



ECPAT Comments on proposals for an EU Council Framework Decision on combating the sexual abuse, sexual exploitation of children and child pornography

Introduction

ECPAT International is a global network of 81 organizations working in 75 countries together to specifically eliminate child prostitution, child pornography, and trafficking of children for sexual purposes.

Across the world, and including in Europe, ECPAT has been a driving force in galvanizing awareness and commitment for the realization of the right of the child to protection against sexual exploitation and has played a leading role in mobilizing three World Congresses against Commercial Sexual Exploitation of Children - in particular, the recent World Congress III against Sexual Exploitation of Children and Adolescents organized in Rio de Janeiro, Brazil in November 2008. ECPAT International also organized the Regional Preparatory Meeting for Europe and Central Asia in Geneva in September 2008 and the Regional Preparatory Meeting for Youth in Dusseldorf in October where progress, gaps and priorities for the region were reviewed.¹

The comments presented below draw on ECPAT International extensive experiences on Commercial Sexual Exploitation of Children, worldwide and in Europe and also reflect the recommendations from the recent **Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents**² which is the result of extensive inputs from various stakeholders, including children, and recommendations drawn from the World Congress III and its related preparatory processes.

Council Framework Decision on combating the sexual abuse, sexual exploitation of children and child pornography

ECPAT International welcomes the EU proposal for Council Framework Decision on combating the sexual abuse of children (CSA), the sexual exploitation of children (CSE) and child pornography (CP).

GENERAL COMMENTS

¹ See reports ...

² See the full text at

http://www.ecpat.net/WorldCongressIII/PDF/Outcome/WCIII_Outcome_Document_Final.pdf



- **Prevention**

Prevention of sexual offences against children cannot be dissociated from other measures to address child sexual abuse and exploitation and therefore must be fully incorporated into a comprehensive and integrated framework that provides full protection for children. Specific policy provisions for implementation of prevention programmes are essential as part of a comprehensive response to child sexual abuse and exploitation and ECPAT is concerned that, whilst mentioned in the *summary of responses of consultation with interested parties*, prevention has not been fully integrated in the FD.

Furthermore, the need to mainstream prevention, especially through community-based prevention activities is mentioned repeatedly in the Rio Declaration and Call for Action and forms part of the Europe and Central Asia Regional Recommendations on Sexual Exploitation of Children and Adolescents resulting from the Regional Preparatory process for the World Congress III. More specifically it mentions the need to “*Streamline policies to protect children and adolescents from sexual exploitation in broader strategies addressing some of the underlying factors such as poverty reduction strategies, education, legal framework and law enforcement, youth employment policies, anti-discrimination initiatives as well as initiatives to fight demand and where possible integrated into National Action Plans.*”

The lack of support and leadership of some European Governments in developing and implementing comprehensive strategies that include prevention as a key measure to protect children from sexual exploitation and abuse has been repeatedly stressed. It has been further highlighted that most activities are conducted as and when possible by NGOs and other civil society actors or IGOs seriously jeopardizing the sustainability of such actions. As the general context of the proposal recognizes the predominant cause of child sexual abuse and exploitation being the “child victim’s vulnerability resulting from a variety of factors” **ECPAT International therefore recommends that a specific provision to implement community-based prevention programmes focused on child sexual abuse and exploitation and child pornography be included calling for these to be executed or sponsored by States and to form part of the integral curriculum of all European schools.**”

- **Child participation**

The right of the child to participate in decisions that directly affect him/her has not been systematically fully articulated in regard to its guarantee in relation to situations of child sexual abuse, exploitation and child pornography. Whilst some elements of the right of the child to participation are incorporated in the FD, for instance “to take due account of the child’s views, needs and concerns” with regard to protection and assistance, **ECPAT International would strongly recommend adoption of the Rio Declaration and Call for Action recommendations in this regard to ensure that States “support measures and structures to institutionalize meaningful child participation in a**



sustainable way at all levels". This would better guarantee that consideration of the child's views is not only limited to the protection of victims but that also appropriate structures are put in place to ensure children can participate in broader programmes addressing child sexual abuse, exploitation, and child pornography.

- **Victim identification**

While **victim identification in regard to child pornography should be made a high priority** to ensure that the child victim receives all the appropriate care and support for recovering from this grave violation and serious harm committed against the child, there also remains significant gaps in the identification of children victims of sexual abuse and sexual exploitation.

