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Committee on Culture and Education

2010/0064(COD)

18.6.2010

DRAFT OPINION

of the Committee on Culture and Education

for the Committee on Civil Liberties, Justice and Home Affairs

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
(COM(2010)0094 – C7-0088/2010 – 2010/0064(COD))

Rapporteur: Petra Kammerevert

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SHORT JUSTIFICATION

1. The European Commission is seeking by means of this Directive to make progress in combating sexual abuse and sexual exploitation and the depiction of sexual acts involving persons below the age of 18.
2. The proposal assumes that criminal offences in this area are on the increase, that the development of modern communications is exacerbating this problem and the regulations in the EU Member States are neither tough enough nor coherent enough.
3. The proposal contains provisions defining criminal offences and sanctions which are to serve to achieve the aims set out in paragraph 1.
4. It is questionable whether this proposal will accomplish these aims:
 - a) Electronic media content depicting sexual acts involving persons below the age of 18 must be removed as rapidly as possible. It is evident that the measures to block access to such content put in place in some Member States can easily be circumvented by users. Blocking mechanisms are not an effective means of combating such depictions. They are of limited efficiency, imprecise and easily bypassed. Blocking does not lead to the elimination of the content, only to their relative non-availability, which does not put an end to the infringement involved in their being 'made available'.
 - b) The EU Member States and the telecommunications operators active in them have functioning transnational networks which as a rule guarantee rapid deletion of content. Recent publications about Scandinavian blocking lists show that a large number of such servers are located in the USA, Australia, the Netherlands and Germany. There is as yet no proof that providers of such content are migrating to countries in which deletion is impossible or only takes place after a considerable lapse of time.
 - c) Establishing technical blocking mechanisms enables large-scale monitoring of communication flows and arouses appetites for other prohibited or otherwise merely undesirable content. Once the internet blocking instrument has been established, it will not be used only as a measure to combat the depiction on the internet of sexual acts involving persons below the age of 18. Blocking of access represents a risk of a fundamental shift away from the principle of net neutrality.
 - d) A multidimensional strategy is required that will strengthen and enhance the cooperation between police forces, internet businesses, existing internet complaints bodies and the INHOPE provider network.
 - e) Access blocking mechanisms undermine confidence in the freedom of information and communication on the internet. Accordingly it is not possible to accept the maxim 'deletion rather than blocking', since this too will require the establishment of a blocking infrastructure. It is to be expected that only occasional offenders will be deterred by means of blocking, which cannot justify such a far-reaching interference with the freedom of information.

- f) Measures to combat the depiction of sexual acts involving persons below the age of 18 cannot be limited to web servers. An approach is needed which also encompasses the exchange of such content by FTP, e-mail, peer to peer networks and mobile telephony.
 - g) The need to protect children and young people during their sexual maturing process must be assessed in differentiated fashion specifically in criminal law on sex offences. Without such differentiation, the area of criminal offences relating to sexual exploitation would be very considerably expanded in several EU Member States.
 - h) An overall global strategy is needed to deal with the sexual exploitation of young people. To this end, it would be desirable for the Commission, in so far as it can, to take the initiative to bring about international binding agreements.
5. For the above reasons there are considerable doubts as to whether the objectives set out in the proposal for a directive can be achieved by means of the measures proposed.

The key points of your rapporteur's proposal are therefore as follows:

- *Rejection of specific provisions for the establishment of internet blocking mechanisms and encouragement Europe-wide for deletion of the content targeted by the Directive.*
- *Abandonment of a Europe-wide definition of the terms 'child' and 'child pornography'.*
- *No introduction of criminal liability for legal persons.*
- *No introduction of an obligation to report suspected sexual exploitation or sexual abuse.*
- *Abandonment of specifically determined punishments for the defined offences.*
- *Reinforced protection for victims and reinforced prevention measures both at EU level and at the level of the Member States.*
- *Reinforcement and up-to-date organisation of international cooperation arrangements for the deletion of content, the prosecution of offences, the protection of victims and prevention.*

AMENDMENTS

The Committee on Culture and Education calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive

Recital 1

Commission proposal

Amendment

(1) Sexual abuse and sexual exploitation of

(1) Sexual abuse and sexual exploitation of

children, including **child pornography** constitute serious violations of fundamental rights, in particular the rights of the child to protection and care as is necessary for his or her well-being as stipulated by the UN Convention on the Rights of the Child and the Charter of Fundamental Rights of the European Union.

children, including **the depiction of sexual acts involving persons below the age of 18**, constitute serious violations of fundamental rights, in particular the rights of the child to protection and care as is necessary for his or her well-being as stipulated by the UN Convention on the Rights of the Child and the Charter of Fundamental Rights of the European Union.

Or. de

Justification

The terms 'child pornography', 'child abuse content' and 'child pornography content' are not used consistently in the proposal for a directive. For the sake of legal clarity, these terms should be abandoned and the phrase 'depiction of sexual acts involving persons below the age of 18' should be used throughout.

Amendment 2

Proposal for a directive Recital 2

Commission proposal

(2) **Child pornography, which consists of images of child sex abuse**, and other **particularly serious** forms of sexual abuse and sexual exploitation of **children** are increasing and spreading through the use of new technologies and the internet.

Amendment

(2) **The depiction of sexual acts involving persons below the age of 18** and other forms of sexual abuse and sexual exploitation of **persons below the age of 18** are increasing and spreading through the use of new technologies and the internet.

