Combating sexual abuse, sexual exploitation of children and child pornography

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report drafted by Roberta ANGELILLI (EPP, IT) 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.

It recommended that the European Parliament's position at first reading adopted under the ordinary legislative procedure should be to amend the Commission proposal. The amendments proposed are the result of an agreement reached between the members of the competent committee and the representatives of the Council of Ministers. They may be summarised as follows:

Scope: it is stipulated that 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**.

The "**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. As regards "pornographic performance", shall mean the live exhibition aimed at an audience,

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**.

Offences concerning sexual abuse: 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.

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.

Offences concerning sexual exploitation:according to the amended text, Member States shall take the necessary measures to ensure that the intentional conduct referred to below is punishable:

- 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;
- 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;
- 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;

- 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;
- 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;
- 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.

Users of child pornography: knowingly obtaining access, by means of information and communication technology, to child pornography should be criminalised. To be liable, the text stipulates that the person should both intend to enter a site where child pornography is available and know that such images can be found there.

Solicitation of children for sexual purposes: Member States shall take the necessary measures to ensure that an attempt through information and communication technology to commit the offences concerning child pornography by an adult soliciting a child who has not reached the age of sexual consent to provide child pornography depicting that child is punishable. This includes, in particular, the **online solicitation of children** for sexual purposes via **social networking websites and chat rooms.**

Aggravating circumstances: Members are in favour of more severe sanctions within the EU, especially in cases of abuse 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; by several people acting together; etc. or that 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 caused by the influence of drugs and alcohol.

Disqualification arising from convictions: 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 may be temporarily or permanently prevented from exercising at least professional activities involving direct and regular contacts with children.

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.

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 the Directive.

Assistance and support: 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. Member States shall in particular take the necessary steps to ensure protection for children who report cases of abuse taking place within their family. They shall also 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. 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.

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 against children; (b) the organisation for others, whether or not for commercial purposes, of travel arrangements with the purpose of committing any of the offences.

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 may have access, where appropriate, to effective intervention programmes or measures designed to evaluate and prevent the risk of offences being committed. 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.

Measures against websites containing or disseminating child pornography: Member States shall take the necessary measures to ensure the prompt removal of web-pages containing or disseminating child pornography hosted in their territory and to endeavour to obtain the removal of such pages hosted outside of their territory. 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. These safeguards shall also include the possibility of judicial redress.