ECPAT International would recommend that the FD includes a specific provision to require States to "Adopt and implement specialized procedures for the rapid identification of child victims of sexual abuse and other forms of sexual exploitation by adequately trained personnel"

- **Publicizing laws related to the protection of children**

ECPAT International believes that building awareness on the problem of sexual exploitation of children and educating the general public on the existence of specific laws to punish specific conducts harmful to children can act as a strong prevention mechanism and would therefore advise the FD to provide for proactive measures and permanent mechanisms to inform the public on the existing legislative framework.

SPECIFIC COMMENTS

(7) Investigation of offences

As mentioned, considering the under-reporting of sexual crimes against children, ECPAT International would recommend to add a specific mention regarding the establishment of reporting mechanisms and would therefore suggest the addition below:

(7) "**Establishing effective and accessible reporting mechanisms**, investigating offences and bringing charges in criminal proceeding should be facilitated"

(12) To combat child pornography

ECPAT International welcomes this addition to establish mechanisms to block access from the EU to Internet pages identified as containing or disseminating child pornography. It has been clearly demonstrated that the extent of this crime and its transnational nature requires coordinated and comprehensive responses. Blocking access is an important mechanism to combat child pornography that needs to be supported and combined with other measures to be fully effective. This would include



ECPAT International feedback–
May 2009

targeted as well as public education and awareness-raising, but also creating platforms to support involvement of various partners to build a multi-stakeholder approach to address the problem.

In light of the recent speech delivered by Mr Jacques Barrot in March 2009 in London “*An indecent profit, a horrific crime*” – *Preparing a European response to combat the commercial distribution of child abuse images* and the need to involve the private sector at large; considering the creation of a new EU Financial Coalition against child sexual abuse on the Internet; and in view of the role of financial institutions in disrupting profits from commercial child pornography; ECPAT International would recommend that (12) is not limited to blocking systems but also includes other measures, such as tracing and stopping financial flows for accessing child pornography and requiring the ICT industry to assess impact on child protection in development of their products and service for integration and implementation of child protection mechanisms. The Rio Declaration and Call for Action “*Calls upon Internet service providers, mobile phone companies, Internet cafes and other relevant actors to develop and implement voluntary Codes of Conduct and other corporate social responsibility mechanisms together with the development of legal tools for enabling the adoption of child protection measures in these businesses.*” ECPAT International would therefore suggest the following additions

(12) To combat child pornography, especially where the original materials are not located within the EU, mechanisms should be put in place to block access from the Union’s territory to internet pages identified as containing or disseminating child pornography, **and to trace and stop the flow of financial transactions undertaken to access child pornography materials**”

- Definitions:

Article 1 (b) (i) Child Pornography

Bearing in mind that various forms of child abuse materials are used to fuel demand and contribute to increasing tolerance for sexual activities with children, that visual but also audio representations can be used to advocate and encourage abuse or counsel on sexual activity with children, ECPAT International recommends that all forms of materials of child sexual abuse form part of the definition of child pornography in line with the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography which understands child pornography as “any representation by whatever means”. This broad scope of materials should be kept in mind when enacting legislation and ECPAT International would therefore suggest the following wording:

Art 1 (b) (i) “Child pornography, shall mean any material that depicts a child ...” **(remove visually)**, or any person appearing to be a child, or realistic images of a non-existent child, engaged **or depicted as being engaged**, in real or simulated sexually explicit conduct”



Child sex tourism

For the purpose of clarification and increased protection of all children, ECPAT International would like to suggest the inclusion of a specific definition related to child sex tourism

ECPAT International defines Child Sex Tourism “as the sexual exploitation of children by a person or persons who travel from their usual environment ³ to a destination where they have sexual contact with children”.

- Article 3 – Offences concerning sexual exploitation

ECPAT International welcomes this review of offences concerning sexual exploitation and points out to the necessity to criminalize all acts related to sexual exploitation. In this context, ECPAT International would like to emphasize the urgent need to address the demand for sexual services from children and to criminalize the ‘client’ of prostituted children and the purchase of and intent to purchase sexual services from children.

ECPAT International would therefore strongly recommend a revision of article 3:

(3) (c) engaging or **agreeing to** engage in sexual activities with a child, where recourse is made to child prostitution, **irrespective of whether the sexual act is committed or not.**

In addition, in order to ensure full protection of all children, including adolescents whose physical appearance may lead the exploiter to believe they may be over 18, it is strongly suggested to remove the “intentional conduct” and rather

(3) “Each Member State shall take the necessary measures to ensure that **the following intentional conduct is** punishable...” This would contribute to closing a legal loophole in investigations and criminal proceedings where exploiters use the argument of not knowing the exact age of the child victim to avoid prosecution.

