the person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 18 and 19 **■**.

Article 18

Assistance and support to victims

1. Member States shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate time after criminal proceedings in order to enable them to exercise the rights set forth in Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings¹, and in this Directive. **Member States shall in particular take the necessary steps to ensure protection for children who report cases of abuse taking place within their family.**
 - 1a. **Member States shall take the necessary measures to ensure that assistance and support for a child victim are not made conditional on the child victim's willingness to co-operate in the criminal investigation, prosecution or trial.**
 2. Member States shall take the necessary measures to ensure that the specific actions to assist and support **child** victims **in enjoying their rights under this Directive**, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns.
 3. **Child** victims of any of the offences referred to in Articles 3 to 7 shall be considered as particularly vulnerable victims pursuant to Article 2 (2), Article 8 (4) and Article 14 (1) of Framework Decision 2001/220/JHA.
 4. Member States shall take measures, where appropriate and possible, to provide assistance and support to the **■** family **of the child victim in enjoying the rights under this Directive when the family is in the territory of the Member State**. In particular, Member States shall, where appropriate and possible, apply Article 4 of **■** Framework Decision 2001/220/JHA to the family.

Article 19

¹ OJ L 82, 22.3.2001, p. 1.

Protection of child victims in criminal investigations and proceedings

1. Member States shall take the necessary measures to ensure that in criminal investigations and proceedings, ***in accordance with the role of victims in the relevant justice system, competent*** authorities appoint a special representative for the child victim where, by national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim, or where the child is unaccompanied or separated from the family.
2. Member States shall ensure that child victims have ***without delay*** access to legal counselling and, ***in accordance with the role of victims in the relevant justice system,*** to legal representation, including for the purpose of claiming compensation. ***Legal counselling and legal representation shall be free of charge when the victim does not have sufficient financial resources.***
3. Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 3 to 7:
 - (a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;
 - (b) interviews with the child victim take place, where necessary, in premises designed or adapted for this purpose;
 - (c) interviews with the child victim are carried out by or through professionals trained for this purpose;
 - (d) the same persons, if possible and where appropriate, conduct all interviews with the child victim;
 - (e) the number of interviews is as limited as possible and interviews are only carried out where strictly necessary for the purpose of criminal ***investigations and*** proceedings;
 - (f) the child victim may be accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.
4. Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 3 to 7 all interviews with the child victim or, where appropriate, with a child witness, may be ***audiovisually recorded*** and that these ***audiovisually recorded*** interviews may be used as evidence in criminal court proceedings, according to the rules under its national law.
5. Member States shall take the necessary measures to ensure, in criminal court proceedings relating to any of the offences referred to in Articles 3 to 7, that it may be

ordered that:

- (a) the hearing shall take place without the presence of the public;
 - (b) the child victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies.
6. *Member States shall take the necessary measures, where in the interest of the child victims and taking into account other overriding interests, to protect their privacy, their identity and their image, and to prevent the public dissemination of any information that could lead to their identification.*

Article 19a

Advertising abuse opportunity and child sex tourism

Member States shall take appropriate measures to prevent or prohibit :

- (a) *the dissemination of material advertising the opportunity to commit any of the offences referred to in Article 3 to 6;*
- (b) *the organisation for others, whether or not for commercial purposes, of travel arrangements with the purpose of committing any of the offences referred to in Articles 3 to 5.*

Article 19b

Preventive intervention programmes or measures

Member States shall take the necessary measures to ensure that persons who fear that they might commit any of the offences referred to in Articles 3 to 7 may have access, where appropriate, to effective intervention programmes or measures designed to evaluate and prevent the risk of offences being committed.

Article 19c

Prevention

1. *Member States shall take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of sexual exploitation related to exploitation of children.*
2. *Member States shall take appropriate action, including through the Internet, such as information and awareness- raising campaigns, research and education programmes, where appropriate in cooperation with relevant civil society organisations and other*

stakeholders, aimed at raising awareness and reducing the risk of children, becoming victims of sexual exploitation.

3. *Member States shall promote regular training for officials likely to come into contact with child victims of sexual exploitation, including front-line police officers, aimed at enabling them to identify and deal with victims and potential victims of sexual exploitation.*

Article 20

Intervention programmes or measures *on a voluntary basis in the course of or after criminal proceedings*

1. *Without prejudice to intervention programmes or measures imposed by the competent judicial authorities under national law, 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.*
2. *Intervention programmes or measures shall meet the specific developmental needs of children who sexually offend.*
3. Member States shall take the necessary measures to ensure that *the following* persons *may have access to intervention programmes or measures* referred to in paragraph 1:
 - (a) *persons subject to criminal proceedings for any of the offences referred to in Articles 3 to 7, under conditions which are neither detrimental nor contrary to the rights of the defence and to the requirements of a fair and impartial trial, and particularly with due respect for the rules governing the principle of the presumption of innocence; and*
 - (b) *persons convicted of any of the offences referred to in Articles 3 to 7.*
4. Member States shall take the necessary measures to ensure that persons **█** referred to in *paragraph 3(a) and (b) are subject to an assessment of the danger presented by the person and possible risks of repetition of any of the offences referred to in Articles 3 to 7, with the aim of identifying appropriate intervention programmes or measures.*
5. Member States shall take the necessary measures to ensure that persons **█** referred to in *paragraph 3(a) and (b) to whom intervention programmes or measures in accordance with paragraph 4 have been proposed:*
 - (a) *are fully informed of the reasons for the proposal;*

- (b) *consent to participation in the programmes or measures in full knowledge of the facts;*
- (c) *may refuse and, in the case of convicted persons, are made aware of the possible consequences a refusal might have.*

Article 21

Measures against websites containing or disseminating child pornography

1. Member States shall take the necessary measures to *ensure the prompt removal of webpages* containing or disseminating child pornography *hosted in their territory and to endeavour to obtain the removal of such pages hosted outside of their territory.*
2. **█** Member States *may* take **█** measures to *block access to webpages* containing or disseminating child pornography *towards the Internet users in their territory. These measures must be set by transparent procedures and provide adequate safeguards, in particular to ensure that the restriction is limited to what is necessary and proportionate, and that users are informed of the reason for the restriction. These safeguards shall also include the possibility of judicial redress.*

Article 22

Replacement of Framework Decision 2004/68/JHA

Framework Decision 2004/68/JHA is hereby *replaced in relation to Member States; participating in the adoption of this Directive*, without prejudice to the obligations of the Member States relating to the time limits for transposition *of the Framework Decision* into national law.

In relation to Member State participating in the adoption in this Directive, references to *Framework Decision 2004/68/JHA* shall be construed as references to this Directive.

Article 23

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ...* at the latest. *They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this directive.*

* OJ: Please the date two years from the entry into force of this Directive.

2. Member States shall *transmit* to the Commission the text of the **■** provisions *transposing into their national law the obligations imposed on them under this Directive*.
3. *When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.*

Article 24

Reporting

1. *The Commission shall, by ... ** , ■ submit a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, accompanied, if necessary, by a legislative proposal.*
2. **■** *The Commission shall by ... *** submit a report to the European Parliament and the Council assessing the implementation of measures provided for by Article 21.*

Article 25

Entry into force

This Directive shall enter into force on the *day of* its publication in the *Official Journal of the European Union*.

Article 26

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at

For the European Parliament

For the Council

** OJ: Please the date four years from the entry into force of this Directive.

*** OJ: Please the date four years from the entry into force of this Directive.

The President

The President

ANNEX TO THE DRAFT LEGISLATIVE RESOLUTION

Joint statement on solicitation of children for sexual purposes

The European Parliament and the Council,

Having regard to the fact that real-life solicitation of children ("off-line grooming") for sexual purposes means intentional manipulation of a child under the age of sexual consent by means of speech, writing, audio-visual material or by similar presentations, to meet him or her for the purpose of committing any of the offences referred to in Articles 3(3) and 5(6) of the present Directive,

Having regard to the fact that real-life solicitation of children for sexual purposes is already covered by the national law of Member States in different forms, either as attempt, a preparatory offence or a special form of sexual abuse,

CALL on the Member States to carefully check their criminal law definitions as regards criminalization of real-life solicitation of children for sexual purposes, and to improve and correct their criminal law, if necessary, as regard any legal lacunae that might still exists in that regard.

18.11.2010

OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION

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 the 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: Petra Kammerevert

SHORT JUSTIFICATION

1. The European Commission is seeking by means of this Directive to make progress in combating sexual abuse and sexual exploitation and the depiction of sexual acts involving persons under the age of 18 years.
2. The proposal assumes that criminal offences in this area are on the increase, that the development of modern communications is exacerbating this problem and the regulations in the EU Member States are neither tough enough nor coherent enough.
3. The proposal contains provisions defining criminal offences and sanctions which are to serve to achieve the aims set out in paragraph 1.
4. It is questionable whether this proposal will accomplish these aims:
 - a) Electronic media content depicting sexual acts involving persons under the age of 18 years must be removed as rapidly as possible. It is evident that the measures to block access to such content put in place in some Member States can easily be circumvented by users. Blocking mechanisms are not an effective means of combating such depictions. They are of limited efficiency, imprecise and easily bypassed. Blocking does not lead to the elimination of the content, only to their relative non-availability, which does not put an end to the infringement involved in their being 'made available'.
 - b) The EU Member States and the telecommunications operators active in them have functioning transnational networks which as a rule guarantee rapid deletion of content. Recent publications about Scandinavian blocking lists show that a large number of

such servers are located in the USA, Australia, the Netherlands and Germany. There is as yet no proof that providers of such content are migrating to countries in which deletion is impossible or only takes place after a considerable lapse of time.