Or. de

Amendment 3

Proposal for a directive Recital 5

Commission proposal

(5) Serious criminal offences such as the sexual exploitation of **children** and **child pornography** require a comprehensive

Amendment

(5) Serious criminal offences, such as **the sexual abuse and** the sexual exploitation of **persons below the age of 18** and **the**

approach covering the prosecution of offenders, the protection of *child* victims, and prevention of the phenomenon. ***The child's best interests must be a primary consideration when carrying out any measures to combat these offences in accordance with the Charter of Fundamental Rights of the European Union and the UN Convention on the Rights of the Child.*** Framework Decision 2004/68/JHA should be replaced by a new instrument providing such comprehensive legal framework to achieve that purpose.

depiction of sexual acts involving persons below the age of 18, require a comprehensive approach covering the prosecution of offenders, the protection of victims ***below the age of 18***, and prevention of the phenomenon. Framework Decision 2004/68/JHA should be replaced by a new instrument providing such comprehensive legal framework to achieve that purpose.

Or. de

Justification

The fundamental rights in the Charter of Fundamental Rights of the European Union all have equal status. Establishing the primacy of a fundamental right carries the danger that further rights, such as the freedom of communication, cannot be fully respected. In order to achieve optimal application of all fundamental rights, each individual issue has to be weighed up. In this process, law of a higher order, such as the UN Convention on the Rights of the Child, will each time be given due consideration.

Amendment 4

Proposal for a directive Recital 6

Commission proposal

(6) Serious forms of *child* sexual abuse and sexual exploitation should be subject to effective, proportionate *and dissuasive* sanctions. ***This includes, in particular, various forms of sexual abuse and sexual exploitation facilitated by the use of information and communication technology. The definition of child pornography should also be clarified and brought closer to that contained in international instruments.***

Amendment

(6) Serious forms of sexual abuse and sexual exploitation of ***persons below the age of 18, and the depiction of such activities, including by means of information and communication technologies***, should be subject to effective ***and*** proportionate sanctions.

Or. de

Justification

All forms of sexual abuse and sexual exploitation can potentially be facilitated by the use of information and communication technologies. The current formulation creates the impression that the internet is dangerous in itself. Modern means of communication are not the reason for particularly serious forms of criminal offences.

Amendment 5

Proposal for a directive

Recital 8

Commission proposal

(8) Investigating offences and bringing charges in criminal proceedings should be facilitated, to take into account the difficulty for child victims of denouncing abuse and the anonymity of offenders in cyberspace. To ensure successful investigations and prosecutions of the offences referred to in this Directive, effective investigation tools should be made available to those responsible for the investigation and prosecutions of such offences. ***These tools may include covert operations, interception of communications, covert surveillance including electronic surveillance, monitoring of bank accounts or other financial investigations.***

Amendment

(8) Investigating offences and bringing charges in criminal proceedings should be facilitated, to take into account the difficulty for child victims of denouncing abuse and the anonymity of offenders in cyberspace. To ensure successful investigations and prosecutions of the offences referred to in this Directive, effective investigation tools should be made available to those responsible for the investigation and prosecutions of such offences.

Or. de

Justification

There is no need for the further enumeration of the investigation tools considered by the Commission to be effective, especially since those listed here are currently highly controversial in several EU Member States and their application and development has been declared in part unconstitutional because of serious breaches of fundamental rights.

Amendment 6

Proposal for a directive Recital 10

Commission proposal

(10) Measures to protect **child** victims should be adopted in their best interest, taking into account an assessment of their needs. **Child** victims should have easy access to legal remedies, including free legal counselling and representation and measures to address conflicts of interest where abuse occurs in the family. Moreover, **child** victims should be protected from sanctions, for example under national legislation on immigration or prostitution, if they bring their case to the attention of competent authorities. Furthermore, participation in criminal proceedings by **child** victims should not cause additional trauma as a result of interviews or visual contact with offenders.

Amendment

(10) Measures to protect victims **below the age of 18** should be adopted in their best interest, taking into account an assessment of their needs. **These** victims should have easy access to legal remedies, including free legal counselling and representation and measures to address conflicts of interest where abuse occurs in the family. Moreover, victims **below the age of 18** should be protected from sanctions, for example under national legislation on immigration or prostitution, if they bring their case to the attention of competent authorities. Furthermore, participation in criminal proceedings by victims **below the age of 18** should not cause additional trauma as a result of interviews or visual contact with offenders.

Or. de

Amendment 7

Proposal for a directive Recital 11

Commission proposal

(11) To prevent and minimise recidivism, offenders should be subject to an assessment of the danger posed by the offenders and the possible risks of repetition of sexual offences against **children**, and should have access to effective intervention programmes or measures on a voluntary basis.

Amendment

(11) To prevent and minimize recidivism, offenders should be subject to an assessment of the danger posed by the offenders and the possible risks of repetition of sexual offences against **persons below the age of 18**, and should have access to effective intervention programmes or measures on a voluntary basis.

Or. de

Amendment 8

Proposal for a directive Recital 12

Commission proposal

(12) Where the danger posed by the offenders and the possible risks of repetition of the offences make it appropriate, convicted offenders should be temporarily or permanently prevented from exercising activities involving regular contacts with **children**, where appropriate. Implementation of such prohibitions throughout the EU should be facilitated.

Amendment

(12) Where the danger posed by the offenders and the possible risks of repetition of the offences make it appropriate, convicted offenders should be temporarily or permanently prevented from exercising activities involving regular contacts with **persons below the age of 18**, where appropriate. Implementation of such prohibitions throughout the EU should be facilitated. ***Application of the due process of law should be a precondition for this.***

Or. de

Amendment 9

Proposal for a directive Recital 13

Commission proposal

(13) ***Child pornography, which constitutes sex abuse images, is a specific type of content which cannot be construed as the expression of an opinion. To combat it, it is necessary to reduce the circulation of child abuse material by making it more difficult for offenders to upload such content onto the publicly accessible Web.*** Action is therefore necessary to remove the content at source and apprehend those guilty of making distributing or downloading **child abuse images**. The EU, in particular through increased cooperation with third countries and international organisations, should seek to facilitate the effective removal by third country authorities of websites containing child

