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**COMMISSION STAFF WORKING DOCUMENT**

*Accompanying document to the*

Proposal for a

**COUNCIL FRAMEWORK DECISION**

**on combating the sexual abuse , sexual exploitation of children and child pornography,  
repealing Framework Decision 2004/68/JHA**

**IMPACT ASSESSMENT**

{COM(2009) 135}  
{SEC(2009) 356

## **EXECUTIVE SUMMARY**

Sexual abuse and sexual exploitation of children are particularly serious forms of crime as they are directed against children, who have the right to special protection and care. They produce long-term physical, psychological and social harm to victims and its persistence undermines the core values of a modern society relating to special protection of children and trust in relevant State institutions. Despite lack of accurate and reliable statistics, studies suggest that a significant minority of children in Europe may be sexually assaulted during their childhood, and research also suggests that this phenomenon is not decreasing over time, rather that certain forms of sexual violence are on the rise.

On the side of the child victims, the main cause of this phenomenon is vulnerability resulting from a variety of factors. Insufficient response by law enforcement mechanisms contributes to the prevalence of these phenomena, and difficulties are exacerbated by the transnational dimension of certain forms of offences. Victims are reluctant to report abuse for shame or fear of the consequences; variations in national criminal law and procedure may give rise to differences in investigation and prosecution in various countries; convicted offenders may continue to be dangerous after serving their sentences. Developments in information technology have made these problems more acute by facilitating production and distribution of child sexual abuse images while offering offenders anonymity. At the same time national legal systems need to deal with high number of actors involved, with different degrees of responsibility and operating in different jurisdictions. Ease of travel and income differences fuel so-called child sex tourism, resulting often in child sex offenders committing offences abroad and enjoying impunity in practice. Beyond the prosecution difficulties, considerable profits can be made with little risk by organised crime.

National legislation covers some of these problems to varying degrees. However, it is not strong or consistent enough to provide a vigorous social response to this disturbing phenomenon. At EU level, Council Framework Decision 2004/68/JHA, introduces a minimum of approximation of Member States' legislation to criminalise the most serious forms of child sexual abuse and exploitation, to extend domestic jurisdiction, and to provide for a minimum of assistance to victims. Although the requirements have generally been put into implementation, the Framework Decision has a number of shortcomings. It approximates legislation only on a limited number of offences, does not address new forms of abuse and exploitation using information technology, it does not remove obstacles to prosecuting offences outside national territory persist, the specific needs of child victims are not sufficiently addressed and measures to prevent offences are inadequate.

Ongoing initiatives in police and judicial cooperation may have some effect in tackling such crime. Furthermore, a recent Council of Europe Convention CETS No. 201 against child sexual abuse has been adopted in 2007 and arguably constitutes the highest international standard for protection of children against sexual abuse and exploitation to date. Implementing the Convention CETS No. 201 by Member States would also lead to significant improvements. However, there is no certainty that all Member States will ratify the Convention in the near future due to lengthy national procedures and lack of a timescale for ratification. A vigorous monitoring mechanism to ensure appropriate implementation is not provided for either.

For these reasons, stakeholders argue forcefully for more effective, specific measures.

The general policy objective of the Union in this field, under Article 29 of the Treaty on the European Union, is to prevent and combat offences against children, which includes child sexual abuse and child sexual exploitation. Specific objectives to serve it would be to effectively prosecute the crime; to protect victims' rights; to prevent child sexual exploitation and abuse and to establish effective monitoring systems.

Various policy options are examined as a means to achieve the objective.

- Policy option (1): No new EU action

The EU would take no new action (legislation, non-policy instruments, financial support) to combat child sexual abuse and exploitation, while Member States may continue the process of signature and ratification of Council of Europe Convention CETS No. 201.

- Policy option (2): Complement existing legislation with non-legislative measures

Existing EU legislation, in particular Framework Decision 68/2004/JHA would not be amended. Instead, non-legislative measures could be put in place to support coordinated implementation of national legislation. This would include exchanging information and experience in prosecution, protection or prevention, awareness raising, cooperation with private sector and encouragement of self regulation, or the setting up of mechanisms for data collection

- Policy option (3): New legislation on prosecuting offenders, protecting victims, and preventing offences

A new Framework Decision would be adopted, incorporating the provisions of the existing Framework Decision, including certain provisions of the Convention CETS No. 201, and also additional elements which are not contained in either of them. It would cover for instance criminalisation of serious forms of child sexual abuse and exploitation that are currently not included such as, new criminal offences in the IT environment. Provisions would be introduced to assist with investigating offences and bringing charges, rules to extend national jurisdiction, provisions to protect and support victims in criminal proceedings, and measures to prevent recidivism and to disrupt access to child pornography

- Policy option (4): New comprehensive legislation to enhance prosecution of offenders, protection of victims and prevention of offences (as in Option 3) plus non-legislative measures (as in Option 2)

The existing provisions of Framework Decision 68/2004/JHA would be supplemented by EU action introducing legislative amendments to substantive criminal law and procedure, protection of the victims, and prevention of offences mentioned under Option 3. In addition, action would be undertaken through non-legislative measures identified under Option 2 to address a number of elements to improve implementation of national legislation in criminal matters resulting from the amendments, and to provide for tools of investigation, prosecution, protection as well as prevention in sectors outside criminal law.

Option 1 (status quo) may provide substantial improvement if Member States sign, ratify and implement Convention CETS No. 201, as they seem willing to do. However, the lengthy national ratification procedures in the absence of an EU legally binding framework and the lack of a vigorous monitoring mechanism make uncertain when and to what extent the

benefits of that Convention will put into practice. Option 2 would enhance the effectiveness in the implementation of the existing legal framework, but it would be insufficient to improve prosecution in a number of areas where a specific legal basis is required.

Option 3 would improve matters in comparison to the current situation. It would strengthen legislation in the areas covered by the current EU legislation on prosecution of the offenders and protection of child victims. It would also address preventive measures, thus improving the protection of children in general. The financial cost is expected to be outweighed by the social and economic benefit of more efficient action against this crime. Fundamental rights improvements would also outweigh the risks for interferences of certain measures.

Option 4 would multiply the effectiveness of the measures in option 2 and 3 by combining them and encouraging Member States to cooperate on setting up tools and acting to improve the implementation of the more comprehensive legal framework been put in place.

Following the analysis of economic impact, social impacts, and impacts on fundamental rights, Options 3 and 4 represent the best approach to the problems and achieve the objectives of the proposal. The preferred option would be option 4, followed by option 3.

## **1. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES**

### **1.1. Background and policy context**

#### *1.1.1. Policy context*

The Commission's Work Programme for 2009<sup>1</sup> includes a proposal to raise the level of protection for children granted by Council Framework Decision 2004/68/JHA<sup>2</sup> against sexual abuse, in particular sexual exploitation and child pornography. Together with a proposal to revise Framework Decision 2002/629/JHA on combating trafficking in human beings, this will be part of an organised crime package.

The main underlying problems addressed by Framework Decision 2004/68/JHA were the serious criminal offences of sexual exploitation of children and child pornography. On 16 November 2007, the Commission adopted a report on its implementation which, in brief, stated that Member States appeared largely to have met the requirements set out in the Decision, but that there was still a need for more action in certain areas, in particular on IT-related developments such as 'grooming' through the Internet, and for new methods to detect these crimes (see section 2.5 for more details).

EU Member States have an international obligation, mainly under the UN Convention on the Rights of the Child, to protect children from all forms of sexual exploitation and sexual abuse. The recent Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse CETS No. 201<sup>3</sup> (referred to as 'the CoE Convention' or 'the

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<sup>1</sup> COM(2008) 712.

<sup>2</sup> Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography, OJ L 13, 20.1.2004, p.44.

<sup>3</sup> Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, CETS No 201, opened for signature on 25 October 2007.

Convention') is regarded by experts as the highest international standard to date. The importance of further action on child protection was underlined in the Hague Programme<sup>4</sup>.

### *1.1.2. Organisation and timing*

The IA was drafted in the second half of 2008, but is also based on previous informal consultations with, in particular, Member States' experts. An Inter-service Steering Group was set up, including DG EAC, EMPL, RELEX, INFSO, DEV and AIDCO, in addition to the SG and LS. The Steering Group met on 26 September and 1 December 2008.

### *1.1.3. Consultation and expertise*

Three formal consultative meetings were carried out. The Group of Experts on trafficking in human beings met on 2-3 October 2008,<sup>5</sup> and after extensive discussion issued a written opinion on trafficking also covering certain aspects of the fight against child exploitation and child pornography. A consultative meeting with experts from different background including governments, law enforcement agencies, NGOs, international organisations and universities invited in a personal capacity was held on 7 October 2008. Following the meeting, several experts submitted written comments. A meeting with Member States' representatives was held on 17 October 2008.

The Commission's general principles on consultations were broadly followed. A wide range of stakeholders took part in detailed discussions on the legislative plans well before these plans were finalised.

A summary of the views of stakeholders is presented in Section 2 below.

In spite of the wide consultation, data collection has proved to be highly problematic, for reasons explained in section 2.3.

## **1.2 The impact assessment board (IAB)**

The Commission's IAB was consulted on 12 December 2008 and delivered its Opinion on 14 January 2009. The IAB considered that the report provided good background information on the issue and how it has developed in recent years. The IAB recommended that the report be significantly improved in a number of areas: the baseline scenario needed to be strengthened, measures listed in the policy options should be further developed, and the report should clarify how costly these measures would be for national authorities.

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<sup>4</sup> Communication from the Commission to the Council and the European Parliament - The Hague Programme: Ten priorities for the next five years The Partnership for European renewal in the field of Freedom, Security and Justice, 10.5.2005, COM (2005) 184 final

<sup>5</sup> Commission Decision of 17 October 2007 setting up the Group of Experts on Trafficking in Human Beings (2007/675/EC), OJ L 277, 20.10.2007; Commission Decision of 22 July 2008 on the appointment of members of the Group of Experts on Trafficking in Human Beings (2008/604/EC), OJ L 194, 23.7.2008.

## **2. PROBLEM DEFINITION**

### **2.1. What is the problem?**

Whereas a ‘child’ is consistently defined in international instruments as any person below the age of 18 years<sup>6</sup>, ‘sexual exploitation’ and ‘sexual abuse of children’ are terms used to designate different forms of behaviour<sup>7</sup> related to sexual relations with a child in the absence of free will or under a certain age, child prostitution, child pornography, corruption of children or solicitation for sexual purposes. These phenomena may be interlinked to different degrees. For instance, ‘child pornography’ is in reality images of child sexual abuse; the term plays down the seriousness of the offence. Furthermore, a recent study showed that 40% of arrested persons in possession of child pornography sexually victimised children too.<sup>8</sup> All behaviours described above as sexual exploitation and sexual abuse of children are particularly serious forms of crime as they are directed against children, who have the right to special protection and care.

### **2.2. Who is affected and how?**

First of all, child victims of sexual abuse and exploitation. They suffer not only specific short- and long-term physical and psychological health consequences but the social consequences of the crime to which they have been subjected, depending on their age and resilience and the environment in which they have been brought up.<sup>9</sup>

Officials and professionals likely to come in contact with potential and presumed victims, and with offenders, are also affected. Child sexual abuse and exploitation involves significant intervention and corresponding costs for the health sector (treating victims for short- and long-term medical harm), for social support structures and services, and for the judiciary and law enforcement system (dealing with investigation, prosecution and sanctions against offences).

The issue also affects society at large: unpunished sexual abuse against children undermines the core values of a modern society relating to special protection of children. Furthermore, it breeds a sense of insecurity and fear, undermining trust in relevant state institutions, as shown by the fall-out from the Dutroux affair in the 1990s.

### **2.3. The size of the problem**

While there is no doubt that the sexual abuse and exploitation of children is a serious problem, there is a lack of accurate and reliable statistics on the nature of the phenomenon and the numbers of children involved, because of differences in national definitions of various child sexual abuse and exploitation offences, very significant underreporting by victims, and

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<sup>6</sup> CETS 201, Article 3; Convention on the Rights of the Child, Article 1; FD 2004/68/JHA, Article 1.

<sup>7</sup> CETS 201, Article 18 to 23.

<sup>8</sup> Wolak, J., et al., *Child pornography possessors arrested in Internet-related crimes*, 2005, quoted in *Child Pornography: Model legislation and global review*, International Centre for Missing and Exploited Children, 2007.

<sup>9</sup> This includes post-traumatic stress disorder, depression or anxiety, engaging in sexual and health risk behaviour, sexually transmitted disease, intimate partner violence and poor academic performance. See May-Chahal, C., and Herczog, M., *Child sexual abuse in Europe*, 2003; Johnson, R.J., ‘Advances in understanding and treating childhood sexual abuse: Implications for research and policy’, *Family & Community Health*, supplement to Vol. 31, (1S), S24-S31.

inadequate data collection mechanisms. Studies suggest that a significant minority of children in Europe, between 10% and 20% as an informed scientific estimate, will be sexually assaulted during their childhood<sup>10</sup>.

Research also suggests that this phenomenon is not decreasing over time, rather that certain forms of sexual violence (such as abuse of teenagers) are on the rise. Child victims portrayed in pornography are getting younger, and the images are becoming more graphic and more violent.<sup>11</sup>

#### 2.4. The underlying drivers of the problem

On the side of the child victims, the main driver is vulnerability resulting from a variety of factors.

Major factors are **gender** (the risk is three times higher for girls than boys); **age** (pre-adolescent children are at higher risk) and **disability** (disabled children face additional risks of sexual abuse)<sup>12</sup>. In turn, different causes appear to be at the root of that situation.

**Poverty and social exclusion** may also set children at risk of falling prey to sexual exploitation. The danger is even more important given the high profits that sexual exploitation, including child pornography, can generate.

