

Child Sexual Abuse and Exploitation Proposal for a new EU legal framework

INTRODUCTION

Save the Children was established in 1919 and is at the forefront in the fight for the rights of the child. Save the Children is an international movement for children's rights that currently comprises 27 organisations, spanning five continents and operating in over 120 countries.

Save the Children has been active for many years in raising awareness about the issue of child abuse and has implemented programmes to combat child abuse in all its forms. Within this programme framework, Save the Children gives direct help to children who have suffered sexual abuse by providing support through appropriate therapeutic projects. The sexual abuse of children represents a serious violation of children's rights. The advance of new technologies poses even greater concerns as perpetrators can easily exploit the technology for the acquirement, production and distribution of child abuse images.

Since the mid 1990s six members of the Save the Children Europe group have been engaged in combating the digital distribution of images depicting the sexual abuse of children and in raising awareness about child sexual abuse and exploitation via the internet and other new technologies. These organisations have worked together to implement hotlines, awareness raising campaigns and advocacy activities calling for increased and improved efforts at national and international levels to fight sexual abuse of children and the production and distribution of child abuse material.

One of the major difficulties in combating child sexual abuse and the commercial sexual exploitation of children via the internet is the international, multi-jurisdictional nature of the crime and its cross border activity. The Member States of the European Union (EU) have taken steps to tackle this problem, especially through the *EU Framework Decision on child sexual abuse and exploitation* ("EU Child Sexual Abuse Framework Decision") by defining, for example, what constitutes child pornography, and by attempting to harmonize legislation on the imposition of sentences within national penal codes.¹ The European Union has also agreed that the protection of children includes all citizens up to the age of eighteen.²

¹ Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography (2003) OJ L13/44; Council Decision of 29 May 2000 to combat child pornography on the Internet OJ L 138/1.

² This is in line with the UN Convention on the Rights of the Child definition of a child, which defines a "child" as being "every human being below the age of eighteen".

Save the Children welcomes the advances made by the EU in this area. However efforts have to be redoubled to ensure that effective measures are taken to tackle these crimes against children. Furthermore, Save the Children considers that the focus of attention should start with the protection and rehabilitation of children who are at risk or who have been subjected to sexual abuse. However, the approach to date has been a criminal justice one with the focus being on the offender more so than on the victim.³ Save the Children recalls that the Member States resolve in the EU Treaty to “ensuring the safety and security of their peoples by establishing an area of freedom, security and justice”. The time has come to place the protection of citizens, and in particular children, at the heart of the European Union’s strategy.

Steps to move forward in this direction have been made by the new *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse* (“CoE Convention”), which is similar in many respects to the EU Child Sexual Abuse Framework Decision but takes a much broader and holistic approach. It covers areas not dealt with by the EU Child Sexual Abuse Framework Decision and openly prioritises child protection. Save the Children considers that there is an important difference in the CoE Convention as the CoE Convention provides measures to prevent the abuse or sexual exploitation of children, and to identify and protect victims, whereas the EU Child Sexual Abuse framework Decision is silent on these subjects focussing instead on punishment of the offender.

Save the Children believes that EU legislation must improved to develop a more effective up-to-date legal framework in terms of child protection. Victim identification should be key to any new proposals for the Framework Decision. Save the Children believes that the EU Framework Decision forms a valid basis and considers the new CoE Convention to be a useful model but one which can also be improved upon. This report outlines existing EU legislation on combating the sexual exploitation and abuse of children, identifies gaps and makes recommendations towards the improvement of the current legislation in this area.⁴ Save the Children provides solutions to these gaps in the current legislation drawing from not only the CoE Convention but also from the approaches in other EU instruments to tackle cross border crime and protect citizens.

³ However, recitals 5, 6,10, 11 and 12 of the Framework Decision state that the legislation addresses specific needs of victims.

⁴ Visible Evidence Forgotten Children Launch Report (2007); Visible Evidence Forgotten Children (2006); and Save the Children Position Paper regarding on-line images of sexual abuse and other Internet-related sexual exploitation of Children (August 2005 Update).

Section 1: Legal Basis for Legislation

The Council Framework Decision on combating the sexual exploitation of children and child pornography (EU Child Sexual Abuse Framework Decision) is enacted having regard to Article 29⁵, Article 31(1)(e)⁶ and Article 34(2)(b)⁷ of the EU Treaty.

Article 29 EU sets out the objective of the European Union as being “to provide citizens with a high level of safety within an area of freedom, security and justice”. The primary goal of the EU Treaty, therefore, is to protect citizens with the protection of children being specifically identified as one of the Union’s objectives. This, according to Article 29 EU, is to be achieved by “preventing and combating crime” through closer cooperation between police forces and other competent authorities and through the European Police Office (Europol) and/or Eurojust. It may also involve approximation of rules on criminal matters. Therefore Article 29 EU enables the European Union to take measures to protect children which enhance co-operation between the appropriate authorities and to adopt legislation relating to criminal matters relating to the abuse of children.

Article 31(1)(e) EU enables the EU to adopt minimum rules relating to the constituent elements of criminal acts and to penalties on particular crimes.

⁵ Article 29 EU states: “Without prejudice to the powers of the European Community, the Union's objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia.

That objective shall be achieved by preventing and combating crime, organised or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud, through:

- closer cooperation between police forces, customs authorities and other competent authorities in the Member States, both directly and through the European Police Office (Europol), in accordance with the provisions of Articles 30 and 32;
- closer cooperation between judicial and other competent authorities of the Member States in accordance with the provisions of Articles 31(a) to (d) and 32;
- approximation, where necessary, of rules on criminal matters in the Member States, in accordance with the provisions of Article 31(e).” (own emphasis)

⁶ Article 31(1)(e) EU states: “Common action on judicial cooperation in criminal matters shall include: [...] progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking.”

⁷ Article 34(2) EU: “The Council shall take measures and promote cooperation, using the appropriate form and procedures as set out in this Title, contributing to the pursuit of the objectives of the Union. To that end, acting unanimously on the initiative of any Member State or of the Commission, the Council may: [...] adopt framework decisions for the purpose of approximation of the laws and regulations of the Member States. Framework decisions shall be binding upon the Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. They shall not entail direct effect.”

Article 34(2)(e) EU enables the EU to adopt framework decisions to implement these policies. These provisions are at the heart of the legislation to protect children against sexual exploitation.

The recommendations made by Save the Children accord with these legal provisions. Save the Children also considers that other provisions of the EU Treaty may also be relevant for the legal basis of the instrument in order to make it more effective. In particular, Save the Children considers that Article 31 EU generally could also be applied rather than relying on specific provisions of the article. Article 31 EU formed the legal basis of legislation permitting the exchange of information extracted from criminal records and is the legal basis for the European Evidence Warrant. Likewise, this provision could facilitate the exchange of information regarding the potential criminal cases relating to child sexual abuse cases and child sexual abuse images (child pornography). It is also the provision providing for the establishment of Eurojust.