Amendment

(13) ***The depiction of sexual acts involving persons below the age of 18 constitutes a type of content whose production, dissemination, duplication or purchase is not safeguarded with reference to fundamental rights.*** Action is therefore necessary to remove the content at source and ***to apprehend and subject to the due process of law*** those guilty of making, distributing or downloading ***such content***. The EU, in particular through increased cooperation with third countries and international organisations ***and with the help of bilateral or multilateral agreements***, should seek to facilitate the effective removal by third country authorities of websites containing child

pornography, which are hosted in their territory. ***However as, despite such efforts, the removal of child pornography content at its source proves to be difficult where the original materials are not located within the EU, mechanisms should also be put in place to block access from the Union's territory to internet pages identified as containing or disseminating child pornography. For that purpose, different mechanisms can be used as appropriate, including facilitating the competent judicial or police authorities to order such blocking, or supporting and stimulating Internet Service Providers on a voluntary basis to develop codes of conduct and guidelines for blocking access to such Internet pages.*** Both with a view to the removal and the blocking of child abuse content, cooperation between public authorities should be established and strengthened, particularly in the interest of ensuring that national lists of websites containing child pornography material are as complete as possible and of avoiding duplication of work. Any such developments must take account of the rights of the end users, adhere to existing legal and judicial procedures and comply with the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. The Safer Internet Programme has set up a network of hotlines whose goal is to collect information and to ensure coverage and exchange of reports on the major types of illegal content online.

pornography, which are hosted in their territory. ***Cooperation with the International Association of Internet Hotlines (INHOPE) should be stepped up.*** In order to avoid duplication of work, cooperation between public authorities should be established and strengthened. Any such developments must take account of the rights of the end users, adhere to existing legal and judicial procedures and comply with the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union. The Safer Internet Programme has set up a network of hotlines whose goal is to collect information and to ensure coverage and exchange of reports on the major types of illegal content online.

Or. de

Justification

Blocking of internet access requires as a technical precondition the introduction of a filter software that enables electronic communication to be monitored. The difficulty inherent in removing such content in non-EU countries is not sufficient argument for introducing internet blocking and its technical prerequisites. It is to be feared that the introduction of internet blocking will contravene the principle of proportionality (Article 5 TEU), particularly with

regard to possible restrictions on the freedom of information and communication.

Amendment 10

Proposal for a directive Recital 14

Commission proposal

(14) Since the objective of this Directive, namely to combat sexual abuse, sexual exploitation of **children** and **child pornography**, cannot be sufficiently achieved by the Member States alone and can therefore, by reasons of the scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principles of subsidiarity as referred to in Article 3 and Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in the latter Article, this Directive does not go beyond what is necessary to achieve that objective.

Amendment

(14) Since the objective of this Directive, namely to combat sexual abuse, sexual exploitation of **persons below the age of 18** and **the depiction of sexual acts involving persons below the age of 18**, cannot be sufficiently achieved by the Member States alone and can therefore, by reasons of the scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principles of subsidiarity as referred to in Article 3 and Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in the latter Article, this Directive does not go beyond what is necessary to achieve that objective.

Or. de

Amendment 11

Proposal for a directive Article 1

Commission proposal

This Directive aims to establish minimum rules concerning the definition of criminal offences and sanctions in the area of sexual exploitation of **children**. It also aims to introduce common provisions to strengthen the prevention of the crime and the protection of its victims.

Amendment

This Directive aims to establish minimum rules concerning the definition of criminal offences and sanctions in the area of **the sexual abuse and** sexual exploitation of **persons below the age of 18, and of the depiction of sexual acts involving persons below the age of 18**. It also aims to introduce common provisions to strengthen the prevention of the crime and the protection of its victims.

Justification

The Directive should refer consistently to 'sexual abuse, sexual exploitation and the depiction of sexual acts involving persons below the age of 18'. Minimum thresholds for sentences should not be set since the arrangements laid down call into question the systems of penalties in the Member States.

Amendment 12

Proposal for a directive
Article 2 – point a

*Commission proposal**Amendment*

(a) ‘child’ shall mean any person below the age of 18 years; **deleted**

Justification

The proposal for a directive is closely concerned with the organisation of individual sectors of criminal law in the Member States. In particular it should not dispense with the 3-tiered classification, used in many Member States, defining ‘child’ (below 14), ‘young person’ (14-18) and ‘adolescent’ (18-21). A Europe-wide definition of ‘child’ should therefore be avoided.

Amendment 13

Proposal for a directive
Article 2 – point b

*Commission proposal**Amendment*

(b) ‘child pornography’ shall mean **(b) ‘The depiction of sexual acts involving persons below the age of 18’**

Amendment 14

Proposal for a directive Article 2 b – point i

Commission proposal

(i) any material that visually depicts a **child** engaged in **real or** simulated sexually explicit conduct; or

Amendment

(i) any material that visually depicts a **person below the age of 18** engaged in simulated sexually explicit conduct; or

Or. de

Amendment 15

Proposal for a directive Article 2 b – point ii

Commission proposal

(ii) any depiction of the sexual organs of a **child** for primarily sexual purposes; **or**

Amendment

(ii) any depiction for primarily sexual purposes of the sexual organs of a **person below the age of 18; or**

Or. de

Amendment 16

Proposal for a directive Article 2 b – point iii

Commission proposal

(iii) any material that visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appearing to be a child, for primarily sexual purposes;

Amendment

deleted

Or. de

Justification

Linking criminality with constituent elements such as ‘appearing to be a child’ and ‘realistic

images’ means it becomes greatly extended. The constituent elements seem too vague, as everyone has their own idea of ‘appearing to be a child’ and ‘realistic’ or ‘true-to-life’. Acts committed against persons and their sexual self-determination, and not against a concept of such, should be punished.