Lack of a properly-functioning **social support network** plays an important role. This also covers the family situation. Children in an environment of family violence are also at higher risk of suffering social violence.

There is no clear profile of the **offender**. Although the percentage of former victims among offenders is higher than in the general population, the majority of victims do not go on to become offenders, and most of the offenders have not been victims. Preconditions for committing child sexual abuse are emotional congruence, sexual arousal, overcoming internal and external inhibitions, and overcoming the resistance of the child. Factors such as the nature of previous offending, sexual preferences and a failure to complete treatment have been identified as increasing the risk of reoffending.

Insufficient response by law enforcement mechanisms contributes to the prevalence of these phenomena; difficulties are exacerbated by the transnational dimension of certain forms of offences.

Victims are **reluctant to report abuse** for shame or fear of the consequences, particularly where the abuse happens within the family, and professionals in contact with them do not always have the tools to identify victims. As a result, three out of four incidents of sexual abuse are estimated to go unreported.<sup>13</sup>

Certain behaviours are not considered a criminal offence everywhere, and variations in criminal law and procedure may give rise to **differences in investigation and prosecution in**

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<sup>10</sup> May-Chahal & Herczog, op. cit.

<sup>11</sup> International Centre for Missing and Exploited Children, op. cit.

<sup>12</sup> Bolen, RM (1998) "Predicting the risk of being sexually abused"; Sullivan and Knutson (2002) "Maltreatment and disabilities: a population-based epidemiological study". Studies referenced in May-Chahal and Herczog, op. cit.

<sup>13</sup> Johnson, op. cit.



**different countries.** For example, undercover operations where the police infiltrate criminal circles are forbidden by law in some Member States, or are subject to different conditions. In some jurisdictions, viewing child pornography without storing files does not amount to 'possession' and no prosecution is possible. Some Member States require a victim of child abuse committed abroad to file a complaint with the home authorities. The conditions for granting child offenders access to intervention programmes also vary, with some Member States providing for it only in cases where the penalties are below a certain threshold or where the offender's capacity is affected by cognitive or intellectual disorders. Aggravating circumstances may apply only to certain crimes whose definition varies from country to country and cover different behaviours. Taking into account the principle of strict interpretation of criminal law, and as outlined in the Explanatory Report to the CoE Convention regarding the advantages of harmonising criminal offences, this situation may favour certain acts in Member States where the law is more lenient, make the collection of comparable data and experience more difficult, and obstruct international cooperation (in particular extradition and mutual legal assistance).<sup>14</sup>

Convicted offenders may continue to be **dangerous after serving their sentences.** It is estimated that some 20% of sex offenders on average (with big differences between different profiles of offenders)<sup>15</sup> go on to commit new offences after conviction. Additional measures to reduce the risk of their reoffending (such as exclusion from certain activities involving contact with children, or monitoring) are not always taken, and are difficult to implement if they leave the country.<sup>16</sup>

Developments in and the spread of **information technology** have made these problems more acute. Images of child abuse can be easily produced and distributed, sold and accessed widely at virtually no cost, giving new economic incentives to abusers. Cyberspace also provides offenders with new opportunities to find, approach and manipulate children under the cover of anonymity. At the same time, national legal systems find it difficult to respond because of the number of actors (users, publishers of websites, internet service providers, and telecom companies) involved in producing and disseminating the information, with different degrees of responsibility and operating in different jurisdictions. According to some stakeholders, the number of such websites located in the EU seems to have fallen following law enforcement action in cooperation with Internet providers and hotlines to report abuse. However, access to and the distribution and sale of child pornography continues in the EU through websites located outside Europe, in countries where the cooperation of national authorities is difficult to obtain.

Ease of travel and income differences fuel so-called **child sex tourism.** The application of certain rules on criminal jurisdiction often results in child sex offenders committing offences abroad and enjoying impunity in practice.

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<sup>14</sup> See the Explanatory Report to CETS 201, para. 112.

<sup>15</sup> Redondo, S., 'Sirve el tratamiento para rehabilitar a los delincuentes sexuales?' in *Revista Española de Investigación Criminológica*, No 4, 2006.

<sup>16</sup> This is illustrated by a number of tragic cases in recent years, an in particular by that of Mr Fourniret in 2004. A French citizen, he had previous convictions for a series of murders and sexual assaults against children before moving to Belgium. As the Belgian authorities were not aware of these previous convictions, he was able to start working in a school. He was then able to use this position to commit further murders and sexual assaults against children (source: NSPCC (2007) "Protecting children from sexual abuse in Europe: safer recruitment of workers in a border-free Europe").

Beyond the prosecution difficulties referred to above, **considerable profits can be made with little risk** by organised crime groups involved in the trade in child pornography or even in children to be abused. Stakeholders estimate that child pornography is a multimillion-dollar business worldwide.

## 2.5. Weaknesses in the current legal framework and policy

National legislation covers some of these problems to varying degrees. However, it is not strong or consistent enough to provide a vigorous social response to this disturbing phenomenon.

The European Union's most relevant response<sup>17</sup>, Council Framework Decision 2004/68/JHA, introduces a minimum of approximation of Member States' legislation to criminalise the most serious forms of child sexual abuse and exploitation, to extend domestic jurisdiction, and to provide for a minimum of assistance to victims.

This legal framework is in the early stages of development, and a number of shortcomings have been identified:

- it approximates legislation on only a limited number of offences;
- it does not address new forms of child sexual abuse and exploitation predominantly using information technology, such as grooming or viewing child pornography on the web without downloading it;
- rules on jurisdiction do not completely remove obstacles to prosecuting offences outside national territory, as in the case of child sex tourism;
- the specific needs of child victims of sexual abuse and exploitation have not been met;
- measures to prevent offences are inadequate.

The 2007 Commission report on the implementation of the Framework Decision concluded that, while information from Member States was incomplete, the requirements set had generally been met. However, the Commission stressed the importance of strengthening social protection and ensuring full respect for the rights of child victims, and suggested updating and further strengthening the Framework Decision, in particular regarding offences committed using IT.

Other EU initiatives in force or under way partially address some problems which also affect child sexual offences. The Framework Decision on the European arrest warrant<sup>18</sup> eliminates the double criminality requirement for sexual exploitation of children and child pornography, but does so only between Member States, above a certain penalty threshold, and only for the purpose of surrendering offenders, not to establish jurisdiction for offences committed outside

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<sup>17</sup> Other instruments include Council Joint Action 97/154/JHA of 24 February 1997 concerning action to combat trafficking in human beings and sexual exploitation of children, OJ L 63, 4.3.1997, p. 2; Council Decision 2000/375/JHA of 29 May 2000 to combat child pornography on the Internet, OJ L 138, 9.6.2000, p. 1.

<sup>18</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

the country. The future Framework Decision on exchanging information extracted from criminal records<sup>19</sup> and the ECRIS Decision<sup>20</sup> will facilitate electronic interconnection of criminal records, where information on convictions is exchanged between Member States speedily, in a uniform and easily computer-transferable way. However, the Framework Decisions makes it possible to limit the exchange of information for purposes other than criminal proceedings (for example, for controlling access to professions involving contacts with children) and contains no obligation on Member States to include in their national systems information on prohibitions on offenders from certain activities or to recognize such prohibitions imposed by other Member States. The Council Framework Decision on the application of the principle of mutual recognition to alternative sanctions<sup>21</sup> is a first step in this direction; however, it does not cover professional disqualifications either, in particular disqualification arising from criminal convictions and prohibition from working or activity with minors. The Framework Decision 2005/222/JHA<sup>22</sup> on attacks against information systems addresses certain forms of cybercrime, such as illegal access to information systems, illegal system interference and illegal data interference, but does not deal with illegal web content. The Safer Internet programme<sup>23</sup> contains a number of far-reaching actions, which are also very relevant in the fight against child pornography. However, these measures are of non-legislative nature.

The recent Council of Europe Convention CETS No. 201 against child sexual abuse (see section 1.1.1) arguably constitutes the highest international standard for protection of children against sexual abuse and exploitation to date. It provides a comprehensive and coherent framework covering prevention, coordination of different actors, protection and assistance to victims, comprehensive criminalisation of various forms of abuse and exploitation, rules and instruments to facilitate investigation, prosecution, and procedural law. Implementing such measures would lead to significant improvements. However, Member States may decide not to sign or ratify the Convention; even if they do, ratification may take a very long time; and even if they ratify, the traditional intergovernmental monitoring mechanism would not ensure appropriate implementation.

On a global scale, the main international standard is set by the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography of 2000. However, not all Member States have yet acceded to this Treaty.

## **2.6. Main issues to be addressed**

Given the current extent of this crime, and the general view among stakeholders that the legal framework is inadequate to tackle it, the specific problems to be addressed can be summarised as follows.

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<sup>19</sup> COM(2005)690; general approach agreed by the JHA Council of 12-13 June 2007, expected to be adopted early in 2009.

<sup>20</sup> COM(2008)332; politically agreed by the JHA Council on 24 October 2008, expected to be adopted at the beginning of 2009.

<sup>21</sup> The Council Framework Decision on the application of the principle of mutual recognition of judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions which was adopted in November 2008. [Ref? OJ?]

<sup>22</sup> Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems, OJ L 69, 16.3.2005, p. 67.

<sup>23</sup> See section 3.2 of the Impact Assessment

1. *Failure to convict criminals*
  - a. Insufficient approximation of relevant criminal law provisions in Member States
  - b. Child victims are reluctant to report the abuse because of trauma or their young age, a sense of shame or fear of the repercussions.
  - c. Insufficient international cooperation and poor use of effective investigation tools.
2. *Insufficient protection and assistance to victims*
  - a. Assistance measures responding to the special needs of child victims are not in place or are insufficient in many Member States;
  - b. It may be difficult in practice for child victims to participate in legal proceedings because of the risk of secondary trauma (reviving the abuse experience), or economic or legal constraints.
  - c. Child victims of sexual exploitation may face sanctions for violations of legal provisions (such as immigration law or laws on prostitution) because of the situation in which they were exploited.<sup>24</sup>
3. *Insufficient measures to prevent child sexual abuse and exploitation*
  - a. Some convicted offenders may continue to be **dangerous after serving their sentences**, and recidivism is a reality. Additional measures to reduce the risk of their reoffending are not always taken, and are difficult to implement if they leave the country.
  - b. Preventing access to and dissemination of child pornography is difficult where the websites are hosted in a third country.
4. *Lack of data on and knowledge of the magnitude of the crime and the effectiveness of policy measures to fight child sexual abuse and exploitation in Member States*

## 2.7. How would the problem evolve, all things being equal?

Due to the current magnitude of the crime, the difficulties in fighting it, the high profitability of such criminal activities, and the highlighted weaknesses of existing policies, an increase in the crime rate can be expected despite the efforts made in recent years, including the 2004 Framework Decision. In fact, swift and constant development and accessibility of new IT techniques and Internet make it likely that the phenomenon will grow in the future.

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<sup>24</sup> Sexually exploited children are often victims of trafficking, although this may be difficult to prove. According to UNICEF (Child Trafficking in Europe, 2008, p.25) '*many trafficked children are not identified as victims, especially in those countries that adopt a narrow definition of trafficking. Even when children are identified as victims of trafficking, their cases are still not always recognised as such. Cases that are brought to court may be tried under other, related legislation, such as laws on sexual exploitation and abuse, migration and asylum, or labour regulations. [...] In consequence, and far too often, victims of trafficking, both children and adults, are treated as illegal migrants, or as individuals who are criminally complicit in their own exploitation.*'

Ongoing initiatives in police and judicial cooperation (such as those outlined above) may have some effect in tackling such crime. Implementing the provisions of Council of Europe Convention CETS No. 201 would also lead to significant improvements.

However, there is no certainty that all Member States will ratify the Convention in the near future. There is neither timescale for ratification, nor a vigorous monitoring mechanism to ensure appropriate implementation.

For these reasons, stakeholders argue forcefully for more effective, specific measures.

## **2.8. Right to act, subsidiarity and fundamental rights**

Under Article 29 of the Treaty on the European Union, the Union's objective is to provide citizens with a high level of safety. This objective is to be achieved, in particular, by preventing and combating offences against children.

The EU should take action in this field only if and in so far as this objective cannot be sufficiently achieved by the Member States and can be better achieved by the Union. As stated above, child sexual exploitation and abuse has a considerable cross-border dimension, which is most evident in child pornography and child sex tourism, but also appears in the need to ensure that children in all Member States should be protected from offenders from all Member States, who can travel easily. This requires EU action, notably to follow up on Council Framework Decision 2004/68/JHA and Council Decision 2000/375/JHA,<sup>25</sup> as the objective of effectively protecting children by preventing and combating offences against them cannot be sufficiently achieved by Member States alone.

Any such EU action must respect fundamental rights and observe the principles recognised in particular by the Charter of Fundamental Rights of the European Union (EU Charter) and the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), notably human dignity, the rights of the child, the prohibition of torture and inhuman or degrading treatment or punishment, the right to liberty and security, respect for private and family life, protection of personal data, non-discrimination, and the special procedural rights set out in Articles 47 to 50 of the EU Charter (Articles 6, 7 and 13 of the ECHR). Member States, when implementing EU law, must do so in accordance with these rights and principles.

The EU Charter is of particular relevance to this Impact Assessment. Article 24 lays down a positive obligation to act with the aim of ensuring the necessary protection of children. It states that children shall have the right to such protection and care as is necessary for their wellbeing. In addition, it requires that in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration. In addition, as regards Articles 1 and 3 of the ECHR, the European Court of Human Rights has held that Contracting States are required to take measures to ensure that individuals within their jurisdiction are not subjected to ill-treatment, including ill-treatment by private individuals.<sup>26</sup>

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<sup>25</sup> Council Decision of 29 May 2000 to combat child pornography on the Internet, OJ L 138, 9.6.2000, p. 1.

