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Subject: Presidency report on the proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA

Delegations will find attached a Presidency report on the above proposal for a Directive.

Presidency report on the proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA

The Commission's proposal for a Directive, which is based on Articles 82(2) and 83(1) of the Treaty on the Functioning of the European Union and which will be discussed under the ordinary legislative procedure (co-decision), was transmitted to the Secretariat General of the Council on 29 March 2010 and submitted to the LIBE Committee of the European Parliament on 27 April. The Spanish Presidency took part in the presentation of the proposal to the European Parliament in order to explain the direction which negotiations in the Council would take. Also present was the European Parliament's rapporteur for the proposal, Ms Roberta Angelilli.

Discussions in the Council's DROIPEN working party started on 28 April and will continue until the end of the Spanish Presidency.

The Commission presented the proposal for a Directive at the above meeting of the DROIPEN working party, highlighting its new approach to sanctions, the more detailed definitions and lists of offences and the provisions on blocking of websites with child pornography content.

Background and objective of the proposal

The subject-matter of the proposal is currently regulated by Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography. Nonetheless, the Framework Decision is insufficient as regards criminalisation and inclusion of new forms of offence carried out using modern technologies, rights and procedural guarantees of minors and means of preventing such conduct. Thus, the Framework Decision leaves unaddressed not only matters relating to conduct undertaken via the Internet, such as harassment or propositioning of minors (also known as "grooming") but also the question of sexual relations between an adult and a minor who has not reached the age of sexual consent.

The aim of the proposal is, therefore, to remedy such deficiencies by offering a comprehensive mechanism to combat this type of abhorrent offence. The proposal consequently seeks to replace the Framework Decision with a new, further reaching and more systematic legislative instrument guaranteeing improved protection for minors, in line with Council of Europe Convention No 201 on the protection of children against sexual exploitation and sexual abuse (the Lanzarote Convention).

Position of the Member States in the Council

The proposal has been warmly welcomed by delegations since its aim is to combat types of behaviour punishable in all the Member States. However, a number of technical issues have been raised, such as the following:

- including unreal characters (images, cartoons, etc.) within the concept of child pornography. In this respect, the Commission has noted that the aim is to criminalise images which reproduce reality;
- instigation, aiding and abetting, and preparatory acts for offences of this kind;
- the length of sentences;
- the criminalisation of intentional access to child pornography by computerised means;
- the extension of territorial jurisdiction;
- the blocking of websites with child pornography content as a complementary measure to the efforts to eliminate the source content;
- assessing and offering rehabilitation programmes to the perpetrators of these crimes;
- the connection between the proposal and the Lanzarote Convention.

Regarding the definition of child pornography, one of the objectives of the new Commission proposal is the criminalisation of the availability of child pornography in a wide sense. The definition of pornographic performance also needs to be clarified.

The Presidency has been able to conclude that most delegations oppose the inclusion of sexual abuse offences in the category of deception. It has also noted that most delegations are in favour of differentiation based on the age of consent of the minor and incline towards not making a distinction in the text in relation to the sexual activity concerned.

In relation to the categorisation of offences concerning sexual exploitation (use of minors in prostitution and in pornographic performances), some delegations suggested treating different types of criminal behaviour, such as profiting from a child participating in pornographic performances and profiting from a child participating in child prostitution, in the same way, as well not differentiating between causing a child to participate in pornographic performances and recruiting a child to participate in pornographic performances. A decision must be taken regarding the relative seriousness of causing a child to take part in child pornography and causing a child to take part in a pornographic performance.

One of the novelties of the proposed Directive is that relating to the use of information and communication technologies to commit one or more of the offences covered by this instrument. Here, further provisions could be included to ensure that unintended access to web sites is not criminalised, introducing examples such as prior payment.

The inclusion of the offence of child grooming for sexual purposes must be considered a positive achievement.

Finally, a solution will have to be found for the issue of consensual activities without coercion, violence or intimidation between minors below the age of consent and persons who have reached the age of criminal responsibility, who are close in age or who are close in their physical or psychological development. This issue arises mainly because of the diversity of existing legal regimes in the European Union, with very different ages in relation to consent and legal responsibilities.

To conclude, the Presidency wishes to thank the other delegations, the General Secretariat of the Council and the Commission for their work and efforts on this initiative, whose successful completion can only be in the interests of the most valued asset for a society: its minors.

Brussels, 27 May 2010

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