Amendment 17

Proposal for a directive Article 2 b – point iv

Commission proposal

(iv) realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, regardless of the actual existence of such child, for primarily sexual purposes;

Amendment

deleted

Or. de

Justification

Linking criminality with constituent elements such as ‘appearing to be a child’ and ‘realistic images’ means it becomes greatly extended. The constituent elements seem too vague, as everyone has their own idea of ‘appearing to be a child’ and ‘realistic’ or ‘true-to-life’. Acts committed against persons and their sexual self-determination, and not against a concept of such, should be punished.

Amendment 18

Proposal for a directive Article 2 – paragraph c

Commission proposal

(c) ‘child prostitution’ shall mean the use of a **child** for sexual activities where money or any other form of remuneration or consideration is given or promised as payment in exchange for the **child** engaging in sexual activities, regardless of whether this payment, promise or consideration is made to the **child** or to a third person;

Amendment

(c) ‘child prostitution’ shall mean the use of a **person below the age of 18** for sexual activities where money or any other form of remuneration or consideration is given or promised as payment in exchange for the **person** engaging in sexual activities, regardless of whether this payment, promise or consideration is made to the **person** or to a third person;

Or. de

Amendment 19

Proposal for a directive

Article 2 d – point i

Commission proposal

(i) of a child engaged in real or simulated sexually explicit conduct; or

Amendment

(i) of a ***person below the age of 18*** engaged in real or simulated sexually explicit conduct; or

Or. de

Amendment 20

Proposal for a directive

Article 2 d – point ii

Commission proposal

(ii) of the sexual organs of a ***child*** for primarily sexual purposes;

Amendment

(ii) of the sexual organs of a ***person below the age of 18*** for primarily sexual purposes;

Or. de

Amendment 21

Proposal for a directive

Article 2 – point e

Commission proposal

(e) ‘legal person’ shall mean any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.

Amendment

deleted

Or. de

Justification

The introduction of criminal responsibility for legal persons is alien to the criminal justice systems of most Member States and must therefore be rejected. There is thus no need for a definition of 'legal person' in substantive criminal law.

Amendment 22

Proposal for a directive Article 3 – paragraph 1

Commission proposal

1. Member States shall take the necessary measures to ensure that the intentional conduct *referred to in paragraphs 2 to 5 is punishable.*

Amendment

1. Member States shall take the necessary measures to ensure that the ***subsequent*** intentional conduct ***is laid down in law as a criminal offence and, in accordance with their system of penalties, afforded a punishment which reflects the severity of the act.***

Or. de

Justification

Instead of introducing minimum thresholds for sentences, the Member States should simply be called on to furnish punishments for criminal offences in accordance with their system of penalties. In addition, due attention should be paid to the fact that modern thinking on criminal law sees punishments as primarily constituting rehabilitation.

Amendment 23

Proposal for a directive Article 3 – paragraph 2

Commission proposal

2. Causing, for sexual purposes, a ***child*** who has not reached the age of sexual consent under national law to witness sexual abuse or sexual activities, even without having to participate, ***shall be punishable by a maximum term of imprisonment of at least two years.***

Amendment

2. Causing, for sexual purposes, a ***person*** who has not reached the age of sexual consent under national law to witness sexual abuse or sexual activities, even without having to participate, ***constitutes an activity as described in paragraph 1.***

Or. de

Amendment 24

Proposal for a directive Article 3 – paragraph 3

Commission proposal

3. Engaging in sexual activities with a **child** who has not reached the age of sexual consent under national law ***shall be punishable by a maximum term of imprisonment of at least five years.***

Amendment

3. Engaging in sexual activities with a **person** who has not reached the age of sexual consent under national law ***constitutes an activity as described in paragraph 1.***

Or. de

Amendment 25

Proposal for a directive Article 3 – paragraph 4

Commission proposal

4. Engaging in sexual activities with a **child**, where:

Amendment

4. Engaging in sexual activities with a **person below the age of 18**, where:

Or. de

Amendment 26

Proposal for a directive Article 3 – paragraph 4 – point i

Commission proposal

(i) abuse is made of a recognised position of trust, authority or influence over the **child shall be punishable by a maximum term of imprisonment of at least eight years**; or

Amendment

(i) abuse is made of a recognised position of trust, authority or influence over the **person**; or

Or. de

Amendment 27

Proposal for a directive

Article 3 – paragraph 4 – point ii

Commission proposal

(ii) abuse is made of a particularly vulnerable situation of the ***child***, notably because of a mental or physical disability or a situation of dependence ***shall be punishable by a maximum term of imprisonment of at least eight years***; or

Amendment

(ii) abuse is made of a particularly vulnerable situation of the ***person***, notably because of a mental or physical disability or a situation of dependence; or

Or. de

Amendment 28

Proposal for a directive

Article 3 – paragraph 4 – point iii

Commission proposal

(iii) use is made of coercion, force or threats ***shall be punishable by a maximum term of imprisonment of at least ten years***.

Amendment

(iii) use is made of coercion, force or threats.

Or. de

Amendment 29

Proposal for a directive

Article 3 – paragraph 4 – subparagraph 1 a (new)

Commission proposal

Amendment

is committing an activity as described in paragraph 1.

