

Tuesday 11 April 2000

4. Child pornography on the Internet *

A5-0090/2000

Initiative of the Republic of Austria with a view to adopting a Council Decision to combat child pornography on the Internet (10317/1999 – C5-0318/1999 – 1999/0822(CNS))

The initiative was amended as follows:

TEXT PROPOSED
BY THE REPUBLIC OF AUSTRIA (1)

AMENDMENTS
BY PARLIAMENT

(Amendment 1)

Title

Initiative of the Republic of Austria with a view to adopting a Council Decision to combat child pornography on the Internet

Initiative of the Republic of Austria with a view to adopting a Council **framework** Decision to combat child pornography on the Internet

(Amendment 2)

First citation

HAVING REGARD to the Treaty on European Union, and in particular Article 34(2)(c) thereof,

HAVING REGARD to the Treaty on European Union, and in particular Article 34(2)(**b**) thereof,

(Amendment 3)

Fourth citation

TAKING ACCOUNT OF the *resolution* adopted by the European Parliament on 19 September 1996 on minors who are victims of violence,

TAKING ACCOUNT OF the **resolutions** adopted by the European Parliament on 19 September 1996 on minors who are victims of violence (1), **12 December 1996 on measures to protect minors in the European Union (2)**, **24 April 1997 on the Commission communication on illegal and harmful content on the Internet (3)**, and **6 November 1997 on the Commission communication on combating child sex tourism and the 'aide-memoire' on the European Union's contribution to reinforcing the prevention of the sexual abuse and exploitation of children (4)**,

(1) OJ C 320, 28.10.1996, p. 190.

(2) OJ C 20, 20.1.1997, p. 170.

(3) OJ C 150, 19.5.1997, p. 38.

(4) OJ C 358, 24.11.1997, p. 37.

(Amendment 4)

Sixth citation

BEARING IN MIND the European Convention on Human Rights, and in particular Article 10(2) thereof,

BEARING IN MIND the European Convention **for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome on 4 November 1950**, and in particular **Articles 2, 3 and 10(2)** thereof,

(Amendment 5)

Sixth citation a (new)

RECALLING the European Convention on the Exercise of Children's Rights, adopted in Strasbourg on 25 January 1996, and in particular Articles 1, 6, 7, 8, 9, 10, 11, 12 and 15 thereof,

(1) OJ C 362, 16.12.1999, p. 8.

Tuesday 11 April 2000

TEXT PROPOSED
BY THE REPUBLIC OF AUSTRIA

AMENDMENTS
BY PARLIAMENT

(Amendment 6)

Sixth citation b (new)

HAVING REGARD TO the Universal Declaration of Human Rights, adopted by the UN General Assembly in its resolution 217 A (III) on 10 December 1948 in Paris, and in particular Articles 2, 3, 7, 25 and 26 thereof,

(Amendment 7)

Seventh citation

RECALLING *Article 34* of the Convention on the Rights of the Child of 20 November 1989,

RECALLING the **United Nations** Convention on the Rights of the Child, **adopted by the UN General Assembly in Resolution 44/25** of 20 November 1989, **and in particular the preamble and Articles 1, 2, 3, 5, 6, 7, 8, 9, 11, 12, 18, 19, 20, 27, 28, 32, 33, 34, 35, 36 and 39 thereof,**

(Amendment 8)

Seventh citation a (new)

BEARING IN MIND the Joint Action of 29 November 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing an incentive and exchange programme for persons responsible for combating trade in human beings and the sexual exploitation of children ⁽¹⁾,

⁽¹⁾ OJ L 322, 12.12.1996, p. 7.