- Article 4 – Offences concerning child pornography

ECPAT International strongly supports this offence which brings a strong protective framework by punishing mere possession and access to child pornography. Abolishing the need to download a material to criminalize an intentional conduct of viewing child pornography constitutes a great progress but ECPAT International would like to suggest the wording “Knowingly obtaining access and **viewing**, by means of an information system, to child pornography” to Article 4 (e) definition, in order to circumvent any potential evidentiary problems.

³ Based on the UNWTO definition of tourist, 1997.



From a practical point of view, law enforcement officials from various countries have agreed that assessing the age of a child in child sexual abuse materials can be extremely challenging. Therefore in order to optimize law enforcement efforts and resources generally only cases involving an 'obvious' child, ie mostly under the age of 14, may be investigated and prosecuted. This implies that cases involving a large portion of teenage children victimized in child sexual abuse materials will not be prioritized for investigation nor would processes for prosecution of offenders be realized due to the difficulty to determine and prove their age. It is therefore essential to ensure that all children depicted in child abuse material are assumed to be under the age of 18 in order to assure that they receive the same level of protection. ECPAT International suggests that a specific provision reversing the burden of the proof of the age of the person in child sexual abuse materials be made so that it lies on the people producing, distributing and/or possessing the materials. This would imply that in any material where there may be a doubt regarding the age of the person, the producer, distributor or viewer would be the one to prove that all persons in the materials are above the age of 18.

ECPAT International would highly recommend to consider this as a matter of priority for this framework decision.

- Article 5 – Solicitation of children for sexual purposes

ECPAT welcomes a specific provision on solicitation of children for sexual purposes, however is worried about linking this to the age of sexual consent as there has been no harmonization in Europe about this and age of sexual consent ranges from as young as 13 in Spain to 17 in Ireland. This would lead to inconsistent protection of all children across Europe and may generate movement of abusers for sexually exploiting children in European destinations where legislation regarding the age of sexual consent is not as strict. ECPAT International would like to suggest the following change

"The proposal, by means of an information system, by an adult to meet a child (~~who has not reached the age of sexual consent under national law according to the relevant provisions of national law~~) for the purpose of committing any of the offences referred to in Articles 2 (a) and 4(a) where this proposal has been followed by material acts leading to such a meeting.

- Article 6 – Instigation, aiding and abetting, attempt and preparatory offences

With regard to traveling abusers, ECPAT International would like to reiterate that a large portion of offenders who sexually exploit children while traveling are 'situational offenders' who did not necessarily travel for the purpose of sexually exploiting children but who when presented with the opportunity to have sexual relations with a child then takes it. Very few situational child sex tourists are arrested, tried and sentenced.⁴ In this context, a specific definition is necessary (see below) and ECPAT International suggests to rephrase the Article 6 (b) , as per Terre des Hommes International Federation comments , "The organization of travel **and/or other** arrangements **AND the commission of** any of the offences referred to in Articles 2 to 5"

⁴ ECPAT International, *Strengthening laws addressing child sexual exploitation*, 2008



- Article 11 – Non application of sanctions to the victim

Children victims of sexual exploitation may be involved in unlawful activities linked with their situation of dependency and vulnerability. A child victim of sexual exploitation found engaged in unlawful activity should always be treated as a victim of a serious crime and should be afforded all necessary protection as their engagement in such activities is subject to the control of their situation of exploitation. This can also provide the exploiters with opportunities to use threats against the child and coerce the child in continued sexual exploitation. Therefore ECPAT International is extremely concerned with Article 11 which only provides for States to *consider* not prosecuting child victims of sexual exploitation and would strongly recommend the following changes for Article 11 “Each member State **shall not** prosecute or impose penalties” as also suggested by Terre Des Hommes International Federation.

- Article 12 – Investigation and Prosecution

Ensuring the prosecution of child sex offenders is crucial in the fight against this phenomenon. As already mentioned above ECPAT International would like to emphasize the need for Member States to ensure the establishment and implementation of effective and accessible reporting mechanisms to support Article 11 (4).

Considering that, as already stressed above, the identification of victim is particularly crucial, the following change could strengthen Article 11 (6) “Each Member State shall take the necessary measures to enable and **support** investigative units...”

- Article 14 – Protection of and assistance to victims

The protection of and assistance to the child victim of sexual exploitation is absolutely essential and necessary but specialized care and support services to victims (both girls and boys) are often considered inadequate and insufficient, and personnel are often ill-trained to deal with the victims.