Article 30 EU which provides for co-operation between the national authorities is also relevant. This provision could therefore be used to establish a formal network of specialist police officers within the national authorities to tackle child sexual abuse and child sexual abuse images.

Where applicable, Save the Children will draw attention to the legal basis for its proposals.

Save the Children proposes the following text at the beginning of the new framework decision:

Recital

Having regard to the Treaty on European Union and in particular Articles 29, 30, 31 and 34(2)(b) thereof

Section 2: Improving EU legislative protection of children

1. Definitions

The term “child pornography” is almost universally used when describing recorded images of children who are subjected to sexual abuse to produce such material. However, this term is not fit for purpose within a child protection or child rights framework. The term “child pornography” undermines the seriousness of the offence because it associates child abuse with conduct which, while pornographic, may be legal in an adult environment. “Child pornography” always involves sexual abuse and exploitation of a child, and therefore constitutes evidence of a crime committed against a child. All persons under the age of 18, have a right to be protected against sexual abuse and exploitation, and can not agree to such crimes, regardless of the legal age of consent. The term “child pornography” can also distort society’s perception of online sexual abusers by stereotyping a certain image of the perpetrator who is involved in the production, distribution and collection of child abuse images. Research shows that online sexual abusers come from all socio-economic backgrounds and are not the monsters portrayed by the media.

Save the Children considers that the term “child abuse image” better reflects the nature of the illegal act. Save the Children stresses that it does not consider that the image must contain “sexual abuse” rather it is to emphasise that the child in the image is being abused or exploited by being photographed or filmed in the context. Save the Children recommends that the revised Framework Decision uses the term “child abuse image” to reflect the criminal and child protection context.

The current definition of “child pornography” in the EU Child Sexual Abuse Framework Decision applies to a real child involved or engaged in sexually explicit conduct including “lascivious” exhibition of the genitals or the pubic area of a child.⁸ It also applies to material where a person appears to be a child or a non-existent child (e.g. computer image of a child) engaged in such conduct. The CoE Convention applies a similar definition of “child pornography”.⁹ However, the CoE Convention expands the definition by the addition of “any depiction of a child’s sexual organs for primarily sexual purposes”. This permits a broader category of representations to be included as constituting “child pornography”. *There need not be any sexually explicit conduct; the mere image of a child’s sexual organs is sufficient.* These

⁸ Article 1 of the EU Child Sexual Abuse Framework Decision defines “child pornography” as “pornographic material that visually depicts or represents: a real child involved or engaged in sexually explicit conduct including lascivious exhibition of the genitals or the pubic area of a child; a real person appearing to be a child engaged in such conduct; or realistic images of a non-existent child involved in such conduct.”

⁹ Article 20 of the CoE Convention defines “child pornography” as “any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child’s sexual organs for primarily sexual purposes.”

images need not be “lascivious”, as required by the Framework Decision’s definition, as long as the purpose is primarily sexual. Save the Children recommends that this aspect of the definition be incorporated into the new text.

The CoE Convention also goes further in that it does not matter whether the child depicted is a real child (i.e. under 18 years).¹⁰ Save the Children agrees with the language used in the CoE Convention that any material, which encourages people to take a sexual interest in children, must be sanctioned. For this reason, it is important to criminalise conduct relating to computer generated images of a non-existent child or a person pretending to be a child. A recital could illustrate examples of this.

Save the Children considers that it is important to address images that depict children in a sexual manner in order to prohibit the websites which display “child erotica” images. These websites often manage to avoid legal sanctions in most countries by promoting themselves as “artistic sites” or “posing pictures” or “soft porn”. These sites often contain images of children posing half-dressed or naked with an emphasis on sexualizing the child either overtly or covertly. Child erotica sites usually advertise legal images of children on the opening page with the promise of more “hard core” child abuse material available through payment via a credit card. Save the Children believes that the easy access to ‘child erotica’ could lead to an increase in children and young people being sexually abused and exploited. Save the Children considers that the definition of “child pornography” should be sufficiently broad to prohibit such images.

Save the Children proposes the following definition:

Definition of Child Abuse Image (previously Child Pornography)

“Child Abuse Image shall mean any material that visually depicts a child:

- (i) engaged in real or simulated sexually explicit conduct; or
- (ii) any depiction of a child’s sexual organs for primarily sexual purposes; or
- (iii) any depiction of a child in an erotic or sexually explicit manner for the sexual gratification of the viewer; or
- (iv) any depiction by a person appearing to be a child involved in the conduct covered by this section.”

Recital

An image may be considered as depicting a child where the person is in clothing or an environment (for example, a bedroom decorated in a manner that gives the impression it belongs to a child) which creates a reasonable impression that the person concerned is a child.

¹⁰ Article 20(3), CoE Convention

Save the Children suggests that the recitals to the Framework Decision provide clarification on the interpretation to be applied to these provisions.

2. Offences concerning ‘Child Pornography’

The EU Child Sexual Abuse Framework Decision requires that Member States shall take the necessary measures to ensure that the following conduct is criminalised:

- (i) production of child pornography;
- (ii) distribution, dissemination or transmission of child pornography;
- (iii) supplying or making available child pornography;
- (iv) acquisition or possession of child pornography.

Member States have the option to exclude the following images from entailing criminal liability:

- the person in the picture is over eighteen years of age or older at the time of the depiction;
- images of children that have reached the age of sexual consent and are produced for private use with that child’s consent i.e. within the context of an appropriate relationship (though this consent is not considered to be valid where superior age, maturity, position, status, experience or the victim’s dependency on the perpetrator has been abused in achieving that consent) **unless these images are made public**;
- realistic images of children may not be criminal if they are produced for private use and no real images have been used to create them.

The CoE Convention covers the same issues as the EU Child Sexual Abuse Framework Decision. It requires the Member States to make such activities criminal. However, the CoE Convention *goes further by focussing on the visual impact of the image* by restricting any “material that visually depicts a child engaged in real or simulated sexually explicit conduct” and in that it includes “knowingly obtaining access through information and communication technologies to child pornography”. This conduct relates to an individual having the potential to get access to child pornography without actually proving that this has been done (e.g. signing up to a website).

