



JOINT NGO BRIEFING FOR MEPS

On the European Commission's proposal for a Directive 'on combating the sexual exploitation of children and child pornography'

We represent children's rights and child protection NGO's from 21 EU member states and this briefing is informed by our substantial practice experience of working on issues relating to child sexual abuse and sexual exploitation across the EU.

From our work at national and European level, we recognise that many aspects of child sexual abuse and exploitation, such as the risks to children resulting from greater movement of people across borders and the threats emerging from the rapidly changing online world and have wider European or international dimensions, and can no longer only be effectively tackled by national governments acting alone.

We strongly encourage MEPs to support this draft proposal which we believe is an important opportunity to improve existing EU legislation particularly in relation to improved cross-border cooperation around protecting children from sexual abuse and exploitation and catching up with developments, such as in the online environment and a greater focus on measures related to the prevention of sexual crimes against children rather than the punishment of crimes against children.

We welcome the European Commission's draft proposal and this briefing highlights issues which we consider to be of particular importance.

1. Guiding Principles – Best interests of the child

1.1 UN Convention on the Rights of the Child (UNCRC)

All EU member states have ratified the UNCRC. This establishes the best interests of the child as the guiding principle which should inform all political negotiations on the Directive. Moreover, Article 34 of the UNCRC commits states to 'protect the child from all forms of sexual exploitation and sexual abuse...' and to take all appropriate national, bilateral and multilateral measures to that end. Article 19 commits states to protect children from all forms of 'violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse'. The UNCRC also contains important general principles which should be taken into account throughout relevant legislation and measures. Furthermore, Article 24 of the EU's Charter of Fundamental Rights and Article 3 of the TEU obliges the EU to protect children's rights. The EU must therefore consider its obligations under international human rights law first and foremost during discussions on the Directive.

2. Terminology

2.1 Definition of a child: Article 2 of the UNCRC defines a ‘child’ as ‘any persons below the age of 18 years’. We support the proposal’s definition of ‘child’. It is also in line with the Council of Europe’s Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse¹ (‘CoE Convention’). The definition of the child must not be confused with the ‘age of consent’ which differs between member states.

2.2 Child abuse images: We support proposals to amend the terminology of ‘child pornography’ to ‘child abuse images’ in the current proposal and other future relevant legislation. This better reflects the content and nature of the image. Moreover, the word pornography implies an element of consent on the part of the child and allows offenders and potential offenders to minimise the seriousness of what they are doing when they look at images.

3. Protecting children from known sex offenders

3.1 Safer recruitment. Pre-employment screening checks are an essential part of safe recruitment processes aiming to protect children from abuse. They allow employers to find out whether prospective employees have previous convictions for sexual, violent or drug-related crimes which may make them unsuitable to work with children or whether they have been banned from working with children². Every person should be made subject to the same background checks when seeking work with children.

Significant numbers of people now move across EU borders, taking advantage of their right to live and work in other EU member states thanks to free movement provisions. The safe recruitment of people from other countries, or nationals who have lived abroad, currently presents significant challenges to employers. They need to be able to check whether the individual has a criminal record in any of the countries where they have lived. Cooperation between Member States needs to be sufficiently robust to ensure that convicted sex offenders cannot gain employment with children when they move between countries. In this regard, we believe Article 10 could be strengthened to oblige member states to carry out pre-employment checks. We believe Article 5(3) of the Council of Europe Convention addresses this, *“Each Party shall take the necessary legislative or other measures...to ensure that the conditions to accede those professions whose exercise implies regular contacts with children ensure that the candidates to those professions have not been convicted of acts of sexual exploitation or sexual abuse of children”*. Member State legislation should make clear that criminal records should be checked every time the person applies for a new job. It should also include persons involved in regular activities with children; an offender is not less likely to sexually abuse a child just because they are not in a paid position.

3.2 Creation of systems in all EU Member States to manage known sex offenders with a view to protecting children from the risk of further offences. We consider that an effective approach to minimising the risk that known sex offenders pose to children should in appropriate circumstances combine imprisonment and surveillance for the small minority of high risk offenders, linked to strategies focused on the rehabilitation and reintegration of all offenders and perpetrators, including therapeutic support. Recording and storing (conviction) information about sex offenders, with proper data protection safeguards in place, is essential as a means of minimising any risks to children in

¹ <http://conventions.coe.int/Treaty/EN/treaties/html/201.htm>

² Other measures are also needed to ensure that children are protected. For example, in addition to employee background checks, employers should conduct suitable interviews, take up references and provide appropriate training and supervision after appointments have been made.

future. Risk assessment of offenders is key in order to ensure that appropriate mechanisms are put in place to reduce risk to children. Currently the majority of states do not have a standardised process for assessing the risk posed by individual sex offenders.