(Amendment 9)

Seventh citation b (new)

HAVING REGARD TO the Carneby report of the G7 States, issued on 17 October 1997, and the outcome of the Unesco 'Info-Ethics' conference, held from 1 to 3 October 1998 for the purpose of laying down the minimum international regulation required to guard against child pornography on the Internet,

(Amendment 10)

Third recital

CONVINCED that *a high value must be placed on the physical and emotional integrity of children and the protection of victims of sexual crimes,*

CONVINCED that **respect for the physical and emotional integrity of children and the protection of victims of sexual exploitation are of fundamental importance and must lie at the heart of the Union's concerns,**

(Amendment 11)

Article -1(1) (new)

1. Each Member State shall take the necessary measures to ensure that the production, sale and distribution or other forms of trafficking in child pornography material and the possession of such material is punishable by effective, proportionate and dissuasive penalties. Participation in and attempts to commit these offences, with the exception of possession, shall also be punishable.

Tuesday 11 April 2000

TEXT PROPOSED
BY THE REPUBLIC OF AUSTRIAAMENDMENTS
BY PARLIAMENT

(Amendment 12)

Article -1(2) (new)

2. Possession shall be punishable only where it is the result of an intentional or deliberate act or, if it is not, where possession is deliberately retained. Acquiring and possessing child pornography material for the purpose of passing it on to the law enforcement authorities or corresponding contact points shall not be an offence.

(Amendment 13)

Article -1(3) (new)

3. For the purposes of this framework Decision, child pornography is visual material giving the impression that a sexual act is being performed on a child or that a child is performing a sexual act on itself, on another person or on an animal. Evidence that the person depicted is not a child or that the act did not actually take place is no defence. The production of child pornography material shall be an offence even when it does not give the impression that the person depicted is a child, although that person actually is a child.

(Amendment 14)

Article -1(4) (new)

4. For the purposes of this framework Decision, the term 'children' shall mean persons younger than 16 years of age. Member States shall be free to set a higher age limit.

Member States shall endeavour to engage in constructive dialogue in order to agree on a common definition of the age below which a human being is considered to be a child with the objective of ensuring comprehensive protection for children by trying to fix such age at 18 years old.

(Amendment 15)

Article 1(1)

1. In order to intensify measures to prevent and combat the production, processing, distribution and possession of child pornography material and to promote the effective investigation and prosecution of offences in this area, Member States will take the necessary measures to encourage Internet users to inform law enforcement authorities, either directly or indirectly, on suspected distribution of child pornography material on the Internet, if they come across such material. Internet users shall be made aware of ways to make contact with law enforcement authorities or entities which have privileged links with law enforcement authorities, to enable such authorities to fulfil their task of preventing and combating child pornography on the Internet.

1. Within the framework of Decision No 276/1999/EC of the European Parliament and of the Council of 25 January 1999 adopting a multiannual Community action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks⁽¹⁾ and in order to intensify measures to prevent and combat the production, processing, distribution and possession of child pornography material and to promote the effective investigation and prosecution of offences in this area, Member States will take the necessary measures to encourage Internet users to inform law enforcement authorities, either directly or indirectly, on suspected distribution of child pornography material on the Internet, if they come across such material. Internet users shall be

Tuesday 11 April 2000

TEXT PROPOSED
BY THE REPUBLIC OF AUSTRIA

AMENDMENTS
BY PARLIAMENT

made aware of ways to make contact with law enforcement authorities or entities which have privileged links with law enforcement authorities, to enable such authorities to fulfil their task of preventing and combating child pornography on the Internet.

(¹) OJ L 33, 6.2.1999, p. 1.

(Amendment 16)

Article 1(1a) (new)

1a. Member States shall adopt the legislative measures required to permit their law enforcement authorities, without prejudice to fundamental rights and in compliance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (¹), to search the Internet for child pornography material.

(¹) OJ L 281, 23.11.1995, p. 31.

(Amendment 17)

Article 1(2)

2. *Where necessary, and taking account of the administrative structure of each Member State, measures for the promotion of effective investigation and prosecution of offences in this area could be the setting up of specialised units within law enforcement authorities with the necessary expertise and resources to be able to deal swiftly with information on suspected production, processing, distribution and possession of child pornography.*

2. **Member States shall**, for the promotion of effective investigation and prosecution of offences in this area, **set up** specialised units within law enforcement authorities with the necessary expertise and resources to be able to **carry out their own investigations and to initiate enquiries and** deal swiftly with information on suspected production, processing, distribution and possession of child pornography.