Or. de

Amendment 30

Proposal for a directive Article 3 – paragraph 5

Commission proposal

5. Coercing a **child** into sexual activities with a third party ***shall be punishable by a maximum term of imprisonment of at least ten years.***

Amendment

5. Coercing a ***person below the age of 18*** into sexual activities with a third party ***constitutes an activity as described in paragraph 1.***

Or. de

Amendment 31

Proposal for a directive Article 4 – paragraph 1

Commission proposal

1. Member States shall take the necessary measures to ensure that the intentional conduct ***referred to in paragraphs 2 to 11 is punishable.***

Amendment

1. Member States shall take the necessary measures to ensure that the ***subsequent*** intentional conduct ***is laid down in law as a criminal offence and, in accordance with their system of penalties, afforded a punishment which reflects the severity of the act.***

Or. de

Amendment 32

Proposal for a directive Article 4 – paragraph 2

Commission proposal

2. Causing a **child** to participate in pornographic performances ***shall be punishable by a maximum term of imprisonment of at least two years.***

Amendment

2. Causing a ***person below the age of 18*** to participate in pornographic performances ***constitutes an activity as described in paragraph 1.***

Or. de

Amendment 33

Proposal for a directive Article 4 – paragraph 3

Commission proposal

3. Profiting from or otherwise exploiting a **child** participating in pornographic performances ***shall be punishable by a maximum term of imprisonment of at least two years.***

Amendment

3. Profiting from or otherwise exploiting a ***person below the age of 18*** participating in pornographic performances ***constitutes an activity as described in paragraph 1.***

Or. de

Amendment 34

Proposal for a directive Article 4 – paragraph 4

Commission proposal

4. Knowingly attending pornographic performances involving the participation of **children shall be punishable by a maximum term of imprisonment of at least two years.**

Amendment

4. Knowingly attending pornographic performances involving the participation of ***persons below the age of 18 constitutes an activity as described in paragraph 1.***

Or. de

Amendment 35

Proposal for a directive Article 4 – paragraph 5

Commission proposal

5. Recruiting a **child** to participate in pornographic performances ***shall be punishable by a maximum term of imprisonment of at least five years.***

Amendment

5. Recruiting a ***person below the age of 18*** to participate in pornographic performances ***constitutes an activity as described in paragraph 1.***

Or. de

Amendment 36

Proposal for a directive Article 4 – paragraph 6

Commission proposal

6. Causing a *child* to participate in child prostitution *shall be punishable by a maximum term of imprisonment of at least five years*.

Amendment

6. Causing a *person below the age of 18* to participate in child prostitution *constitutes an activity as described in paragraph 1*.

Or. de

Amendment 37

Proposal for a directive Article 4 – paragraph 7

Commission proposal

7. Profiting from or otherwise exploiting a *child* participating in child prostitution *shall be punishable by a maximum term of imprisonment of at least five years*.

Amendment

7. Profiting from or otherwise exploiting a *person below the age of 18* participating in child prostitution *constitutes an activity as described in paragraph 1*.

Or. de

Amendment 38

Proposal for a directive Article 4 – paragraph 8

Commission proposal

8. 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*.

Amendment

8. Engaging in sexual activities with a *person below the age of 18*, where recourse is made to child prostitution *constitutes an activity as described in paragraph 1*.

Or. de

Amendment 39

Proposal for a directive Article 4 – paragraph 9

Commission proposal

9. Coercing a ***child*** to participate in pornographic performances ***shall be punishable by a maximum term of imprisonment of at least eight years.***

Amendment

9. Coercing a ***person below the age of 18*** to participate in pornographic performances ***constitutes an activity as described in paragraph 1.***

Or. de

Amendment 40

Proposal for a directive Article 4 – paragraph 10

Commission proposal

10. Recruiting a ***child*** to participate in child prostitution ***shall be punishable by a maximum term of imprisonment of at least eight years.***

Amendment

10. Recruiting a ***person below the age of 18*** to participate in child prostitution ***constitutes an activity as described in paragraph 1.***

Or. de

Amendment 41

Proposal for a directive Article 4 – paragraph 11

Commission proposal

11. Coercing a ***child*** into child prostitution ***shall be punishable by a maximum term of imprisonment of at least ten years.***

Amendment

11. Coercing a ***person below the age of 18*** into child prostitution ***constitutes an activity as described in paragraph 1.***

Or. de

Amendment 42

Proposal for a directive Article 5 – paragraph 1

Commission proposal

1. Member States shall take the necessary measures to ensure that the intentional conduct *referred to in paragraphs 2 to 6 is punishable.*

Amendment

1. Member States shall take the necessary measures to ensure that the ***subsequent*** intentional conduct ***is laid down in law as a criminal offence and, in accordance with their system of penalties, afforded a punishment which reflects the severity of the act.***

Or. de

Amendment 43

Proposal for a directive Article 5 – paragraph 2

Commission proposal

2. Acquisition or possession of ***child pornography shall be punishable by a maximum term of imprisonment of at least one year.***

Amendment

2. Acquisition or possession of ***material containing depictions of sexual acts involving persons below the age of 18 constitutes an activity as described in paragraph 1.***

Or. de

Amendment 44

Proposal for a directive Article 5 – paragraph 3

Commission proposal

3. Knowingly obtaining access, by means of information and communication technology, to ***child pornography shall be punishable by a maximum term of imprisonment of at least one year.***

Amendment

3. Knowingly obtaining access, by means of information and communication technology, to ***depictions of sexual acts involving persons below the age of 18 constitutes conduct as defined in paragraph 1.***

Amendment 45

**Proposal for a directive
Article 5 – paragraph 4**

Commission proposal

4. Distribution, dissemination or transmission of *child pornography shall be punishable by a maximum term of imprisonment of at least two years.*

Amendment

4. Distribution, dissemination or transmission of *depictions of sexual acts involving persons below the age of 18 constitutes conduct as defined in paragraph 1.*

Or. de

Amendment 46

**Proposal for a directive
Article 5 – paragraph 5**

Commission proposal

5. Offering, supplying or making available *child pornography shall be punishable by a maximum term of imprisonment of at least two years.*

Amendment

5. Offering, supplying or making available *depictions of sexual acts involving persons below the age of 18 constitutes conduct as defined in paragraph 1.*

Or. de

Amendment 47

**Proposal for a directive
Article 5 – Paragraph 6**

Commission proposal

6. Production of *child pornography shall be punishable by a maximum term of imprisonment of at least five years.*

Amendment

6. Production of *depictions of sexual acts involving persons below the age of 18 shall constitute conduct as defined in paragraph 1.*