- c) Establishing technical blocking mechanisms enables large-scale monitoring of communication flows and arouses appetites for other prohibited or otherwise merely undesirable content. Once the internet blocking instrument has been established, it will not be used only as a measure to combat the depiction on the internet of sexual acts involving persons under the age of 18 years. Blocking of access represents a risk of a fundamental shift away from the principle of net neutrality.
 - d) A multidimensional strategy is required that will strengthen and enhance the cooperation between police forces, internet businesses, existing internet complaints bodies and the INHOPE provider network.
 - e) Access blocking mechanisms undermine confidence in the freedom of information and communication on the internet. Accordingly it is not possible to accept the maxim 'deletion rather than blocking', since this too will require the establishment of a blocking infrastructure. It is to be expected that only occasional offenders will be deterred by means of blocking, which cannot justify such a far-reaching interference with the freedom of information.
 - f) Measures to combat the depiction of sexual acts involving persons under the age of 18 years cannot be limited to web servers. An approach is needed which also encompasses the exchange of such content by FTP, e-mail, peer to peer networks and mobile telephony.
 - g) The need to protect children and young people during their sexual maturing process must be assessed in differentiated fashion specifically in criminal law on sex offences. Without such differentiation, the area of criminal offences relating to sexual exploitation would be very considerably expanded in several EU Member States.
 - h) An overall global strategy is needed to deal with the sexual exploitation of young people. To this end, it would be desirable for the Commission, in so far as it can, to take the initiative to bring about international binding agreements.
5. For the above reasons there are considerable doubts as to whether the objectives set out in the proposal for a directive can be achieved by means of the measures proposed.

The key points of your rapporteur's proposal are therefore as follows:

- *Rejection of specific provisions for the establishment of internet blocking mechanisms and encouragement Europe-wide for deletion of the content targeted by the Directive.*
- *Abandonment of a Europe-wide definition of the terms 'child' and 'child pornography'.*
- *No introduction of criminal liability for legal persons.*
- *No introduction of an obligation to report suspected sexual exploitation or sexual abuse.*

- *Abandonment of specifically determined punishments for the defined offences.*
- *Reinforced protection for victims and reinforced prevention measures both at EU level and at the level of the Member States.*
- *Reinforcement and up-to-date organisation of international cooperation arrangements for the deletion of content, the prosecution of offences, the protection of victims and prevention.*

AMENDMENTS

The Committee on Culture and Education 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

Title

Text proposed by the Commission

Proposal for a directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of *children* and *child pornography*, repealing Framework Decision 2004/68/JHA

Amendment

Proposal for a directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of *persons under the age of 18 years* and *the depiction of sexual acts involving such persons*, and repealing Framework Decision 2004/68/JHA

Amendment 2

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 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.

Amendment

(1) Sexual abuse and sexual exploitation of *persons under the age of 18 years*, including *the depiction of sexual acts involving such persons*, 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.

Amendment 3

Proposal for a directive

Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) Due note should be taken, in that connection, of the importance of the United Nations Convention on the Rights of the Child of 20 November 1989, and in particular Articles 19 and 34 thereof, and of the Optional Protocol of 25 May 2000 to that Convention on the Sale of Children, Child Prostitution and Child Pornography.

Amendement 4

Proposal for a directive

Recital 1 b (new)

Text proposed by the Commission

Amendment

(1b) Due note should be taken, in that connection, of the importance of Article 16 of the Treaty on the Functioning of the European Union, which lays down the right to protection of personal data.

Amendement 5

Proposal for a directive

Recital 1 c (new)

Text proposed by the Commission

Amendment

(1c) Due note should be taken, in that connection, of the importance of Articles 7, 8, 11 and 24 of the Charter of Fundamental Rights of the European Union, which lay the right to respect for

private and family life, the right to protection of personal data, the right to freedom of expression and information and the rights of the child.

Amendement 6

Proposal for a directive

Recital 1 d (new)

Text proposed by the Commission

Amendment

(1d) Due note should be taken in that connection, of the importance of Articles 8 and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which lay down the right to respect for private and family life and the right to freedom of expression.

Amendment 7

Proposal for a directive

Recital 2

Text proposed by the Commission

Amendment

(2) Child pornography, which consists of images of child sex abuse, and other particularly serious forms of sexual abuse and sexual exploitation of children are increasing and spreading through the use of new technologies and the internet.

(2) The depiction of sexual acts involving persons under the age of 18 years and other forms of sexual abuse and sexual exploitation of persons under the age of 18 years are increasing and spreading through the use of new technologies and the internet.

Amendment 8

Proposal for a directive

Recital 3

Text proposed by the Commission

Amendment

(3) Council Framework Decision 2004/68/JHA on combating the sexual

(3) Council Framework Decision 2004/68/JHA on combating the sexual

exploitation of children and child pornography approximates Member States' legislation to criminalise the most serious forms of *child* sexual abuse and sexual exploitation, to extend domestic jurisdiction, and to provide for a minimum level of assistance for victims. Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings establishes a set of victims' rights in criminal proceedings, including the right to protection and compensation. Moreover, the coordination of prosecution of cases of sexual abuse, sexual exploitation of *children* and *child pornography* will be facilitated by the adoption of Council Framework Decision 2009/948/JHA on prevention and settlement of conflict of jurisdiction in criminal proceedings.

exploitation of children and child pornography approximates Member States' legislation to criminalise the most serious forms of sexual abuse and sexual exploitation *of persons under the age of 18 years*, to extend domestic jurisdiction, and to provide for a minimum level of assistance for victims. Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings establishes a set of victims' rights in criminal proceedings, including the right to protection and compensation. Moreover, the coordination of prosecution of cases of sexual abuse, sexual exploitation of *persons under the age of 18 years* and *the depiction of sexual acts involving such persons* will be facilitated by the adoption of Council Framework Decision 2009/948/JHA on prevention and settlement of conflict of jurisdiction in criminal proceedings.

Amendment 9

Proposal for a directive

Recital 5

Text proposed by the Commission

(5) Serious criminal offences such as the sexual exploitation of *children* and *child pornography* require a comprehensive approach covering the prosecution of offenders, the protection of *child* victims, and prevention of the phenomenon. The *child's* best interests must be *a primary* consideration when carrying out any measures to combat these offences in accordance with the Charter of Fundamental Rights of the European Union and the UN Convention on the Rights of the Child. Framework Decision 2004/68/JHA should be replaced by a new instrument providing such comprehensive legal framework to achieve that purpose.

Amendment

(5) Serious criminal offences, such as the *sexual abuse and the* sexual exploitation of *persons under the age of 18 years* and *the depiction of sexual acts involving persons under the age of 18 years*, require a comprehensive approach covering the prosecution of offenders, the protection of victims *under the age of 18 years*, and prevention of the phenomenon. The best interests *of victims under the age of 18 years* must be *an important* consideration when carrying out any measures to combat these offences in accordance with the Charter of Fundamental Rights of the European Union and the UN Convention on the Rights of the Child. Framework Decision 2004/68/JHA should be replaced

by a new instrument providing such comprehensive legal framework to achieve that purpose.

Amendment 10

Proposal for a directive

Recital 6

Text proposed by the Commission

(6) Serious forms of **child** sexual abuse and sexual exploitation should be subject to effective, proportionate **and dissuasive** sanctions. ***This includes, in particular, various forms of sexual abuse and sexual exploitation facilitated by the use of information and communication technology. The definition of child pornography should also be clarified and brought closer to that contained in international instruments.***

Amendment

(6) Serious forms of sexual abuse and sexual exploitation ***of persons under the age of 18 years, and the depiction of such activities, including by means of information and communication technologies,*** should be subject to effective ***and*** proportionate sanctions. ***The approach taken by Member States to the various forms of sexual abuse and sexual exploitation must reflect advances in information and communication technology, and the role such outlets can potentially play in producing and disseminating such materials.***

Amendment 11

Proposal for a directive

Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) If the sexual abuse and sexual exploitation of persons under the age of 18 years and the depiction of sexual acts involving such persons is to be combated effectively, a holistic approach is needed which combines punishment of the perpetrators with comprehensive protection of the victims and effective preventive measures in the Member States. The preventive approach should, above all, have a clear and lasting impact

on the how people are taught to use new means of communication, e.g. the internet.

Amendment 12

Proposal for a directive

Recital 7

Text proposed by the Commission

(7) This Directive does not govern Member States' policies with regard to consensual sexual activities *in which children may be involved* and which can be regarded as the normal discovery of sexuality in the course of human development, taking account of the different cultural and legal traditions and of new forms of establishing and maintaining relations among *children and adolescents*, including through information and communication technologies.

Amendment

(7) This Directive does not govern Member States' policies with regard to consensual sexual activities *involving persons of comparable age, at least one of whom is under the age of 18 years*, and which can be regarded as the normal discovery of sexuality in the course of human development, taking account of the different cultural and legal traditions and of new forms of establishing and maintaining relations among *young people*, including through information and communication technologies.

Amendment 13

Proposal for a directive

Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) At the same time, it should be pointed out that differing cultural and legal traditions cannot justify the sexual harassment of persons under the age of 18 years or the depiction of sexual acts involving them.

Amendment 14

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, 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.***

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, ***including the activation of early warning systems,*** should be made available to those responsible for the investigation and prosecutions of such offences. These ***investigations should be subject to prior authorisation by the relevant judicial authority in the Member State concerned and should be carried out under the supervision of that authority.***

Amendment 15

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 sexual abusers or exploiters ***of persons under the age of 18 years*** from the European Union face prosecution even if they commit their crimes outside the European Union, in particular via so-called sex tourism.

Amendment 16

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 victims **under the age of 18 years** should be adopted in their best interest, taking into account an assessment of their needs. **Those** 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, victims **under the age of 18 years** 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 victims **under the age of 18 years** should not cause additional trauma as a result of interviews or visual contact with offenders.

Amendment 17

Proposal for a directive

Recital 11

Text proposed by the Commission

(11) To prevent and minimise recidivism, offenders should be subject to an assessment of the danger posed by the offenders and the possible risks of repetition of sexual offences against **children, and** should have access to **effective intervention** programmes **or measures** on a voluntary basis.