While important, the protection and assistance cannot be limited to legal support and the need to ensure that specialized care is provided to the child can not be overlooked. ECPAT International would therefore strongly recommend that Article 14 be strengthened with additional sub=sections as suggested below:

“Each Member State shall ensure that children victims of offences mentioned in Articles 2 to 6 receive adequate and specialized assistance, including accommodation in a safe place, medical and psychosocial assistance and education. Member States shall ensure that these services are provided by well trained multi-disciplinary teams of professionals and respecting the child’s cultural identity/origin, gender and age”.⁵

⁵ Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents



Considering that many children are exposed to sexual exploitation and trafficking also as a result of inadequate care and support available for them, ECPAT International suggests an additional measure to be incorporated : **“Each Member State shall consider taking action to establish minimum assistance quality standards to avoid that children are (re-)victimized as a result of inadequate care. Training for professionals and monitoring mechanisms to ensure the implementation of such measures shall also be developed”**.

- Article 15 – Participation of child victims in criminal investigations and proceedings

The participation of children in criminal proceedings can be extremely intimidating and potentially further victimize the child. Therefore specific care must be taken to ensure the highest protection of the child. As mentioned in the Rio Declaration and Call for Action, “special gender sensitive units/ children’s desks within police forces should be established, involving when appropriate other professionals like health care and social workers and teachers, to address sexual crimes against children and provide specialized training to judicial and law enforcement personnel”

ECPAT International would therefore recommend the addition below

Article 15 (1) **“Each Member State shall establish specialized child and gender sensitive units within police forces and provide specialized training to judicial and law enforcement personnel”**

- Article 18 – Blocking access to websites containing child pornography

As already mentioned above, while blocking access to child pornography materials constitutes a strong step forward in the protection of children, additional measures are necessary to disrupt the distribution of child pornography.

ECPAT International would therefore recommend the following changes to Article 18 : **“Each Member State shall take the necessary measures to require Internet service providers, mobile phone companies, search engines and other relevant actors to report, remove and block the access by users to pages** containing or disseminating child pornography ...“

“And to order or similarly obtain that financial institutions undertake actions to trace and stop the flow of financial transactions undertaken through their services which facilitate access to child pornography”.⁶

⁶ Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents



ECPAT Comments on proposals for an EU Council Framework Decision on preventing and combating trafficking in human beings and protecting victims

Child trafficking for sexual purposes is one of the main manifestations of commercial sexual exploitation of children which the ECPAT International network has constantly put efforts to combat on a global and local basis. A large number of ECPAT groups around the world (86% of the 81 groups in the 75 countries) have developed prevention and protection initiatives to protect children from trafficking for sexual purposes. It is from this extensive experience that ECPAT International sends its comments on the new Framework Decision in an attempt to ensure that the right of the child to protection from sexual exploitation is guaranteed by all States.

ECPAT International welcomes this new Council Framework Decision on trafficking in human beings and protecting victims and would like to support the opinion of the Groups of Experts on Trafficking in Human Beings.

ECPAT International would like to reiterate and suggest specific comments:

- Article 9 par. 4 – Protection of vulnerable victims

“Each Member State shall allow, where appropriate, that the identity of a particularly vulnerable victim acting as a witness is not disclosed.”

ECPAT International would like to emphasize that the protection of the identity of a victim of trafficking is a key principle of protection and can not be comprised and should apply to all victims, not only be limited to those acting as witnesses. Disclosure of information on the victim should always be considered inappropriate.

As such, ECPAT International would like to suggest the following change: “Each Member State shall allow, ~~where appropriate~~, that the identity of a particularly vulnerable victim ~~acting as a witness~~ is not disclosed, **whether or not the victim is acting as a witness.**”

- Article 10 par. 4 – Assistance to victims

ECPAT International would like to stress and reiterate that in order to ensure an effective social recovery and reintegration of victims of trafficking, including and in particular children, it is essential that States develop programmes providing livelihood options (including employment opportunities, vocational training, educational programmes) in collaboration with national partners, including private sector, civil society partners,

As such ECPAT International would like to suggest the following revision:



ECPAT International feedback–
May 2009

Victims shall be granted the necessary assistance and support by Member States in the framework of criminal proceedings, to enable them to recover and escape from the influence of the perpetrators, including by providing them with secure accommodation and material assistance, necessary medical treatment including psychological assistance, counseling and information, **access to employment, education and training opportunities**, assistance to enable their rights and interests to be presented and considered in criminal proceedings, and translation and interpretation services where appropriate. Member States shall attend to the special needs of the most vulnerable.