While child abuse images involving children below the age of consent is obviously illegal, Save the Children believes that an equally robust position should be taken as regards the treatment of images involving children below the age of 18 but above the age of consent. Save the Children appreciates that this is a sensitive issue but the starting point should be the protection of the child who even at the age of seventeen should be protected from exploitation. Society already recognises that a person must be of a certain age (normally 18 years) before they are considered mature enough to make certain choices such as voting in elections or driving vehicles. Likewise, the consent of a child engaging in sexual activities should receive special protection so that it is not exploited. Consequently, the consent of a child to the production of a sexual image should only be allowed for private use and where the recipient is not in a position of disproportionately superior age or in a position of trust.

While the existing legislation does provide for this situation, it is far from clear. It should be made absolutely clear perhaps in a recital in the framework decision that any image of a person below the age of 18 in a sexually explicit manner shall be considered as a child abuse image if it is made public.

Save the Children also supports the message of the CoE Convention that any sexual interest in children should never be sanctioned and that it does not matter whether the child is real or not, or whether the sexual conduct represented is real or not. Accordingly, Save the Children welcomes the idea that the provision catches those persons who view child abuse images on line by accessing web sites which contain these material but without downloading the images, and who cannot therefore be caught under the offence of “procuring” or “possession”. According to the CoE Convention, to be criminally liable the person must both intend to enter a site where ‘child pornography’ is available and know that such images can be found there. In Save the Children’s view such intention and knowledge should be reasonably deduced from repetitive visits to the websites and should not be an insurmountable standard to prove.

Save the Children proposes the following draft text:

Offences concerning child abuse images

1. Member States will ensure that the following conduct is criminalised:

- (a) producing a child abuse image;
- (b) offering or making available a child abuse image;
- (c) distributing or transmitting a child abuse image;
- (d) procuring a child abuse image for oneself or for another person;
- (e) possessing a child abuse image;
- (f) knowingly receiving a child abuse image;
- (g) knowingly obtaining access, through information and communication technologies, to child abuse images.
- (h) organising, participating or facilitating the live transmission of child sexual abuse via information and communication technologies

Recital

The placement of any image in the public sphere of a sexual act with a child (i.e. a person below the age of 18 years) will be considered as a child abuse image. Such images can include but are not limited to pictures, still images, films and web-streaming (live or deferred). The public sphere includes, but is not limited to, display on internet sites, electronic forums, social websites as well as any physical publication or recording which is disseminated to a person not contemplated at the time the image was created.

3. Offences concerning Child Sexual Exploitation

The current EU legislation does not effectively harmonise the protection of children from sexual exploitation. This is because there are wide variations in the age of consent throughout the EU. At present, the EU legislation, unlike the CoE Convention, is not sufficiently far-reaching in terms of criminalising child sexual exploitation activities.

The Framework Decision requires the Member States to take “necessary measures” to ensure that the following acts are punishable:

- (i) coercing a child into prostitution or pornographic performances or profiting from or otherwise exploiting a child for such purposes;
- (ii) recruiting a child into prostitution or into participation in pornographic performances; or
- (iii) engaging in sexual activities with a child where:
 - use is made of coercion, force or threats; or
 - the sexual activity is in return for money or other forms of remuneration; or
 - a person in a position of influence over a child abuses that position; or
 - engaging in sexual activities with a child in the above circumstances is not a punishable act where the child is above the age of consent and there is no element of prostitution.

The CoE Convention also requires parties to take the necessary legislative steps to criminalise child prostitution or participation in pornographic performances (coercion and recruitment).¹¹ However, it goes much further than the Framework Decision because *it also makes knowingly attending pornographic performances involving the participation of children an offence*.¹² Therefore, the CoE Convention provides that the spectator of such performances, that is someone who *knows* that the performance will involve children, should be sanctioned by criminal law.

The CoE Convention also *requires Party States to criminalise any sexual activities with a child below the age of consent*.¹³ The Framework Decision does not criminalise sexual activities with a child

¹¹ Article 19, CoE Convention

¹² Article 21, CoE Convention

¹³ Article 18, CoE Convention

below the age of consent unless there is an element of coercion, prostitution or abuse of authority involved.¹⁴

At the moment, as noted also by the Commission¹⁵ (in the written Report on the measures taken by the Member States to comply with the Framework Decision), there are wide variations in the age of sexual consent throughout the Community. The age of sexual consent is relevant to the obligation to criminalise conducts; for this reason the level of protection of children varies within the Member States according to these differences. Save the Children believes that harmonising the age of sexual consent is essential in order to guarantee the same levels of protection to children in all Member States from sexual abuse.

In any case, the age of sexual consent should be differentiated from the sexual exploitation of children under the age of 18. Save the Children welcomes the new provisions covered by the CoE Convention, especially the criminalisation of any sexual activities with a child below the age of consent, and child prostitution or the participation in the production of child abuse material (coercion and *recruitment*).¹⁶ Such consent is negated where superior age, maturity, position, status, experience or the victim's dependency on the perpetrator has been abused in achieving it.

Save the Children believes that a child under the age of 18 years but above the age of consent cannot consent to prostitution, exploitation or trafficking for sexual purposes.¹⁷ In such instances, the new Framework Decision should make it clear that the perpetrator will always be criminally liable (strict liability) for such exploitation regardless of any purported consent from the child in question.

Save the Children proposes the following draft text:

Offences concerning the sexual exploitation of children

Note: A child is defined as being under the age of 18.

1. Member States will ensure that the following conduct is criminalised:

- (a) coercing a child into prostitution or into participating in the production of child abuse material, or profiting from or otherwise exploiting a child for such purposes.
- (b) recruiting a child into prostitution or into production of child abuse material.
- (c) engaging in sexual activities with a child, where:

¹⁴ Article 2 and Article 5(2)(c), EU Child Sexual Abuse Framework Decision

¹⁵ Report from the Commission based on Article 12 of the Council Framework Decision of 22 December 2003 on combating the sexual exploitation of children and child pornography (2007) COM 716 final, 16.1.2007 (“Commission Report”).

¹⁶ Article 19, CoE Convention

¹⁷ SC Position Paper regarding on-line images of sexual abuse and other Internet-related sexual exploitation of Children (August 2005 Update), page10.

- (i) use is made of coercion, force or threats; or
 - (ii) money or other forms of remuneration or consideration is given as payment in exchange for the child engaging in sexual activities; or
 - (iii) a recognised position of trust, authority or influence over the child is abused.
 - (d) inducing or coercing a child through electronic media or other means into prostitution or into engaging in sexual activities.
 - (e) abuse is made of a child in a particularly vulnerable situation, notably because of a mental or physical disability or a situation of dependence.
 - (f) knowingly attending pornographic performances in physical premises involving the participation of children.
2. These offences shall not be negated by the fact that the child is above the age of consent as defined by the Member State or has granted their consent to participation in these activities.