Amendment

(11) To prevent and minimise recidivism, offenders should be subject to an assessment of the danger posed by the offenders and the possible risks of repetition of sexual offences against **persons under the age of 18 years. At all events, an order to that effect should be made when offenders are sentenced; it should take account of the offender's rights under Articles 5(1) and 7(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In addition, offenders** should have access to **support or treatment**

programmes on a voluntary basis.

Amendment 18

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) Where the danger posed by the offenders and the possible risks of repetition of the offences make it appropriate, convicted offenders should be temporarily or permanently prevented from exercising activities involving regular contacts with *children*, where appropriate. Implementation of such prohibitions throughout the EU should be facilitated.

Amendment

(12) Where the danger posed by the offenders and the possible risks of repetition of the offences make it appropriate, convicted offenders should be temporarily or permanently prevented from exercising activities involving regular contacts with *persons under the age of 18 years*, where appropriate. Implementation of such prohibitions throughout the EU - *in keeping with existing data protection rules* - should be facilitated. *Procedures should be implemented in line with the legislation in force in the Member States.*

Amendment 19

Proposal for a directive

Recital 13

Text proposed by the Commission

(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 with third countries and international organisations, should seek to facilitate the effective removal by third country authorities of websites containing *child*

Amendment

(13) *The depiction of sexual acts involving persons under the age of 18 years* constitutes a type of content *whose making, dissemination, reproduction or purchase are not protected as fundamental rights. The use of the term 'depiction of sexual acts' is intended to widen the concept of abuse to cover all sexual acts involving persons under the age of 18 years, even in cases where the latter are forced to perform the acts on themselves.* Action is therefore necessary to remove the content at source *as quickly as possible* and apprehend *and subject to the due process of law* those guilty of making distributing or downloading *such content*. The EU, in particular through

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.**

increased cooperation with third countries and international organisations **and on the basis of bilateral or multilateral agreements**, should seek to facilitate the effective removal by third country authorities of websites containing **depictions of sexual acts involving persons under the age of 18 years**, which are hosted in their territory. **Cooperation with the International Association of Internet Hotlines (INHOPE) should be stepped up. In order to avoid** duplication of work, cooperation between public authorities should be established and strengthened. 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.

Amendment 20

Proposal for a directive

Recital 14

Text proposed by the Commission

(14) Since the objective of this Directive, namely to combat sexual abuse, sexual exploitation of **children** and **child pornography**, cannot be sufficiently achieved by the Member States alone and can therefore, by reasons of the scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principles of subsidiarity as referred to in *Article 3 and Article 5* of the Treaty on European Union. In accordance with the principle of proportionality, as set out in *the latter* Article, this Directive does not go beyond what is necessary to achieve that objective.

Amendment

(14) Since the objective of this Directive, namely to combat sexual abuse, sexual exploitation of **persons under the age of 18 years** and **the depiction of sexual acts involving persons under the age of 18 years**, cannot be sufficiently achieved by the Member States alone and can therefore, by reasons of the scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principles of subsidiarity as referred to in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in *that* Article, this Directive does not go beyond what is necessary to achieve that objective.

Amendment 21

Proposal for a directive

Recital 15

Text proposed by the Commission

(15) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably human dignity, the prohibition of torture and inhuman or degrading treatment or punishment, the rights of the child, the right to liberty and security, freedom of expression and information, protection of personal data, the right to an effective remedy and to a fair trial and the principles of legality and proportionality of criminal offences and penalties. In particular, this Directive **seeks to ensure** full respect for those rights and has to be implemented accordingly.

Amendment

(15) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably human dignity, the prohibition of torture and inhuman or degrading treatment or punishment, the rights of the child, the right to liberty and security, freedom of expression and information, protection of personal data, the right to an effective remedy and to a fair trial and the principles of legality and proportionality of criminal offences and penalties. In particular, this Directive **ensures** full respect for those rights and has to be implemented accordingly.

Amendment 22

Proposal for a directive

Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) Preventing the sexual exploitation, sexual abuse or sexual assault of persons under the age of 18 years on the internet is an ethical and educational priority, with the upholding of persons under the age of 18 years' rights forming a basis for any preventive action.

Amendment 23

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 establish minimum rules concerning the definition of criminal offences and sanctions in the area of **the sexual abuse and** sexual exploitation of **persons under the age of 18 years, and of the depiction of sexual acts involving such persons**. It also aims to introduce common provisions to strengthen the prevention of the crime and the protection of its victims.

Justification

The Directive should refer consistently to 'sexual abuse, sexual exploitation and the depiction of sexual acts involving persons under the age of 18 years'. Minimum thresholds for sentences should not be set, since the arrangements laid down call into question the systems of penalties in the Member States.

Amendment 24

Proposal for a directive

Article 2 – point a

Text proposed by the Commission

Amendment

(a) ‘child’ shall mean any person under the age of 18 years; **deleted**

Justification

The proposal for a directive is closely concerned with the organisation of individual sectors of criminal law in the Member States. In particular it should not dispense with the three-tiered classification, used in many Member States, defining ‘child’ (below 14), ‘young person’ (14-18) and ‘adolescent’ (18-21). A Europe-wide definition of ‘child’ should therefore be avoided.

Amendment 25

Proposal for a directive

Article 2 – point b - introductory part

Text proposed by the Commission

Amendment

(b) ‘child pornography’ shall mean **(b) ‘the depiction of sexual acts involving persons under the age of 18 years’ means:**

Amendment 26

Proposal for a directive

Article 2 – point b – point i

Text proposed by the Commission

Amendment

(i) any material that visually depicts a *child* engaged in real or simulated sexually explicit conduct; or **(i) any material that visually depicts a *person under the age of 18 years* engaged in real or simulated sexually explicit conduct; or**

Amendment 27

Proposal for a directive

Article 2 – point b – point ii

Text proposed by the Commission

Amendment

(ii) any depiction of the sexual organs of a **child** for primarily sexual purposes; **or**

(ii) any depiction for primarily sexual purposes of the sexual organs of a **person under the age of 18 years**,

Amendment 28

Proposal for a directive

Article 2 – point b – point iii

Text proposed by the Commission

Amendment

(iii) any material that visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appearing to be a child, for primarily sexual purposes; or

deleted

Justification

Linking criminality with constituent elements such as ‘appearing to be a child’ and ‘realistic images’ means it becomes greatly extended. The constituent elements seem too vague, as everyone has their own idea of ‘appearing to be a child’ and ‘realistic’ or ‘true-to-life’. Acts committed against persons and their sexual self-determination, and not against a concept of such, should be punished.

Amendment 29

Proposal for a directive

Article 2 – point b – point iv

Text proposed by the Commission

Amendment

(iv) realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, regardless of the actual existence of such child, for primarily sexual purposes;

deleted

Justification

Linking criminality with constituent elements such as ‘appearing to be a child’ and ‘realistic images’ means it becomes greatly extended. The constituent elements seem too vague, as everyone has their own idea of ‘appearing to be a child’ and ‘realistic’ or ‘true-to-life’. Acts committed against persons and their sexual self-determination, and not against a concept of such, should be punished.

Amendment 30

Proposal for a directive

Article 2 – point d – point i

Text proposed by the Commission

(i) of a **child** engaged in real or simulated sexually explicit conduct; or

Amendment

(i) of a **person under the age of 18 years** engaged in real or simulated sexually explicit conduct; or

Amendment 31

Proposal for a directive

Article 2 – point d – point ii

Text proposed by the Commission

(ii) of the sexual organs of a **child** for primarily sexual purposes;

Amendment

(ii) of the sexual organs of a **person under the age of 18 years** for primarily sexual purposes;

Amendment 32

Proposal for a directive

Article 2 – point e

Text proposed by the Commission

(e) **‘legal person’ shall mean any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.**

Amendment

deleted

Justification

The introduction of criminal responsibility for legal persons is alien to the criminal justice systems of most Member States and must therefore be rejected. There is thus no need for a definition of 'legal person' in substantive criminal law.

Amendment 33

Proposal for a directive

Article 3 – paragraph 1

Text proposed by the Commission

1. Member States shall take the necessary measures to ensure that the intentional conduct *referred to in paragraphs 2 to 5 is punishable.*

Amendment

1. *Since criminal law systems are an integral aspect of the legal order of each individual Member State,* Member States shall take the necessary measures to ensure that the *forms of* intentional conduct *described below are laid down in law as criminal offences and, in accordance with their systems of criminal penalties, are punished by means of the imposition of sentences which reflect their seriousness.*

Amendment 34

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 *person* 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 constitute conduct as referred to in paragraph 1.*

Amendment 35

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 **person** who has not reached the age of sexual consent under national law **shall constitute conduct as referred to in paragraph 1.**

Amendment 36

Proposal for a directive

Article 3 – paragraph 4 - introductory part

Text proposed by the Commission

4. Engaging in sexual activities with a **child**, where:

Amendment

4. Engaging in sexual activities with a **person under the age of 18 years**, where:

Amendment 37

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) abuse is made of a recognised position of trust, authority or influence over the **person**; or

Amendment 38

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

Amendment

(ii) abuse is made of a particularly vulnerable situation of the **person**, 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

or a situation of dependence; or

Amendment 39

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,

Amendment 40

Proposal for a directive

Article 3 – paragraph 4 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

constitutes conduct as referred to in paragraph 1.

Amendment 41

Proposal for a directive

Article 3 – paragraph 5

Text proposed by the Commission

Amendment

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***.

5. Coercing a ***person under the age of 18 years*** into sexual activities with a third party ***constitutes conduct as referred to in paragraph 1.***

Amendment 42

Proposal for a directive

Article 4 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall take the necessary

1. ***Since criminal law systems are an***

measures to ensure that the intentional conduct *referred to in paragraphs 2 to 11 is punishable.*

integral aspect of the legal order of each individual Member State, Member States shall take the necessary measures to ensure that the forms of intentional conduct described below are laid down in law as criminal offences and, in accordance with their systems of criminal penalties, are punished by means of the imposition of sentences which reflect their seriousness.