<sup>26</sup> ECtHR, M.C. v. Bulgaria, para. 149.

## 2.9. Views of consulted stakeholders

A broad range of experts in the field were consulted in three different meetings dealing both with child sexual abuse and sexual exploitation, and trafficking in human beings. This included, in particular, the following categories of stakeholders were invited to the consultation:

- Representatives of Member States' Governments.
- Members of the Commission's Group of Experts on Trafficking in Human beings, selected from Government bodies, NGOs and academia.
- International organisations: Council of Europe, ICMPD, ILO, IOM, ODIHR, UNICEF, UNHCR, UNOCD.
- NGOs: Amnesty International, CATW, CCME, Centre pour l'égalité des chances, ECPAT, Fondation Roi Baudoin, La Strada, Missing Children, NSPCC, On the Road, Pag-asa, Save the Children, TAMPEP, Terre des Hommes, Women Lobby.
- Academia and research centres: Brottsförebyggande rådet, Innocenti Center of UNICEF, Transcrime, University of Kiel.
- Public institutions: Carabinieri, CEOP, Dutch National Rapporteur on Trafficking, Europol, Eurojust.
- A number of experts and organisations have subsequently sent in submissions and provided information: NSPCC, INHOPE, Missing Children Europe, Save the Children, EuroISPA, and UNICEF.

The consultation revealed widespread agreement on the need to substantially improve the level of protection to children granted by the EU framework, to take account of technical developments and trends, and to align it with the highest international standards. This is also necessary to ensure that Member States will be in a position to comply with their international obligations, in particular with regard to Council of Europe Convention CETS No. 201, which sets a high and advanced level of protection.

Key messages resulting from the consultation are:

- the need to incorporate improvements of the Council of Europe Convention;
- the need to criminalise forms of abuse not included in the current FD, in particular offences using IT;
- the need to eliminate obstacles to investigation and prosecution in cross-border cases;
- the need to ensure comprehensive protection of victims, in particular in investigation and criminal proceedings;
- the need to prevent offences through intervention programmes and treatment;
- the need to ensure that convictions and security measures imposed on dangerous offenders in one country are effective in all Member States.

The input received during the consultation has been taken into account in the Impact Assessment. Some of the proposals made by different stakeholders in the consultation process have not been included in the policy options, for the reasons explained in section 4.3 (policy Option 3).

### 3. OBJECTIVES

#### 3.1. General, specific and operational objectives

The **general policy objective** of the Union in this field, under Article 29 of the Treaty on the European Union, is to *prevent and combat offences against children*, which includes child sexual abuse and child sexual exploitation. This should be done by building a more coherent framework for combating these crimes within the third pillar and by increasing its effectiveness.

In view of the problems described, this general objective could be served by action aimed at achieving the following **specific and operational objectives**.

#### **A. Specific objective: to effectively prosecute the crime**

*Operational objectives:*

A.1 **To impose effective, proportionate and dissuasive criminal penalties** on offenders who commit child sexual abuse or exploitation. This is especially important with regard to activities which currently are not criminalised at all, or are not criminalised consistently throughout the EU, including new forms of child sexual abuse or exploitation committed using information technology.

A.2 **To facilitate the investigation of offences and the initiation of criminal proceedings**, especially in the absence of reporting or a complaint by the child victim at the time of the abuse.

A.3 To effectively **prosecute abuse or exploitation committed abroad**, thus ensuring that international travel is not an obstacle to fighting child sexual abuse and exploitation.

A.4 To **remove obstacles to international cooperation** and to foster the use of investigative tools which are effective in organised crime and transnational cases.

#### **B. Specific objective: to protect victims' rights**

*Operational objectives:*

B.1 To **facilitate access by victims** to legal remedies and appropriate specialist protection measures.

B.2 To ensure that **victims** of child sexual abuse and exploitation **suffer no harm** from participating in criminal investigations and proceedings.

## **C Specific objective: to prevent child sexual exploitation and abuse**

*Operational objectives:*

C.1 To promote **access to intervention programmes and measures** as a means to prevent repeated and first-time offences against children.

C.2 To ensure that appropriate **security measures** are taken with regard to child sex offenders who continue to be dangerous after their release, and that they are **effectively implemented** throughout the EU.

C.3 To technically **prevent or make it more difficult to access and disseminate child pornography, especially on the internet.**

## **D. Specific objective: to establish effective monitoring systems**

*Operational objective:*

D.1 To create harmonised national mechanisms to **measure the extent of such crime** and to **monitor the effectiveness of policy** to fight child sexual abuse and exploitation.

### **3.2. Consistency of the objectives with other EU policies and horizontal objectives**

The objectives are fully consistent with the EU policy of promotion, protection and fulfilment of children's rights in the internal and external policies of the EU. The EU explicitly recognised protection of children's rights in the European Charter of Fundamental Rights, specifically in Article 24. Furthermore, in its communication *Towards an EU Strategy on the Rights of the Child*, the Commission set itself the objective of maximising the use of its existing policies and instruments partly with a view to protecting children from violence and sexual exploitation inside and outside the EU.

They are also consistent with the Safer Internet Programme<sup>27</sup> set up to promote safer use of the Internet and new online technologies, particularly for children, and to fight against illegal content. They complement the forthcoming Safer Internet Programme 2009–2013,<sup>28</sup> which will include action: (1) to reduce the amount of illegal content circulating online and deal adequately with harmful conduct online, mainly online distribution of child sexual abuse material, (2) to promote a safer online environment by bringing stakeholders together and enhancing both cooperation between them and action by them, (3) to ensure and increase awareness, in particular among children, parents, carers and educators, of opportunities and risks relating to the use of online technologies and means of staying safe online, (4) to establish a knowledge base for dealing adequately with existing and emerging uses of the online environment and relevant risks and consequences, and (5) to enhance international cooperation.

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<sup>27</sup> Decision No 854/2005/EC of the European Parliament and of the Council of 11 May 2005, OJ L 149, 11.06.2005, p.1.

<sup>28</sup> Proposal for a Decision of the European Parliament and of the Council establishing a multiannual Community programme on protecting children using the Internet and other communication technologies, 27.2.2008, COM(2008)106 final.



## **4. POLICY OPTIONS**

### **4.1. Policy option (1) No new EU action**

The EU would take no new action (legislation, non-policy instruments, financial support) to combat child sexual abuse and exploitation.

Under this policy option, Member States may continue the process of signature and ratification of Council of Europe Convention CETS No. 201. Shortly over one year after being adopted, the Convention has been signed by 32 Parties, including 20 EU Member States<sup>29</sup>, and it can be expected that others will follow. The Commission would encourage Member States to ratify, as it currently does in different contexts.

Ratification by Member States would lead to significant improvements. They would derive from the Convention's innovative content and its broad extent of measures covering prevention, coordination of different actors, protection and assistance to victims, comprehensive criminalisation of various forms of abuse and exploitation, rules and instruments to facilitate investigation, prosecution, and procedural law.

It should be noted, though, that ratification of the Convention requires Parties to have already put in place all necessary measures so that they may implement its obligations from the moment they ratify. This includes introducing the necessary legislation and setting up the administrative mechanisms required. As a result, the ratification of the Convention by EU Member States is a process that may go on for a long and uncertain period of time, depending on how long it takes each of the individual Member States to adopt those measures. It has to be noted also that the degree of what is considered sufficient implementation required for ratification may vary in practice from one signatory State to another one.

The Convention is in principle open to signature by the European Community. However, at the current stage of development of community law, the matters covered by the Convention fall primarily outside of the competences of the European Community, as matters under the EU's third pillar (Title VI of the Treaty on the European Union). Therefore, ratification by the European Community is at present not possible. Should this be possible in the future (for instance because the European Union acquires legal personality), this would still require adoption of EU legislation to comply with the international obligations arising from the Convention. As this would mean positive EU action, for methodological reasons it cannot be considered in the baseline scenario under Option 1 ("no new EU action").

### **4.2. Policy option (2) Complement existing legislation with non-legislative measures**

Existing EU legislation, in particular Framework Decision 68/2004/JHA would not be amended, so Member States would not be obliged to amend their criminal law on child sexual abuse and exploitation. Instead, non-legislative measures could be put in place to support coordinated implementation of national legislation. The EU would not prescribe how to carry out this, in recognition of the fact that each MS would need to select the most appropriate approach to implementation for its own particular situation. However the EU would provide

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<sup>29</sup> Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Lithuania, Netherlands, Poland, Portugal, Romania, Slovenia, Sweden, United Kingdom.

examples of what Member States have done by way of best practice. The following measures would be included:

- exchanging information on and experience of prosecuting offences: on forms of abuse which are difficult to combat, new forms of abuse involving cyberspace and IT; the fight against sexual abuse and exploitation occurring outside Member States but involving their nationals or permanent residents as offenders;
- setting up joint investigative teams and judicial coordination to investigate and prosecute child pornography cases involving a number of Member States;
- exchanging experience among authorities on the implementation of Council Decision 2008/615/JHA<sup>30</sup> to DNA files opened and kept for the investigation of child sexual abuse offences
- exchanging information and experience relating to protection of the victims, in particular to avoid re-victimisation through their participation in investigations and judicial proceedings;
- ensuring coordination between different actors involved in child protection (education and health, social services, law enforcement and the judiciary) and setting up independent institutions to promote and protect children's rights
- exchanging information and experience on measures other than criminal sentences to protect victims in the best interests of the child, to protect their privacy, and to ensure short-, medium- and long-term support for victims, including through special funds using the proceeds of these offences.
- exchanging information on and experience of preventing offences, in particular intervention programmes and measures, and security measures against offenders (such as disqualification arising from criminal convictions, prohibition from working or activity with minors).
- training and awareness raising for children and those in regular contact with them, so that they know enough to recognise and report sexual abuse, and for public officials to conduct proceedings in a child-friendly way.
- cooperating with the private sector (in particular the information and communication technology, tourism and travel, banking and finance industries) and with civil society to develop and implement policies to prevent sexual exploitation and sexual abuse of children.
- encouraging self-regulation of Internet Service Providers to cooperate with public authorities and block access to webpages containing or disseminating child pornography.
- setting up mechanisms for data collection or focal points to observe and evaluate the phenomenon of child sexual abuse and exploitation.

These non-legislative measures have been identified in consultation with stakeholders. Some of them seek, through exchange of information and experience, to explore new ways for more effective action on the triple front of prosecution, protection and prevention, and focus on

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<sup>30</sup> Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, OJ L 210, 6.8.2008, p.1.

especially difficult areas identified in national practice, such as IT offences, cross-border crimes, secondary victimisation or recidivism of convicted offenders.

Others have been identified by Member States as useful elements for the effective implementation of legislation, and as such have been introduced in Council of Europe Convention CETS No. 201, in particular concerning collection and exchange of data, training and cooperation with the private sector. The EU would thus serve as a facilitator to promote cooperation, exchange of best practices, and policy coordination among Member States, to promote ratification of the Convention, and contribute to compliance with the international obligations resulting from it in a consistent way. The EU would even go beyond the Convention by providing a consolidated legal framework (Council Decision 2008/615/JHA) for the collection and exchange of personal data of convicted persons, as envisaged in Article 37 of the Convention.

- In the case of blocking of Internet pages through self-regulation by Internet Service Providers, this is a measure that is already in place in certain Member States (United Kingdom, Sweden). EU action would seek to encourage generalisation of voluntary agreements of Internet Providers drawing on that experience.

#### **4.3. Policy option (3) New legislation on prosecuting offenders, protecting victims, and preventing offences**

The 3<sup>rd</sup> policy option would be for a new Framework Decision, which at once repeals and incorporates the existing Framework Decision, includes certain provisions of the Convention CETS No. 201 and also additional provisions which are not contained in either the existing Framework Decision or the Convention to address the objectives to a greater extent than the equivalent provisions of the Convention.

##### **Comparison of the policy option with the current Framework Decision 2004/68/JHA**

The new elements to be included in the new Framework Decision, compared to the current Framework Decision, would be the following ones:

##### **On substantive criminal law in general**

Serious forms of child sexual abuse and exploitation are currently not covered by EU legislation. To ensure prosecution and to facilitate international cooperation in trans-border cases, they should be explicitly included as criminal offences in a Framework Decision. The conducts described in Convention CETS No. 201 would be criminalised also in the EU legislative instrument, and the level of penalties would be increased to reflect the seriousness of offences. The following conduct would be criminalised, and other elements would also be included:

- engaging in sexual activities with a child under the age of sexual consent
- engaging in sexual activities with a child where abuse is made of the child's particularly vulnerable situation
- coercing a child into sexual relations with a third party
- intentionally causing children to witness sexual abuse or activities
- new aggravating circumstances: particularly vulnerable victim, abuse of authority or influence; gang offence; recidivism

- amendment of the definition of ‘child pornography’ to better align it with international instruments (in particular the CoE Convention) and to cover child sexual abuse or exploitation more widely
- inclusion of all cases of child pornography offences, even where adults pose as children, or where it involves realistic images of a non-existent child
- knowingly attending pornographic performances involving children
- attempting to commit child sexual abuse or exploitation offences; aiding and abetting by means of advertising child pornography, facilitating travel or arrangements for child sex tourism, or promoting child sexual abuse or exploitation, for example, through internet fora
- The level of penalties would be increased and the legislation would be consistent with the rules on child trafficking, so that criminal sanctions are proportionate, effective and dissuasive, and that investigation and prosecution of these offences is given appropriate attention by national authorities.