4. Grooming - Solicitation of children for sexual purposes

The Framework Decision is silent with respect to the offence of “child grooming”. Grooming is the strategy used by sexual abusers to manipulate the child in order to abuse the child or place the child in a situation where the abuser has total control over the victim. It is a process where the abuser gradually overcomes the child's resistance through a sequence of psychologically manipulative acts. It is also used to silence the child after the abuse has taken place. Grooming is not new but it has taken on a new dimension with the proliferation of the new technologies.

It is not only children who will be targeted for grooming. Protective adults will also be targeted by potential abusers for grooming. This is a tactic where the abuser will remove the barrier to the child, which is normally a protective parent or other responsible adult, who will be unaware they have been selected for grooming. This needs to be addressed by child protection agencies in implementing child protection policies and the judicial systems in regard to sentencing.

The grooming process has been well documented by practitioners working with sexually abused children and those working with perpetrators. It is important to continue to inform and update professionals about the manipulative aspects of grooming and its negative psychological effects on children.

The CoE Convention requires Party States to criminalise the solicitation of children through information technology, which makes child grooming an offence.¹⁸ In order to constitute an offence, the relationship-forming contacts must be followed by a proposal to meet the child, the person must intend to sexually abuse or sexually exploit the child, and concrete steps

¹⁸ Article 23, CoE Convention

must have been taken leading to the meeting, such as buying train tickets or arriving at the meeting point.

Save the Children's view is that the CoE Convention provides a good starting point for criminalising grooming. However, EU legislation needs to take into account the different forms of grooming, the heterogeneity of offenders and the silencing of victims (and protective adults). The legislation should also protect children who are groomed through other means (offline grooming). The psychological harm suffered by the abused child will also need to be taken into account in both online and offline grooming cases.

Save the Children proposes the following draft wording:

Solicitation of children for sexual purposes (“Grooming”)

1. Member States shall take the necessary legislative or other measures to criminalise both any contact including through information and communication technologies by which an adult attempts to meet a child who has not reached the age of consent [as stipulated by each Member State or as defined in the new EU legislation] for the purpose of committing sexual abuse and/or offences concerning child pornography against the child, where this proposal has been followed by material acts leading to such a meeting.

2. Evidence of such solicitation shall include but not be limited to:

- arrangements to meet under false pretences;
- travel arrangements
- communications suggesting a meeting where knowledge is known of the age of the child.

Recitals

The provision on grooming is designed to tackle “online” and “offline” grooming. Evidence could include travel arrangements or plans to meet. However, in order for the conduct to amount to an offence, there should not need to be additional evidence that the meeting took place or was about to take place as this would compromise the safety of children. The primary aim should be to catch any proposal for an adult to meet a child for sexual purposes.

5. Criminal Sanctions for Child Abuse Images

The EU Child Sexual Abuse Framework Decision states offences concerning the sexual exploitation of children and offences concerning ‘child pornography’ as well as any conduct aiding or abetting such offences should be punishable by at least one to three years of imprisonment.

Member States may provide that the conduct relating to non-existent children (computer generated images etc) and persons pretending to be children may not incur criminal sanctions (though non-criminal sanctions may still be imposed).¹⁹ However, Save the

¹⁹ Article 3(2) and Article 5(4), EU Child Sexual Abuse Framework Decision.

Children considers that these images should also incur criminal sanctions (though perhaps of a lesser duration) in order to make it clear that Member States will not tolerate the sexual abuse of children, nor the impression of it. Save the Children considers that anyone involved in the production of such images should face prosecution.

6. Victim Identification

The current legislation contains no reference to the identification of children who are the subject of abuse for the production of child abuse images. Very few of these children are identified and protected from ongoing abuse despite the fact that law enforcement and other child protection agencies have access to this primary evidence. Interpol's Child Abuse Image database has been in operational use since 2001 and consists of almost one million images showing the sexual abuse of over 10,000-20,000 individual children, of which approximately 800 have been identified.²⁰ It should be recalled that not one of these images could have been produced without a child suffering abuse or being sexually exploited. The right to be protected from sexual abuse and exploitation is fundamental in the sense that it largely determines the possibilities to fulfil other basic rights which affect positive child development.

The successful identification of victims is essential as the image captures the sexual abuse of the child and is therefore evidence of a crime. The arrest and conviction of those viewing these child abuse images should not be the end of a process but rather seen as the start of a new investigation into a crime of child abuse. Identification and protection of child victims in the production and distribution of images depicting child sexual abuse must therefore be a priority in the revised Framework Decision. Save the Children considers that the new framework decision should require Member States to establish special units of police officers and social workers who have the task of identifying and working with victims post identification.

The CoE Convention requires the Party States to establish police units to help identify the victims on child abuse images.²¹ Some Member States have established specialised teams consisting of trained police officers and social workers. These teams should be seen as reference points and examples of good practice for other member states.²² States are urged to develop techniques for examining material containing child abuse images in order to make it easier to identify and assist victims. The Commission, in the Report on the measures taken by the Member States to comply with the EU Child Sexual Abuse Framework Decision, noted that there were new methods aimed at more effective detection as well as the identification of child victims through the use of specialised law enforcement units.

²⁰ Information retrieved from Interpol in 2008

²¹ Article 30(5), CoE Convention.

²² In the UK the CEOP Centre and Greater Manchester Police have these specialised units.

Save the Children considers that the setting up of specialised police units in cooperation with social services will be crucial to making the revised Framework Decision an effective instrument in the fight against child abuse. Save the Children considers that this impetus should be provided by the European Union to ensure that an effective pan-European identification strategy is put in place.

The legal basis for such a measure would be Article 29 EU and Article 31(1)(a) EU and Article 34(2)(b). Article 29 EU sets protection of children as one of the Union's objectives. The identification of children who are the victims of abuse is essential to the fulfilment of this objective. Article 29 EU also states how this is to be achieved through closer co-operation between the police forces *and competent authorities*.

Article 31(1)(a) EU provides for "operational cooperation" between the competent authorities, including the police, customs and other specialised law enforcement services of the Member States in relation to the "prevention, detection of criminal offences". This provision enables the EU to provide legislation which assists the Member States in the detection of child abuse crimes through the identification of victims.

Article 34(2)(b) means that these measures can be taken in a framework decision. The identification of victims is possible under this provision. It forms the legal basis of Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings which at Article 12 calls for cooperation between Member States in order to facilitate more effective protection of victims' interests in criminal proceedings. It is also noteworthy that the Victims Framework Decision provides for the protection of victims (Article 8 Right to Protection) and is not just limited to criminal procedures. It is also the legal basis of Council Framework Decision establishing a framework programme on police and judicial cooperation in criminal matters (AGIS) which provides for greater co-operation on victims.

