

Combating the sexual exploitation of children and child pornography: recognition and enforcement of prohibitions arising from convictions for sexual offences

2004/0818(CNS) - 05/11/2004 - Legislative proposal

PURPOSE : to present a Belgian initiative which aims to adopt a framework decision on the recognition and enforcement in the European Union of prohibitions arising from convictions for sexual offences committed against children.

CONTENT : it should be noted that this initiative is intended as a useful supplement, in the particularly troubling area of sexual offences against children, to the proposal for a Council Decision on the exchange of information extracted from criminal records (please refer to CNS/2004/0238).

Combating the sexual exploitation of children and child pornography, and in particular combating risks of recidivism in this context, should be a priority for the Union. In this particular area Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography established a minimum common EU approach to these criminal offences, in particular as regards the type of penalty and prohibition that should be provided for by national legislation. The principle of mutual recognition should be applicable to temporary or permanent prohibition from exercising professional activities related to the supervision of children, which is expressly provided for by the Framework Decision, where that prohibition is consequent upon a criminal conviction for one of the offences connected to the sexual exploitation of children and child pornography.

Awareness of the existence of such a prohibition in one Member State is a prerequisite for its recognition and enforcement in another Member State. Several international instruments govern the exchange of information on convictions, in particular the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, which provides that Member States are to inform each other of all criminal convictions and subsequent measures entered in the criminal records that concern their nationals. It is necessary to improve the existing legal framework for exchanging information on the prohibitions associated with such convictions. This draft Framework Decision applies to the offences covered in Articles 2, 3 and 4 of Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography.

Its purpose is to establish the rules under which a Member State shall recognise and enforce in its territory prohibitions arising from convictions for such offences.

The proposed Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

More specifically, the drafts states that Member States shall take the necessary steps to ensure that any prohibition is registered in the criminal record. When the issuing State passes on criminal record information to another Member State under the applicable international rules on mutual legal assistance in criminal matters, it shall mention the prohibition in the excerpt from the criminal record. The central authority of the issuing State shall also indicate the duration of the prohibition.

Where application is made in the framework of this Framework Decision for the criminal records of a Member State, in accordance with national law, with a view to obtaining information on a national of another Member State, an application shall always be made to the central authority of the Member State of which the person concerned is a national.

Moreover, the proposal highlights the procedures for the recognition and enforcement of the prohibition. The competent authorities of the enforcing State shall recognise any prohibition, without any formalities being required, and shall enforce it, unless the competent authorities decide to invoke one of the grounds for non-recognition or non-enforcement stated below. When an enforcing State is informed of the existence of a prohibition, it shall forward that information to the competent authority. The competent authority shall issue its decision within thirty days of such information being forwarded.

On the other hand, the proposal sets out reasons for non-recognition or non-enforcement. Refusal to recognise and enforce a prohibition may only happen if: the penalty is time-limited under the law of the enforcing State, where the offences concerned are subject to the jurisdiction of that State under its own criminal law; the conviction was handed down in default of appearance and the person concerned was not summoned in person nor otherwise informed of the date and location of the hearing that led to the conviction handed down in default of appearance; a conviction was handed down on the person concerned for the same offences in the enforcing State.

If the duration of the prohibition exceeds the maximum provided for by the law of the enforcing State for the same offence, the duration of the enforced prohibition shall be reduced to that maximum.

Each Member State shall put in place the necessary arrangements to ensure that the convicted person has a non-suspensive legal remedy against the recognition and enforcement of a prohibition.

Lastly, the central authority of the issuing State shall inform the central authority of the enforcing State of any subsequent measure affecting the prohibition, including review, pardon, amnesty, rehabilitation and erasure.