(Amendment 18)

Article 1(3)

3. Member States shall ensure that the law enforcement authorities act swiftly when they have received information on suspected production, processing, distribution and possession of child pornography material.

3. Member States shall ensure that the law enforcement authorities act swiftly when they have received information on suspected production, processing, distribution and possession of child pornography material. **Law enforcement authorities may defer taking action if and as long as tactically necessary, for instance with a view to getting at those behind the criminal operations, or at networks (child pornography rings).**

(Amendment 19)

Article 2(1)

1. Member States shall ensure the widest possible cooperation to facilitate an effective investigation and prosecution of offences concerning child pornography on the Internet in accordance with existing arrangements and agreements.

1. Member States shall ensure the widest **and speediest** possible cooperation to facilitate an effective investigation and prosecution of offences concerning child pornography on the Internet in accordance with existing arrangements and agreements.

Tuesday 11 April 2000

TEXT PROPOSED
BY THE REPUBLIC OF AUSTRIA

AMENDMENTS
BY PARLIAMENT

(Amendment 20)

Article 2(2)

2. To ensure a timely and effective response to these offences, Member States will *communicate already established* points of contact, which are set up on a 24-hour basis and consist of knowledgeable personnel, *as well as* the specialised units, which are mentioned in Article 1(2) and which can be used for exchange of information and for further contacts between Member States. Points of contact, which Member States have already set up for other duties can be used for these purposes. Equally, existing channels for communication, such as Europol and Interpol shall be used.

2. To ensure a timely and effective response to these offences, Member States will **establish** points of contact, which are set up on a 24-hour basis and consist of knowledgeable personnel **and communicate them, and** the specialised units which are mentioned in Article 1(2) and which can be used for exchange of information and for further contacts between Member States, **to each other**. Points of contact which Member States have already set up for other duties can be used for these purposes. Equally, existing channels for communicate, such as Europol and Interpol shall be used.

(Amendment 29)

Article 2(3)

3. Member States shall ensure that Europol, within the limits of its mandate, is informed of suspected cases of child pornography.

3. Member States shall ensure that Europol, within the limits of its mandate, is informed **immediately** of suspected cases of child pornography, **so that it is able to make rapid analyses of the situation and coordinate measures in criminal tactics effectively. The competent authorities specialising in combating child pornography on the Internet shall primarily use electronic communications facilities with a view to promoting the general exchange of information and improving cooperation with Europol.**

(Amendment 21)

Article 2(5a) (new)

5a. Member States shall establish registers of persons convicted of the distribution of child pornography and the sexual abuse of children. The information in these registers shall be accessible to all Member States and Europol.

(Amendment 22)

Article 2(5b) (new)

5b. Member States shall seek to involve the candidate countries as soon as possible in action to combat child pornography.

(Amendment 23)

Article 3, introduction

Member States shall engage in constructive dialogue with industry and *examine* appropriate measures, of a voluntary or a legally binding nature to eliminate child pornography on the Internet. In particular, Member States shall exchange experiences on the effectiveness of any measures they have taken to

Member States shall engage in constructive dialogue with industry and **adopt** appropriate measures, **both** of a voluntary **and of** a legally binding nature, to eliminate child pornography on the Internet. In particular, Member States shall exchange experiences on the effectiveness of any measures they have

Tuesday 11 April 2000

TEXT PROPOSED
BY THE REPUBLIC OF AUSTRIA

AMENDMENTS
BY PARLIAMENT

eliminate child pornography on the Internet. In this context, they shall *examine* the following measures which *would* place Internet providers under a duty:

taken to eliminate child pornography on the Internet. In this context, they shall **adopt** the following measures, which, **within the framework of Decision No 276/1999/EC, will** place Internet providers under a duty:

(Amendment 24)