Or. de

Amendment 48

Proposal for a directive Article 6

Commission proposal

Member States shall take the necessary measures to ensure that the following **intentional** conduct is punishable:

The proposal, by means of information and communication technology, by an adult to meet a **child** who has not reached the age of sexual consent under national law, for the purpose of committing any of the offences referred to in Articles 3 (3) and Article 5 (6), where this proposal has been followed by material acts leading to such a meeting, **shall be punishable by a maximum term of imprisonment of at least two years.**

Amendment

Member States shall take the necessary measures to ensure that the following **intentionally committed** conduct is punishable **and that the crime, in accordance with their system of penalties, is afforded a punishment which reflects the severity of the act.**

A proposal by means of information and communication technology, by an adult to meet a **person** who has not reached the age of sexual consent under national law, for the purpose of committing any of the offences referred to in Articles 3(3) and 5(6), where this proposal has been followed by material acts leading to such a meeting.

Or. de

Amendment 49

Proposal for a directive Article 8

Commission proposal

The provisions of Article 3 (2), with regard to witnessing sexual activities, and (3); Article 4 (2) and (4) and Article 5 do not govern consensual sexual activities between **children or involving** persons who are close in age and degree of psychological and physical development or maturity, insofar as the acts did not involve any abuse.

Amendment

The provisions of Article 3(2), with regard to witnessing sexual activities, and (3); Article 4(2) and (4) and Article 5 do not govern consensual sexual activities between persons who are close **to each other** in age and degree of psychological and physical development or maturity, insofar as the acts did not involve any abuse.

Amendment 50

Proposal for a directive

Article 9 – Paragraph 1 – Letter a

Commission proposal

(a) the **child** has not reached the age of sexual consent under national law;

Amendment

(a) the **victim** has not reached the age of sexual consent under national law;

Or. de

Amendment 51

Proposal for a directive

Article 9 – Paragraph 1 – Letter b

Commission proposal

(b) the offence was committed against a **child** in a particularly vulnerable situation, notably because of a mental or physical disability or a situation of dependence;

Amendment

(b) the offence was committed against a **person below the age of 18** in a particularly vulnerable situation, notably because of a mental or physical disability or a situation of dependence;

Or. de

Amendment 52

Proposal for a directive

Article 9 – Paragraph 1 – Letter c

Commission proposal

(c) the offence was committed by a member of the family, a person cohabiting with the **child** or a person having abused their authority;

Amendment

(c) the offence was committed by a member of the family, a person cohabiting with the **victim** or a person having abused their authority;

Or. de

Amendment 53

Proposal for a directive

Article 9 – Paragraph 1 – Letter g

Commission proposal

(g) the offence endangered the life of the *child*;

Amendment

(g) the offence endangered the life of the *victim*;

Or. de

Amendment 54

Proposal for a directive

Article 9 – Paragraph 1 – Letter h

Commission proposal

(h) the offence involved serious violence or caused serious harm to the *child*.

Amendment

(h) the offence involved serious violence or caused serious harm to the *victim*.

Or. de

Amendment 55

Proposal for a directive

Article 10 – Paragraph 1

Commission proposal

1. 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 referred to in Articles 3 to 7 may be temporarily or permanently prevented from exercising activities involving regular contacts with *children*.

Amendment

1. 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 referred to in Articles 3 to 7 may be temporarily or permanently prevented from exercising activities involving regular contacts with *persons below the age of 18*.

Or. de

Amendment 56

Proposal for a directive Article 10 – Paragraph 3

Commission proposal

3. By way of derogation from Articles 7 (2) and 9 (2) of the Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from criminal records between Member States, Member States shall take the necessary measures to ensure that, for the purpose of effectively implementing the measure consisting in temporarily or permanently preventing the person from exercising activities involving regular contacts with **children**, in particular insofar as the requesting Member State subjects access to certain activities to conditions to ensure that candidates have not been convicted of any of the offences referred to in Articles 3 to 7 of this Directive, information concerning the disqualification arising from conviction of any of the offences referred to in Articles 3 to 7 of this Directive is transmitted when requested under Article 6 of that Framework Decision from the central authority of the Member State of the person's nationality, and that personal data concerning such disqualification provided under Article 7(2) and (4) of that Framework Decision may in all cases be used for such purpose.

Amendment

3. By way of derogation from Articles 7 (2) and 9 (2) of the Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from criminal records between Member States, Member States shall take the necessary measures to ensure that, for the purpose of effectively implementing the measure consisting in temporarily or permanently preventing the person from exercising activities involving regular contacts with **persons below the age of 18**, in particular insofar as the requesting Member State subjects access to certain activities to conditions to ensure that candidates have not been convicted of any of the offences referred to in Articles 3 to 7 of this Directive, information concerning the disqualification arising from conviction of any of the offences referred to in Articles 3 to 7 of this Directive is transmitted when requested under Article 6 of that Framework Decision from the central authority of the Member State of the person's nationality, and that personal data concerning such disqualification provided under Article 7(2) and (4) of that Framework Decision may in all cases be used for such purpose.

Or. de

Amendment 57

Proposal for a directive Article 11

Commission proposal

Article 11

Amendment

deleted

Liability of legal persons

1. Member States shall take the necessary measures to ensure that legal persons may be held liable for any of the offences referred to in Articles 3 to 7 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having a leading position within the legal person, based on one of the following:

(a) a power of representation of the legal person;

(b) an authority to take decisions on behalf of the legal person;

(c) an authority to exercise control within the legal person.

2. Member States shall also take the necessary measures to ensure that legal persons may be held liable where the lack of supervision or control by a person referred to in paragraph 1 of this Article has made possible the commission, by a person under its authority, of any of the offences referred to in Articles 3 to 7 for the benefit of that legal person.

3. Liability of legal persons under paragraphs 1 and 2 of this Article shall be without prejudice to criminal proceedings against natural persons who are perpetrators of, or accessories to, any of the offences referred to in Articles 3 to 7.

