



**COUNCIL OF
THE EUROPEAN UNION**

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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Initiative of the Kingdom of Belgium with a view to adopting Council Framework Decision 2008/.../JHA on the recognition and enforcement of prohibitions arising from convictions for sexual offences committed against children

**INITIATIVE OF THE KINGDOM OF BELGIUM
WITH A VIEW TO ADOPTING
COUNCIL FRAMEWORK DECISION 2008/.../JHA**

of

**on the recognition and enforcement 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(1)(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 Parliament¹,

¹ Opinion of

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 the 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 similar sanctions, the effectiveness of certain sanctions in the European context 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 one or more instruments 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 in order 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 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 pornography¹ established, in accordance with the principle of subsidiarity, a minimum common Union approach to such criminal offences, in particular as regards the types 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, such prohibition being expressly provided for by Framework Decision 2004/68/JHA, where it 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 each Contracting Party is to inform any other Party of all criminal convictions and subsequent measures, entered in the judicial records in respect of nationals of the latter Party. It is necessary to improve the existing legal framework for exchanging information on the prohibitions associated with convictions for sexual offences committed against children,

HAS ADOPTED THIS FRAMEWORK DECISION:

¹ OJ L 13, 20.1.2004, p. 44.

Title I

Scope

Article 1

Purpose

1. This Framework Decision shall apply to the offences covered by Articles 2, 3 and 4 of Framework Decision 2004/68/JHA.
2. Its purpose is to establish the rules under which Member States shall recognise and enforce in their 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.

Article 2

Definitions

For the purposes of this Framework Decision:

- (a) "conviction" means any final decision by a criminal court establishing that a person is guilty of a criminal offence;

- (b) "criminal record" means the national register or registers recording convictions in accordance with national law;
- (c) "prohibition" means a temporary or permanent ban on exercising professional activities related to the supervision of children, referred to in Article 5(3) of Framework Decision 2004/68/JHA, arising from a conviction for an offence referred to in Article 1(1) of this Framework Decision;
- (d) "central authority" means the authority designated under Article 1 of Council Decision 2005/876/JHA on the exchange of information extracted from the criminal record¹;
- (e) "issuing State" means the Member State in which the conviction was handed down;
- (f) "enforcing State" means the Member State, other than that in which the conviction was handed down, on whose territory the convicted person resides.

¹ OJ L 322, 9.12.2005, p. 33.

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

Obligation to pass on information

1. When the central authority of 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 any prohibition in the excerpt from the criminal record.
2. The central authority of the issuing State shall also indicate the duration of any prohibition.

Article 5

Obligation to request information

Where in application of this Framework Decision in accordance with national law, information from the criminal records of a Member State is requested, a request with a view to obtaining such information on a national of another Member State shall always be sent 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 a prohibition

1. The competent authority of the enforcing State shall recognise any prohibition, without any formalities being required, and shall enforce it, unless it decides 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. The competent authority of the enforcing State shall enforce the prohibition without any formalities being required, other than a reply on the basis of form referred to in Article 3(2) of Decision 2005/876/JHA.

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

Article 9

Legal remedy

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 conviction itself and the sentence may not 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 the provisions of this Framework Decision before
2. Member States shall, by the same date, transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of a report established using this information by the Commission, the Council shall, before ..., assess the extent to which Member States have complied with the provisions of 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 of the European Union.

Done at Brussels,

For the Council
The President
