



**COUNCIL OF
THE EUROPEAN UNION**

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INITIATIVE

source: Kingdom of Belgium

dated: 4 November 2004

Subject: Initiative of the Kingdom of Belgium with a view to the adoption by the Council of a framework decision on the recognition and enforcement in the European Union of prohibitions arising from convictions for sexual offences committed against children

Sir,

Please find enclosed herewith an initiative of the Kingdom of Belgium with a view to the adoption by the Council of a framework decision on the recognition and enforcement in the European Union of prohibitions arising from convictions for sexual offences committed against children, based on Article 31(a) and Article 34(2)(b) of the Treaty on European Union.

The initiative is intended as a useful supplement, in the particularly troubling area of sexual offences against children, to the proposal for a Council Decision on the exchange of information extracted from criminal records, presented by the European Commission at the Justice and Home Affairs Council of 25 and 26 October 2004.

(Complimentary close)

Signed:

Jan de Bock

Initiative of the Kingdom of Belgium with a view to the adoption by the Council of a framework decision on the recognition and enforcement in the European Union of prohibitions arising from convictions for sexual offences committed against children

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(a) and Article 34(2)(b) thereof,

Having regard to the initiative of the Kingdom of Belgium,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) It is the European Union's objective to provide citizens with a high level of safety within an area of freedom, security and justice.
- (2) The European Council, meeting in Tampere on 15 and 16 October 1999, stressed that the principle of mutual recognition should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union.

- (3) On 29 November 2000 the Council adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters. According to point 3.4 of the programme, concerning disqualifications and other sanctions, the effectiveness of certain sanctions within the European Union depends on their being recognised and enforced throughout the Union. In that context, the Council set it as a priority (measure 22) to draw up an instrument enabling such disqualifications to be enforced in the sentenced person's Member State of residence and certain disqualifications to be extended to the Union as a whole, at least as regards certain types of offence and disqualification.
- (4) Given that a prohibition is generally imposed either because of the gravity of the offence committed or to prevent the commission of further offences by the convicted person, it is genuinely desirable that the prohibition be enforceable in any other Member State in whose territory the person is resident.
- (5) Combating the sexual exploitation of children and child pornography, and in particular combating risks of recidivism in this context, should be a priority for the Union. In this particular area Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography established, in accordance with the principle of subsidiarity, a minimum common EU approach to these criminal offences, in particular as regards the type of penalty and prohibition that should be provided for by national legislation. The principle of mutual recognition should be applicable to temporary or permanent prohibition from exercising professional activities related to the supervision of children, which is expressly provided for by the Framework Decision, where that prohibition is consequent upon a criminal conviction for one of the offences connected to the sexual exploitation of children and child pornography.

- (6) Awareness of the existence of such a prohibition in one Member State is a prerequisite for its recognition and enforcement in another Member State. Several international instruments govern the exchange of information on convictions, in particular the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, which provides that Member States are to inform each other of all criminal convictions and subsequent measures entered in the criminal records that concern their nationals. It is necessary to improve the existing legal framework for exchanging information on the prohibitions associated with such convictions,

HAS ADOPTED THIS FRAMEWORK DECISION:

TITLE I - SCOPE

Article 1

Purpose

1. This Framework Decision applies to the offences covered in Articles 2, 3 and 4 of Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography.
2. Its purpose is to establish the rules under which a Member State shall recognise and enforce in its territory prohibitions arising from convictions for such offences.
3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

Article 2
Definitions

For the purposes of this Framework Decision,

- (a) "conviction" shall mean any final decision by a criminal court establishing that a person is guilty of a criminal offence;
- (b) "criminal record" shall mean the national register or registers recording convictions in accordance with national law;
- (c) "prohibition" shall mean a temporary or permanent ban on exercising professional activities related to the supervision of children, referred to in Article 5(3) of Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography, arising from a conviction for an offence under Article 1(1);
- (d) "central authority" shall mean the authority appointed under Article 2 of the Council Decision of [...] on the exchange of information extracted from the criminal record;
- (e) "issuing State" shall mean the Member State in which a court handed down the conviction;
- (f) "enforcing State" shall mean the Member State, other than that in which a court handed down the conviction, on whose territory the convicted person resides.

TITLE II - INFORMATION ON PROHIBITIONS

Article 3

Registration obligation

Member States shall take the necessary steps to ensure that any prohibition is registered in the criminal record.

Article 4

Notification obligation

1. When the issuing State passes on criminal record information to another Member State under the applicable international rules on mutual legal assistance in criminal matters, it shall mention the prohibition in the excerpt from the criminal record.
2. The central authority of the issuing State shall also indicate the duration of the prohibition.

Article 5

Obligation to request information

Where application is made in the framework of this Framework Decision for the criminal records of a Member State, in accordance with national law, with a view to obtaining information on a national of another Member State, an application shall always be made to the central authority of the Member State of which the person concerned is a national.

TITLE III - PROCEDURE FOR ENFORCEMENT OF PROHIBITIONS

Article 6

Recognition and enforcement of the prohibition

1. The competent authorities of the enforcing State shall recognise any prohibition, without any formalities being required, and shall enforce it, unless the competent authorities decide to invoke one of the grounds for non-recognition or non-enforcement provided for in Article 7.
2. When an enforcing State is informed of the existence of a prohibition, it shall forward that information to the competent authority for the purposes of applying paragraph 1. The competent authority shall issue its decision within thirty days of such information being forwarded.

Article 7

Reasons for non-recognition or non-enforcement

The competent authorities in the enforcing State may refuse to recognise and enforce a prohibition only if:

- (a) the penalty is time-limited under the law of the enforcing State, where the offences concerned are subject to the jurisdiction of that State under its own criminal law;
- (b) the conviction was handed down in default of appearance and the person concerned was not summoned in person nor otherwise informed of the date and location of the hearing that led to the conviction handed down in default of appearance;
- (c) a conviction was handed down on the person concerned for the same offences in the enforcing State.

Article 8

Enforcement procedures

1. To enforce a prohibition, the competent authority of the issuing State shall not require any formalities other than form B, referred to in Article 4(2) of the Council Decision of [...] on the exchange of information extracted from the criminal record.

2. If the duration of the prohibition exceeds the maximum provided for by the law of the enforcing State for the same offence, the duration of the enforced prohibition shall be reduced to that maximum.

Article 9

Appeals

1. Each Member State shall put in place the necessary arrangements to ensure that the convicted person has a non-suspensive legal remedy against the recognition and enforcement of a prohibition pursuant to Article 6. The action shall be brought before a court in the enforcing State in accordance with the national law of that State.

2. The substantial reasons for handing down the conviction and the sentence cannot be challenged before a court in the enforcing State.

Article 10

Subsequent changes

1. The central authority of the issuing State shall inform the central authority of the enforcing State of any subsequent measure affecting the prohibition, including review, pardon, amnesty, rehabilitation and erasure. The central authority of the enforcing State shall forward this information to the competent authority for the purposes of applying Article 6(1).

2. If the competent authority of the enforcing State is informed of a subsequent measure affecting the prohibition in accordance with paragraph 1, it shall accordingly adapt the measures taken pursuant to Article 6(1).

TITLE IV - FINAL PROVISIONS

Article 11

Implementation

1. Member States shall take the necessary measures to comply with this Framework Decision by [...].

2. Member States shall, by the same date, communicate to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations resulting from this Framework Decision. On the basis of a report established on the basis of this information by the Commission, the Council shall, no later than [...], assess the extent to which Member States have taken the necessary measures to comply with this Framework Decision.

Article 20

Entry into force

This Framework Decision shall enter into force on the day of its publication in the Official Journal.
