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

2001/0025(CNS) - 22/01/2001 - Legislative proposal

PURPOSE : to present a proposal for a Council Framework Decision on combating the sexual exploitation of children and child pornography. CONTENT : on 24 February 1997 the Council adopted a Joint Action 97/154/JHA concerning action to combat trafficking in human beings and sexual exploitation of children. Through the Joint Action, the Member States undertook to review their existing laws with a view to providing that trafficking in human beings and the sexual exploitation of children were criminal offences. Since the adoption of the Joint Action in 1997, actions and initiatives against trafficking in human beings have developed considerably in number and in substance at the level of the European Union, however continuing divergence of legal approaches in the Member States clearly demonstrates the need for further action against the menace of sexual exploitation of children. The Commission believes that a further response to the issue is required at EU level. Therefore, it proposes that the use of a Framework Decision, an instrument introduced by the Amsterdam treaty, will reinforce a common approach of the EU in this area and fill gaps in existing legislation. The proposal also includes provisions on horizontal judicial issues such as jurisdiction and cooperation between Member States. The proposal covers sexual exploitation of children and child pronography. It does not include trafficking in human beings for exploitative purposes as this is dealt with in a separate proposal (see CNS/2001/0024). The main provisions of the proposal are as follows: - an obligation put on the Member States to ensure that sexual exploitation is punishable; - an obligation put on the Member States to ensure that various forms of intentional acts concerned with child pornography is punishable, e.g, the production, distribution, dissemination and transmission of child pornography; - an obligation on Member States to takes the necessary measures to ensure that acts concerned with pornographic material that visually represent a child involved in sexually explicit conduct is punishable; - an obligation on the Member States to ensure that instigation of, aiding or abetting the sexual exploitation of children and child pornography are punishable. The penalties shall include imprisonment that is not less than 4 years. As regards intentional acquisition and possession it is specifically indicated that the maximum penalty shall not be less than 1 year. In cases where aggravating circumstances apply, the offences shall be punishable by terms of imprisonment with a maximum penalty that is not less than 8 years. It is also necessary to cover the situation in which legal persons are involved in sexual exploitation of children and child pornography. The purpose of this framework decision is to ensure that service providers are liable when they commit child pornography offences for the benefit of the service provider. Moreover, provisions are also provided in relation to the liability of the legal persons. In addition, the framework decision establishes a series ofcriteria conferring jurisdiction on national enforcement and judicial authorities to prosecute and examine cases involving the offences referred to in this framework decision. A Member State shall establish its jurisdiction in three situations: - where the offence is committed in whole or in part on its territory, irrespective of the status or the nationality of the person involved (territoriality principle), or - where the offender is a national (active personality principle) or - where the offence is committed for the benefit of a legal person established in the territory of that Member State. Other provisions takes account of the fact that some Member States do not extradite their nationals and seeks to ensure that persons suspected of having committed trafficking offences do not evade prosecution because extradition is refused in principle on the grounds that they are nationals of that state. The Commission is also of the view that an Article on victims should be included in this Framework Decision. In addition, the Framework Decision requires Member States to afford each other mutual assistance to the widest extent possible in judicial proceedings on trafficking in human beings. It also stipulates that the appropriate use of existing co-operation mechanisms such as the liaison magistrates and the European Judicial Network and that Europol should be properly involved. Lastly, Member States that shall take the necessary measures to comply with this

Framework Decision not later than 31.12.2002. Furthermore, the Council will by the 30.06.2004 assess the extent to which Member States have taken the necessary measures to comply with this Framework Decision.