Some elements suggested by stakeholders during the consultation have been taken into account, but for different reasons would not be included in this proposal. They are the following:

- The proposal to approximate legislation harmonising the age of sexual consent

The age under which engaging in consensual sexual relations with a child is considered a criminal offence varies considerably throughout the EU, with ages ranging from 13 to 17 years. Setting a uniform age of sexual consent would have the advantage of granting a uniform level of protection for children across Europe and would avoid any inconsistency arising from the abolition of double criminality (an element which is essential to fight child sex tourism). However, it has been considered that the regulation of such delicate matter as the discovery of sexuality by adolescents results from a set of cultural and moral norms particular for each Member State on. Attempts to harmonise that age, even within certain brackets would have triggered difficult and possibly emotional debates in Member States and would unlikely lead to a consensus. Therefore, it has been considered not to include this element in a proposal.

- The proposal to change the term "child pornography" to "child sexual abuse images/materials."

The proposed change would properly reflect the gravity of the offence. The current term "child pornography" is indeed misleading and suggests that this is just one special kind of pornography, as such a legitimate activity. However, the term "child pornography" is used in international instruments and legislation. Changing the term in an EU Framework Decision would have created problems of consistency for the national legislator, who would have been confronted with the need to use different wording deriving from different international obligations. For that reason, the term "child pornography" has been maintained.

### **On new criminal offences in the IT environment**

New forms of sexual abuse and exploitation are being facilitated by the use of IT. This is mainly due to the possibilities for offenders to act with a certain degree of anonymity. In other cases, webcams allow to be virtually present in the abuse of children, even over a physical distance. And access to child pornography which is not technically stored in the offender's

equipment does not amount to possession in certain jurisdiction. If these new forms of behaviours are not explicitly included in criminal law, prosecutions and sanctions are legally not possible. Therefore, new criminal offences should be included in the FD to take account of them, building on the work done in the context of the recent Convention CETS No. 201. The new forms of criminal offences would include, in particular:

- grooming (soliciting children for sexual purposes)
- online sexual abuse and exploitation by means of images, without physical contact
- intentionally viewing child pornography without downloading or storing files.

### **On criminal investigation and initiation of proceedings**

A number of provisions would be introduced to assist with investigating offences and bringing charges. Especially on child pornography, sex offender circles are difficult to investigate by law enforcement authorities, as they often require newcomers to provide child abuse images as a way of vetting them, something that traditional rules regulating enquiry activities by the police may forbid. Additionally, it is important that charges can be brought by the victim once he or she has recovered from the trauma of suffering the abuse, which can take years after it happens, particularly given the vulnerable situation of children. On the other hand, other persons who become aware of the abuse should be able to report it without having to fear sanctions for breaches of professional rules on confidentiality, as for the reasons mentioned before, the child itself may not be in a position to denounce the crime. The Framework Decision would include, in particular, the following elements:

- explicitly recognising the possibility to use, where appropriate, special investigative techniques for investigating child sexual abuse and exploitation offences, subject to conditions laid down by national legislation and taking into account, *inter alia*, the principle of proportionality in relation to the rules of evidence and regarding the nature and seriousness of the offences
- extending the statute of limitations for the victim in all child sexual abuse and exploitation offences
- protecting professionals who may come into contact with children and report suspicion of abuse from liability

### **On prosecution of offences committed abroad**

Rules on jurisdiction would be amended to ensure that child sexual abusers or exploiters from the EU face prosecution even if they commit their crimes in a third country, via so-called sex tourism. For that, traditional rules on criminal jurisdiction should be amended to cover extraterritorial cases and to eliminate requirements of intervention by authorities in the third country, which may not be able or willing to take a firm stand against child sexual exploitation. In this way offenders abusing abroad face sanctions when they come back. The following elements would be included:

- to establish Member States' jurisdiction in all cases where the offender, the person for whose benefit the offence is committed or the victim is a national or a permanent resident, regardless of where the abuse takes place
- to abolish the prosecution requirement in some national legislation that the acts must be criminal offences in the country where they are performed ('dual criminality')

- to abolish the requirement in some national legislation that the victim file a complaint or that the State where the offence took place bring charges

### **On protection of victims**

Victims should have easy access to legal remedies. When abuse occurs in the family, it would be necessary to tackle conflicts of interest, and the vulnerable situation of the child, also in financial terms, advocate free legal counselling and representation. Additionally, children who are sexually exploited should not be in a position to fear sanctions from authorities derived from bringing their case to their attention, for example as a result of national legislation on immigration or on prostitution. Furthermore, their participation in criminal proceedings should ensure that reviving the experience and facing offenders does not lead to new trauma. The new provisions would include:

- adoption of protection measures for child victims following a multidisciplinary assessment of their needs, taking into account the best interests of the child in the first place
- to free legal counselling and free legal representation for victims of exploitation who are party to criminal proceedings on these offences
- appointment of a special representative of the child victim in criminal proceedings in the event of a conflict of interest with the legal guardian
- specific provisions on the participation of child victims in investigations and criminal proceedings to prevent trauma and re-victimisation
- non-punishment and non-detention provisions for victims of offences related to their exploitation

### **On prevention of offences**

Amendments would be introduced to help prevent child sexual abuse and exploitation offences, through a number of actions. Some would concentrate on previous offenders. To prevent re-offending, the dangerousness of each particular offender should be assessed. Intervention programmes and different types of treatment are proving effective in curbing down re-offending, and this good practice should be generalized, taking care of respecting the fundamental rights of offenders. Additionally, it should be possible to ensure that prohibitions to exercise activities involving contact with children can be implemented even if the offender crosses borders within the EU. On child pornography, reducing the possibilities of dissemination reduces also economic incentive for abusers to commit their crimes. Where removing the pages at the origin is not possible, technical tools to restrict access at the destination should be considered. The following measures should be included:

- Individual risk assessment of each convicted child sex offender
- Obligation for Member States to offer intervention programmes or measures accessible to convicted child sex offenders on a voluntary basis
- Adoption of measures focused on offenders, such as disqualification arising from criminal convictions and prohibition from working or activity with minors, as appropriate for offenders whose risk assessment indicates that they are still dangerous.
- Mechanisms to ensure recognition and effective implementation of such measures throughout the EU. These would require efficient information exchange between the Member States on child sex offenders' criminal records, to include information on

disqualification arising from criminal convictions and prohibition from working or activity with minors, and to ensure their mutual recognition. This would entail making some additions to the rules envisaged in the future EU instruments on exchange of criminal records, namely to include such prohibitions in the criminal records, and to allow processing of that personal data for the purpose of implementing the prohibitions.

- An obligation on Member States to put in place a mechanism to block access by Internet users to Internet pages containing or disseminating child pornography, through, for instance, legally binding measures or voluntary agreements with Internet Service Providers.<sup>31</sup>
- Some elements suggested by stakeholders during the consultation have been taken into account, but for the reason mentioned below would not be included in this proposal. They are the following:
- The proposal to include a system of mandatory checking of criminal records by employers.

This proposal aimed at ensuring that child sexual offenders who are prevented from exercising professional activities involving regular contact with children would effectively be barred from gaining access to those positions. However, such measure would involve regulating the conditions for access to employment in Member States, which would go beyond the scope of a Framework Decision and of any EU instrument in criminal matters. Therefore, this matter has been left to Member States. However, where Member States' legislation does require such mandatory checking, the proposal would provide the added value of ensuring that the criminal records to be checked provide an accurate picture of prohibitions arising from conviction issued anywhere in the EU.

In this way, the new Framework Decision would lay down a comprehensive legal framework, within the limits set by the Treaty, respecting the principles of necessity and proportionality.

The individual elements of this option have been identified through a broad stakeholder's consultation and, for the vast majority of measures, taking into account information on best national practices and the improvements in international standards recently introduced in the Convention CETS No. 201. The consultation meetings have contributed to the update of the list of problems and solutions.

Even though international action in criminal law is relatively recent, a broad consensus has been built on the need for a holistic approach covering prosecution of the offenders, protection of the victims, and prevention of the phenomenon. The three aspects are interdependent, and combining them is a condition for success of an effective policy. To fight crime, criminal sanctions are necessary, and the rule of law requires legislation for that. Protection of victims is a humanitarian duty and a condition for successful prosecution, as victims are the main witnesses. And penalties are necessary, but only intervene after the crime has been committed and the victim has been harmed, making it necessary to adopt additional measures to reduce the risks of offending.

The current Framework Decision already addresses prosecution and protection. Legislation to go beyond the baseline scenario would therefore need to introduce substantive improvements in those two fields and additionally incorporate provisions on prevention.

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<sup>31</sup> This specific measure may require a separate EU legal instrument.

## **Comparison of the policy option with the Convention CETS No. 201**

With respect to Convention CETS No. 201, this policy option would allow for the EU to provide added value in a number of areas that are described in detail below.

Firstly, in general terms, even though Member States may be willing to ratify Convention CETS No. 201, incorporating some of its provisions into the new Framework Decision would provide a number of advantages linked to the stronger bond created by the EU legal order. The added value of an EU instrument is related to the advantages of the more integrated institutional framework of the European Union concerning third pillar instruments, in particular Framework Decisions, vis-à-vis international treaties and conventions. In particular:

- In contrast with the lengthy procedures to sign and ratify international conventions that can last for many years, Framework Decisions enter into force exactly as first pillar instruments do and set out a restricted period for implementation.
- Member States must notify the national measures implementing Framework Decisions to the Council and Commission. The correct and full implementation of Member States is evaluated in an implementation report from the Commission, later assessed by the Council. In addition, the European Court of Justice is entitled to interpret Framework Decisions via preliminary rulings. Sixteen Member States have accepted so far the authority of the European Court of Justice to deliver preliminary rulings as regards instruments of the third pillar.

Secondly, a number of substantial provisions which are not contained in Convention CETS No. 201 have been identified in consultations with stakeholders as necessary to go beyond the level of detail of the Convention and to improve protection of children beyond the Council of Europe standard:

- The establishment of mechanisms to ensure that exclusions from exercising certain activities involving regular contact with children, to reduce the risk of reoffending, are applied consistently EU-wide.

This measure would build upon work already achieved at EU level, such as the general scheme for exchange of information on criminal records, and on the implementation of alternative sanctions, and would introduce specific elements necessary to ensure the effectiveness of those prohibitions across the EU, such as the need to include them in national criminal records, and the possibility to use the personal data for the purpose of implementing the prohibition, for example to grant access to employment involving regular contact with children.

- Member States should put in place mechanisms to block access to Internet pages containing or disseminating child pornography.

This is considered by stakeholders as a necessary element in the fight against child pornography, in particular where the websites are located outside the EU, as it usually happens, and removing its content from the original source requires cooperation by third country authorities, which is not easy to obtain.

The obligation on Member States to put in place a mechanism to block access does not exclude self-regulation by Internet Service Providers. Only in the absence of effective self-



regulatory measures putting in place a blocking mechanism should Member States look into taking additional measures, which may include regulations.

The solution on blocking access limited to encouraging self-regulation is dealt with under option 2.

- criminalising coercing a child into sexual relations with a third party

In the current Framework Decision, coercing a child into sexual relations with a third party is only a criminal offence if money is received in exchange, that is, in the context of child prostitution. However, the harm for the child arises arguably from the fact of being forced to sexual relations, regardless of whether payment (usually to the exploiter) has taken place or not. This provision would cover this lacuna of the current legal framework.

- eliminating possibilities for Member States to make exceptions in the current Framework Decision on child pornography offences

The current Framework decision contains the possibility for Member States to exempt themselves from criminalising certain forms of child pornography. These exemptions, however, blur the clear message that child pornography is in reality child sexual abuse images and that it should be combated. It also conveys the message that certain forms of child pornography can be considered as acceptable. For the sake of coherence and to clarify the legal provisions, they should be eliminated.

- addressing activities facilitating child pornography and child sex tourism

The sexual exploitation of children through child pornography or child sex tourism usually takes place in the context of complex organisations and involving a number of actors. It is important that attention is drawn to the need examine activities which are necessary for these forms of abuse to take place (like the organisation of sex trips or the advertisement of child pornography) as instigation, or aiding and abetting under national law.

- adapt the level of penalties to the severity of the offences

The levels of penalties should be increased to reflect the seriousness of the offence and the harm they cause on child victims. It is also necessary to ensure consistency with the penalties set out in the Framework Decision on Trafficking for traffickers exploiting children for prostitution.

- child sexual abuse online (webcam abuse)

The use of information technologies make possible new forms of sexual abuse and this includes those situations where children are abused and their images are transmitted live online (usually via a webcam) to an audience, which sometimes dictates in real time how the abuse should be performed. To avoid the difficulties in applying existing criminal provisions to this new phenomenon, a new criminal offence should be introduced.

- non-punishment clause

Sexually exploited children are often victims of trafficking, although this may be difficult to prove in particular cases, due to the different elements necessary to qualify as trafficking in human beings, or where legislation adopts a narrow definition of trafficking. As a result, cases

that are brought to court may be tried under other, related legislation, such as laws on sexual exploitation and abuse, migration and asylum, or labour regulations. In consequence, and far too often, victims of trafficking, including children, are treated as illegal migrants, or as individuals who are criminally complicit in their own exploitation. To prevent this, legislation should explicitly state that children victims of sexual exploitation should not be prosecuted, detained or punished for unlawful activities they have been involved in as a direct consequence of being subjected to sexual exploitation.

- free legal counselling for child victims

Effective access to court may necessitate the free assistance of a lawyer. This is particularly the case for children victims of sexual abuse and sexual exploitation, where special circumstances are often present: the complexity of proceedings, the psychological vulnerability of children, or the risk of insufficient capacity of social services or conflict of interest with legal guardians. All this suggest that free legal counselling should be provided for children victims of sexual abuse and exploitation in all cases.

