



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 27 May 2002

9140/1/02

REV 1

LIMITE

DROIPEN 32

MIGR 43

OUTCOME OF PROCEEDINGS

of : Council

on : 24 and 25 April 2002

No. prev. doc. : 8135/02 DROIPEN 26 MIGR 35 + COR 1(en)

No. Cion prop. : 5206/01 DROIPEN 2 (COM(2000)854 final)

Subject : Draft Council Framework Decision on combating the sexual exploitation of children and child pornography

The Council examined at its meeting on 24 and 25 April 2002 the outstanding questions on the draft Framework Decision on combating the sexual exploitation of children and child pornography on the basis of document 8135/02 DROIPEN 26 MIGR 35 + COR 1(en).

The Presidency proposed the text set out in Annex I and II of DROIPEN 26 as amended in the text in Annex I of the present document.

The text as amended was subject to the following:

- Parliamentary scrutiny reservations by the Swedish, German, Netherlands, Danish, Irish and Portuguese delegations.
- Reservation by the Italian delegation on Article 3(2)(b).
- Reservation by the Finnish delegation on the reference to Article 4 in Article 5(1).
- Reservation by the Netherlands delegation on Article 5(2)(b) and (c).

- Reservation by the Finnish delegation on the penalty level provided for in Article 5(2)(c) in respect of the offences referred to in Article 3(1)(a), 3(1)(b) and 3(1)(c).

The Belgian delegation indicated it would make a declaration on Article 5(2)(c) at the adoption of the instrument. Following the meeting, it has submitted the following declaration:

"Declaration on Article 5(2)(c)

Belgium [and other delegations which want to join the declaration] regrets that the scope of Article 5(2)(c) is limited to cases where the victim is a child below the age of sexual consent, and declares that it will not apply that limitation in its national law."

The Council instructed Coreper to examine the outstanding questions with a view to reaching agreement on the draft at its meeting in June 2002.

Articles 3(2)(b) and (c)

Articles 3(2)(b) and (c) are worded as follows:

- "(b) referred to in Article 1(b)(i) and (ii) where, in the case of production and possession, images of persons of the age of sexual consent or older are produced and possessed with their agreement and solely for their own private use.¹
- (c) referred to in Article 1(b)(iii), where it is established that the pornographic material is produced and possessed by the producer solely for his or her own private use, as far as no pornographic material as referred to in Article 1(b)(i) and (ii) has been used for the purpose of its production, and provided that the act involves no risk for the dissemination of the material.²"

Article 5(1)

The following statement is entered in the minutes of the Council at the adoption of the Framework Decision:

"The German delegation assumes that the rule laid down in Article 5(1) does not mean that aiding, abetting and attempt, in particular, are to be equated with the offence committed by the principal offender."

¹ The Italian delegation maintained its reservation and proposed the following wording of Article 3(2)(b): "(b) referred to in Article 1(b)(i) (...) where, in the case of production and possession, images of children having reached the age of sexual consent (...) are produced and possessed by them for their own private use."

² Article 3(2)(c) was amended on request by the Italian delegation. Certain delegations underlined that they could only accept the amended text on the condition that the Italian delegation lifted its reservation on Article 3(2)(b).

Article 5(2)

Article 5(2) is worded as follows:

"2. Subject to paragraph 4, each Member State shall take the necessary measures to ensure that the following offences are punishable with criminal penalties of a maximum of at least between 5 and 10 years of imprisonment:

- a) the offences referred to in **Article 2(a)**, consisting in "coercing a child into prostitution or into participating in pornographic performances", and the offences referred to in **Article 2(c)(i)**;
- b) the offences referred to in **Article 2(a)**, consisting in "profiting from or otherwise exploiting a child for such purposes", and the offences referred to in **Article 2(b)**, in both cases as far as they refer to prostitution, where at least one of the following circumstances may apply:¹
 - The victim is a child below the age of sexual consent under national law.
 - The offender has deliberately or by recklessness endangered the life of the child.
 - The offences involve serious violence or caused serious harm to the child.
 - The offences are committed within the framework of a criminal organisation within the meaning of Joint Action 98/733/JAI of December 21, 1998 making it a criminal offence to participate in a criminal organisation in the Member States of the European Union, irrespective of the level of the penalty referred to in this text.

¹ The Netherlands delegation maintained its reservation on Article 5(2)(b) and (c) and thought that Article 5(2)(b) should apply to the whole of Article 2(a), consisting in "profiting from or otherwise exploiting a child for such purposes", and of Article 2(b), in both cases concerning both prostitution and pornographic performances, and Articles 2(c)(ii) and (iii).

- c) the offences referred to in **Article 2(a)**, consisting in "profiting from or otherwise exploiting a child for such purposes", and the offences referred to in **Article 2(b)**, in both cases as far as they refer to pornographic performances, **Articles 2(c)(ii), 2(c)(iii), 3(1)(a), 3(1)(b) and 3(1)(c)**, where the victim is a child below the age of sexual consent under national law and at least one of the circumstances referred to under the second, third and fourth indent under point b) may apply."^{1 2}

Article 8(6)

Article 8(6) is worded as follows:

"6. Each Member State shall take the necessary measures to enable the prosecution, in accordance with national law, of at least the most serious of the offences referred to in Article 2 after the victim has reached the age of majority."

¹ See footnote to Article 5(2)(b).

² Reservation by the Finnish delegation on the penalty level provided for in Article 5(2)(c) in respect of the offences referred to in Article 3(1)(a), 3(1)(b) and 3(1)(c).