It should be recalled that these victims are the victims of a crime that may be still taking place at the time the image is recovered and will continue unless stopped by the authorities. Existing legislative measures enable information to be exchanged to identify individuals who may constitute a security threat (such as football hooligans and protestors at EU meetings).²³ It is possible to use the same legal basis to identify victims of serious crimes and to prevent the perpetration of other potentially serious crimes against children. The EU Treaty therefore has an adequate legal basis for the specific identification of victims of child abuse.

²³ The legislation used to tackle football hooligans which provides "National football information points shall, in accordance with the domestic and international rules applicable, have access to information involving personal data on high-risk supporters". Council Framework Decision 2002/348/JHA concerning security in connection with football matches with an international dimension (2002) OJ L/121. See also: Council resolution on security at European Council meetings and other comparable events (2004) OJ C 116/06.

Save the Children proposes the following draft text:

<p>Identification of Victims</p> <p>1. Each Members State shall use its best endeavours to identify the child or children who are subjected to child sexual abuse for the production of child abuse images. Efforts should be made to identify the country where the abuse takes place. This should apply irrespective of the nationality of the victim, perpetrator of the offence, or the country in which the offence has taken place.</p> <p>Ownership of Case</p> <p>1. Should it be established that the origin of the child abuse images falls within the jurisdiction of an EU Member State, that Member State must take ownership of the child protection investigation and make appropriate resources available to identify and protect the child.</p> <p>2. Each Member State shall establish an investigation unit within the competent authority of the Member State dedicated with the specific purpose of identifying the children in child abuse images obtained in the course of an investigation.</p> <p>Recital</p> <p>The investigation units dedicated to identifying victims should include police officers and qualified social workers. The unit should not only be charged with identifying and locating the children but also be responsible for implementing child protection measures and an appropriate therapeutic response post identification.</p>

Save the Children also refers to the section on co-operation between Member States' authorities.

7. Aggravating circumstances

Save the Children considers that any list of aggravating circumstances should be non-exhaustive to enable Member States to take a broad approach. Save the Children would support a provision which sets a framework to establish aggravating circumstances based on general aspects such as the child's age and vulnerability, repeated offences, financial profit, severity of the abuse etc.

The EU Child Sexual Abuse Framework Decision provides that the following may be considered as aggravating circumstances in offences relating to placing the "child into prostitution or into participating in pornographic performances" or "profiting from or otherwise exploiting a child for such purposes":

- the victim is below the age of consent;
- offender has deliberately or recklessly endangered the life of the child;
- offence involves violence or caused serious harm to the child;

- offender commits an offence within the framework of a criminal organisation.

The CoE Convention in addition provides that the offence should be treated seriously where the offence was committed by a member of the family, a person cohabiting with the child or a person having abused his or her authority. Save the Children considers that this should be reflected in the general principles on aggravating circumstances in the revised Framework Decision.

Save the Children also considers that repeat offences should be taken into account when establishing aggravating circumstances in the sentencing. This should include offences from all EU Member States and other countries where verified.

8. Treatment and management of child sexual offenders and potential abusers

At present, the EU Framework Decision does not cover treatment and management of convicted child sexual offenders or potential sexual abusers.

The CoE Convention requires parties to “ensure or promote” effective intervention programmes or measures for any person *prosecuted for and convicted of* sexual offences against children. The objective is to minimise the risk of repeat offences.²⁴ In its Explanatory Report on the CoE Convention, the Council of Europe stipulates what may constitute an intervention programme. This is given a far reaching interpretation and includes psychological intervention, medical intervention, which refers specifically to anti-hormone therapy or ‘medical castration’, and social intervention to regulate and stabilise the social behaviour of the offender as well as to facilitate re-integration in society.

The CoE Convention suggests that programmes for people who have a sexual interest in children should be implemented as a child protection measure. These programmes have been developed in some Member States and they may deter some adults from sexually abusing a child. People who realise that they have a problem and fear that they might go on to abuse children should, according to the CoE Convention, should have access to appropriate treatment programmes.²⁵

It is essential to establish sex offender management systems which are able to monitor high risk offenders on release from prison and share information across borders

Save the Children welcomes the attention posed by the CoE Convention on treatment for sex offenders. Save the Children considers that offenders should be required to attend such intervention programmes. Save the Children proposes that sex offender management systems be implemented throughout the EU which take into account child protection principles as well as being in harmony with human rights. Some convicted sex offenders will

²⁴ Articles 15 and 16, CoE Convention

²⁵ Article 7, CoE Convention

continue to pose a high risk of recidivism and this has to be managed. The UK has adopted an effective response to this problem by implementing a Sex offender register and the Multi Agency Public Protection Arrangements. This an attempt to assess and manage the risk posed by sex offenders returning to the community after serving their sentence. A similar child protection and sex offender management system should be applied by other EU Member States.

Save the Children considers that Article 29 EU which enables the EU to take measures to prevent crime forms an adequate legal basis in combination with the other provisions as it prevents crime. Save the Children proposes the following provisions:

Preventive intervention programmes or measures

1. Each Member State shall ensure or promote, in accordance with its national law, effective intervention programmes or measures for the persons found to have committed an offence under this Framework Decision. This includes not only treatment during any custodial sentence but also treatment after completion of a custodial sentence.
2. Each Member State shall ensure that persons who fear that they might commit any of the offences established may have access, where appropriate, to effective intervention programmes or measures designed to evaluate and prevent the risk of offences being committed.
3. Each Member State shall ensure or promote the development of partnerships or other forms of co-operation between the competent authorities, in particular health-care services and the social services, and the judicial authorities and other bodies responsible for following the persons to implement preventive intervention programmes.

9. Young Offenders

The CoE Convention also contains specific provisions relating to the assistance of children who sexually harm other children, stating that they should receive treatment. Development programmes should be established for children who sexually offend including those below the age of criminal responsibility.²⁶ This provision recognises that the treatment of children involved in such offences is different to the intervention and punishment of adult offenders. Children under the age of 18 who sexually harm other children should be brought into the child protection system and not the criminal justice system. There are appropriate treatment programmes in operation in most Member States for these children. Similar provisions should be included in the new EU Framework Decision.

²⁶ Article 16(3), CoE Convention

10. Conduct of Investigation

The CoE Convention provides that investigations should be carried out in the best interests of the child and respecting the rights of the child.²⁷ Crimes must also be treated as a priority and be dealt with promptly. Save the Children proposes the following text:

Conduct of Investigations

1. Investigations into offences specified under this Framework Decision must be conducted with the best interests of the child in mind at all times.
2. investigations must be conducted promptly and without any undue delay.