Amendment 43

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 *person under the age of 18 years* to participate in pornographic performances *constitutes conduct as referred to in paragraph 1.*

Amendment 44

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 *person under the age of 18 years* participating in pornographic performances *constitutes conduct as referred to in paragraph 1.*

Amendment 45

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*

Amendment

4. Knowingly attending pornographic performances involving the participation of *persons under the age of 18 years constitutes conduct as referred to in*

least two years.

paragraph 1.

Amendment 46

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 *person under the age of 18 years* to participate in pornographic performances *constitutes conduct as referred to in paragraph 1.*

Amendment 47

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. *Any individual who causes a person under the age of 18 years to become involved in sexual activities or who exploits that involvement where money or other forms of remuneration or consideration are given or promised in exchange, regardless of whether this payment, promise or consideration is made to the person under the age of 18 years or to a third party, shall be guilty of intentional conduct within the meaning of paragraph 1.*

Amendment 48

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*

Amendment

deleted

of imprisonment of at least five years

Amendment 49

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. **Any individual who engages** in sexual activities with a **person under the age of 18 years and in exchange offers or promises money or other forms of remuneration or consideration, regardless of whether this payment, promise or consideration is made to the person under the age of 18 years or to a third party, shall be guilty of intentional conduct within the meaning of paragraph 1.**

Amendment 50

Proposal for a directive

Article 4 – paragraph 9

Text proposed by the Commission

9. Coercing a **child** to participate in pornographic performances **shall be punishable by a maximum term of imprisonment of at least eight years.**

Amendment

9. Coercing a **person under the age of 18 years** to participate in pornographic performances **constitutes conduct as referred to in paragraph 1.**

Amendment 51

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. **Any individual who recruits or forces a person under the age of 18 years to become involved in sexual activities where money or other forms of remuneration or**

consideration are given or promised in exchange, regardless of whether this payment, promise or consideration is made to the person under the age of 18 years or to a third party, shall be guilty of intentional conduct within the meaning of paragraph 1.

Amendment 52

Proposal for a directive

Article 4 – paragraph 11

Text proposed by the Commission

Amendment

11. Coercing a child into child prostitution shall be punishable by a maximum term of imprisonment of at least ten years.

deleted

Amendment 53

Proposal for a directive

Article 5 – title

Text proposed by the Commission

Amendment

Offences concerning **child pornography**

Offences concerning **the depiction of sexual acts involving persons under the age of 18 years**

Amendment 54

Proposal for a directive

Article 5 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall take the necessary measures to ensure that the intentional conduct **referred to in paragraphs 2 to 6 is punishable.**

1. **Since criminal law systems are an integral aspect of the legal order of each individual Member State,** Member States shall take the necessary measures to ensure that the **forms of** intentional conduct

described below are laid down in law as criminal offences and, in accordance with their systems of criminal penalties, are punished by means of the imposition of sentences which reflect their seriousness.

Amendment 55

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 **material concerning the depiction of sexual acts involving persons under the age of 18 years constitutes conduct as referred to in paragraph 1.**

Amendment 56

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, to **the depiction of sexual acts involving persons under the age of 18 years constitutes conduct as referred to in paragraph 1.**

Amendment 57

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 **the depiction of sexual acts involving persons under the age of 18 years constitutes conduct as referred to in paragraph 1.**

Amendment 58

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 ***the depiction of sexual acts involving persons under the age of 18 years constitutes conduct as referred to in paragraph 1.***

Amendment 59

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 ***the depiction of sexual acts involving persons under the age of 18 years constitutes conduct as referred to in paragraph 1.***

Amendment 60

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

Amendment

Member States shall take the necessary measures to ensure that the following intentionally committed conduct is punishable ***and that, in accordance with their system of criminal penalties, the crime is punished by means of the imposition of a sentence which reflects its seriousness:***

The proposal, by means of information and communication technology, by an adult to meet a ***person*** 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 61

Proposal for a directive

Article 7 – paragraph 1

Text proposed by the Commission

1. Member States shall take the necessary measures to ensure that the instigation of, aiding and abetting to commit any of the offences referred to in Articles 3 to 6 ***is punishable.***

followed by material acts leading to such a meeting.

Amendment

1. Member States shall take the necessary measures to ensure that the instigation of, aiding and abetting to commit any of the offences referred to in Articles 3 to 6 ***are laid down in law as criminal offences and, in accordance with their systems of criminal penalties, are punished by means of the imposition of sentences which reflect their seriousness.***

Amendment 62

Proposal for a directive

Article 7 – paragraph 2

Text proposed by the Commission

2. Member States shall take the necessary measures to ensure that attempts to commit any of the offences referred to in Article 3 (3) to (5), and (2) with regard to witnessing sexual abuse; Article 4 (2) to (3) and (5) to (11); and Article 5 (2) and (4) to (6) ***is punishable.***

Amendment

2. Member States shall take the necessary measures to ensure that attempts to commit any of the offences referred to in Article 3 (3) to (5), and (2) with regard to witnessing sexual abuse; Article 4 (2) to (3) and (5) to (11); and Article 5 (2) and (4) to (6) ***are laid down in law as criminal offences and, in accordance with their systems of criminal penalties, are punished by means of the imposition of sentences which reflect their seriousness.***

Amendment 63

Proposal for a directive

Article 7 – paragraph 3 – introductory part

Text proposed by the Commission

3. Member States shall take the necessary measures to **ensure that** the following intentional conduct **is punishable**:

Amendment

3. Member States shall take the necessary measures to **prevent or prohibit** the following forms of intentional conduct **and lay them down in law as criminal offences and, in accordance with their systems of criminal penalties, punish them by means of the imposition of sentences which reflect their seriousness**:

Amendment 64

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 **persons at least one of whom is under the age of 18 years** or involving persons who are **similar** in age and degree of psychological and physical development or maturity, insofar as the acts did not involve any abuse.

Amendment 65

Proposal for a directive

Article 9 – paragraph 1 – introductory part

Text proposed by the Commission

1. **In so far as** the following circumstances do not already form part of the constituent elements of the offences referred to in Articles 3 to 7, **they shall** be considered as aggravating circumstances **for the purposes of this Directive**:

Amendment

1. **Member States shall take the legislative or other measures required to ensure that** the following circumstances, if they do not already form part of the constituent elements of the offences referred to in Article 3 to 7, **can** be considered as

aggravating circumstances:

Amendment 66

Proposal for a directive

Article 9 – paragraph 1 – point a

Text proposed by the Commission

(a) the **child** has not reached the age of sexual consent under national law;

Amendment

(a) the **victim** has not reached the age of sexual consent under national law;

Amendment 67

Proposal for a directive

Article 9 – paragraph 1 – point b

Text proposed by the Commission

(b) the offence was committed against a **child** in a particularly vulnerable situation, notably because of a mental or physical disability or a situation of dependence;

Amendment

(b) the offence was committed against a **victim** in a particularly vulnerable situation, notably because of a mental or physical disability or a situation of dependence;

Amendment 68

Proposal for a directive

Article 9 – paragraph 1 – point c

Text proposed by the Commission

(c) the offence was committed by a member of the family, a person cohabiting with the **child** or a person having abused their authority;

Amendment

(c) the offence was committed by a member of the family, a person cohabiting with the **victim** or a person having abused their authority;

Amendment 69

Proposal for a directive

Article 9 – paragraph 1 – point g

Text proposed by the Commission

(g) the offence endangered the life of the

Amendment

(g) the offence endangered the life of the

child;

victim;

Amendment 70

Proposal for a directive

Article 9 – paragraph 1 – point h

Text proposed by the Commission

Amendment

(h) the offence involved serious violence or caused serious harm to the *child*.

(h) the offence involved serious violence or caused serious harm to the *victim*.

Amendment 71

Proposal for a directive

Article 9 – paragraph 2

Text proposed by the Commission

Amendment

2. Where at least one of the aggravating circumstances referred to in paragraph 1 are present, Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 to 6 are punishable by effective, proportionate and dissuasive penalties which are more severe than those foreseen in Articles 3 to 6 for the basic offence.

2. Where at least one of the aggravating circumstances referred to in paragraph 1 are present, Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 to 6 are punishable by effective, proportionate and dissuasive penalties which are more severe than those foreseen in Articles 3 to 6 for the basic offence *which are legally available to Member States in accordance with their criminal penalty and sentencing systems and which reflect the seriousness of the offences involved*.

Amendment 72

Proposal for a directive

Article 10 – paragraph 1

Text proposed by the Commission

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

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*.

prevented from exercising activities involving regular contacts with *persons under the age of 18 years*.

Amendment 73

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 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.

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 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 *persons under the age of 18 years*, 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 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.

Amendment 74

Proposal for a directive

Article 11 – paragraph 1 – introductory part

Text proposed by the Commission

1. Member States shall take the necessary measures to ensure that legal persons may be held liable for any of the offences referred to in Articles 3 to 7 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on one of the following:

Amendment

1. Member States shall take the necessary measures to ensure that legal persons may be held liable for any of the offences referred to in Articles 3 to 7 committed for their benefit by any **natural** person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on one of the following:

Amendment 75

Proposal for a directive

Article 12

Text proposed by the Commission

Article 12

Sanctions on legal persons

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 11 (1) is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, for example:

(a) exclusion from entitlement to public benefits or aid;

(b) temporary or permanent disqualification from the practice of commercial activities;

(c) placing under judicial supervision;

(d) judicial winding-up;

(e) temporary or permanent closure of establishments which have been used for committing the offence.

2. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 11 (2) is punishable by penalties or measures which are effective, proportionate and dissuasive.