Or. de

Justification

Applying penalties to legal persons is alien to the criminal justice systems of most Member States, is inconsistent with the conception of penalties under those systems and is inappropriate. For example, it makes no sense if a youth organisation that has taken every precaution at an organisational level to avoid sexual abuse occurring during children's free-time activities but that subsequently discovers that one of its carers has committed an offence is required as a penalty to cease its activities altogether, to have its funding withdrawn or to disband.

Amendment 58

Proposal for a directive Article 12

Commission proposal

Article 12

Sanctions on legal persons

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 11 (1) is punishable by effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, for example:

(a) exclusion from entitlement to public benefits or aid;

(b) temporary or permanent disqualification from the practice of commercial activities;

(c) placing under judicial supervision;

(d) judicial winding-up;

(e) temporary or permanent closure of establishments which have been used for committing the offence.

2. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 11 (2) is punishable by penalties or measures which are effective, proportionate and dissuasive.

Amendment

deleted

Or. de

Amendment 59

Proposal for a directive Article 13

Commission proposal

Member States shall provide for the possibility of not prosecuting or imposing penalties on **child** victims of the offences referred to in Articles 4 and Article 5 (4) to (6) for their involvement in unlawful

Amendment

Member States shall provide for the possibility of not prosecuting or imposing penalties on victims of the offences referred to in Articles 4 and Article 5(4) to (6) for their involvement in unlawful

activities as a direct consequence of being subjected to those offences.

activities as a direct consequence of being subjected to those offences.

Or. de

Amendment 60

Proposal for a directive Article 15 – Paragraph 1

Commission proposal

1. Member States shall take the necessary measures to ensure that the confidentiality rules imposed by national law on certain professionals called upon to work in contact with **children** do not constitute an obstacle to the possibility, for those professionals, of their reporting to the services responsible for child protection any situation where they have reasonable grounds for believing that a **child** is the victim of offences referred to in Articles 3 to 7.

Amendment

1. Member States shall take the necessary measures to ensure that the confidentiality rules imposed by national law on certain professionals called upon to work in contact with **persons below the age of 18** do not constitute an obstacle to the possibility, for those professionals, of their reporting to the services responsible for child protection any situation where they have reasonable grounds for believing that a **person below the age of 18** is the victim of offences referred to in Articles 3 to 7.

Or. de

Amendment 61

Proposal for a directive Article 15 – Paragraph 2

Commission proposal

2. Member States shall take the necessary measures to encourage any person who knows about or suspects, in good faith, offences referred to in Articles 3 to 7 to report these facts to the competent services.

Amendment

deleted

Or. de

Justification

The obligation to report facts should be rejected. If there is a fear that a failure to report facts is itself punishable, this brings with it the danger of denunciations. Those genuinely affected by abuse would be subject to additional pressure. They would have to answer questions not only about the abuse itself but also about the possible complicity of the person entrusted with their care, which cannot be expected at their stage of development. There would be a danger that confidence in providers of assistance to victims would be destroyed or reduced because they would also be obliged to report facts.

Amendment 62

Proposal for a directive Article 17 – Paragraph 1

Commission proposal

1. ***Victims of*** the offences referred to in Articles 3 to 7 shall be provided assistance, support and protection, taking into account ***the*** best interests ***of the child***.

Amendment

1. ***Persons below the age of 18 who fall victim to*** the offences referred to in Articles 3 to 7 shall be provided assistance, support and protection, taking into account ***their*** best interests.

Or. de

Amendment 63

Proposal for a directive Article 17 – Paragraph 2

Commission proposal

2. Member States shall ensure that, where the age of a person subject to the offences referred to in Articles 3 to 7 is uncertain and there are reasons to believe that the person is ***a child***, the person is presumed to be ***a child*** in order to receive immediate access to assistance, support and protection in accordance with Article 18 and 19, pending verification of the age.

Amendment

2. Member States shall ensure that, where the age of a person subject to the offences referred to in Articles 3 to 7 is uncertain and there are reasons to believe that the person is ***below the age of 18***, the person is presumed to be ***such*** in order to receive immediate access to assistance, support and protection in accordance with Article 18 and 19, pending verification of the age.

Or. de

Amendment 64

Proposal for a directive Article 18 – Paragraph 2

Commission proposal

2. Member States shall take the necessary measures to ensure that the specific actions to assist and support victims in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular **child** victim, taking due account of the **child's** views, needs and concerns.

Amendment

2. Member States shall take the necessary measures to ensure that the specific actions to assist and support victims in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular victim, taking due account of the **victim's** views, needs and concerns.

Or. de

Amendment 65

Proposal for a directive Article 18 – Paragraph 3

Commission proposal

3. **Victims of** any of the offences referred to in Articles 3 to 7 shall be considered as particularly vulnerable victims pursuant to Article 2 (2), Article 8 (4) and Article 14 (1) of Framework Decision 2001/220/JHA.

Amendment

3. **Persons below the age of 18 who fall victim to** any of the offences referred to in Articles 3 to 7 shall be considered as particularly vulnerable victims pursuant to Article 2(2), Article 8(4) and Article 14(1) of Framework Decision 2001/220/JHA.

Or. de

Amendment 66

Proposal for a directive Article 19 – Title

Commission proposal

Protection of **child** victims in criminal investigations and proceedings

Amendment

Protection of victims in criminal investigations and proceedings

Or. de

Amendment 67

Proposal for a directive Article 19 – Paragraph 1

Commission proposal

1. Member States shall take the necessary measures to ensure that in criminal investigations and proceedings, judicial authorities appoint a special representative for the child victim where, by national law, the holders of parental responsibility are precluded from representing the **child** as a result of a conflict of interest between them and the **child** victim, or where the **child** is unaccompanied or separated from the family.