4. Internet-related child sexual abuse offences

4.1 Criminalisation of online grooming – solicitation of children for sexual purposes. It is important to criminalise in all Member States the process of arranging an inappropriate meeting with a child with the intention of carrying out illegal sexual activity. Police should have the powers to intervene to prevent a meeting which is known to be imminent, rather than waiting until contact sexual abuse of a child has actually been attempted in order to arrest the abuser.

4.2 Combating child abuse images (child pornography). Child abuse images are visual representations of a child being abused. On top of the devastating impact of sexual abuse itself, research indicates there it creates additional distress for the child to have to live with the knowledge that once an image has been uploaded to the internet it may be replicated and downloaded an unlimited number of times. Child abuse images on the internet have massively increased in prevalence over the last few years³ and the internet has enabled a shift from small-scale, 'amateur', non-profit production of images, to the distribution of images by members of organised crime in order to benefit financially.

We believe that images of child abuse on websites should be deleted at source. The speed at which these images are taken down must be substantially improved. Moreover, where images are housed outside a country's national jurisdiction, we support the Directive's measures to oblige internet service providers to block access to them. In this regard, we support the Council's recommendation for a cyber crime agency as a means to improve cross border cooperation.

4.3 Identifying children who are abused in the production of images. We believe it is crucial that law enforcement agencies dedicate more time and resources to identifying children who have been victimised in these images in order to be able to protect and support them. In addition, we highlight that Member States must ensure that all child victims of sexual abuse and sexual exploitation are provided with protection and support, whether or not the abuse was linked to production of images.

4.4 Criminalisation of child pornography offences. Furthermore, it is important that the production of pseudo images of child abuse should also be criminalised, as this kind of material forms part of a subculture of sexual abuse material.

5. Support and protection for children

We welcome recommendations related to support and protection for children who have been abused. Investigation of abuse cases and legal proceedings must be child-centred, taking into account the best interests of the child.

In addition, we highlight that children who sexually harm other children should not be treated in the same way as adult offenders. Member States should ensure that children are offered an appropriate response which includes treatment to address both their offending behaviour and their developmental needs and engages the different agencies responsible for children's welfare. Where a penal sanction is

³ Figures from an Action for Children (formerly NCH) study show that in 1995 the Greater Manchester Police seized 12 images of child abuse images on paper and video (Carr, 2004). In 2004 the same Manchester police force arrested one man who alone was found to be in possession of almost 1,000,000 images (Carr, 2004). In 1996 the Internet Watch Foundation processed 615 complaints of online abuse images (85% relate to suspected child abuse websites), compared with 34,871 in 2007 (Internet Watch foundation annual report, 2006).

used it is essential that it is linked to treatment provisions for children, and that children are detained 'only as a last resort and for the shortest appropriate period of time' (Article 37 UNCRC).

Moreover, we believe the Directive could go further to ensure that member states the rights of victims are fully protected by adopting elements set out in Article 30 of the CoE Convention. In particular, the following principles should be added to Article 17.

- informing child victims of their rights and the services at their disposal and, unless they do not wish to receive such information, the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role therein as well as the outcome of their cases;
- ensuring, at least in cases where the victims and their families might be in danger, that they may be informed, if necessary, when the person prosecuted or convicted is released temporarily or definitively;
- protecting the privacy of child victims, their identity and their image and by taking measures in accordance with internal law to prevent the public dissemination of any information that could lead to their identification;
- providing for their safety, as well as that of their families and witnesses on their behalf, from intimidation, retaliation and repeat victimisation;
- ensuring that contact between victims and perpetrators within court and law enforcement agency premises is avoided, unless the competent authorities establish otherwise in the best interests of the child or when the investigations or proceedings require such contact.

6. Accompanying action

We recommend that EU legislative action should be accompanied by exchange of best practice on the implementation of some of its provisions, and where appropriate non-binding common guidelines or minimum standards which can assist Member States in developing their national systems in a way which best protects children.

This should include measures to ensure that children are educated about their rights to protection from abuse, how to protect themselves, and what to do if they are or have been abused. This is central to preventing and combating child abuse and exploitation, and includes teaching children about risks related to the use of internet and mobile phone technologies, and how to protect themselves in these environments.

Additional recommendations and further information:

We would be pleased to provide further detailed proposals, background information, and comments on the draft Directive. Please contact:

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