11. Treatment of Children during investigation

According to the EU Child Sexual Abuse Framework Decision, victims of child abuse should be considered as “particularly vulnerable victims” for the purposes of standing in criminal proceedings as defined in the EU Victims Framework Decision. In particular, such victims may, by decision taken by the court, be entitled to testify in a manner by any appropriate means compatible with basic legal principles.²⁸

The EU Child Sexual Abuse Framework Decision requires Member States to take all measures possible to ensure that the victim’s family receives appropriate assistance.²⁹ The EU Victims Framework Decision also provides for the protection of victims and assistance to victims which, although not child specific, are also relevant. However, more child specific measures are advocated in the CoE Convention which Save the Children considers should be applied in the revised text.

The best interest of the child shall be the primary consideration in all actions involving child victims, whether undertaken by police, courts of law, administrative authorities or legislative bodies, public or private social welfare institutions. Child victims are entitled to special protection measures, especially during the investigations and criminal proceedings in which they are involved both as victims and as children, in accordance with their special rights and needs.³⁰

²⁷ Article 30, CoE Convention

²⁸ Article 8, EU Victims Framework Decision

²⁹ Article 9(3), EU Child Sexual Abuse Framework Decision

³⁰ All action undertaken in relation to child victims shall be guided by and based on the principles of the best interest of the child, child protection and respect for the rights enshrined in the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, the European Convention on the Exercise of Children’s Rights 1996 and the United Nations Convention on the Rights of the Child 1989 and its Optional Protocols.

(continued...)

The legal basis for these measures would be the same as that applied in the EU Victims Framework Decision (Article 31 EU generally and Article 34(2)(b) EU).

11.1 *Interview of Children*

Although there is some overlap on the interviewing of children in the Victims Framework Decision, the CoE Convention goes much further in stipulating the manner in which children should be interviewed. The CoE Convention states that interviews should be conducted by professionals trained for that purpose and, where necessary, always by the same person. The number of interviews should be limited to the minimum possible. The child may be accompanied by a legal representative or where appropriate by an adult of the child's choice. The interview should be recorded on film and it should be possible for this to be used as evidence in court.³¹ Neither the EU Child Sexual Abuse Framework Decision nor the Victims Framework Decision provide for evidence from children to be collected in such a specific manner. Although it should be good practice to video children giving evidence, professionals undertaking video interviews must take into account the special circumstances when the child abuse has been filmed or recorded for example for the production of child abuse images as the use of a camera for the purposes of video interviews may re-traumatise a child who has been filmed while being sexually abused.

Save the Children proposes the following text which is similar to that in the CoE Convention:

Interview with Children

1. Each Member State shall provide that:

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

(ii) Child victims should be informed by their rights and the services, in particular those relating to treatment as established in this Framework Decision, at their disposal;

(iii) interviews with the child take place, where possible, in premises designed or adapted for this purpose and are child-friendly;

(iv) interviews with the child must be undertaken by professionals trained for this purpose and/or where considered appropriate by a person of the same sex as the child;

³¹ Article 35, CoE Convention

- (v) the same persons, if possible and where appropriate, conduct all interviews with the child;
- (vi) the number of interviews is as limited as possible for the purpose of criminal proceedings;
- (vii) the child 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.
2. Each Party shall take the necessary legislative or other measures to ensure that all interviews with the victim or, where appropriate, those with a child witness, may be videotaped and that these videotaped interviews may be accepted as evidence during the court proceedings, according to the rules provided by its internal law.
3. When the age of the victim is uncertain and there are reasons to believe that the victim is a child, these measures shall be applied pending verification of his or her age.

11.2 *Conduct of Trial*

The CoE Convention also goes much further than the EU Victims Framework Decision by stipulating that national law should enable the judge hearing the case to do so without the presence of the public.

The CoE Convention states that the evidence of victims should be heard in a manner consistent with the relevant national law and the child should be able to choose to have the means of having their views, needs and concerns presented directly or through an intermediary and considered.³²

Where ever possible the child should not be cross examined in an adult court room. The technology exists to cross examine children over close circuit TV away from the court room. The child should be given the option of giving live evidence depending on the level of his/her development and understanding. The best interest of the child should be a primary consideration at all times. The fact that a child may have been filmed while being sexually abused must be taken into account before using video or close circuit TV interviews.

³² Article 31, CoE Convention

Save the Children proposes the following text which is similar to that provided in the CoE Convention:

Conduct of Trial

Member State shall provide:

1. The best interest of the child must be a primary consideration at all times, and should inform all decisions in relation to conduct of the trial.
2. At any stage in the conduct of the trial, without prejudice to the rights of the defence, the judge may order the hearing to take place without the presence of the public;
3. The child subject to the alleged abuse may be heard in the courtroom without being present through the use of appropriate communication technologies.

Recital

In the conduct of hearings, where ever possible, children should not be cross examined in an adult court room. Alternatives should be made available such as providing video technology or a closed court room where only a limited number of parties are entitled to be present such as judge, lawyers and, where applicable, jury.

11.3 Training

The CoE Convention provides that training should be available to the judiciary, prosecution and lawyers on children’s rights and the sexual exploitation and sexual abuse of children. The EU Victims Framework Decision provides for general training but there are no specific measures for children.³³ Training should include instruction on child protection.

Save the Children proposes the following text in relation to the treatment of children during the criminal proceedings:

Training

Each Member State shall take the necessary legislative or other measures, with due respect for the rules governing the autonomy of legal professions, to ensure that training on children’s rights and sexual exploitation and sexual abuse of children is available for the benefit of all persons involved in the proceedings, in particular judges, prosecutors and lawyers.

³³ Article 14, EU Victims Framework Decision

12. Treatment of Children who have been sexually abused

The current framework decision does not address the treatment of children subject to abuse. The CoE Convention requires social programmes to be established and set up multidisciplinary structures (also involving non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims) to provide the necessary support for victims, their close relatives and carers.³⁴

Specific measures should be taken when abuse is committed by a parent or by someone close to the victim, and persons who are close to the victim may benefit, where appropriate, from therapeutic assistance, notably emergency psychological care.

In order to protect children who have been subjected to child sexual abuse crimes, adequate measures must be put in place to ensure that children receive appropriate therapeutic care from specially trained persons and a high standard of protection. Article 29 EU, which provides for the protection and safety of citizens, would provide an adequate legal basis for such protective measures.

Save the Children proposes the following text:

Care for Child Victims

1. Member States shall ensure appropriate therapeutic care, treatment and assistance is provided to:

- (i) any child who is the victim of an offence set out in the framework decision; and
- (ii) the family (parents and any brothers or sisters) of the child subject to the abuse

in accordance with their special rights and needs.

2. Member States shall ensure that the care, treatment and assistance is provided by personnel trained specifically to treat abused children either from within its public services or from victim support organizations.