Amendment

deleted

Amendment 76

Proposal for a directive

Article 13

Text proposed by the Commission

Member States shall provide for the possibility of not prosecuting or imposing penalties on **child** victims of the offences referred to in Articles 4 and Article 5 (4) to (6) for their involvement in unlawful activities as a direct consequence of being subjected to those offences.

Amendment

Member States shall provide for the possibility of not prosecuting or imposing penalties on **persons who are** victims of the offences referred to in Articles 4 and Article 5 (4) to (6) for their involvement in unlawful activities as a direct consequence of being subjected to those offences.

Amendment 77

Proposal for a directive

Article 14 – paragraph 3

Text proposed by the Commission

3. Member States shall take the necessary measures to ensure that effective investigative tools are available to persons, units or services responsible for investigating or prosecuting offences referred to in Articles 3 to 7, allowing the possibility of covert operations at least in those cases where the use of information and communication technology is involved.

Amendment

3. Member States shall take the necessary measures to ensure that effective investigative tools are available to persons, units or services responsible for investigating or prosecuting offences referred to in Articles 3 to 7, allowing the possibility of covert operations at least in those cases where the use of information and communication technology is involved. ***Those investigations shall be subject to prior authorisation by the relevant judicial authority in the Member State concerned and shall be carried out under the supervision of that authority.***

Amendment 78

Proposal for a directive

Article 14 – paragraph 4

Text proposed by the Commission

4. Member States shall take the necessary measures to enable investigative units or

Amendment

4. Member States shall take the necessary measures to enable investigative units or

services to attempt to identify the victims of the offences referred to in Articles 3 to 7, in particular by analysing **child pornography** material, such as photographs and audiovisual recordings transmitted or made available by means of information and communication technology.

services to attempt to identify the victims of the offences referred to in Articles 3 to 7, in particular by analysing material, such as photographs and audiovisual recordings transmitted or made available by means of information and communication technology.

Amendment 79

Proposal for a directive

Article 15 – paragraph 1

Text proposed by the Commission

1. Member States shall take the necessary measures to ensure that the confidentiality rules imposed by national law on certain professionals **called upon** to work in contact with **children** do not constitute an obstacle to the possibility, for those professionals, of their reporting to the services responsible for child protection any situation where they have reasonable grounds for believing that a **child** is the victim of offences referred to in Articles 3 to 7.

Amendment

1. Member States shall take the necessary measures to ensure that the confidentiality rules imposed by national law on certain professionals **whose primary task is** to work in contact with **persons under the age of 18 years** do not constitute an obstacle to the possibility, for those professionals, of their reporting to the services responsible for child protection any situation where they have reasonable grounds for believing that a **person under the age of 18 years** is the victim of offences referred to in Articles 3 to 7.

Amendment 80

Proposal for a directive

Article 15 – paragraph 2

Text proposed by the Commission

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.

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 **committed against a person under the age of 18 years** to report these facts to the

competent services.

Amendment 81

Proposal for a directive

Article 15 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The Member States shall take the measures necessary to create information services, such as special telephone helplines and internet sites, to provide advice and assistance to persons under the age of 18 years.

Amendment 82

Proposal for a directive

Article 15 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. The Member States shall take the necessary measures to ensure that prevention campaigns are mounted in primary and secondary schools with a view to enabling persons under the age of 18 years to enhance their understanding of the rights of every individual, of self-respect and respect for others, and helping them recognise awkward, intrusive or abusive situations.

Amendment 83

Proposal for a directive

Article 17 – paragraph 1

Text proposed by the Commission

Amendment

1. *Victims* of the offences referred to in Articles 3 to 7 shall be provided assistance, support and protection, taking into account

1. ***Persons under the age of 18 years who are the victim*** of the offences referred to in Articles 3 to 7 shall be provided assistance,

the best interests *of the child*.

support and protection, taking into account *their* best interests.

Amendment 84

Proposal for a directive

Article 17 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that, where the age of a person subject to the offences referred to in Articles 3 to 7 is uncertain and there are reasons to believe that the person is *a child*, the person is presumed to be *a child* in order to receive immediate access to assistance, support and protection in accordance with Article 18 and 19, pending verification of the age.

Amendment

2. Member States shall ensure that, where the age of a person subject to the offences referred to in Articles 3 to 7 is uncertain and there are reasons to believe that the person is *under the age of 18 years*, the person is presumed to be *such* in order to receive immediate access to assistance, support and protection in accordance with Article 18 and 19, pending verification of the age.

Amendment 85

Proposal for a directive

Article 18 – paragraph 2

Text proposed by the Commission

2. Member States shall take the necessary measures to ensure that the specific actions to assist and support victims in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular *child* victim, taking due account of the *child's* views, needs and concerns.

Amendment

2. Member States shall take the necessary measures to ensure that the specific actions to assist and support victims in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular victim, taking due account of the *victim's* views, needs and concerns.

Amendment 86

Proposal for a directive

Article 18 – paragraph 3

Text proposed by the Commission

3. *Victims* of any of the offences referred

Amendment

3. *Persons under the age of 18 years who*

to in Articles 3 to 7 shall be considered as particularly vulnerable victims pursuant to Article 2 (2), Article 8 (4) and Article 14 (1) of Framework Decision 2001/220/JHA.

are the victim of any of the offences referred to in Articles 3 to 7 shall be considered as particularly vulnerable victims pursuant to Article 2(2), Article 8(4) and Article 14(1) of Framework Decision 2001/220/JHA.

Amendment 87

Proposal for a directive

Article 18 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States shall take the necessary measures to launch information campaigns and other campaigns aimed at preventing the risks of the depiction of sexual acts involving persons under the age of 18 years, focusing in particular on the ways of detecting and preventing offences.

Amendment 88

Proposal for a directive

Article 18 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4b. Member States shall take the necessary measures to help and encourage teachers, social workers, youth leaders and all those working with persons under the age of 18 years to develop, within their syllabuses or activities, media and internet education in order to teach persons under the age of 18 years to react in ways that might save them from harm. It is vital that persons under the age of 18 years be taught how to navigate the internet safely.

Amendment 89

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

Text proposed by the Commission

Amendment

4c. Member States shall take the necessary measures to ensure that educational measures are included in the aims and values that underpin all levels of primary and secondary schooling. It is vital to develop attitudes that are shaped by respect and justice, enabling persons under the age of 18 years to develop self-respect and respect for others, as well as respect for institutions and for their environment. Only if someone is ready to listen to them will persons under the age of 18 years be able to become aware of any abuse they may have been subjected to or recognise an awkward or intrusive situation they may have experienced.

Amendment 90

Proposal for a directive
Article 19 – title

Text proposed by the Commission

Amendment

Protection of ***child*** victims in criminal investigations and proceedings

Protection of victims in criminal investigations and proceedings

Amendment 91

Proposal for a directive
Article 19 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall take the necessary measures to ensure that in criminal investigations and proceedings, judicial authorities appoint a special representative for the child victim where, by national law, the holders of parental responsibility are precluded from representing the ***child*** as a

1. Member States shall take the necessary measures to ensure that in criminal investigations and proceedings, judicial authorities appoint a special representative for the child victim where, by national law, the holders of parental responsibility are precluded from representing the ***person***

result of a conflict of interest between them and the *child* victim, or where the *child* is unaccompanied or separated from the family.

under the age of 18 years as a result of a conflict of interest between them and the victim, or where the *victim under the age of 18 years* is unaccompanied or separated from the family. ***The victim shall be consulted before the decision is taken.***

Amendment 92

Proposal for a directive Article 19 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that *child* victims have immediate access to free legal counselling and to free legal representation, including for the purpose of claiming compensation

Amendment

2. Member States shall ensure that victims *under the age of 18 years* have immediate access to free legal counselling and to free legal representation, including for the purpose of claiming compensation.

Amendment 93

Proposal for a directive Article 19 – paragraph 3 – point a

Text proposed by the Commission

(a) interviews with the *child* victim take place without unjustified delay after the facts have been reported to the competent authorities;

Amendment

(a) ***in principle***, interviews with the victim *under the age of 18 years* take place without unjustified delay after the facts have been reported to the competent authorities;

Amendment 94

Proposal for a directive Article 19 – paragraph 3 – point b

Text proposed by the Commission

(b) interviews with the *child* victim take place, ***where necessary***, in premises designed or adapted for this purpose;

Amendment

(b) ***in principle***, interviews with the victim *under the age of 18 years* take place in premises designed or adapted for this purpose;

Amendment 95

Proposal for a directive

Article 19 – paragraph 3 – point c

Text proposed by the Commission

(c) interviews with the **child** victim are carried out by or through professionals trained for this purpose;

Amendment

(c) **in principle**, interviews with the victim **under the age of 18 years** are carried out by or through professionals trained for this purpose;

Amendment 96

Proposal for a directive

Article 19 – paragraph 3 – point d

Text proposed by the Commission

(d) the same persons, **if possible and where appropriate**, conduct all interviews with the **child** victim;

Amendment

(d) **in principle**, the same persons conduct all interviews with the victim **under the age of 18 years**;

Amendment 97

Proposal for a directive

Article 19 – paragraph 3 – point f

Text proposed by the Commission

(f) the **child** victim may be accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.

Amendment

(f) the victim **under the age of 18 years** may be accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.

Amendment 98

Proposal for a directive

Article 19 – paragraph 4

Text proposed by the Commission

4. Member States shall take the necessary measures to ensure that in criminal

Amendment

4. Member States shall take the necessary measures to ensure that in criminal

investigations of any of the offences referred to in Articles 3 to 7 all interviews with the **child** victim or, where appropriate, with a **child** witness, may be videotaped and that these videotaped interviews may be used as evidence in criminal court proceedings, according to the rules under its national law.

investigations of any of the offences referred to in Articles 3 to 7 all interviews with the victim **under the age of 18 years** or, where appropriate, with a witness **under the age of 18 years**, may be videotaped and that these videotaped interviews may be used as evidence in criminal court proceedings, according to the rules under its national law.