#### **4.4. Policy option (4) New comprehensive legislation to enhance prosecution of offenders, protection of victims and prevention of offences (as in Option 3) plus non-legislative measures (as in Option 2)**

Under this policy option, the existing provisions of Framework Decision 68/2004/JHA would be supplemented by EU action introducing legislative amendments to substantive criminal law and procedure, protection of the victims, and prevention of offences mentioned under Option 3. In addition, action would be undertaken through non-legislative measures in different forms (Council conclusions, voluntary benchmarks, exchange of information and experience, coordination of national policies) identified under Option 2, to address a number of elements to improve implementation of national legislation in criminal matters resulting from the amendments, and to provide for tools of investigation, prosecution, protection and prevention in sectors outside criminal law.

## **5. ANALYSIS OF IMPACTS**

As a general remark, no environmental impacts will be considered, as they do not seem relevant to the action undertaken.

### *Social impacts*

Any measure which is inefficient in fighting crime is likely to produce a series of negative social impacts linked to the crime itself. This includes damage to values which matter to society, undermining trust in public institutions and the authority of the State, trauma for victims, and widespread fear. In the case of child sexual abuse, these impacts are even more intense. Sexual abuse and exploitation of children causes deep and long-lasting physical, psychological and social damage for the victim and people close to him or her. In the analysis that follows, we will refer to these impacts as '*the negative social impact of child sexual abuse and exploitation in general*'

On the other hand, measures which improve efficiency in fighting crime are likely to produce positive social impacts, such as an increase in security and trust in authorities and interpersonal relations, as well as a lesser need for self-protecting measures. In the case of

fighting child sexual abuse and exploitation, this includes more harmonious child development, and more stable family and social life. In the analysis that follows, we will refer to these impacts as ‘*the positive social impact of fighting child sexual abuse and exploitation in general*’.

*Economic impact*

In the same way, measures that are inefficient in fighting crime will produce a general pattern of negative economic impact. In the long term, this includes inefficient State intervention due to lack of trust in public authorities, inefficient use of resources due to individuals adopting self-protecting measures, decreased productivity linked to trauma suffered by victims, and unfair distribution of wealth as criminals profit from their activities. In the case of child sexual exploitation and abuse, this is exacerbated by the economic cost of the psychological distress of victims and their increased health risks, and the cost of processing offenders through the criminal system. Scientific estimates of the economic cost of child sexual abuse crimes range between EUR 100 000 and EUR 250 000<sup>32</sup> per offence. In the analysis that follows, we will refer to these impacts as ‘*the negative economic impact of child sexual abuse and exploitation in general*’.

By contrast, measures which improve efficiency in fighting crime are likely to produce a general pattern of net positive economic impact. In the short term, there may be a moderate increase in administrative costs due to greater demands on the public system of criminal law (because a more efficient system to fight crime catches and processes more criminals), accompanied by a corresponding effect on the wider economy that must pay those costs. However, in the medium and long term, there should be a substantial reduction in such costs (because a more efficient system to fight and prevent crime deters more criminals and their rehabilitation leads to fewer offences, so that fewer criminals are ‘processed’), bearing in mind that a baseline level of crime is probably unavoidable. At any rate, and especially in the case of crimes as serious as child sexual offences, any possible short-term increase in administrative expenditure is largely compensated by the economic benefits of avoiding the economic costs of such offences listed above. In the analysis that follows, we will refer to these impacts as ‘*the positive economic impact of fighting child sexual abuse and exploitation in general*’.

Table of symbols (distinguishes ‘-’ for costs and ‘+’ benefits)	
Small magnitude	- / +
Medium magnitude	-- / ++
Significant magnitude	--- / +++
No impact	0

<sup>32</sup> Calculations made on the basis of 1998 estimates based on the situation in Australia for reoffending in child sexual abuse crime, taking account of victim-related costs (tangible: direct cost per victim / intangible: economic value of pain and suffering) and offender-related costs (incarceration); taken from Shanahan, M., and Donato, R., ‘Counting the cost: estimating the economic benefit of pedophile treatment programs’, in *Child Abuse and Neglect*, Vol. 25, Issue 4, 2001.

## **5.1. Policy option 1: no new EU action**

As stated above, all things being equal, under this option the current level of child sexual abuse and exploitation is likely to remain unchanged, or at any rate there is no radical decrease in the number of crimes committed.

Member States can be expected to ratify the recent Council of Europe Convention CETS No. 201 and implement its provisions; this would lead to significant improvements in all three areas of prosecution of offenders, protection of the victims and prevention of offences. In principle, Member States should introduce extensive legislative improvements in criminal law, but also in other areas of the legal system; and they would put in place the necessary administrative capacity to implement it, involving different actors involved in child services.

However, due to the length of ratification periods in the absence of an EU legally binding framework, benefits arising from individual ratification by Member States would be fragmented over time, and less vigorous enforcement mechanisms would raise doubts about the quality of implementation, which is why its possible impacts are very difficult to assess.

### *5.1.1. Economic impact: 0*

Until all Member States have signed the Convention, put in place the necessary legislation and administrative capacity to implement it, and ratified the Convention, current levels of offences against children could be expected to persist. This would result in a *negative economic impact of child sexual abuse and exploitation in general*, representing an economic cost in itself, without any specific benefit.

### *5.1.2. Social impact: 0*

Until all Member States have signed the Convention, put in place the necessary legislation and administrative capacity to implement it, and ratified the Convention, current levels of offences against children could be expected to persist. This would result in a *negative social impact of child sexual abuse and exploitation in general*, representing a social cost in itself, without any specific benefit.

### *5.1.3. Fundamental rights impact: 0*

Until all Member States have signed the Convention, put in place the necessary legislation and administrative capacity to implement it, and ratified the Convention, there would be no new measures which could raise concerns as to their compatibility with fundamental rights. At the same time, however, no higher level of child protection would be achieved. In the light of Article 24 of the EU Charter and children's right to protection, this situation could be considered as having a negative impact on fundamental rights.

## **5.2. Policy option (2): Complement existing legislation with non-legislative measures**

Under this option, existing EU legislation, in particular Framework Decision 68/2004/JHA would not be amended, and Member States would not be obliged to modify their criminal legislation in the field of fight against child sexual abuse and exploitation. Instead, non-legislative mechanisms would be used to coordinate implementation of national legislation through exchange of best practice mainly.

As stated above, the EU would deliberately not prescribe how to implement this, since each Member State would need to select the most appropriate and proportionate approach to implementation for its own particular situation. However the EU would provide examples of what Member States have done by way of best practice, in prosecuting certain crimes, protecting victims or preventing offences (see section 4).

For this reason, it is not possible to assess the impact of implementing these measures with any accuracy, although some benefits and potential costs can be broadly estimated (see table below).

This option would improve the situation in certain areas where implementation is crucial and where a specific legal basis at national level is not essential. This is the case for measures aimed at improving national coordination of different actors involved in child protection, interaction with the private sector, or awareness raising activities. In other sectors, though, the existing legal basis should at national level would determine the extent to which cooperation is possible, e.g. conducting enquiries involving more than one Member State (as is often the case in child pornography offences), improving protocols on the participation of child victims in proceedings, or sharing best practice in designing and implementing intervention programmes for offenders to curb reoffending. However, in other areas where new legislation is essential, the benefits would be modest. This applies to criminal prosecution and conviction for conduct involving various forms of child abuse and exploitation that would have to be explicitly covered by law (*nulla poena sine lege*, Article 7 of the ECHR, Article 49 of the EU Charter), and certain measures involving interference in fundamental rights, which also need to be taken ‘in accordance with the law’ (Articles 8 and 10 of the ECHR, and Article 52(1) of the EU Charter).

As a result, the following impacts can be expected

#### 5.2.1. *Economic impact:*

- *financial cost:* -
- *economic benefit:* +

Improving national measures in place would bring about a certain *positive economic impact of fighting child sexual abuse and exploitation in general*. These measures may lead to an improvement in the use of resources currently allocated by Member States, but not necessarily to allocating more resources to those activities. Where they decide to invest more resources (for example, setting up new intervention programmes for offenders), the investment could be expected to be rather limited without an external obligation (e.g. deriving from EU legislation). The financial burden would therefore be moderate. Some EU funding for certain activities may also be available under the existing financial programmes<sup>33</sup>.

In particular, blocking access to websites containing child abuse material would involve economic costs. The economic impact of a similar measure to restrict access to material inciting terrorism was assessed in revising the Council Framework Decision on Combating

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<sup>33</sup> Council Decision (2007/125/JHA) of 12 February 2007 establishing for the period 2007 to 2013, as part of General Programme on Security and Safeguarding Liberties, the Specific Programme ‘Prevention of and Fight against Crime’, OJ L 58, 24.2.2007, p. 7.

Terrorism.<sup>34</sup> As the impact assessment accompanying the Commission proposal stated, the cost of imposing any of the different filtering methods to all internet service providers based in the EU is impossible to calculate. An upper limit of EUR 10 per computer is given on the basis of a specific example of implementing filtering in a network of 100 000 computers at 4 000 schools in Ireland. The cost of running a blacklist of illegal content may be borne by those in charge of it, whether law enforcement authorities or specific NGOs. This can be estimated at about EUR 110 000 to build the database and EUR 90 000 per year for maintenance. However, EU funding may be available for managing blacklists and exchanging information on illegal content<sup>35</sup>.

These costs are mainly linked to the technology involved. The fact that the mechanisms is put in place on the basis of self-regulation by ISP encouraged by the Commission may not lead to a significant reduction of the costs compared to a system where putting in place such mechanisms at national level is brought about by a EU obligation on Member States to do so. The only difference in global cost may derive from the fact that in a self regulatory scheme only if costs are limited will ISP be ready to bear them on a voluntary basis. If they go beyond a certain threshold, ISP will not implement the system. There will be savings in the same proportion as there will be a decrease in effectiveness.

#### 5.2.2. *Social impact:*

- *social costs:* 0
- *social benefits:* +

There would be a modest improvement in the *positive social impact of fighting child sexual abuse and exploitation in general*, in particular due to less traumatic treatment of victims in proceedings and more effective intervention programmes, together with improvement in cross-border prosecution as a result of coordination.

No significant social costs have been identified.

#### 5.2.3. *Fundamental rights impact:*

- *risk of interference in fundamental rights:* -
- *improvement in the fundamental rights situation:* +

This policy option would mostly not entail new measures which could raise concerns as to their compatibility with fundamental rights, only improve existing measures through peer pressure and exchange of best practice. This policy option would include only two specific measures which may raise concerns as to their compatibility with fundamental rights.

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<sup>34</sup> Impact Assessment, footnote 32.

<sup>35</sup> In order to fight offences on the internet, including child pornography, the Commission has responded to the initiative of the French Presidency of the Council of the EU, and made available EUR 300 000 under the ISEC programme for Europol to set up an alert platform where reports on illicit web content and other Internet-related crime committed in EU member states would be pooled for cross-checking. EU funding for hotlines to receive reports on illegal content is also available under the Safer Internet Programme.

One is the exchange of experience among authorities on the implementation of Council Decision 2008/615/JHA for DNA files opened and kept for the investigation of child sexual abuse offences, which includes storing and exchange of personal data for the purpose of facilitating criminal investigation. To be legitimate, the specific mechanism would need to comply with the requirements of Article 8 ECHR (Articles 7 and 8 of the EU Charter), namely to be set up in accordance with the law, and be a necessary measure in a democratic society for the prevention of important public interests, such as combating child sexual abuse. In so far as the creation of the DNA files and the exchange of information would be subject to the conditions set by Framework Decision 2008/615/JHA, which includes strong data protection guarantees, and also to Member States' national data protection legislation, appropriate safeguards are provided to ensure that the potential restrictions of fundamental rights could be justified. However, to take account of the risk that any of these conditions may not be respected in practice, and given the sensitive nature of such data, we consider this option to have a higher negative impact on fundamental rights.

The other is encouragement of self regulation by ISPs to block access to Internet pages containing child pornography would involve interference in the right to freedom of expression in Article 10 ECHR (Article 11 of the EU Charter). In accordance with the ECHR, again, as interpreted by the European Court of Human Rights in Strasbourg, to respect fundamental rights such interference needs to be prescribed by law and be necessary in a democratic society for important interests, such as the prevention of crime. The proportionality of the measure would be ensured, as the blocking would only apply to specific websites identified by public authorities as containing such material. There is also a risk, depending on the technology used, that the systems in place may occasionally block legitimate content too. More problematic may be the compliance with the requirement that the interference in this fundamental right must be "prescribed by law", which implies that a valid legal basis in domestic law must exist. This may not always be present in a system based exclusively on self-regulation, and therefore this measure risks to amount to a non legitimate interference with fundamental rights.

In general terms, through the elements included in this option, the level of child protection would improve.