Amendment

1. Member States shall take the necessary measures to ensure that in criminal investigations and proceedings, judicial authorities appoint a special representative for the child victim where, by national law, the holders of parental responsibility are precluded from representing the **person below the age of 18** as a result of a conflict of interest between them and the victim, or where the **victim below the age of 18** is unaccompanied or separated from the family. ***The victim should be consulted before the decision is taken.***

Or. de

Amendment 68

Proposal for a directive Article 19 – Paragraph 2

Commission proposal

2. Member States shall ensure that **child** victims have immediate access to free legal counselling and to free legal representation, including for the purpose of claiming compensation

Amendment

2. Member States shall ensure that victims **below the age of 18** have immediate access to free legal counselling and to free legal representation, including for the purpose of claiming compensation.

Or. de

Amendment 69

Proposal for a directive Article 19 – Paragraph 3 – Letter a

Commission proposal

(a) interviews with the **child** victim take place without unjustified delay after the facts have been reported to the competent authorities;

Amendment

(a) ***in principle***, interviews with the victim ***below the age of 18*** take place without unjustified delay after the facts have been reported to the competent authorities;

Or. de

Amendment 70

Proposal for a directive Article 19 – Paragraph 3 – Letter b

Commission proposal

(b) interviews with the **child** victim take place, where necessary, in premises designed or adapted for this purpose;

Amendment

(b) ***in principle***, interviews with the victim ***below the age of 18*** take place, where necessary, in premises designed or adapted for this purpose;

Or. de

Amendment 71

Proposal for a directive Article 19 – Paragraph 3 – Letter c

Commission proposal

(c) interviews with the **child** victim are carried out by or through professionals trained for this purpose;

Amendment

(c) ***in principle***, interviews with the victim ***below the age of 18*** are carried out by or through professionals trained for this purpose;

Or. de

Amendment 72

Proposal for a directive

Article 19 – Paragraph 3 – Letter d

Commission proposal

(d) the same persons, ***if possible and where appropriate***, conduct all interviews with the ***child*** victim;

Amendment

(d) ***in principle***, the same persons conduct all interviews with the victim ***below the age of 18***;

Or. de

Amendment 73

Proposal for a directive

Article 19 – Paragraph 3 – Letter f

Commission proposal

(f) the ***child*** victim may be accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.

Amendment

(f) the victim ***below the age of 18*** may be accompanied by his or her legal representative or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person.

Or. de

Amendment 74

Proposal for a directive

Article 19 – Paragraph 4

Commission proposal

4. Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 3 to 7 all interviews with the ***child*** victim or, where appropriate, with a ***child*** witness, may be videotaped and that these videotaped interviews may be used as evidence in criminal court proceedings, according to the rules under

Amendment

4. Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 3 to 7 all interviews with the victim ***below the age of 18*** or, where appropriate, with a witness ***below the age of 18***, may be videotaped and that these videotaped interviews may be used as evidence in criminal court proceedings,

its national law.

according to the rules under its national law.

Or. de

Amendment 75

Proposal for a directive

Article 19 – Paragraph 5 – Letter b

Commission proposal

(b) the **child** victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies.

Amendment

(b) the victim ***below the age of 18*** may be heard in the courtroom without being present ***directly***, notably through the use of appropriate communication technologies.

Or. de

Amendment 76

Proposal for a directive

Article 20 – Paragraph 2 – Subparagraph 1

Commission proposal

2. Member States shall take the necessary measures to ensure that effective intervention programmes or measures are made available with a view to preventing and minimising the risks of repeated offences of a sexual nature against **children**. These programmes or measures shall be accessible at any time during the criminal proceedings, inside and outside prison, according to the conditions laid down in national law.

Amendment

2. Member States shall take the necessary measures to ensure that effective intervention programmes or measures are made available with a view to preventing and minimising the risks of repeated offences of a sexual nature against **persons below the age of 18**. These programmes or measures shall be accessible at any time during the criminal proceedings, inside and outside prison, according to the conditions laid down in national law.

Or. de

Amendment 77

Proposal for a directive

Article 20 – Paragraph 2 – Subparagraph 2

Commission proposal

Such intervention programmes or measures shall be adapted to meet the specific developmental needs for **children** who sexually offend, including those who are below the age of criminal responsibility.

Amendment

Such intervention programmes or measures shall be adapted to meet the specific developmental needs for **persons** who sexually offend, including those who are below the age of criminal responsibility.

Or. de

Amendment 78

Proposal for a directive

Article 21 – Paragraph 1

Commission proposal

1. Member States shall take the necessary measures to obtain the blocking of access by Internet users in their territory to Internet pages containing or disseminating child pornography. The blocking of access shall be subject to adequate safeguards, in particular to ensure that the blocking is limited to what is necessary, that users are informed of the reason for the blocking and that content providers, as far as possible, are informed of the possibility of challenging it.

Amendment

deleted

Or. de

Justification

Blocking access is disproportionate. If such blocking of access were introduced, all pages belonging to a domain with a single IP address, including legal subfolders and subdomains, would be blocked. Moreover, blocking access would require blocking lists to be drawn up. Should such lists fall into the hands of unauthorised persons, they could be misused as sales catalogues. It is possible to conduct an automated search of blocked internet pages using simple technology. Blocking access would in fact make it easier for paedophiles to find

criminal content.

Amendment 79

Proposal for a directive Article 21 – Paragraph 2

Commission proposal

2. *Without prejudice to the above,*
Member States shall take the necessary measures to obtain the removal of ***internet pages containing or disseminating child pornography.***

Amendment

2. Member States shall take the necessary measures to obtain the ***immediate*** removal of ***depictions of sexual acts involving persons below the age of 18 in information and communication services.*** ***The deletion of such content shall occur in accordance with the due process of the law and with adequate safeguards to ensure that only what needs to be deleted is deleted.***

Or. de