Amendment 99

Proposal for a directive

Article 19 – paragraph 5 – point b

Text proposed by the Commission

(b) the **child** victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies.

Amendment

(b) the victim **under the age of 18 years** may be heard in the courtroom without being present **directly**, notably through the use of appropriate communication technologies.

Amendment 100

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 intervention programmes or measures are made available with a view to preventing and minimising the risks of repeated offences of a sexual nature against **persons under the age of 18 years**. 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 101

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 **persons** who sexually offend, including those who are below the age of criminal responsibility.

Amendment 102

Proposal for a directive

Article 20 a (new)

Text proposed by the Commission

Amendment

Article 20a

Preventive measures

1. Member States shall take the necessary measures to promote the protection of the rights of persons under the age of 18 years among those working with such persons in the areas of education, health, social welfare, justice and law enforcement, and in areas relating to sport, culture and leisure. These measures shall include instruction in the use of new media, starting in early childhood, which enables persons under the age of 18 years to use information and communication technologies safely and makes them aware of the risks involved. Parents, teachers and other educators shall also be involved in providing this instruction.

2. Member States shall encourage the media to become involved in this instruction process, in keeping with their remit to provide education and information.

3. Member States shall encourage the private sector, particularly the fields of information technology, communication,

tourism, banking and finance, and civil society to take part in the drawing-up and implementation of policies to prevent and combat the sexual exploitation and abuse of persons under the age of 18 years, by means of rules on self-regulation and exchange of information with the competent authorities.

4. Member States shall provide the necessary finance through the establishment of special funds for the implementation of projects and programmes to prevent, and protect persons under the age of 18 years from, sexual exploitation and abuse.

5. In the context of a structured dialogue, the Commission shall support the Member States in their efforts and shall ensure that they regularly exchange information about the measures they have taken. In this way it shall make a contribution to the dissemination of best-practice models.

Amendment 103

Proposal for a directive

Article 20 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. Member States shall take the necessary measures to ensure that, during primary and secondary education, pupils and their teachers are given information on the risks relating to the sexual exploitation and abuse of persons under the age of 18 years, and on existing protection instruments. That information, which shall form part of the general information on sexuality, with particular reference to the risks relating to the use of information and communication technology.

Amendment 104

Proposal for a directive

Article 21 – paragraph 1

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.***

Amendment

Article 21

Measures in connection with information and communication services

1. Member States shall take the necessary measures to obtain the ***immediate removal of depictions of sexual acts involving persons under the age of 18 years in information and communication services. The removal of such content shall be undertaken in accordance with national procedures and with adequate safeguards to ensure that it is confined to what is strictly necessary. In addition, the European Union shall conduct negotiations with third countries with the aim of securing the prompt removal of such content from servers on their territory. Furthermore, the Member States and institutions of the Union and Europol shall step up cooperation with international hotlines, such as INHOPE, with the aim of securing the prompt removal of such content.***

Amendment 105

Proposal for a directive

Article 21 – paragraph 2

Text proposed by the Commission

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

2. ***Other measures to prevent such content from becoming available, such as Internet blocking mechanisms, shall be a matter for the Member States. They may be taken only once all measures to secure the removal of content have been exhausted and it is clear, on that basis, that removal is impossible. In addition, the measures***

must be confined to what is strictly necessary, shall be subject to review by a judge, and the persons affected by such a measure shall be informed of the reasons for the decision. Persons affected shall have the right to seek legal remedy.

Amendment 106

Proposal for a directive

Article 21 a (new)

Text proposed by the Commission

Amendment

Article 21a

Reporting

The Commission shall submit to the European Parliament an annual report on the measures taken in the Member States and at European and international level to curb the sexual abuse and sexual exploitation of persons under the age of 18 years, to eliminate material depicting such acts, to identify the perpetrators and to prosecute and sentence the producers and users of such material. This report shall also contain details of the measures taken at all political levels in the areas of prevention and the protection of and care and assistance for victims.

Justification

It is crucial to improve the actions of Member States individually and collectively in this area. A reporting obligation would assist Member States in completing their five-yearly reports to the United Nations and ensure that efforts in this area are more transparent and coordinated more effectively.

PROCEDURE

Title	Sexual abuse and sexual exploitation of children and child pornography (repeal of Framework Decision 2004/68/JHA)
References	COM(2010)0094 – C7-0088/2010 – 2010/0064(COD)
Committee responsible	LIBE
Opinion by Date announced in plenary	CULT 21.4.2010
Rapporteur Date appointed	Petra Kammerevert 3.5.2010
Discussed in committee	14.7.2010
Date adopted	27.10.2010
Result of final vote	+ : 25 - : 0 0 : 0
Members present for the final vote	Magdi Cristiano Allam, Maria Badia i Cutchet, Zoltán Bagó, Malika Benarab-Attou, Lothar Bisky, Piotr Borys, Jean-Marie Cavada, Silvia Costa, Santiago Fisas Aixela, Petra Kammerevert, Morten Løkkegaard, Marek Henryk Migalski, Doris Pack, Chrysoula Paliadeli, Marie-Thérèse Sanchez-Schmid, Marietje Schaake, Marco Scurria, Joanna Senyszyn, Emil Stoyanov, Hannu Takkula, Sabine Verheyen, Milan Zver
Substitute(s) present for the final vote	Ivo Belet, Luigi Berlinguer, Knut Fleckenstein, Nadja Hirsch, Oriol Junqueras Vies, Seán Kelly, Timothy Kirkhope, Iosif Matula, Mitro Repo, Monika Smolková, Rui Tavares, Róza Gräfin von Thun und Hohenstein

25.1.2011

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

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 years. 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'

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

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

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.

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

² The Internet Watch Foundation Company

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.

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 1 a (new)

Text proposed by the Commission

Amendment

(1a) All stakeholders should have a zero-tolerance approach to combating the sexual abuse and exploitation of children and child pornography.

Amendment 2

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.

Amendment 3

Proposal for a directive

Recital 3 b (new)

Text proposed by the Commission

Amendment

(3b) The danger posed by females who commit child sexual abuse, as well as the danger posed by men who do likewise should be investigated.

Amendment 4

Proposal for a directive

Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) It is often the case that victims of human trafficking have been victims of child abuse and sexual exploitation.

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 5

Proposal for a directive

Recital 6

Text proposed by the Commission

(6) Serious forms of child sexual abuse and sexual exploitation should be subject to effective, proportionate and dissuasive sanctions. This includes, in particular, various forms of sexual abuse and sexual exploitation facilitated by the use of information and communication technology. The definition of child pornography should also be clarified and brought closer to that contained in international instruments.

Amendment

(6) Serious forms of child sexual abuse and sexual exploitation should be subject to effective, proportionate and dissuasive sanctions. This includes, in particular, various forms of sexual abuse and sexual exploitation facilitated by the use of information and communication technology ***such as "grooming" (the online solicitation of children for sexual purposes) via social networking websites and chat rooms.*** The definition of child pornography should also be clarified and brought closer to that contained in international instruments.

Amendment 6

Proposal for a directive

Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) At the same time, it is necessary to ensure that differences of cultural and legal tradition are not to be used to hide the sexual abuse of children and child pornography.

Amendment 7

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

Amendment

(8) Investigating offences, bringing charges in criminal proceedings ***and identifying the offender*** should be facilitated, to take into account the difficulty for child victims of

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.

denouncing abuse. The anonymity of offenders in cyberspace ***should not be allowed to obstruct investigations and prevent the offender from being traced without delay. Member States should therefore take steps to ensure that cyberspace users remain anonymous in public but can be identified immediately in the event of an offence being committed, in particular in the online spaces in which there is the highest risk of grooming, such as on social networking websites, forums, social platforms and blogs.*** 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. ***Those investigations should be authorised by the relevant judicial authority in the Member State concerned and should be carried out under the supervision of that authority.***

Amendment 8

Proposal for a directive

Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) An early warning system through regular reporting to the police or local hotlines of suspected child sexual abuse material on the internet is likely to help considerably in rapidly disrupting the activities of sex offenders and in notifying immediately to the authorities and internet service providers the existence of such illegal material in their network, so that they can take prompt,

appropriate action to remove the illegal material from public access and preserve evidence for law enforcement investigations.

Amendment 9

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) ***It is crucial to strengthen the effectiveness of law, including extraterritorial criminal law in order 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, ***a phenomenon that is spreading geographically with serious implications.***

Amendment 10

Proposal for a directive

Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) Member States should foster open dialogue and communication with third countries in order to be able to prosecute, under the relevant national legislation, perpetrators who travel to those countries for the purposes of sex tourism.

Justification

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

Amendment 11

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 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. ***The confidentiality of any information related to the identification of child victims is central to the protection of those child victims.***

Amendment 12

Proposal for a directive

Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) For full victim protection, child victims should be informed of their rights and the services at their disposal, the general progress of the investigation or proceedings, their role in the investigation or proceedings and the outcome thereof.

Furthermore, measures should be adopted which should ensure that children are educated about their rights to protection from abuse, how to protect themselves and what to do if they are or have been

abused.

Amendment 13

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) Where the danger posed by the offenders and the possible risks of repetition of the offences make it appropriate, convicted offenders should be temporarily or permanently prevented from exercising activities involving regular contacts with children, where appropriate. Implementation of such prohibitions throughout the EU should be facilitated.

Amendment

(12) Where the danger posed by the offenders and the possible risks of repetition of the offences make it appropriate, convicted offenders should be temporarily or permanently prevented from exercising activities involving regular contacts with children, where appropriate. Implementation of such prohibitions throughout the EU should be facilitated. ***Pre-employment screening checks should be carried out by the Member States when the job is subject to regular activities with children. Procedures should be implemented in line with the legislation in force in the Member States.***

Amendment 14

Proposal for a directive

Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) The internet is a part of society like any other and should not be viewed as a 'neutral' space. As in normal society, standards and rules governing its use will need to be applied.