5.2.4. *Relevance of the measures*

<i>Measure</i>	<i>Link to specific objective</i>	<i>Cost</i>
Exchange of information and experience relating to prosecution of offences on: <ul style="list-style-type: none"> <li>– forms of abuse which are difficult to prosecute;</li> <li>– new forms of abuse involving cyberspace and IT;</li> <li>– tackling sexual abuse and exploitation taking place outside Member States and involving nationals or permanent residents as offenders.</li> </ul>	A1, A2, A3, A4	Unable to quantify  As an example, the costs of projects on exchange of information and experiences trafficking in human beings and child sexual exploitation under the AGIS programme are around EUR 200 000 on average, ranging

		from EUR 50 000 to EUR 500 000
Setting up joint investigative teams and judicial coordination to investigate and prosecute child pornography cases involving a number of Member States.	A4	Unable to quantify  As an example, the costs of joint investigative teams having received EU funding range between around EUR 200 000 and EUR 1 500 000 depending on the length of the operation, complexity and number of countries involved
Exchange of experience among authorities on the implementation of Council Decision 2008/615/JHA for DNA files opened and kept for the investigation of child sexual abuse offences	A4	No significant additional costs for Member States
Exchange of information and experience relating to protection of the victims, in particular to avoid re-victimisation through their participation in investigations and judicial proceedings.	B2	Unable to quantify  As an example, the costs of projects on exchange of information and experiences on trafficking in human beings and child sexual exploitation under the AGIS programme are around EUR 200 000 on average, ranging from EUR 50 000 to EUR 500 000
Ensuring coordination between different actors involved in child protection (education and health, social services, law enforcement and the judiciary) and setting up independent institutions to promote and protect children's rights	B1	Unable to quantify
Exchanging information and experience	B1, B2	Unable to quantify



on measures other than criminal sanctions to protect victims in the best interests of the child, to protect their privacy, and to ensure short-, medium- and long-term support for victims, including through special funds using the proceeds of these offences		
Exchange of information and experience on preventing offences, in particular on intervention programmes and measures and alternative sanctions like exclusion from activities involving contact with children.	C1, C2	Unable to quantify  As an example, the costs of projects on exchange of information and experiences on trafficking in human beings and child sexual exploitation under the AGIS programme are around EUR 200 000 on average, ranging from EUR 50 000 to EUR 500 000
Training and awareness raising for children and persons having regular contact with them, so that they know enough to recognise and to report sexual abuse, and for public officials to conduct proceedings in a child-friendly way.	A2, B2	Depends on implementation.  As a reference, CEPOL training course for 20 law enforcement officials on trafficking in human beings costs EUR 30 000-35 000
Cooperating with the private sector, in particular the information and communication technology, tourism and travel, banking and finance industries, and with civil society, to develop and implement policies to prevent sexual exploitation and sexual abuse of children	A2, A3, C3	Unable to quantify
Encouraging self-regulation of Internet Service Providers to cooperate with public authorities and block access to webpages containing or disseminating child pornography	C3	Unable to quantify
Setting up mechanisms for data collection or focal points to observe and evaluate the phenomenon of child sexual	D1	Unable to quantify  As an example, the

abuse and exploitation		<p>costs of the equivalent mechanisms in the field of fight against trafficking in human beings, where they exist, is as follows:</p> <p>Annual budget of the Dutch National Rapporteur:</p> <p>EUR 560 000;</p> <p>Annual budget of the 'Centre pour l'égalité des chances' (BE):</p> <p>EUR 236 000s</p>
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### **5.3. Policy option (3) New legislation on prosecuting offenders, protecting victims, and preventing offences**

Under this policy option, Framework Decision 68/2004/JHA would be replaced by new EU legislation amending substantive criminal law and procedure with the same scope (prosecution and protection) but substantially better. In addition, legislative amendments would be introduced to help prevent child sexual abuse and exploitation offences.

Regarding prosecution, this option would approximate national criminal law to cover serious forms of child sexual abuse and exploitation currently not covered by EU legislation and divergently regulated in Member States. It would also include conduct which has proliferated recently through the expansion of IT and the Internet, such as child grooming, webcam abuse and web viewing of child abuse images. It would also introduce amendments to criminal procedure to remove legal obstacles which enquiries and prosecutions face when the victim does not report the abuse, or when offenders travel abroad to profit from the vulnerability of children in other countries; and to ensure that legal proceedings are not a new source of harm for children.

Regarding protection, this option would facilitate participation of victims in legal proceedings and reduce or eliminate the harm that they may suffer from participating in legal proceedings, whether trauma or punishment for offences they may be charged with as a result of their exploitation.

To prevent offences, this option would incorporate a series of measures focusing on child sex offenders. Risk assessments should be conducted for offenders, and they should be offered to participate on a voluntary basis in intervention programmes or measures. These may include various kinds of treatment, e.g. psychological, medical and social. They should be suited to the risks and circumstances of the offender, and give special consideration to children who are abusers. They should be voluntary, and open to people who fear that they may commit offences in future. Under these conditions, such programmes, where they exist, are known to

effectively reduce the rates of recidivism. Various studies give different figures measuring the effectiveness of these programmes.<sup>36</sup>

These measures would seek to effectively harmonise criminal law as CETS No. 201 aims to do. As stated in the explanatory report to the Convention<sup>37</sup>, harmonisation helps combat crime at national and international level for several reasons. Firstly, harmonising domestic law is a way of excluding a criminal preference for committing acts in a State which previously had more lenient rules. Secondly, it becomes possible to promote the exchange of useful common data and experience. Shared definitions can also assist research and promote data comparability at national and regional level, thus making it easier to gain an overview. Lastly, international cooperation (in particular extradition and mutual legal assistance) is facilitated.

Additional measures not contained in the Convention would further improve the level of protection beyond the Council of Europe standard.

Setting up mechanisms to ensure that measures focusing on offenders and adopted to reduce the risk of reoffending (such as exclusion from certain activities) are applied consistently throughout the EU would make tragedies like the Fourniret case more difficult or even impossible.

Furthermore, Member States would ensure that websites containing child pornography are not accessible from the EU establishing national mechanisms through, for instance, legally binding measures or voluntary agreement with ISPs. It is recognised that different methods of filtering do not constitute a perfectly solid barrier, that dissemination of illegal content could only be hindered, not eliminated, and that distribution through other electronic means would persist.<sup>38</sup> This tool may therefore not be appropriate in fighting material inciting terrorism as its effectiveness depends more on quality (reaching the right people) than quantity (reaching many people). However, in the case of child sex pornography, much of the dissemination is profit-driven<sup>39</sup>, and making access more difficult also makes it a less profitable business. Filtering and blocking was therefore identified by various stakeholders as a necessary component of the fight against child sexual abuse and exploitation<sup>40</sup>. The difference with the encouragement of self-regulation under Option 2 would be that under the present Option Member States should ensure a broad coverage of the system. This would not exclude self-regulation at national level, but does not exclude that Member States adopt legally binding measures where it may be necessary, thus ensuring a greater effectiveness of the mechanism.

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<sup>36</sup> A study reviewing the results of 32 studies on the effectiveness of programmes for offenders in all sorts of crime gives an overall reduction of 14% in recidivism for programme participants compared to those not participating (Joy Tong, L.S. and Farrington, D., 'Effectiveness of 'reasoning and rehabilitation' in reducing re-offending', *Psychothema* 2008, Vol. 20, No 1). More specifically on sexual offences, in some Spanish prisons offering psychological treatment, the recidivism rate was 18.2% in the control group compared with 4.1% among offenders participating in the programme (Redondo Illescas, op. cit.).

<sup>37</sup> CETS 201, para. 112.

<sup>38</sup> Impact Assessment on the Commission Proposal for a revision of the Council Framework Decision of 13 June 2002 on combating terrorism, 6.11.2007, SEC(2007) 1424.

<sup>39</sup> EUROPOL: Trafficking in Human Beings and Child Sexual Exploitation Intelligence Bulletin, No 2, April 2008, pg. 15 ff.

<sup>40</sup> Council Decision 2000/375/JHA, Article 3(b); Europe and Central Asia Regional Preparatory Meeting for the World Congress III against Sexual Exploitation of Children and Adolescents, September 2008; information available at [http://www.ecpat.net/WorldCongressIII/PDF/RegionalMTGs/EU\\_PR.pdf](http://www.ecpat.net/WorldCongressIII/PDF/RegionalMTGs/EU_PR.pdf); Proposal for a European Parliament Recommendation to the Council on combating the sexual exploitation of children and child pornography, 2008/2144(INI).

Other provisions to be introduced were identified in consultations with stakeholders as necessary to go beyond the level of protection or detail contained in the Convention, e.g. criminalising coercing a child into sexual relations with a third party, not allowing Member States to make exceptions to the current Framework Decision on child pornography offences, addressing activities facilitating child pornography and child sex tourism, matching the level of penalties to the severity of the offences, criminalising child sexual abuse online (webcam abuse), a non-punishment clause for child victims, and to free legal counselling and free legal representation for child victims.

Following these measures, a significant improvement is likely to take place in the fight against child sexual abuse and exploitation. As a result, the following impacts can be expected.

### 5.3.1. *Economic impact*

- *financial cost*: - -
- *economic benefit*: + +

The significant improvement in prosecuting and protecting victims and, indirectly, preventing offences through deterrence may lead to a significant *positive economic impact of fighting child sexual abuse and exploitation in general*.

In general terms, the measures envisaged here would lead to a more effective criminal law system. This means more police operations, more detentions, more judicial proceedings and more prison sentences. This would undoubtedly imply a higher financial burden for Member States. These costs, however, are very difficult to estimate. On the other hand, economic benefits would derive from higher levels of security and less damage to victims and society. As it is normally preferable to live in a secure society than in a crime-ridden one, it can well be assumed that the economic benefits outweigh the costs.

Based on these considerations, we will focus the analysis only on some of the measures envisaged which may have financial costs for Member States. Based on fragmentary information collected from similar, existing mechanisms, these can be estimated as follows:

- Granting to free legal counselling and free legal representation to child victims: it has been particularly difficult to obtain information from by Member States to quantify the cost of this measure. Conditions for access to legal aid vary considerably, sometimes covering only victims up to 16 years, or not distinguishing adults/children. Where data on fees exist, it may be dependent on other factors: the time consumed by a lawyer on this type of cases vary depending on the difficulty (within/outside the family; with/without witnesses or forensic evidence; with/without need to prove additional circumstances; only in first instance, or also in appeal), or the amount of compensation for damage awarded. Equally, the number of victims per year is not known. There is lack of reliable mechanisms for collecting data, definitions of crimes vary (e.g. "rape" may cover both child and adult victims), and there is no disaggregated data depending on the offence and the victim. We are therefore unable to quantify this cost. It is clear, though, that these costs would be borne by Member States' general system of free legal aid.
- Individual risk assessment for offenders: EUR 52 million for the whole EU per year, with Member States' costs varying according to the level of prices and size, ranging from about

EUR 9 million in the UK to EUR 32 000 in Malta.<sup>41</sup> These costs would be borne by Member State administrations (usually prison services) taking care of convicted offenders. Details on these estimates are included in the Annex.

- Offering intervention programmes for offenders or potential offenders: about EUR 190 million for the whole EU per year, with costs per Member States varying according to the level of prices and size, and ranging from EUR 32 million in the UK to EUR 125 000 in Malta.<sup>42</sup> Scientific literature suggests, however, that the economic benefits of preventing reoffending largely override the costs of carrying out such programmes.<sup>43</sup> These costs would be borne by Member State administrations (usually prison services) taking care of convicted offenders. Details on these estimates are included in the Annex.
- Blocking access to websites containing child abuse material: as explained before when speaking about this measure on a self-regulation basis, the cost of imposing any of the different filtering methods to all internet service providers based in the EU is impossible to calculate, with an upper limit of EUR 10 per computer is given on the basis of specific experience, and cost of running a blacklist of illegal content at about EUR 110 000 to build the database and EUR 90 000 per year for maintenance, to be borne by law enforcement authorities or specific NGOs. These unit costs, linked to putting in place the technology and organisation to run the system, are substantially the same for self-regulation exclusively or for an option which does not exclude regulation. The difference may be in global costs, deriving from the fact that under the current option Member States would be obliged to establish a national mechanism to block access (through self-regulation or through binding measures where necessary), and a larger extent of ISP involved and content blocked may be ensured, with higher costs corresponding to higher efficiency. As with the self-regulatory model in option 2, EU funding may be available for managing blacklists and exchanging information on illegal content.

### 5.3.2. *Social impact*

- *social costs:* -
- *social benefits:* + +

There would be a significant improvement in the *positive social impact of fighting child sexual abuse and exploitation in general*, as more cases of abuse would be punished in a more efficient way. Better protection of the victims would reduce their fear of reporting crimes and that would in turn make prosecution more effective. Indirectly, a more effective response by the criminal law system would be a stronger deterrent for certain offenders and prevent new abuse. For those not deterred, intervention programmes matching their risk would reduce cases of reoffending, and measures focusing on offenders, such as prohibition from activity involving contact with children would limit opportunities for further abuse.

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<sup>41</sup> Calculations on the basis of 1) cost estimates for risk assessment and intervention programmes in some countries (UK, Sweden, Australia); 2) price level index weighing (source: European Commission); 3) mean rate of persons convicted of rape (European Sourcebook of Crime and Criminal Justice, 2006); and 4) general and child population in Europe (Eurostat).

<sup>42</sup> See footnote 30.

<sup>43</sup> Shanahan and Donato, op. cit.

Limited social costs would derive from excluding dangerous offenders from work or activity in areas involving regular contact with children.

### 5.3.3. *Fundamental rights impact:*

- *risk of interference in fundamental rights:* -
- *improvement in the fundamental rights situation:* + +

This policy option would entail measures which could raise concerns as to their compatibility with fundamental rights.

Concerning the right to respect for private and family life (Article 8 ECHR, Articles 7 and 8 of the EU Charter), criminalising new forms of internet abuse and recognising special investigative techniques would lead to more enquiries into electronic communications, involving disclosure of traffic data and other categories of personal data. Prohibition from certain activities, or monitoring, and the exchange of information to ensure implementation throughout the EU could also amount to interference with this right. As for freedom of expression (Article 10 ECHR, Article 11 of the EU Charter), more intense law enforcement against publishing and disseminating child abuse material, advertising child pornography or encouraging child sexual abuse, as well as mechanisms to block access to Internet pages containing child pornography would involve interference in this right.

In accordance with the ECHR, as interpreted by the European Court of Human Rights in Strasbourg, to respect fundamental rights such interference needs to be in accordance with the law and constitute a necessary measure in a democratic society for important interests, such as the prevention of crime.

