Basic information

2001/0025(CNS) CNS - Consultation procedure Decision	Procedure completed
Combating the sexual exploitation of children and child pornography: criminal offences, penalties and sanctions. Framework decision Repealed by 2010/0064(COD) **Subject** 4.10.03 Child protection, children's rights 7.30.30.02 Action to combat violence, trafficking in human beings and migrant smuggling 7.40.04 Judicial cooperation in criminal matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties and Internal Affairs	KARAMANOU Anna (PSE)	27/02/2001

Committee for opinion	Rapporteur for opinion	Appointed
FEMM Women's Rights (Associated committee)	PRETS Christa (PSE)	27/02/2001

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2370	2001-09-27
Justice and Home Affairs (JHA)	2423	2002-04-25
Justice and Home Affairs (JHA)	2396	2001-12-06
Justice and Home Affairs (JHA)	2455	2002-10-14
Environment	2556	2003-12-22

European Commission

Commission DG	Commissioner
Justice and Consumers	

Key events

Date	Event	Reference	Summary
15/07/1998	Committee referral announced in Parliament		

22/01/2001	Legislative proposal published	COM(2000)0854	Summary
29/05/2001	Vote in committee		Summary
29/05/2001	Committee report tabled for plenary, 1st reading/single reading	A5-0206/2001	
11/06/2001	Debate in Parliament		Summary
12/06/2001	Decision by Parliament	T5-0313/2001	Summary
27/09/2001	Debate in Council		Summary
06/12/2001	Debate in Council		
25/04/2002	Debate in Council		
22/12/2003	Act adopted by Council after consultation of Parliament		
22/12/2003	End of procedure in Parliament		
20/01/2004	Final act published in Official Journal		

Technical information

Procedure reference	2001/0025(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
Amendments and repeals	Repealed by 2010/0064(COD)
Legal basis	Treaty on European Union (after Amsterdam) M 029 Treaty on European Union (after Amsterdam) M 031 Treaty on European Union (after Amsterdam) M 034-p2 Rules of Procedure EP 57_o
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/4/10339

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Document attached to the procedure		B5-0496/2000	23/05/2000	
Document attached to the procedure		B5-0499/2000	26/05/2000	
Committee report tabled for plenary, 1st reading/single reading		A5-0206/2001	29/05/2001	
Text adopted by Parliament, 1st reading/single reading		T5-0313/2001 OJ C 053 28.02.2002, p. 0023-0108 E	12/06/2001	Summary

European Commission

Document type	Reference	Date	Summary

Legislative proposal	COM(2000)0854	22/01/2001	Summary
Follow-up document	COM(2007)0716	16/11/2007	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CofR	Committee of the Regions: opinion	CDR0087/2001 OJ C 357 14.12.2001, p. 0041	14/06/2001	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Justice and Home Affairs act 2004/0068
OJ L 013 20.01.2004, p. 0044-0048 Summary

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.

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

2001/0025(CNS) - 12/06/2001 - Text adopted by Parliament, 1st reading/single reading

In adopting the report of Anna KARAMANOU (PES, GR) (see previous document), the European Parliament approved it by 446 votes in favour, 16 against and 48 abstentions. In adopting the report, the European Parliament voted to delete the Commission's text that certain images should not be considered child pornography if it is determined that the person posing as a child was actually older than 18 years. Finally, MEPs advocated better protection of and asistance to victims and witnesses and stated that financial compensation for rehabilitation should be compulsory and be financed out of confiscated proceeds of crime. Furthermore, registers should be made of all persons convicted of serious sexual offences against children or of child pornography. These registers should be accessible to all Member States and Europol.

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

2001/0025(CNS) - 27/09/2001

The Council, given the divergent views that appeared during the preparatory proceedings, examined certain key questions identified by the Presidency on the draft Framework Decision on combating the sexual exploitation of children and child pornography, namely: - should the Framework Decision in principle cover child pornography in all cases involving realistic images of a child, and in particular the following two cases: when the person represented appears to be a child but is actually over 18 years of age on the date of the image?; when a real person is not represented (virtual pornography)? - could the field of application covering the cases referred to above be accompanied by exceptions as regards charges and sentences? - should child prostitution and the participation of children in pornographic performances be criminalised, whatever the age of the child involved? - should the production, acquisition and possession of child pornography in general be criminalised, even if there is no intention of distribution, in keeping with the Joint Action of 24 February 1997, which does not contain such a limitation? - should an exception be made from the obligation to criminalise child pornography where images of persons over the age of sexual consent are produced, acquired and possessed with the agreement of the persons concerned and solely for their own private use? In conclusion, the Chairman noted that the responses to the four questions show a large majority in favour of a broad scope for the Framework Decision. However, many delegations argued in favour of a differentiated approach which would take into account the age of the victim as regards the level of sentences to be imposed, especially when the victim has reached the age of sexual consent. In addition, the Council adopted the general approach of providing for an exception there images of a person over the age of sexual consent are produced, acquired and possessed with the agreement of the persons concerned and solely for their own private use. The Council instructed its preparatory bodies to continue their work expeditiously on the basis of the guidelines agreed by the Council, with a view to reaching political agreement as soon as possible.

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.