Amendment 15

Proposal for a directive

Recital 13

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(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 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

(13) Child pornography constitutes sex abuse images. 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 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. 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, **whereas the vast majority of websites having been blocked are facilitated through servers located in countries (mainly the US and EU) which have signed the United Nations Convention on the Rights of the Child or the Optional Protocol to the Convention on the Rights of the Child on sale of children, child prostitution and child pornography. Mechanisms should be put in place to strengthen international cooperation between states, judicial and police authorities, and reporting points for child pornography in order to ensure the safe and fast removal** of websites containing child pornography. 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

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.

illegal content online.

Amendment 16

Proposal for a directive

Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a). There are numerous access points for viewing child pornography images online and offenders adapt with the ongoing progression of technology and its application.

Amendment 17

Proposal for a directive

Recital 13 b (new)

Text proposed by the Commission

Amendment

(13b). The European Financial Coalition should expand its remit to cover all child pornography images online, and not just commercial child pornography sites.

Amendment 18

Proposal for a directive

Article 2 – point b – introductory part

Text proposed by the Commission

(b) ‘child pornography’ shall mean

Amendment

(b) ‘child pornography’ **is a form of child abuse and** shall mean:

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 draftsman advises that the word ‘child pornography’ is used.

Amendment 19

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 maximum term of imprisonment of at least two years **and a ban on engaging in occupations involving any form of contact with children.**

Amendment 20

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 maximum term of imprisonment of at least **eight** years **and a ban on engaging in occupations involving any form of contact with children.**

Amendment 21

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) 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 **and a ban on engaging in occupations involving any form of contact with children. In the case of parents who have abused their children, the sentence shall be adequate to protect the children against any repetition of the offence;**

Amendment 22

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) abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability, **poverty and social exclusion** or a situation of dependence shall be punishable by a maximum term of imprisonment of at least eight years **and a ban on engaging in occupations involving any form of contact**

with children;

Amendment 23

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 maximum term of imprisonment of at least ten years ***and a ban on engaging in occupations involving any form of contact with children.***

Amendment 24

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 into sexual activities with a third party shall be punishable by a maximum term of imprisonment of at least ten years ***and a ban on engaging in occupations involving any form of contact with children.***

Amendment 25

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 two years ***and a ban on engaging in occupations involving***

any form of contact with children.

Amendment 26

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 two years ***and a ban on engaging in occupations involving any form of contact with children.***

Amendment 27

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 two years ***and a ban on engaging in occupations involving any form of contact with children.***

Amendment 28

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

Amendment

5. Recruiting a child to participate in pornographic performances shall be punishable by a maximum term of

imprisonment of at least five years.

imprisonment of at least five years **and a ban on engaging in occupations involving any form of contact with children.**

Amendment 29

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 five years **and a ban on engaging in occupations involving any form of contact with children.**

Amendment 30

Proposal for a directive

Article 4 – paragraph 6 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Under special circumstances a maximum penalty of at least 8 years. Especially if the child is exposed to danger, extreme violence is used which is causing the child serious harm, or where there are performances of more systematic or organized nature.

Amendment 31

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

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.

shall be punishable by a maximum term of imprisonment of at least five years **and a ban on engaging in occupations involving any form of contact with children.**

Amendment 32

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 **eight** years **and a ban on engaging in occupations involving any form of contact with children.**

Amendment 33

Proposal for a directive

Article 4 – paragraph 9

Text proposed by the Commission

9. Coercing a child to participate in pornographic performances shall be punishable by a maximum term of imprisonment of at least eight years.

Amendment

9. Coercing a child to participate in pornographic performances shall be punishable by a maximum term of imprisonment of at least eight years **and a ban on engaging in occupations involving any form of contact with children.**

Amendment 34

Proposal for a directive

Article 4 – paragraph 10

Text proposed by the Commission

10. Recruiting a child to participate in child

Amendment

10. Recruiting a child to participate in child

prostitution shall be punishable by a maximum term of imprisonment of at least eight years.

prostitution shall be punishable by a maximum term of imprisonment of at least eight years **and a ban on engaging in occupations involving any form of contact with children.**

Amendment 35

Proposal for a directive

Article 4 – paragraph 11

Text proposed by the Commission

Amendment

11. Coercing a child into child prostitution shall be punishable by a maximum term of imprisonment of at least ten years.

11. Coercing a child into child prostitution shall be punishable by a maximum term of imprisonment of at least ten years **and a ban on engaging in occupations involving any form of contact with children.**

Amendment 36

Proposal for a directive

Article 5 – Title

Text proposed by the Commission

Amendment

Offences concerning child **pornography**

Offences concerning child **abuse material**

Justification

The word "child pornography" is very problematic. The usual definition of the word "pornography" refers to consensual acts between adults. The wording child abuse material gives a clear message: looking at it is the evidence of a crime.

Amendment 37

Proposal for a directive

Article 7 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(b) the organisation of travel arrangements

(b) the organisation of travel **and/or other**

with the purpose of committing any of the offences referred to in Articles 3 to 6.

arrangements with the purpose of committing any of the offences referred to in Articles 3 to 6.

Justification

Regarding the organisation of child sex tourism, actors facilitating the sexual abuse and exploitation of a child include not only those who arrange travel, such as tour operators and travel agencies, but also a number of intermediaries which provide other services, such as hotels, hostels, tour guides, translation services and so on.

Amendment 38

Proposal for a directive

Article 9 – paragraph 1 – point b

Text proposed by the Commission

(b) the offence was committed against a child in a particularly vulnerable situation, notably because of a mental or physical disability or a situation of dependence;

Amendment

(b) the offence was committed against a child in a particularly vulnerable situation, notably because of a mental or physical disability or ***poverty and social exclusion*** or a situation of dependence;

Amendment 39

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 the measure referred to in paragraph 1 is entered in the criminal record of the convicting Member State. ***Member States shall take the necessary legislative or other measures to ensure that criminal records have been checked every time a person applies for a new job whose exercise implies regular contact with children.***

Amendment 40

Proposal for a directive

Article 10 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Member States should ensure that state and private organisations exercising activities involving regular contact with children check systematically the criminal records of new employees, and that organisations, including schools, providing services for children have in place strong and active child protection policies.

Justification

Information recording and sharing must be complimented with action by organisations involving regular contact with children to ensure that the criminal record of candidates for a position or activities involving children are checked prior to the offer of employment, through pre-employment checks.

Amendment 41

Proposal for a directive

Article 13

Text proposed by the Commission

Amendment

Member States shall ***provide for the possibility of not prosecuting or imposing*** penalties on child victims of the offences referred to in Articles 4 and Article 5 (4) to (6) for their involvement in unlawful activities as a direct consequence of being subjected to those offences.

Member States shall not ***prosecute child victims or impose*** penalties on child victims of the offences referred to in Articles 4 and Article 5(4) to (6) for their involvement in unlawful activities as a direct consequence of being subjected to those offences.

Justification

A child victim should not be considered as capable of consenting to prostitution or participation in child abuse images. Criminal liability rests solely with the perpetrator regardless of any purported or presumed 'consent' from the victim.

Amendment 42

Proposal for a directive

Article 14 – paragraph 1

Text proposed by the Commission

1. Member States shall take the necessary measures to ensure that investigations into or the prosecution of the offences referred to in Articles 3 to 7 are not dependent on a report or accusation being made by the victim, and that the criminal proceedings may continue even if the victim has withdrawn their statements.

Amendment

1. Member States shall take the necessary measures to ensure that investigations into or the prosecution of the offences referred to in Articles 3 to 7 are not dependent on a report or accusation being made by the victim, and that the criminal proceedings may continue even if the victim has withdrawn their statements. ***Procedures shall be implemented in line with the legislation in force in the Member States.***

Amendment 43

Proposal for a directive

Article 14 – paragraph 3

Text proposed by the Commission

3. Member States shall take the necessary measures to ensure that effective investigative tools are available to persons, units or services responsible for investigating or prosecuting offences referred to in Articles 3 to 7, allowing the possibility of covert operations at least in those cases where the use of information and communication technology is involved.

Amendment

3. Member States shall take the necessary measures to ensure that effective investigative tools are available to persons, units or services responsible for investigating or prosecuting offences referred to in Articles 3 to 7, allowing the possibility of covert operations at least in those cases where the use of information and communication technology is involved. ***Those measures shall be subject to prior authorisation by the relevant judicial authority in the Member State concerned and shall be carried out under the supervision of that authority.***

Amendment 44

Proposal for a directive

Article 14 – paragraph 4

Text proposed by the Commission

4. Member States shall take the necessary measures to enable investigative units or services to attempt to identify the victims of the offences referred to in Articles 3 to 7, in particular by analysing child pornography material, such as photographs and audiovisual recordings transmitted or made available by means of information and communication technology.

Amendment

4. Member States shall take the necessary measures to enable **and support** investigative units or services to attempt to identify **without delay** the victims of the offences referred to in Articles 3 to 7, in particular by analysing child pornography material, such as photographs and audiovisual recordings transmitted or made available by means of information and communication technology.

Justification

Member States must provide the necessary financial and human resources to ensure that investigative units become fully operational and effective

Amendment 45

Proposal for a directive

Article 14 – paragraph 4 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

In line with action to combat terrorism, monitoring and prevention measures should be taken vis-à-vis perpetrators of offences within the meaning of Articles 3 to 7 of this Directive. To that end, the Commission shall look into the feasibility of establishing a European early warning system (EWS) to coordinate anti-cyber crime activities conducted by Member State authorities and prevent offences by paedophiles and sex offenders, as called for by the European Parliament in its recommendation of 23 June 2010 on setting up a European early warning system (EWS) for paedophiles and sex offenders¹, which was adopted by an absolute majority.