Such measures must indeed be subject to law, or they are illegal. Their proportionality is guaranteed by a series of safeguards, according to the measure:

- For new criminal offences and special investigation techniques, existing law on criminal procedure should ensure that action is targeted and only taken upon well-founded suspicion of crime, through procedures involving the intervention of the judiciary, and subject to domestic data protection legislation.
- Prohibition from certain activities and further measures focusing on offenders who continue to be dangerous after their sentences would affect only those offenders individually assessed as posing risks after release, and would be limited to restrictions considered essential.
- Ensuring that ISPs block access to websites would apply where the specific website has been identified by public authorities as containing such material. However, there is also a risk, depending on the technology used, that the systems in place may occasionally block legitimate content too.

Although intervention programmes may be perceived as particularly intrusive for offenders' rights, access to intervention programmes would not entail a risk of interference in fundamental rights, since as a matter of principle, participating in these programmes should be voluntary for the offender, who must be provided with full information and may refuse them. They should be designed to take account of the circumstances of offenders and their specific risk of re-offending, as determined by the risk assessment they should be subject to.

These measures would contribute to preventing and combating child sexual abuse and its adverse consequences. Subject to the principles of necessity and proportionality and the conditions outlined above, these are legitimate and important objectives which could justify limitations on the right to private and family life and freedom of expression. At the same time, this policy option has a positive impact on fundamental rights, as it aims to promote and advance the right to protection of children as laid down in Article 24 of the EU Charter.

#### 5.3.4. *Relevance of the measures*

The following table lists the specific measures proposed, their relevance to the specific objectives and, where possible, the likely costs entailed. Unfortunately in some cases, details of costs of these provisions where they are already in force in some Member States have not been provided.

<i>Measure</i>	<i>Link to specific objective</i>	<i>Cost</i>
<b><u>On substantive criminal law in general</u></b>		
Criminalising engaging in sexual activities with a child under the age of sexual consent	A1	No direct cost
Criminalising engaging in sexual activities with a child where abuse is made of the child's particularly vulnerable situation	A1	No direct cost
Criminalising coercing a child into sexual relations with a third party	A1	No direct cost
Criminalising intentionally causing children to witness sexual abuse or activities	A1	No direct cost
Criminalising new aggravating circumstances: particularly vulnerable victim, abuse of authority or influence; gang offence; recidivism	A1	No direct cost
Amending the definition of 'child pornography' to better align it with international instruments (in particular the CoE Convention) and to cover child sexual abuse or exploitation more widely	A1	No direct cost
Criminalising all cases of child pornography offences, even where adults pose as children, or where it involves realistic images of a non-existent child	A1	No direct cost

Criminalising knowingly attending pornographic performances involving children	A1	No direct cost
Criminalising the attempt to commit child sexual abuse or exploitation offences; inclusion of certain activities as aiding and abetting, such as advertising child pornography, facilitating travel or arrangements for child sex tourism, or promoting child sexual abuse or exploitation, for example through internet fora;	A1	No direct cost
Increasing the level of penalties and ensuring consistency with the rules on child trafficking, so that criminal sanctions are proportionate, effective and dissuasive, and that investigation and prosecution of these offences is given appropriate attention by national authorities.	A1	No direct cost
<b><u>On new criminal offences in the IT environment</u></b>		
Criminalising grooming (soliciting children for sexual purposes)	A1	No direct cost
Criminalising online sexual abuse and exploitation by means of images without physical contact	A1	No direct cost
Criminalising intentionally viewing child pornography without downloading or storing files	A1	No direct cost
<b><u>On criminal investigation and initiation of proceedings</u></b>		
Explicitly recognising special investigative techniques for investigating child sexual abuse and exploitation offences	A2	No direct cost
Extending the statute of limitations for the victim in all child sexual abuse and exploitation offences	A2	No direct cost
Ensuring protection from liability for professionals who may come into contact	A2	No direct cost



with children and report suspicion of abuse		
<b><u>On prosecution of offences committed abroad</u></b>		
Establishing Member States' jurisdiction in all cases where the offender, the person for whose benefit the offence is committed, or the victim is a national or a permanent resident, regardless of where the abuse takes place	A3	No direct cost
Explicitly excluding the prosecution requirement in some national legislation that the acts must be criminal offences in the country where they are performed ('dual criminality')	A3	No direct cost
Explicitly excluding the requirement in some national legislation that the victim file a complaint or that the State where the offence took place bring charges	A3	No direct cost
<b><u>On protection of victims</u></b>		
Adoption of protection measures for child victims following a multidisciplinary assessment of their needs, taking into account the best interests of the child in the first place	B1	Unable to quantify
To free legal counselling and free legal representation for victims of exploitation who are party to criminal proceedings on these offences	B1	Unable to quantify
Appointment of a special representative of the child victim in criminal proceedings in the event of a conflict of interest with the legal guardian	B1	Unable to quantify
Specific provisions on the participation of child victims in investigations and criminal proceedings to prevent trauma and re-victimisation	B2	Unable to quantify
Non-punishment and non-detention provision for victims, for offences related to their exploitation	B2	No direct cost

<b><u>On prevention of offences</u></b>		
Individual risk assessment of each convicted child sex offender;; and	C1, C2	52 Million euro per year for the whole EU for risk assessments
Obligation to offer intervention programmes or measures accessible to offenders on a voluntary basis		190 Million euro for the whole EU per year for intervention programmes or measures
Measures focusing on offenders (such as disqualification arising from criminal convictions, prohibition from working or activity with minors) as appropriate for offenders whose risk assessment indicates that they are still dangerous		No direct costs
Mechanisms to ensure recognition and effective implementation of such measures throughout the EU. These would require efficient information exchange between the Member State on the child sex offenders' criminal records, including information on disqualification arising from criminal convictions and prohibition from working or activity with minors, and mutual recognition. In addition to the future EU instruments on exchange of criminal records, this would entail making certain additions to those rules.	C2	Not significant additional cost for Member States  The costs for the general system of exchange of information on criminal records was already considered already in the Commission Proposals for a Framework Decision (2005) and ECRIS Decision (2008) on exchange of criminal records, and would not be altered by the measures proposed under this policy option.
Obligation on Member States to ensure that domestic Internet service providers block access from the Member State's territory to internet pages which national authorities identify as containing or disseminating child pornography.	C3	Unable to quantify

#### **5.4. Policy option (4) New legislation on prosecuting offenders, protecting victims, and preventing offenders (as in Option 3) plus non-legislative measures (as in Option 2)**

Under this policy option, FD 68/2004 would be replaced by EU legislation introducing changes to substantive criminal law and procedure, victim protection, and prevention of offences as under Option 3. In addition, ‘soft law’ measures listed under Option 2 would be taken to improve implementation of the resulting national criminal law and to provide tools for investigation, prosecution, protection and prevention.

In addition to the benefits of option 3, this option could be expected to bring about an improvement in the implementation and effectiveness of Member States’ legislation deriving from the measures identified under Option 2, and consistent compliance with their obligation under both EU and international law. The blocking of internet pages would be carried out in accordance with the system mentioned under Option 3, allowing for both for self regulation or a regulatory framework to be determined at national level.

As a result, the following impacts can be expected.

##### *5.4.1. Economic impact:*

- *financial cost:* - -
- *economic benefit:* + + +

There would be a very substantial improvement in the *positive economic impact of fighting child sexual abuse and exploitation in general*, as, on top of the improvements set out in option 3, better implementation of legislation and additional tools would mean less crime, fewer victims, and better prosecution of existing cases.

The financial costs for Member States and other actors, like Internet Service Providers, would be those analysed under Options 2 and 3. The main items would be the blocking access to internet pages, free legal counselling and free legal representation for victims, individual risk assessments for offenders and intervention programmes for offenders.

##### *5.4.2. Social impact:*

- *social costs:* -
- *social benefits:* + + +

There would be a very substantial improvement in the *positive social impact of fighting child sexual abuse and exploitation in general*, as, on top of the improvement set out in option 3, better implementation and additional tools would make prosecution, victim protection, and prevention of this crime more effective.

No additional social costs are identified compared with option 3.

##### *5.4.3. Fundamental rights impact:*

- *risk of interference in fundamental rights:* - -

- *improvement in the fundamental rights situation: + + +*

Risk of interferences in fundamental rights would be involved in the exchange of DNA files, blocking access to child pornography on the internet, prohibitions on offenders to exercise certain activities, or intervention programmes for offenders. Their impact has been assessed under Options 2 and 3.

In general, legislation complemented by non legislative measures would contribute to better protection of children's rights, and would therefore result in a significant positive impact on fundamental rights.

#### 5.4.4. *Relevance of the measures*

The relevance of the different measures is reflected in the tables included under options 2 and 3.

## 6. COMPARING THE OPTIONS

### 6.1. Summary table: costs and benefits

Policy option	Costs (-) / Benefits (+)		
	Economic impact	Social impact	Fundamental rights impact
Policy option (1): No new EU action	0	0	0
Policy option (2): Complement existing legislation with non-legislative measures	- / +	0 / +	- / +
Policy option (3): New comprehensive legislation on prosecuting offenders, protecting victims and preventing offences	- - / + +	- / + +	- / + +
Policy option (4) New legislation on prosecuting offenders, protecting victims, and preventing offences (as in Option 3) plus non-legislative measures	- - / + + +	- / + + +	- - / + + +

## 6.2. Advantages and drawbacks of the policy options

Policy options	Advantages	Drawbacks
Policy option (1): No new EU action	Problem may be addressed if Member States ratify the Convention within a limited period and implement it consistently	Weaknesses of current legal framework and implementation persist Uncertainty about the extent and timing of ratification of the Convention EU legislation continues to be outdated in relation to the Council of Europe
Policy option (2): Complement existing legislation with non-legislative measures	Improved implementation of national legislation Involvement of civil society Improved national coordination Limited costs for EU and Member States	Weaknesses of current EU legal framework persist EU legislation continues to be outdated in relation to the Convention Risk of interference in privacy concerning storing data on offenders and blocking without a legal basis
Policy option (3): New legislation on prosecuting offenders, protecting victims, and preventing offences	Legally binding rules covering prosecution, protection and prevention, mutually reinforcing their effectiveness National action and international cooperation facilitated in cross-border cases Ratification of the Convention facilitated	Economic cost of some measures Higher risk of interference in fundamental rights
Policy option (4) New legislation on prosecuting offenders, protecting victims, and preventing offences (as in Option 3) plus non-legislative measures	Those of policy options (2) plus (3)	Those of policy options (2) plus (3)

## 6.3. Comparison of the options

Option 1 (status quo) may provide substantial improvement if Member States sign, ratify and implement Convention CETS No. 201, as they seem willing to do. However, the lengthy national ratification procedures in the absence of an EU legally binding framework and the lack of a vigorous monitoring mechanism make uncertain when and to what extent the benefits of that Convention will put into practice. Option 2 would enhance the effectiveness in the implementation of the existing legal framework, but it would be insufficient to improve prosecution in a number of areas where a specific legal basis is required.

Option 3 would improve matters in comparison to the current situation. It would strengthen legislation in the areas covered by the current EU legislation on prosecution of the offenders and protection of child victims. It would also address preventive measures, thus improving the protection of children in general. The financial cost is expected to be outweighed by the social and economic benefit of more efficient action against this crime.

Option 4 would multiply the effectiveness of the measures in option 2 and 3 by combining them and encouraging Member States to cooperate on setting up tools and acting to improve the implementation of the more comprehensive legal framework been put in place.

Options 3 and 4 represent the best approach to the problems and achieve the objectives of the proposal. The preferred option would be option 4, followed by option 3.

#### **6.4. Added value of Option (4)**

##### *6.4.1. Compared with the current Framework Decision*

Option 4 shows the added value of a broader approach including criminal law and procedure on prosecution of offenders, victim support, and monitoring. In addition, the combination of legislative and non-legislative instruments enables Member States to better achieve the objectives, since the obligation to establish a legal framework for certain measures is complemented by guidance based on best practice and other tools to improve its implementation. In particular, the following new provision would be made in the act or in a non-legislative measure:

##### *6.4.2. Prosecution of offenders*

- criminalising serious forms of child sexual abuse and exploitation currently not covered by EU legislation, including new forms of sexual abuse and exploitation facilitated by the use of IT (legislation)
- introducing new provisions to facilitate investigation of offences and initiations of proceedings (legislation)
- training and awareness raising for children and persons in regular contact with them, so that they know enough to recognise and to report sexual abuse, and for public officials to conduct proceedings in a child-friendly way (non-legislative)
- more effective prosecution of child sexual abusers or exploiters from the EU committing their crimes in a third country ('sex tourism'). (legislation)
- Exchanging experience among authorities on the implementation of Council Decision 2008/615/JHA for DNA files opened and kept for the investigation of child sexual abuse offences (non legislative).
- exchange of information and experience with prosecuting offences: on forms of abuse which are difficult to combat, new forms of abuse involving cyberspace and IT; combating sexual abuse and exploitation taking place outside Member States and involving nationals or permanent residents as offenders (non-legislative)

- setting up joint investigative teams and judicial coordination to investigate and prosecute child pornography cases involving a number of Member States (non-legislative)

#### 6.4.3. *Protection of victims*

- improvement of access to a legal remedy (legislation)
- protection from negative consequences of involvement in proceedings, such as trauma or punishment (legislation)
- exchange of information and experience on measures other than criminal sanctions to protect victims in the best interests of the child, to protect their privacy, and to ensure short-, medium- and long-term support for victims, including through special funds using the proceeds of these offences. (non-legislative)
- exchange of information and experience on protecting victims, in particular to avoid re-victimisation through their participation in investigations and judicial proceedings (non-legislative)

#### 6.4.4. *Prevention of offences*

- individual risk assessment of the child sex offenders
- obligation to offer intervention programmes or measures accessible to child sex offenders on a voluntary basis
- measures focusing on dangerous offenders adopted to diminish the risk of reoffending after serving the sentence (such as exclusion from certain activities) (legislation)
- the establishment of mechanisms to ensure that measures adopted to diminish the risk of reoffending after serving the sentence (such as exclusion from certain activities) are applied consistently throughout the EU (legislation)
- blocking by domestic Internet providers of access from the Member State's territory to internet pages identified as containing or disseminating child pornography (legislation)
- cooperation with the private sector, in particular the information and communication technology, tourism and travel, banking and finance industries, and with civil society, to develop and implement policies to prevent sexual exploitation and sexual abuse of children. (non-legislative)
- ensuring coordination between different actors involved in child protection (education and health, social services, law enforcement and the judiciary) and setting up independent institutions to promote and protect children's rights (non-legislative)
- exchange of information and experience on preventing offences, in particular on intervention programmes and measures and measures focusing on offenders (such

as disqualification arising from criminal convictions, prohibition from working or activity with minors) (non-legislative)

#### 6.4.5. *Monitoring of the phenomenon*

- setting up mechanisms for data collection or focal points to observe and evaluate the phenomenon of child sexual abuse and exploitation (non-legislative)

#### 6.4.6. *Compared to Council of Europe Convention CETS No 201*

Option (4) shows the following added value:

- the establishment of mechanisms to ensure that measures focusing on offenders adopted to diminish the risk of reoffending after serving the sentence (such as exclusion from certain activities) are applied consistently throughout the EU
- blocking by domestic Internet providers of access from the Member State’s territory to internet pages identified as containing or disseminating child pornography (legislation)
- other provisions identified in consultations with stakeholders as necessary to go beyond the level of protection or detail contained in the Convention: criminalising coercing a child into sexual relations with a third party, removing the scope for Member States to make exceptions in the current Framework Decision on child pornography offences, addressing activities facilitating child pornography and child sex tourism, matching the level of penalties to the severity of the offences, criminalising child sexual abuse online (webcam abuse), and introducing a non-punishment clause and to free legal counselling and free legal representation for child victims.