2. Member State shall make the care, treatment and assistance available during the course of the investigation and criminal proceedings as well and provide victims of abuse with the option of continuing such treatment after the criminal proceedings.

Recital

Child victims should receive therapeutic help and support to guide them through the trauma of being abused and of knowing that images of their abuse will be in continuous circulation on the internet.

³⁴ Article 11, CoE Convention

13. Co-operation between Member States: Sharing of Images

The current EU Child Sexual Abuse Framework Decision does not provide for any co-operation between the authorities of the EU Member States in identification or prosecution of child abuse images. The most important aspect is that the children are identified and protected from the abusive situation. Identification of the child should therefore be the first goal of any co-operation.

Images depicting the sexual abuse of a child also constitute evidence of a crime. It is important that the image can be used in any subsequent action against the perpetrator of the child abuse. Save the Children recognises that the transfer of evidence is a sensitive matter. However, at the time of transfer the image should not constitute evidence but in the event that a prosecution is brought, the image should be capable of being used in evidence against the perpetrator. The new text should provide legal security regarding the use of such images.

The appropriate legal basis for these measures could be Article 30 EU which provides for the collection of information and co-operation between police and judicial authorities. The Framework Decision on tackling football hooliganism provides an example of where information is exchanged between authorities.³⁵ A similar approach could be followed to trace victims featured in child pornography and to apprehend the perpetrators of the abuse.

The collection and sharing of information in regard to child abuse images should be undertaken in conjunction with Interpol which operate the international child abuse images database.

Save the Children proposes the following text for facilitating the sharing of child pornography images:

Sharing of Images

1. Each Member State shall transmit child abuse images which are identified as originating from another Member State to that Member State through the national contact points established by this Framework Decision. A child abuse image will be considered as originating from another Member State if the geographic location of the image is identified as being in that Member State.
2. Each Member State shall treat any child abuse image transmitted to it by another Member State pursuant to this Article as constituting child abuse within the meaning of this decision and subject to the same treatment under its national law as if it were obtained by its own authorities.

³⁵ Framework Decision concerning security in connection with football matches with an international dimension (2002) OJ L 121

3. Each Member State may use the child abuse image transmitted to it by another Member State for the purpose of identification and/or in the course of criminal proceedings.
4. Each Member State may use any child abuse image transmitted to it by another Member State as evidence in criminal proceedings.
5. Member States shall co-operate with international authorities in the treatment of child abuse images which they obtain in order to avoid duplication of work.

14. Co-operation – Contact Points and European Network

Save the Children proposes the following text for the establishment of contact points in each of the Member States (which is similar to the text use in the Framework Decision to combat fraud)³⁶:

Contact Points in National Authorities

1. Member States shall designate operational contact points or may use existing operational structures for the exchange of information and for other contacts between Member States for the purposes of applying this Framework Decision.
2. Each Member State shall inform the General Secretariat of the Council and the Commission of its department or departments acting as contact points in accordance with paragraph 1. The General Secretariat shall notify the other Member States of these contact points.

Recital

The designated contact points should co-operate with Interpol in particular the Victim identification unit and the Interpol database. The Contact Points should work together in the identification of possible abuse cases and in the planning of co-ordinated action.

Save the Children also proposes the following text to encourage co-operation between Member States. This could be achieved through a recital to the framework decision (as was done for example when the European Competition Network was established) or an article in the framework decision. The legal basis for such a network would be provided for in Article 30.

³⁶ Framework Decision 2001/413/JHA on combating fraud and counterfeiting of non-cash means of payment (2001) OJ L 149/1

Article / Recital on European Child Protection Network

1. The child protection authorities of the Member States, the Commission, Eurojust and Europol should form together a network of public authorities applying the EU rules on the protection of children in close cooperation.
2. For this purpose it is necessary to set up arrangements for information and consultation. Further modalities for the cooperation within the network will be drafted by the Commission subject to approval by the Council working in close cooperation with the Member States.
3. The network may be used to discuss issues relating to jurisdiction or coordinated action though any decision will remain with the national authorities.
4. The network may also be used to discuss best practices on prevention and treatment of victims.
5. The network should liaise with Interpol and any other relevant European and international bodies responsible for the tackling of child sexual abuse.

15. Recording Data

There are no provisions for the collection and sharing of data that refers to the movement of people convicted of sexual crimes against children in the EU Child Sexual Abuse Framework Decision. EU legislation should, like the CoE Convention, address the issue of the storing and sharing of data between Member States.

The CoE Convention requires data of the genetic profile (DNA) of persons convicted for child abuse to be stored. A single authority should be placed in charge of this (when the Convention is ratified). Furthermore, the Convention requires each Party State to take the necessary legislative measures to enable the sharing of this DNA information amongst other Party States to the CoE Convention.

Save the Children, in line with the CoE Convention, believes that the problems relating to data sharing should be addressed. For example, credit card companies face difficulties in assisting the judicial authorities with the detection of offenders as a result of data protection rules on the manner in which they share sensitive data. It also seems that credit card companies are not able to operate pan European databases regarding merchants (including child abuse merchants) which have been terminated for fraud or other illegal activities including child abuse offences to prevent such merchants from being able to obtain credit card services. As a result, such criminal merchants are able to move from one credit card provider (e.g. banks) to the next because if they are terminated by one provider, there is no general means for another provider to check that they have been engaged in such illicit activities.

However, such databases should be used with caution and with rigorous access restrictions for the following reasons: it is probable that, in the future, courts will need more data

evidence to prove that seized child abuse pictures are pictures of a real child, and not manipulated pictures; identified children may feel significant pressure when they know that their personal data will be revealed in the court, which could lead to intrusive press contact; the database would need to be regularly updated.

Save the Children considers that Article 31 EU, which was used as the legal basis of the framework decision on the exchange of criminal records, should provide an adequate legal basis for measures taken with respect to use and storage of data. Save the Children proposes the following text:

Storing and Sharing Data

1. Member States shall store data of the genetic profile (DNA) of persons convicted for child abuse in a central authority.
2. Access to the data stored by the central authority shall be strictly related and may only be retrieved for criminal proceedings.
3. Each Member State shall enable information stored on the genetic profile of persons convicted for child abuse to be shared upon request from a judicial authority for in criminal proceedings.

Personal Data

1. Member States shall require financial institutions to provide the relevant authorities upon request with data concerning offences in this decision in particular information on transactions to view child pornography.
2. Any storage or transmission of data in fulfilment of this requirement shall not infringe the protection of personal data.

16. Prevention

There is an important difference in approach between the CoE Convention and the EU Child Sexual Abuse Framework Decision. The CoE Convention is focused on prevention of sexual abuse in the first place whereas the EU Child Sexual Abuse Framework Decision is focussed on sanctioning criminal conduct. The EU is therefore missing an important tool in the combat against the sexual abuse and exploitation of children. The European Union now has an opportunity to broaden the scope of the protection it can provide citizens.