Amendment 46

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 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.

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 47

Proposal for a directive

Article 15 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall encourage state and private organisations exercising activities involving regular contact with children to carry out routine staff training, so that individuals are better able to detect where a child is being abused and are aware to whom this information should be reported.

Justification

Where staff members are trained to detect abuse, incidents of abuse are likely to be reported more quickly.

Amendment 48

Proposal for a directive

Article 15 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. Member States shall take steps to ensure that victims have access to confidential child-friendly reporting and referral mechanisms, such as telephone or internet helplines, and that these are run by professionals trained in dealing with abuse.

Justification

Putting in place child-friendly reporting mechanisms and information services gives child victims a greater degree of autonomy, and will encourage them to come forward and report abuse.

Amendment 49

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.***

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 50

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

Text proposed by the Commission

Amendment

2a. Member States shall take the necessary measures to establish an anonymous reporting service to internet users who accidentally uncover child sex abuse material on the internet.

Amendment 51

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

Text proposed by the Commission

Amendment

2b. Member States shall take the measures necessary to create information services, such as special telephone helplines and internet sites, to provide advice and assistance to children.

Amendment 52

Proposal for a directive
Article 16 – paragraph 3

Text proposed by the Commission

Amendment

3. A Member State may decide that it will not apply or that it will apply only in specific cases or circumstances the jurisdiction rules set out in paragraph 1 (c) and (d) as far as the offence is committed outside its territory.

deleted

Amendment 53

Proposal for a directive
Article 17 – paragraph 1 a (new)

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Text proposed by the Commission

Amendment

1a. Member States shall take the necessary measures to protect the privacy of child victims, their identity and their image by means of preventing public dissemination of information.

Amendment 54

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:

(a) information and support shall be provided to the general public to help them protect children, including awareness raising and education campaigns so that individuals are better able to detect if a child might be being sexually abused and aware to whom this should be reported, both online and offline;

(b) educational awareness programmes in schools and in children's activity groups to educate children to recognise and avoid high-risk situations;

(c) 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 websites, 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, whether voluntary or paid employment, which involve working with children and young people below the age of 18 years;
(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 and such information/data is subject to all current EU and national data protection law.

Amendment 55

Proposal for a directive

Article 18 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States are encouraged to use the confiscated assets from criminals to fund additional therapeutic and integration services for child pornography victims.

Amendment 56

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.

Justification

Information services such as telephone help lines can be a vital tool in combating child sexual abuse. Article 13 of the Council of Europe's Convention on Sexual Abuse recognises this.

Amendment 57

Proposal for a directive

Article 18 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4b. Member States shall take the necessary measures to ensure that the family of the offender will not experience isolation and stigmatisation.

Amendment 58

Proposal for a directive

Article 19 – paragraph 3 – introductory part

Text proposed by the Commission

Amendment

3. Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal ***investigations*** of any of the offences referred to in Articles 3 to 7:

3. Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal ***proceedings*** of any of the offences referred to in Articles 3 to 7:

Justification

This wording is in keeping with Article 14(3) of the Commission proposal for a Directive on preventing and combating trafficking in human beings and protecting victims.

Amendment 59

Proposal for a directive

Article 19 – paragraph 3 – point b

Text proposed by the Commission

(b) interviews with the child victim take place, **where necessary**, in premises designed or adapted for this purpose;

Amendment

(b) interviews with the child victim take place in premises designed or adapted for this purpose, **and where the child feels safe**;

Amendment 60

Proposal for a directive

Article 19 – paragraph 3 – point f

Text proposed by the Commission

(f) the child victim **may be** accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.

Amendment

(f) the child victim **is** accompanied by his or her **appointed guardian**, legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.

Justification

This amendment aims at strengthening the level of protection of the child.

Amendment 61

Proposal for a directive

Article 19 – paragraph 5 – introductory part

Text proposed by the Commission

5. Member States shall take the necessary measures to ensure, in criminal court proceedings relating to any of the offences referred to in Articles 3 to 7, that it **may be** ordered that:

Amendment

5. Member States shall take the necessary measures to ensure, in criminal court proceedings relating to any of the offences referred to in Articles 3 to 7, that it **is** ordered that:

Amendment 62

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, according to the conditions laid down in national law. **Member States shall offer counselling and advice programmes to support the immediate families of male or female perpetrators.**

Justification

Women are also perpetrators or co-perpetrators of crimes involving child pornography and the dissemination of such material on the Internet.

Amendment 63

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 **against other children**, including those who are below the age of criminal responsibility. **Member States shall ensure that such children are offered a suitable response, which includes an assessment of their individual needs and appropriate treatment to address their offending behaviour.**

Amendment 64

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 shall be ensured.

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 65

Proposal for a directive

Article 21

Text proposed by the Commission

Amendment

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.***

Measures against websites containing ***or disseminating*** child pornography

1. Member States shall take the necessary measures to ***ensure the removal of webpages*** containing or disseminating child pornography ***hosted in their territory and to endeavour to obtain the removal of such pages hosted outside of their territory.***

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.

1a. Member States shall take the appropriate law enforcement measures to notify other Member States rapidly about the existence of child sexual abuse material and obtain its removal.

2. Where the removal of webpages containing or disseminating child pornography is not possible the blocking of access shall be obtained 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.

Amendment 66

Proposal for a directive

Article 21 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall take the necessary measures to increase the liability of internet service providers and owners of domains so that they deny access to child pornography websites of which they are aware.

Amendment 67

Proposal for a directive

Article 21 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Member States shall make an active effort to address the issue of peer-to-peer software and the re-emergence of usenet newsgroups.

Amendment 68

Proposal for a directive

Article 21 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2c. The determination of harmful websites under this Directive as well as of the appropriate procedures for deleting or blocking the website must take full account of fundamental rights of internet users and shall be based on transparent procedures and judicial control and oversight.

Amendment 69

Proposal for a directive

Article 21 – paragraph 2 d (new)

Text proposed by the Commission

Amendment

2d. The Commission shall submit to the European Parliament and the Council an annual report on the activities undertaken by Member States to remove child sexual abuse material from online services.

PROCEDURE

Title	Sexual abuse and sexual exploitation of children and child pornography (repeal of Framework Decision 2004/68/JHA)
References	COM(2010)0094 – C7-0088/2010 – 2010/0064(COD)
Committee responsible	LIBE
Opinion by Date announced in plenary	FEMM 21.4.2010
Rapporteur Date appointed	Marina Yannakoudakis 4.5.2010
Discussed in committee	28.10.2010 20.1.2011
Date adopted	20.1.2011
Result of final vote	+ : 24 - : 3 0 : 2
Members present for the final vote	Regina Bastos, Edit Bauer, Andrea Češková, Marije Cornelissen, Tadeusz Cymański, Ilda Figueiredo, Iratxe García Pérez, Zita Gurmai, Mary Honeyball, Lívia Járóka, Teresa Jiménez-Becerril Barrio, Philippe Juvin, Nicole Kiil-Nielsen, Rodi Kratsa-Tsagaropoulou, Barbara Matera, Elisabeth Morin-Chartier, Siiri Oviir, Antonyia Parvanova, Raül Romeva i Rueda, Nicole Sinclair, Joanna Katarzyna Skrzydlewska, Marc Tarabella, Britta Thomsen, Marina Yannakoudakis, Anna Záborská
Substitute(s) present for the final vote	Anne Delvaux, Cornelia Ernst, Sylvie Guillaume, Kartika Tamara Liotard, Mariya Nedelcheva, Norica Nicolai, Antigoni Papadopoulou, Rovana Plumb
Substitute(s) under Rule 187(2) present for the final vote	Carmen Romero López

PROCEDURE

Title	Sexual abuse and sexual exploitation of children and child pornography (repeal of Framework Decision 2004/68/JHA)			
References	COM(2010)0094 – C7-0088/2010 – 2010/0064(COD)			
Date submitted to Parliament	24.3.2010			
Committee responsible Date announced in plenary	LIBE 21.4.2010			
Committee(s) asked for opinion(s) Date announced in plenary	CULT 21.4.2010	FEMM 21.4.2010		
Rapporteur(s) Date appointed	Roberta Angelilli 26.1.2010			
Discussed in committee	27.4.2010	15.11.2010	10.1.2011	25.5.2011
	12.7.2011			
Date adopted	12.7.2011			
Result of final vote	+: -: 0:	50 0 3		
Members present for the final vote	Jan Philipp Albrecht, Sonia Alfano, Alexander Alvaro, Roberta Angelilli, Viliija Blinkevičiūtė, Mario Borghezio, Rita Borsellino, Emine Bozkurt, Simon Busuttil, Philip Claeys, Carlos Coelho, Rosario Crocetta, Agustín Díaz de Mera García Consuegra, Cornelia Ernst, Tanja Fajon, Hélène Flautre, Kinga Gőncz, Nathalie Griesbeck, Sylvie Guillaume, Ágnes Hankiss, Anna Hedh, Salvatore Iacolino, Sophia in 't Veld, Teresa Jiménez-Becerril Barrio, Timothy Kirkhope, Juan Fernando López Aguilar, Baroness Sarah Ludford, Monica Luisa Macovei, Véronique Mathieu, Nuno Melo, Jan Mulder, Antigoni Papadopoulou, Georgios Papanikolaou, Carmen Romero López, Birgit Sippel, Csaba Sógor, Renate Sommer, Rui Tavares, Wim van de Camp, Daniël van der Stoep, Renate Weber, Tatjana Ždanoka			
Substitute(s) present for the final vote	Edit Bauer, Anna Maria Corazza Bildt, Ioan Enciu, Monika Hohlmeier, Jean Lambert, Antonio Masip Hidalgo, Mariya Nedelcheva, Hubert Pirker, Michèle Striffler, Kyriacos Triantaphyllides, Cecilia Wikström			
Date tabled	2.8.2011			