## 7. MONITORING AND EVALUATION

The core indicators of progress towards meeting the objectives of the proposal could be listed as follows:

Objective	Indicator
General Objective: To prevent and combat offences against children, including child sexual abuse and child exploitation	Number of child victims of sexual exploitation and abuse
A.1 To impose effective, proportionate and dissuasive criminal penalties on offenders	Number of offenders being sentenced for different forms of child sexual abuse and exploitation crimes
	Severity of the penalties imposed
	List of behaviours constituting child sexual abuse and exploitation where no sanctions are imposed



A.2 To facilitate the investigation of offences and the conduction of criminal proceedings	Number of investigations opened and closed
	Number of criminal proceedings brought and concluded with convictions
A.3 To effectively prosecute abuse or exploitation committed abroad	Estimated number of persons travelling abroad who commit child sexual abuse and exploitation and are identified/tracked
	Number of offenders being sentenced for different forms of child sexual abuse and exploitation crimes committed abroad
	Severity of the penalties imposed for child sexual abuse and exploitation committed abroad
B.1 To facilitate access by victims to legal remedies and protection measures	Number of children reporting sexual abuse or exploitation
	Number of children participating in legal proceedings
B.2 To ensure that victims of child sexual abuse and exploitation suffer no harm from participating in criminal investigations and proceedings	Number of child victims of sexual abuse or exploitation being subject to sanctions for violations relating to their exploitation
	Qualitative assessment of the trauma suffered by children participating in legal proceedings
C.1 To promote access to intervention programmes and measures as a means of preventing repeat and first-time offences against children	Number of persons without a criminal record of child sexual abuse having followed an intervention programme
	Recidivism rate for child sex offenders
C.2 To ensure that appropriate measures are taken with regard to child sex offenders who continue to be dangerous after their release, and that they are effectively implemented throughout the EU.	% of offenders having undergone a risk assessment before release
	Number of offenders being subject to special measures to reduce risks of re-offending (exclusion from activities, monitoring, etc) after release
	Qualitative auditing of mechanisms to exchange information on security measures among Member States' authorities, and to ensure effective implementation throughout the EU
C.3 To technically prevent or make more difficult to access and disseminate child pornography, especially on the internet	Number of requests to access websites containing child sexual abuse materials blocked by ISP
	Number of websites containing child sexual abuse materials

	Number of files on the internet (video, audio, photo) containing child sexual abuse material
D.1 To create harmonised national mechanisms to measure the extent of such crime and to monitor the effectiveness of policy to fight child sexual abuse and exploitation	Availability of the indicators above Availability of other information

The evaluation arrangements will rely on the willingness of stakeholders and Member States to collect and share this data. If the preferred option 4 is chosen, systematic data could be collected at Member State level and coordinated by the mechanisms for data collection and focal points.

## ANNEX

**TABLE 1. ESTIMATION OF COSTS OF RISK ASSESSMENTS ON CONVICTED OFFENDERS  
(CFR SECTION 5.3.1)**

Country	Population (1)	average number of offenders for sexual crimes (rape) per year (No./100.000 inhabitants) (2)	estimated number of offenders / year (3)	Cost of risk assessment per offender (4)	Price index (5)	Costs weighted	Average cost per offender	Equivalent average cost per offender in each country (weighted)	Total costs of risk assessment for estimated offenders in each country
EU 27	497.481.657	5,8	28.854				1.709 €		52.321.276 €
BE	10.666.866		619		100	0 €	1.709 €	1.709 €	1.057.570 €
BU	7.640.238		443		69,7	0 €	1.709 €	1.191 €	527.973 €
CZ	10.381.130		602		81,2	0 €	1.709 €	1.388 €	835.743 €
DK	5.475.791		318		139,4	0 €	1.709 €	2.383 €	756.801 €
DE	82.221.808		4.769		99,3	0 €	1.709 €	1.697 €	8.094.842 €
EE	1.340.935		78		83,6	0 €	1.709 €	1.429 €	111.144 €
GR	11.214.992		650		95,3	0 €	1.709 €	1.629 €	1.059.654 €
ES	45.283.259		2.626		100,4	0 €	1.709 €	1.716 €	4.507.581 €
FR	63.753.140		3.698		117,4	0 €	1.709 €	2.007 €	7.420.648 €
IE	4.419.859		256		121,8	0 €	1.709 €	2.082 €	533.738 €
IT	59.618.114		3.458		110,6	0 €	1.709 €	1.891 €	6.537.406 €
CY	794.580		46		89,9	0 €	1.709 €	1.537 €	70.822 €
LV	2.270.894		132		83,6	0 €	1.709 €	1.429 €	188.224 €
LT	3.366.357		195		77,4	0 €	1.709 €	1.323 €	258.329 €
LU	483.799		28		100	0 €	1.709 €	1.709 €	47.966 €
HU	10.045.000		583		89,8	0 €	1.709 €	1.535 €	894.331 €
MT	410.584		24		84,8	0 €	1.709 €	1.450 €	34.520 €
NL	16.404.282		951		111,5	0 €	1.709 €	1.906 €	1.813.444 €
AT	8.331.930		483		107,8	0 €	1.709 €	1.843 €	890.505 €
PL	38.115.641		2.211		80,7	0 €	1.709 €	1.379 €	3.049.642 €
PT	10.617.575		616		92,2	0 €	1.709 €	1.576 €	970.573 €

RO	21.528.627		1.249		78,8	0 €	1.709 €	1.347 €	1.681.956 €
SI	2.025.866		118		88,3	0 €	1.709 €	1.509 €	177.355 €
SK	5.400.998		313		81,3	0 €	1.709 €	1.390 €	435.348 €
FI	5.300.484		307		117,8	0 €	1.709 €	2.014 €	619.060 €
SE	9.182.927		533	2.000 €	117	1.709 €	1.709 €	2.000 €	1.065.220 €
UK	61.185.981		3.549		143,1	0 €	1.709 €	2.446 €	8.680.879 €

**Notes:**

(1) Source: Eurostat

(2) Source: European Sourcebook of Crime and Criminal Justice Statistics – 2006. Table 1.2.2.6 – Police statistics: Offenders per 100.000 population for rape (no distinction about sexual offences against children and no information on other sexual offences is available), 2003 (latest year available), mean of European countries considered. The figure from police statistics (5,8) refers to information on offences recorded by the police. This figure has been preferred to the lower one on persons convicted (2,2; table 3.2.1.6), since the resulting estimated number of offenders per country appears more commensurate to fragmentary data on convicted child sexual abuse offenders provided by different Member States for recent years (575 for Belgium, 132 for Cyprus, 203 for Slovenia, 386 for Sweden; but less commensurate for Cyprus: 12-13). Available at:

[http://www.europeansourcebook.org/esb3\\_Full.pdf](http://www.europeansourcebook.org/esb3_Full.pdf)

(3) Results from multiplying (1)\*(2)/100.000

(4) Source: Response by the Swedish Government to the Commission

(5) Source: European Commission

**TABLE 2. ESTIMATION OF COSTS OF INTERVENTION PROGRAMMES FOR OFFENDERS (CFR SECTION 5.3.1)**

Country	Population (1)	average number of offenders for sexual crimes (rape) per year (No./100.000 inhabitants) (2)	estimated number of offenders / year (3)	Cost of intervention programmes per offender (4)	Price index weighting (5)	Costs weighted	Average cost per offender	Equivalent average cost per offender in each country (weighted)	Total costs of intervention programmes for estimated offenders in each country
EU 27	497.481.657	5,8	28.854				6.213 €		190.162.384 €
BE	10.666.866		619		100	0 €	6.213 €	6.213 €	3.843.751 €

BU	7.640.238		443		69,7	0 €	6.213 €	4.330 €	1.918.925 €
CZ	10.381.130		602		81,2	0 €	6.213 €	5.045 €	3.037.520 €
DK	5.475.791		318		139,4	0 €	6.213 €	8.661 €	2.750.604 €
DE	82.221.808		4.769		99,3	0 €	6.213 €	6.169 €	29.420.814 €
EE	1.340.935		78		83,6	0 €	6.213 €	5.194 €	403.954 €
GR	11.214.992		650		95,3	0 €	6.213 €	5.921 €	3.851.326 €
ES	45.283.259		2.626		100,4	0 €	6.213 €	6.238 €	16.382.863 €
FR	63.753.140		3.698		117,4	0 €	6.213 €	7.294 €	26.970.444 €
IE	4.419.859		256		121,8	0 €	6.213 €	7.567 €	1.939.877 €
IT	59.618.114		3.458		110,6	0 €	6.213 €	6.871 €	23.760.292 €
CY	794.580		46		89,9	0 €	6.213 €	5.585 €	257.404 €
LV	2.270.894		132		83,6	0 €	6.213 €	5.194 €	684.103 €
LT	3.366.357		195		77,4	0 €	6.213 €	4.809 €	938.900 €
LU	483.799		28		100	0 €	6.213 €	6.213 €	174.335 €
HU	10.045.000		583		89,8	0 €	6.213 €	5.579 €	3.250.459 €
MT	410.584		24		84,8	0 €	6.213 €	5.268 €	125.463 €
NL	16.404.282		951		111,5	0 €	6.213 €	6.927 €	6.590.988 €
AT	8.331.930		483		107,8	0 €	6.213 €	6.697 €	3.236.554 €
PL	38.115.641		2.211		80,7	0 €	6.213 €	5.014 €	11.083.966 €
PT	10.617.575		616		92,2	0 €	6.213 €	5.728 €	3.527.562 €
RO	21.528.627		1.249		78,8	0 €	6.213 €	4.896 €	6.113.093 €
SI	2.025.866		118		88,3	0 €	6.213 €	5.486 €	644.599 €
SK	5.400.998		313		81,3	0 €	6.213 €	5.051 €	1.582.279 €
FI	5.300.484		307		117,8	0 €	6.213 €	7.319 €	2.249.983 €
SE	9.182.927		533	8.350 €	117	7.137 €	6.213 €	7.269 €	3.871.555 €
UK	61.185.981		3.549	7.749 €	143,1	5.415 €	6.213 €	8.891 €	31.550.771 €
AUS				6.829 €	112,2	6.087 €			

**Notes:**

(1) Source: Eurostat

(2) Source: European Sourcebook of Crime and Criminal Justice Statistics – 2006. Table 1.2.2.6 – Police statistics: Offenders per 100.000 population for rape (no distinction about sexual offences against children and no information on other sexual offences is available), 2003 (latest year available), mean of European countries considered. The figure from police statistics (5,8) refers to information on offences recorded by the police. This figure has been preferred to the lower one on persons convicted (2,2; table 3.2.1.6), since the resulting estimated number of offenders per country appears more commensurate to fragmentary data on convicted child sexual abuse offenders provided by different Member States for recent years (575 for Belgium, 132 for Cyprus, 203 for Slovenia, 386 for Sweden; but less commensurate for Cyprus: 12-13). Available at:

[http://www.europeansourcebook.org/esb3\\_Full.pdf](http://www.europeansourcebook.org/esb3_Full.pdf)

(3) Results from multiplying (1)\*(2)/100.000

(4) Source:

- Response by the Swedish Government to the Commission;

- Information relating to the Sex Offender Treatment Programmes (SOTP) in the UK, available at:

<http://www.homeoffice.gov.uk/about-us/freedom-of-information/released-information/foi-archive-offender-management/3400-sex-treatment-programme?view=Binary>

- Cost per treated offender in Australia in 1998 Australian Dollars, updated to 2008 prices in Euro. Source: Shanahan, M., and Donato, R., ‘Counting the cost: estimating the economic benefit of pedophile treatment programs’, in Child Abuse and Neglect, Vol. 25, Issue 4, 2001.

(5) Source: European Commission