



COMMISSION DES COMMUNAUTÉS EUROPÉENNES

Bruxelles, le 16.3.2009
SEC(2009) 357

AVIS DU COMITÉ DES ANALYSES D'IMPACT

**PROPOSITION DE DECISION-CADRE DU CONSEIL RELATIVE A LA LUTTE
CONTRE L'ABUS SEXUEL, L'EXPLOITATION SEXUELLE DES ENFANTS ET LA
PEDOPORNOGRAPHIE, ABROGEANT LA DECISION-CADRE 2004/68/JAI**

{COM(2009) 135}
{SEC(2009) 355}
{SEC(2009) 356}



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Brussels, 16 JAN. 2009
D(2009) 339

Opinion

Title Impact Assessment on a proposal for a Framework Decision combating the sexual abuse and sexual exploitation of children, repealing Framework Decision 2004/68/JHA

(draft version of 12 December 2008)

Lead DG DG JLS

1) Impact Assessment Board Opinion

(A) Context

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. Considering new developments, in particular the increasing use of the internet as a medium for child exploitation, it is felt that this legislation does not go far enough and so the Commission's Work Programme for 2009 includes a proposal to update the 2004 Framework Decision, together with a proposal on combating trafficking in human beings, which will form part of an organised crime package. The recent Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse CETS No. 201 (referred to as 'the CoE Convention' or 'the Convention') is regarded by experts as the highest international standard to date and has so far been signed by 20 EU Member States.

(B) Positive aspects

The IA report provides good background information on the issue and how it has developed in recent years.

(C) Main recommendations for improvements

The recommendations below are listed in order of descending importance. Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

General recommendation: The Report needs to be significantly improved in a number of areas. Firstly, the baseline scenario needs to be reworked so that the

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options can be compared against a status quo which incorporates existing EU legislation and the Council of Europe Convention CETS No. 201. On this basis, the value added of further EU action should be more clearly demonstrated, clarifying also the relationship with fundamental rights. Second, the 'packages' of measures listed in the policy options should be further developed to explain how these were arrived at and which, if any, might be problematic or controversial. Finally, the report should clarify how costly these measures will be for national authorities. In its discussion with the Board, JLS expressed agreement with these comments and committed to rewrite the Report as recommended.

(1) Reformulate the baseline scenario to incorporate existing EU legislation and the Council of Europe Convention CETS No. 201. Considering that the proposal fully endorses the Convention and will encourage Member States to sign and ratify it, the baseline should work from the premise of a fully-ratified Convention and explore what the proposal seeks to achieve *on top of* this status quo. In this respect, the measure to encourage Member States to sign and ratify the Convention should not appear in option 4 but in the baseline scenario itself.

(2) Clarify the issues surrounding Convention CETS No. 201. The Report should list which member states have already signed the Convention and whether all intend to do so. The report should explain why the Commission is proposing measures that go beyond the Convention (for example non-binding measures which it plans to make binding) and accordingly make clear where the value-added of EU action lies. It should also clarify why it does not consider that the European Community should accede to the Convention.

(3) Deepen the analysis of the policy options proposed. Option 3 should include sub-options to explore alternatives to some of the strictly new measures of this proposal, such as the child sex offender management system or blocking of websites and discuss less costly alternatives such as self-regulation. It should also address the objections which member states may have to these potentially controversial measures and be more explicit on how the measures respect fundamental rights. The more innovative 'soft measures' of option 4 should be incorporated into the non-legislative measures of option 2, which should in turn be given more weight and re-examined as a serious policy alternative.

(4) Provide more detail on implementation costs for national authorities where possible. Rough estimates or even ranges of costs for national authorities should be provided where possible. For example, if costs for a given system exist for one member state then this could be used to estimate the costs for other member states.

(D) Procedure and presentation

The presentation of the comparison of options is slightly confusing (section 6.1), especially the symbol --/++. To avoid confusion, the Report should explain that the pluses and minuses refer to different effects of the policy option. The basis for the calculations of the economic impact should be given. The Report should present the consultation results more clearly.

2) IAB scrutiny process

Reference number	2009/JLS/004 (CLWP 2009 priority initiative)
Author DG	JLS
External expertise used	No
Date of Board Meeting	14 January 2009
Date of adoption of Opinion	16 JAN. 2009