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

2001/0025(CNS) - 16/11/2007 - Follow-up document

In accordance with provisions set out in the Council Framework Decision on combating the sexual exploitation of children and child pornography, the Commission is required to prepare a report on measures taken by the Member States to comply with the Decision. The value of the report, therefore, depends to a large extent on the information forwarded to the Commission by the Member States. By January 2006 only two Member States namely Belgium and Austria had notified the Commission of measures taken. By the end of April 2007, the Commission had received no contribution from Greece, Portugal and Malta.

Assessment: the sexual exploitation of children and child pornography constitutes a serious violation of human rights and the Decision was adopted in order to complement existing Community instruments and to approximated the laws of the Member States on this matter. The Decision introduces a set of common provisions in order to address criminalisation, penalties and other sanctions, aggravating circumstances, jurisdiction, prosecution as well as protection of, and assistance to, victims. The legal systems of the Member States can vary greatly and in many cases legal concepts and expressions cannot always be easily compared to one another. The information received by the Commission varies considerably, especially in terms of its completeness. Not all of the Member States forwarded the relevant texts. Below, is a summary of the Commission's findings on the information it did receive:

Definitions: in most cases the report finds that the definitions have been correctly implemented and no areas of major concern have arisen. In the case of "child pornography" most of the Member States have adopted legislation which is consistent with that set out in the Framework Decision. The Czech Republic, Estonia, Latvia, Lithuania, Luxembourg, Poland, Spain and Sweden do not have a detailed definition of child pornography. Concerning the definition "Computer system" the Czech Republic, Lithuania and Poland have not forwarded the relevant documentation to evaluate their implementation properly.

Offences concerning the sexual exploitation of children: the report points out that Member States' legal systems vary widely making comparisons not always easy. Also, the Commission works mainly through translated documents and misunderstandings are therefore always possible. However, a general overview of national legislation shows that the provisions applicable in Member States mostly comply with the requirements of the Framework Decision with respect to the sexual exploitation of children.

Offences concerning child pornography: the report finds that whilst national legislation seems to comply with the minimum requirement of criminalisation of child pornography, there is nevertheless a general lack of information concerning permitted exceptions. The Commission only received complete information from Hungary, Lithuania, Italy, Denmark, Germany and Cyprus. As a result is has not been possible to evaluate the real level of protection of children above the age of sexual consent, which is a sensitive issue especially in countries where the age of sexual consent is below 16.

Instigating, aiding, abetting and attempt: the information received by the Commission referred to the general rules on complicity and inchoate offences under their criminal system. The general rules would also apply to the crime committed towards minors, namely sexual exploitation and crime related to child pornography.

Penalties and aggravating circumstances: this is one of the Decision's key provisions. Offences, as identified in the Decision, should in all cases be sanctioned with imprisonment of a maximum of at least between one and three years. This provision is intended to ensure a minimum harmonisation in relation to the penalties applicable to the offenders. All Member States seem to comply with the requirements of the Decision. However, documentation forwarded to the Commission by Spain, Slovenia, Estonia and Luxembourg has not enabled the Commission to establish a clear picture regarding the legal system implementing the requirements of the Decision.

Liability and sanctions on legal persons: legal persons will be held liable for offences committed for their benefit by any person acting either individually or as part of the organ of the legal person, or, for example, by a person who exercises a power of decision. As regards information on national systems submitted to the Commission, the legislation of most Member States provides for the possibility of applying sanctions against legal persons, at least by means of administrative measures.

Jurisdiction and prosecution: the Member States are obliged to establish jurisdiction over the offences set out in the Decision. The main rule being the territoriality principle, according to which each Member State must establish its jurisdiction over offences committed in whole or in part in its territory. (One of the provisions has since been replaced with the European Arrest Warrant). These requirements are of particular importance in order to ensure the effective prosecution of sex tourism. In principle, therefore, the Member States should guarantee the same level of protection of children regardless of whether they are resident in one or another country. Concerning extra-territorial jurisdiction, the Member States did not offer sufficient information to evaluate how far they have gone in the implementation of such a rule.

Protection of and assistance to victims: generally speaking, the Member States complied with the rule that states investigating or prosecuting offences covered by the Framework Decision will not be dependent on the report or accusation made by the victim when the territorial jurisdiction rules applies. On the matter of child victims who are considered particularly vulnerable, Member States' replies were fragmented and incomplete. An overall analysis of this requirement was therefore not possible. On a final point, Germany, Latvia, Sweden, the UK, Austria and Estonia provided the Commission with information showing that they apply the rules to provide specific protection of and assistance to the victim's family.

Conclusions: on the basis of information received, the report concludes that requirements set out in the Decision have been met by most, though not all, of the Member States – either as a result of pre-existing domestic laws or through the implementation of new and specific legislation. Generally speaking, Member States' legislation ensures a high level of protection for children and provides for an appropriate level of penalties. In cases where the Decision has not been implemented into national provisions, the Commission invites the relevant Member States to correct the situation as soon as possible through the introduction of implementing legislation.

The report also finds that new issues have been raised since the rise in electronic communications. This includes, for example, fraudulent solicitation of children for illicit purposes through the internet. At the same time, new methods aimed at effectively detecting such crimes and of identifying child victims through specialised law enforcement units are being developed. The Commission may consider the need to update and further strengthen the present Framework Decision regarding child exploitation and related offences – in particular offences committed through electronic communication networks and information systems.