Combating the sexual exploitation of children and child pornography: criminal offences, penalties and sanctions. Framework decision

2001/0025(CNS) - 22/12/2003 - Final act

PURPOSE : to ensure sanctions against the sexual exploitation of children. LEGISLATIVE ACT : Council Framework Decision 2004/68/JHA on combating the sexual exploitation of children and child pornography. CONTENT : on the matter of the sexual exploitation of children, this framework Decision requires that Member State take the necessary measures to ensure that the following intentional conduct is punishable: - coercing or recruiting a child into prostitution or into participating in pornographic performances, or profiting from or otherwise exploiting a child for such purposes; - engaging in sexual activities with a child, where use is made of coercion, force or threats; or, money or other forms of remuneration or consideration is given as payment in exchange for the child engaging in sexual activities; or abuse is made of a recognised position of trust, authority or influence over the child. With regard to child pornography, the Framework Decision provides that Member State must take the necessary measures to ensure that the following intentional conduct whether undertaken by means of a computer system or not, is punishable: - production of child pornography; - distribution, dissemination or transmission of child pornography; - supplying or making available child pornography; - acquisition or possession of child pornography. Member States must also ensure that instigation of, aiding or abetting the sexual exploitation of children and child pornography are punishable. A Member State may exclude from criminal liability conduct relating to child pornography under certain circumstances. These include where a real person appearing to be a child was in fact 18 years of age or older at the time of the depiction; and where, in the case of production and possession, images of children having reached the age of sexual consent are produced and possessed with their consent and solely for their own private use. However, even where the existence of consent has been established, it will not be considered valid, if for example superior age, maturity, position, status, experience or the victim's dependency on the perpetrator has been abused in achieving the consent. In the case of virtual pornography, criminal liability is excluded, where it is established that the pornographic material is produced and possessed by the producer solely for his or her own private use, and provided that the act involves no risk for the dissemination of the material. The framework Decision goes on to set out the penalties for the offences and lists aggravating circumstances where penalties may be may severe. There are provisions for the liability of legal persons where the offence is committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person. Victims of child sexual exploitation should be considered as particularly vulnerable victims pursuant to Council framework Decision 2001/220/JHA and Member States must take all measures possible to ensure appropriate assistance for the victim's family. ENTRY INTO FORCE : 20/01/2004. Joint Action 97/154/JHA is hereby repealed. DATE OF TRANSPOSITION : 20/01/2006. By 20 January 2006 the Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national legislation the obligations imposed on them under this framework Decision. By 20 January 2008 on the basis of a report established using this information and a written report from the Commission, the Council shall assess the extent to which the Member States have complied with the provisions of this framework Decision. TERRITORIAL SCOPE : this Framework Decision shall apply to Gibraltar.