



Dear Members of the LIBE committee,

**Re: Sexual abuse and sexual exploitation of children and child abuse images ('child pornography')**

As key voices of European civil society, drawn from 21 EU member states, we are writing to urge the Members of the European Parliament to actively support the Commission's proposal for a Directive on combating the sexual abuse, sexual exploitation of children and child pornography in the exchange of views in the LIBE committee on Tuesday 27 April.

We, the undersigned NGOs, fully support the proposal and believe it is an important step forward which strengthens existing legislative child protection measures in the EU.

Promoting and respecting child rights is a key and necessary element of EU action - it is not a discretionary task of the EU, nor should it involve tokenistic efforts.<sup>1</sup> Where an EU policy specifically addresses or has an impact on the situation of vulnerable children, the EU must ensure that its actions secure children's rights to protection, by placing child protection concerns at the very centre of its legislation. Under Article 3 of the UN Convention on the Rights of the Child, the "best interest of the child" is to be the central principle in all legal instruments protecting children's rights.

We call on the European Parliament to consider fully the EU's obligations towards protecting children's rights, by supporting legislation that will ensure that the EU's measures fully respect and promote children's rights.

The draft Directive contains a broad range of provisions which tackle the wider setting within which child abuse takes place. However, much attention has, in recent debates, been focussed on 'Article 21' concerning blocking access to child abuse images published on the web.

We believe that it would be quite wrong for the debate on the draft Directive to focus solely on the images of child abuse. The images are but one part, one dimension, of a much, much bigger set of typically very tragic issues. Similarly, finding ways to deal with the images is also extremely important, indeed we believe it is absolutely vital, but it would be regrettable if that aspect were to dominate the debate on the many other key challenges which are reflected in and addressed by the other articles within the draft Directive.

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<sup>1</sup> All EU Member States have ratified the UN Convention on the Rights of the Child. The European Court of Justice has expressly recognized the need to respect children's rights and requires EU law to take due account of the UN Convention on the Rights of the Child (See e.g., Case C-540/03 European Parliament v. Council of the European Union [2006] ECR 5769). The Lisbon Treaty provides that protecting the rights of children is an objective of the EU, both internally and in its relations with the wider world. The EU Charter of Fundamental Rights clearly reaffirms the EU's commitment to human rights and, within that content, expressly to the rights of the child (Article 24). See also e.g., Case C-540/03 European Parliament v. Council of the European Union [2006] ECR 5769

Protection of some of the most fundamental child rights always has absolute priority. Bearing in mind the obligation to place the best interest of the child (UNCRC Art 3), at the centre of EU legislation, blocking offending sites from being viewed can be valuable as an effective means of protecting these children against access to the images by accidental viewers or those with a lower threshold of technological know how.

We urge the European Parliament to base its position on the following quotes from the landmark judgment of the European Court of Human Rights of 2<sup>nd</sup> of December 2008 (case of K.U. v. Finland, Application no 2872/02):

*“Sexual abuse is unquestionably an abhorrent type of wrongdoing, with debilitating effects on its victims. Children and other vulnerable individuals are entitled to State protection, in the form of effective deterrence, from such grave types of interference with essential aspects of their private lives”*

*“... although freedom of expression and confidentiality of communications are primary considerations and users of telecommunications and Internet services must have a guarantee that their own privacy and freedom of expression will be respected, such guarantee cannot be absolute and must yield on occasion to other legitimate imperatives, such as the prevention of disorder or crime or the protection of the rights and freedoms of others”.*

The fear that blocking could be extended to other issues, though based on the sincere concerns of some of our fellow citizens, is unfounded. Article 21 (1) of the proposal establishes the necessary safeguards. Moreover one may assume that in all Member States “the rule of law” is the basis for the use of criminal law instruments and tools - meaning that such instruments can only be used for the fight against the specific criminal activity envisaged in that legal instrument (i.e. online abuse images in this case) and that this happens under the control of the courts.

Without doubt the best way to prevent child abuse images being circulated on the internet is to stop child abuse happening in the first place. However, in light of the arguments above, it is simply not an admissible argument that, since taking down at source a child sexual abuse site is the most desirable law enforcement outcome, alternative options must be made unavailable to the defence of our children.

Please see attached a full briefing which addresses why we believe the measures outlined in Article 21 are crucial to protect children. We believe:

- Child abuse images are a visual record of abuse and humiliation
- The images undermine the child’s self confidence and self esteem
- The images are a gross violation of the child’s right to privacy
- Preventing further publication is a very important child protection measure
- Further publication re-abuses the child
- Further publication risks creating new child abusers
- Removal of the illegal images by deletion or take down is the preferred option
- Do not let the best be the enemy of the good – blocking can play a valuable role
- Other technologies present different challenges demanding different solutions
- Investigating the producers and distributors is essential in all cases
- Do we need a new, internationally based investigative police unit?
- We must improve our record of locating, identifying and helping victims
- Vital to reduce the possibility of the images reaching their intended markets
- Worries about “mission creep” must be addressed
- Democratic accountability and scrutiny are essential
- Working within the framework of the rule of law is fundamental

We would be happy to provide you with more information on all of the issues highlighted in the aforementioned briefing. Please do not hesitate to contact us if you have questions or would like to discuss these issues further.

Yours sincerely,

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*ECPAT International works for the elimination of child prostitution, child pornography and the trafficking of children for sexual purposes. It seeks to ensure that children everywhere enjoy their fundamental rights free and secure from all forms of commercial sexual exploitation. [www.ecpat.net](http://www.ecpat.net)*

*eNACSO, The European NGO Alliance for Child Safety Online is a network consisting of children's rights NGOs from across the EU working for a safer online environment for children. Our Mission is to promote and support actions at national, European and international level to protect children and promote their rights in relation to the Internet and new technologies. Our work is based on the 1989 UN Convention on the Rights of the Child (UNCRC) and the Optional Protocol to the UNCRC on the sale of children, child prostitution and child pornography. eNACSO is funded by the European Commission's Safer Internet Programme. [www.enacso.eu](http://www.enacso.eu)*

*Missing Children Europe is the European Federation for Missing and Sexually Exploited Children. It groups 24 organisations in 16 EU member countries and in Switzerland which are active in the fight against child disappearances and sexual abuse and exploitation of children. [www.missingchildreneurope.eu](http://www.missingchildreneurope.eu)*

*NSPCC – The NSPCC is the UK's leading NGO specialising in child protection. The NSPCC aims to end cruelty to children by seeking to influence legislation, policy, practice, attitudes and behaviours for the benefit of children and young people. This is achieved through a combination of service provision, lobbying, campaigning and public education. [www.nspcc.org.uk](http://www.nspcc.org.uk)*

*Save the Children's vision is a world in which every child attains the right to survival, protection, development and participation. We are 29 national organisations working in 120 countries worldwide. As the world's leading independent organisation for children, Save the Children's mission is to inspire breakthroughs in the way the world treats children, and to achieve immediate and lasting change in their lives. In Europe, 13 national Save the Children work together to promote children's rights in EU measures and action. [www.savethechildren.net/brussels](http://www.savethechildren.net/brussels)*