The CoE Convention states that Party States should take measures to ensure that candidates applying to enter a profession, which involves working with children, have not been convicted of acts of sexual exploitation.³⁷ This issue is touched upon by Article 5(3) of the

³⁷ Articles 5(3) CoE Convention

Child Sexual Abuse Framework Decision, which states that a person convicted of an offence may be temporarily or permanently excluded from exercising professional activities related to the supervision of children. However, this measure focuses on punishment (i.e. preventing a person from working with children) rather than taking preventive measures, such as setting up a screening process, to ensure that high risk persons are not put in regular contact with children. Save the Children considers that the focus should now be placed upon prevention.

The CoE Convention also requires Party States to take the legislative measures to ensure that the confidentiality rules on professionals who are in contact with children do not constitute an obstacle to reporting suspected cases of sexual exploitation or abuse. Further, legislation should encourage any person who suspects a case of abuse to report it.³⁸ It requires also legislative or other measures in order to encourage the reporting suspicion of sexual exploitation or sexual abuse professionals called upon to work in contact with children any person who knows about or suspects. It also requires the assistance to victims in the short and long term, in their physical and psycho-social recovery, and that measures taken shall take due account of the child's views, needs and concerns.

The technological revolution also means that children are being victimised in new ways on the internet. The following examples highlight the seriousness of the problem:

- Abuse can be viewed live online and the viewer can give interactive instructions directly to the abuser in another country on how the abuse of the child should be carried out. Abusers can get in touch with potential victims themselves online via social networking sites and can chat to them before, during and after the abuse.
- Children who use the internet and mobile phones often engage in risk-taking behaviour without realising. Such behaviour can involve the use of sexually explicit language, daring and inappropriate self presentations and uploading of inappropriate sexually explicit images of others. These types of behaviour can put the children at risk of being sexually abused, sexually harassed and being open to ridicule if the images are circulated on the web. It can also expose the child to long term consequence of having inappropriate images of them being available on the internet for a long time.
- Internet abusers make children feel comfortable enough to give away information about themselves. This leaves them unprotected and vulnerable to grooming by potential abusers. Perpetrators use the information from popular teenage websites to gather information about who to contact, to build relations and to “groom” children into participating in sexual activities.

³⁸ Article 12, CoE Convention

The difficulties of controlling such complex relations are enormous. Studies show that children often ignore what they have learned about risk of harm when they feel they are in control. In other words, many children know how to protect themselves but do not use this knowledge. The focus in national prevention programmes must therefore be on protection from abuse and not only on how to use the new technologies. Such programmes should emphasise that children are never responsible for sexual abuse. It is solely the responsibility of the perpetrator.

Save the Children is in agreement with the preventive measures to educate young people on the safe use of the internet suggested by the CoE Convention and considers that these should be adopted by the new text. The CoE Convention also requires Party States to promote or conduct awareness campaigns in order to ensure that the general public is aware of the sexual exploitation and sexual abuse of children and encourages children to be part of the development and the implementation of state policies concerning the fight against sexual exploitation and the sexual abuse of children.³⁹ These already exist in some member states.⁴⁰

Save the Children would like to emphasise that children's right to express their views and have those views given due weight in all matters affecting their lives. Children should be involved in developing appropriate response and solutions, awareness raising activities and efforts to change attitudes through meaningful and ethical participation.

Save the Children considers that Article 29 EU, which provides for the prevention of crime, should provide an adequate legal basis for acting in this area. Save the Children proposes the following text:

<p>Prevention</p> <p>Member States shall:</p> <ol style="list-style-type: none">(1) implement public education and prevention programmes based on the active participation of children.(2) implement public education and prevention programmes for parents, teachers and professionals working with children.(3) enable professionals to report suspicions of possible abuse in a confidential manner. Such information shall be treated sensitively by the authorities to ensure that privacy and family relations are not unduly damaged but with utmost seriousness.(4) implement appropriate sex offender management systems which undertake risk management of high risk sex offenders returning to the community

³⁹ Article 9, CoE Convention

⁴⁰ www.stopitnow.org.uk

17. Jurisdiction

The EU Child Sexual Abuse Framework Decision requires Member States to take measures to impose jurisdiction where the offence is committed in the Member State or, the offender is a national or, offence was committed for the benefit of a legal entity (such as a company) in the Member State or, by a person established in that Member State. Where a Member State cannot extradite one of its nationals under its extradition laws, it must take jurisdiction when the alleged offence has been committed by one of its own nationals.⁴¹ The Framework Decision does not provide for Member State jurisdiction where the victim is one of its nationals.

In addition to the same conditions for establishing jurisdiction as those set out in the EU Child Sexual Abuse Framework Decision, the CoE Convention includes an important new element. The CoE Convention removes the requirement of double criminality in the most serious cases (i.e. that the conduct must be an offence in the country of prosecution as well as the country in which the conduct was committed). This means that perpetrators of child sex tourism can be prosecuted once they return to the home country for the offences that they committed abroad.

Save the Children considers that establishing jurisdiction based on the victim's nationality (and not only offender's or where the offence is committed) would facilitate the ownership of the case.

Save the Children proposes the following additional text:

Jurisdiction

1. Each Member State shall take the necessary measures to establish its jurisdiction over the offences referred to in this decision where the victim is a national of the Member State.
2. Each Member State shall take the necessary measures to establish jurisdiction and to prosecute, where appropriate, an offence referred to in this decision committed outside its territory when it is committed by one of its own nationals or a person who has his or her habitual residence in its territory but there is no equivalent offence in the country where the offence was committed.

⁴¹ Article 8, EU Child Sexual Abuse Framework Decision

Conclusion

Save the Children welcomes the proposal to amend the existing Framework Decision. This represents a unique opportunity to provide children in the European Union with a high standard of protection. In this report, Save the Children puts forward detailed proposals the most important of which can be summarised as follows:

- Change of definition to “child abuse image” to better reflect the fact that children are being exploited and abused in these images.
- The prohibition of the grooming (on-line and off-line) of children.
- The obligation upon EU Member States to use best endeavours to identify victims of child abuse from the images obtained in investigations and to co-ordinate with the authorities in other Member States in identifying the victims and bringing the perpetrators of the abuse to justice.
- The creation of contact points in order to facilitate contact between EU Member States and the establishment of a European Child Protection Network.
- The treatment of children and victims of child abuse not only in judicial proceedings but in general.

If the new framework decision follows these and the other proposals put forward in this report, Save the Children believes the European Union will achieve its objective of providing children with the opportunity to grow up in an area of freedom and security.

Brussels 19 February 2009