Article 3(-a) (new)

(-a) to ensure that the identity of persons who obtain an electronic mail (e-mail) address can be established;

(Amendment 25)

Article 3(c)

(c) in accordance with the Council Resolution of 17 January 1995 on the lawful interception of telecommunications to retain traffic-related data, where *applicable and* technically feasible — in particular for criminal prosecution purposes in cases of suspected sexual abuse of children, production, processing and distribution of child pornography — for such time as may be specified under the applicable national law, to allow the data to be made available for inspection by the criminal prosecution authorities in accordance with the applicable rules of procedure;

(c) in accordance with the Council Resolution of 17 January 1995 on the lawful interception of telecommunications to retain traffic-related data, where technically feasible — in particular for criminal prosecution purposes in cases of suspected sexual abuse of children, production, processing and distribution of child pornography — for such time as may be specified under the applicable national law, **which shall not, however, be less than three months**, to allow the data to be made available for inspection by the criminal prosecution authorities in accordance with the applicable rules of procedure;

(Amendment 26)

Article 4

Member States shall regularly verify whether technological developments require, in order to maintain the efficiency of the fight against child pornography on the Internet, changes to criminal procedural law, while respecting the fundamental principles thereof and, where necessary, shall make appropriate proposals to their competent authorities to that end.

Member States shall regularly verify whether technological developments require, in order to maintain the efficiency of the fight against child pornography on the Internet, changes to criminal procedural law, while respecting the fundamental principles thereof and, where necessary, shall make appropriate proposals to their competent authorities to that end. **Offences committed in third countries should be punishable in accordance with national law.**

(Amendment 27)

Article 6(1)

1. The Council shall examine the extent to which Member States have fulfilled their obligations pursuant to Joint Action 97/154/JHA and the extent to which the measures proposed in this Decision have proved effective.

1. **By 1 July 2002** the Council shall examine the extent to which Member States have fulfilled their obligations pursuant to Joint Action 97/154/JHA **and this framework Decision** and the extent to which the measures proposed in this **framework** Decision, **and in particular in Article 3**, have proved effective.

Tuesday 11 April 2000

TEXT PROPOSED
BY THE REPUBLIC OF AUSTRIA

AMENDMENTS
BY PARLIAMENT

(Amendment 28)

Article 6(2)

2. The examination referred to in paragraph 1 *may* be carried out under Joint Action 97/827/JHA adopted by the Council on 5 December 1997 establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime, subject to the following:

- (a) evaluation teams shall consist of two experts;
- (b) on-the-spot evaluation shall be made so as to avoid cumbersome procedures.

2. The examination referred to in paragraph 1 **shall** be carried out under Joint Action 97/827/JHA adopted by the Council on 5 December 1997 establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime, subject to the following:

- (a) evaluation teams shall consist of two experts;
- (b) on-the-spot evaluation shall be made so as to avoid cumbersome procedures.

(ba) the Council Presidency shall annually inform Parliament of the conclusions of the multidisciplinary working party on organised crime and of all recommendations formulated by the Council.

European Parliament legislative resolution on the initiative of the Republic of Austria with a view to adopting a Council decision to combat child pornography on the Internet (10317/1999 – C5-0318/1999 – 1999/0822(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative of the Republic of Austria (10317/1999)⁽¹⁾,
- having been consulted by the Council pursuant to Article 34(2) (c) of the EU Treaty (C5-0318/1999),
- having regard to Rule 67 of its Rules of Procedure,
- having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinions of the Committee on Culture, Youth, Education, the Media and Sport and the Committee on Legal Affairs and the Internal Market (A5-0090/2000),

1. Approves the initiative of the Republic of Austria as amended;
2. Calls on the Council to alter the draft decision accordingly;
3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
4. Asks to be consulted again if the Council intends to amend the draft decision substantially;
5. Instructs its President to forward its position to the Council and Commission.

⁽¹⁾ OJ C 362, 16.12.1999, p. 8.