Combating sexual abuse, sexual exploitation of children and child pornography

2009/0049(CNS) - 25/03/2009 - Legislative proposal

PURPOSE: to recast Framework Decision 2004/68/JHA on the sexual abuse, sexual exploitation of children and child pornography by including new provisions aimed at making it more effective.

PROPOSED ACT: Framework Decision.

BACKGROUND: sexual abuse and sexual exploitation of children are particularly serious forms of crime as they are directed against children. They produce long-term physical, psychological and social harm to victims and its persistence undermines the core values of a modern society relating to the special protection of children and trust in relevant State institutions. To combat this type of crime, the EU already has a legislative framework based on Article 29 of the Treaty on the European Union: Framework Decision 2004/68/JHA aims to introduce a minimum of approximation of Member States' legislation to criminalise the most serious forms of child sexual abuse and exploitation, to extend domestic jurisdiction, and to provide for a minimum of assistance to victims.

However, although the requirements have generally been put into implementation, the Framework Decision has a number of shortcomings as it approximates legislation only on a **limited number of offences**:

- it does not address new forms of abuse and exploitation using information technology;
- it does not remove obstacles to prosecuting offences outside national territory;
- it does not meet all the specific needs of child victims;
- it does not contain adequate measures to prevent offences.

That is why the Commission proposes to review the legislation in force in order to strengthen the existing legal framework and to correct the aforementioned shortcomings. Moreover, the revision would aim to take into account the essential elements of the Council of Europe (COE) Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, which constitutes the highest international standard for protecting children against sexual abuse and exploitation to date.

IMPACT ASSESSMENT: the Commission considered several options:

- **option 1**: no new EU action;
- **option 2**: complement existing legislation with non-legislative measures to support coordinated implementation of national legislation;
- option 3: new legislation on prosecuting offenders, protecting victims, and preventing offences, including certain provisions of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and keeping the most relevant elements of the original Framework Decision;
- **option 4**: new comprehensive legislation to enhance prosecution of offenders, protection of victims and prevention of offences (as in option 3) plus non-legislative measures (as in option 2).

Following the assessment of the socioeconomic impact and the impact on fundamental rights, the preferred option would be option 4, followed by option 3.

CONTENT: the proposal will both repeal and incorporate Framework Decision 2004/68/JHA to include the following new elements:

- **substantive criminal law**: serious forms of child sexual abuse and exploitation currently not covered by EU legislation would be criminalised. This includes, for instance, the organisation of travel arrangements with the purpose of committing sexual abuse, something particularly relevant, but not exclusively, in the context of child sex tourism. The definition of child pornography is amended to approximate it to the COE Convention and the Optional Protocol. Special consideration is given to offences against children in a particularly vulnerable situation, such as unaccompanied children;
- **new criminal offences in the IT environment**: new forms of sexual abuse and exploitation facilitated by the use of IT would be criminalised. This includes **knowingly obtaining access to child pornography**, to cover cases where viewing child pornography from websites without downloading or storing the images does not amount to "possession of" or "procuring" child pornography. Also the new offence of "**grooming**" is incorporated closely following the wording agreed in the COE Convention;
- **criminal investigation and initiation of criminal proceedings**: a number of provisions would be introduced to assist with investigating offences and bringing charges. A mechanism to coordinate prosecution in cases of multiple jurisdictions is included, but may be superseded once the proposal for a Framework Decision on conflict of jurisdiction in criminal proceedings is adopted;
- **prosecution of offences committed abroad**: rules on jurisdiction would be amended to ensure that child sexual abusers or exploiters from the EU face prosecution even if they commit their crimes **outside the EU**, via so-called sex tourism;
- **protection of victims**: new provisions will be included to ensure that victims have easy access to legal remedies and do not suffer from participating in criminal proceedings;
- **prevention of offences**: amendments would be introduced to help prevent child sexual abuse and exploitation offences, through a number of actions concentrating on previous offenders to prevent recidivism, and to **restrict access to child pornography on the internet**. The aim of restricting such access is to reduce the circulation of child pornography by making it more difficult to use the publicly-accessible Web. It is not a substitute for action to remove the content at the source or to prosecute offenders;
- **other protective measures not contained in the COE Convention**: the proposal includes elements not contained in the COE Convention, notably: (i) ensuring implementation across the EU of prohibitions from activities with children imposed on offenders; (ii) blocking access to child pornography on the internet; (iii) criminalising coercing a child into sexual relations with a third party and child sexual abuse online; (iv) a non-punishment clause for child victims. It also goes beyond the obligations imposed by the COE Convention regarding the level of **penalties**, free legal counselling for child victims and repression of activities encouraging abuse and child sex tourism. Moreover, incorporating provisions from the Convention into EU law will facilitate faster adoption of national measures compared to national procedures for ratification, and ensure better monitoring of implementation.

BUDGETARY IMPLICATIONS: the proposal has no implication for the Community budget.