

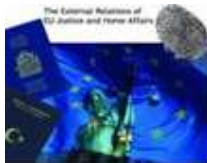


Malta-EU Steering & Action Committee

JUSTICE AND HOME AFFAIRS

Sectoral Committee
Weekly Update
09.04.10

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COM(2010)94 - Proposal for a Directive of the European Parliament and of the Council: on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA

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, does not remove obstacles to prosecuting offences outside national territory, does not meet all the specific needs of child victims, and does not contain adequate measures to prevent offences.

Consequently in March 2009 the Commission adopted a proposal¹ wherein it proposed new rules obliging EU countries to impose more severe punishment on those who sexually abuse children.

This new proposal builds on the proposal made in March 2009 which had to be reshaped after the entry into force of the Lisbon Treaty so as to allow the Commission to verify that EU law is correctly translated into national rules and take those countries that are not complying to Court.

This proposal would make it easier to fight these crimes through different tools:

- by providing severe criminal sanctions across the EU for sexual abuse and exploitation, as they are serious crimes. New forms of abuse will also be covered, like 'grooming' - luring children through internet and abusing them, viewing child pornography without downloading files or making children pose sexually in front of webcams.
- "Sex tourists" travelling abroad to abuse children will face prosecution when they come home.
- Child victims will be protected against additional trauma resulting from interviews by law enforcement and judicial authorities, or having to be exposed in front of the public in court, and will be helped by a free lawyer.
- Every offender should be assessed individually and offered tailor-made treatment so that they don't abuse again.
- Member States will be obliged to ensure that access to websites containing child pornography can be blocked, as they are very difficult to take down at the source, especially if the site is outside the EU. The proposal will leave it to Member States to decide exactly how the blocking should be implemented but legal safeguards will always apply.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0094:FIN:EN:PDF>

¹ Sectoral Committee Update 6 – 27.03.2009 - [COM \(2009\) 135](#)



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COM(2010)95 – Proposal for a Directive of the European Parliament and of the Council: on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA

As in the case of the proposal above on combatting child abuse, in March 2009 the Commission had also adopted a proposal² wherein it proposed new rules more stringent than those found Framework Decision 2002/629/JHA for the prevention and combating of trafficking in human beings.

This new proposal builds on the proposal made in March 2009 which had to be reshaped after the entry into force of the Lisbon Treaty so as to allow the Commission to verify that EU law is correctly translated into national rules and take those countries that are not complying to Court.

This proposal obliges EU Member States to act on the three fronts of prosecuting criminals responsible for trafficking human beings, protecting the victims and preventing the offences. The Commission will also soon take steps to appoint an EU Anti-Trafficking Co-ordinator to make the EU anti-trafficking policy more efficient, visible and coherent, including in relation to addressing root causes and working with third countries

If adopted, the proposal would increase consistency among national rules on crimes and penalties. Offenders would face charges even if they commit crimes abroad. Investigative tools used to fight organised crime should be made available to police and judicial authorities.

Victims would receive accommodation, medical care to help them recover and witness protection so that they are not afraid to testify against their perpetrators. They would also receive legal aid throughout the proceedings including for the purpose of claiming financial compensation.

To do more to prevent human trafficking, the proposal envisages raising awareness of potential victims on the risks of falling prey to traffickers, and of public officials to detect cases of trafficking and deal with them. It encourages sanctions against persons who knowingly employ or buy services from trafficking victims. It would also establish bodies in Member States to monitor implementation of these actions.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0095:FIN:EN:PDF>

² Sectoral Committee Update 6 – 27.03.2009 – [COM \(2009\) 136](#)



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COM(2010) 104 - Proposal for a Council Decision No .../2010/EU: authorising enhanced cooperation in the area of the law applicable to divorce and legal separation

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0104:FIN:EN:PDF>

COM(2010) 105 - Proposal for a Council Regulation (EU): implementing enhanced cooperation in the area of the law applicable to divorce and legal separation

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0105:FIN:EN:PDF>

In July 2006, the Commission adopted a proposal for a Council Regulation which would introduce rules concerning the applicable law in matrimonial matters. The legal basis for the proposed Regulation (Articles 61(c) and 67(1) of the EC Treaty) prescribed unanimity.

At the Council meeting of 5 and 6 June 2008, Ministers concluded that 'there was no unanimity to go ahead with the proposed Regulation and that insurmountable difficulties existed, making a decision requiring unanimity impossible now and in the foreseeable future'.

In July-August 2008, nine Member States (Bulgaria, Greece, Spain, Italy, Luxembourg, Hungary, Austria, Romania and Slovenia) addressed a request to the Commission indicating that they wished to establish enhanced cooperation between themselves in the area of applicable law in matrimonial matters and that the Commission should submit a proposal to the Council to that end. In January 2009, France also addressed a similar request. On 3 March 2010, Greece withdrew its request.

The provisions regulating enhanced cooperation require 2 proposals to implement enhanced cooperation in the area of the law applicable to divorce and legal separation:

- a Commission proposal for a Council Decision authorising enhanced cooperation in the area of the law applicable to divorce and legal separation (COM(2010) 104), and
- a Commission proposal for a Council Regulation implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (COM(2010) 105).

The purpose of the enhanced cooperation is to provide a clear and comprehensive legal framework, covering applicable law rules in matters of divorce and legal separation and allowing the parties a certain degree of autonomy in choosing the applicable law.

It should be clarified that the area of the proposed enhanced cooperation, 'the law applicable to divorce and legal separation', does not comprise conflict-of-law rules for the property consequences of divorce. Also, the subject is not the substantive law on divorce, i.e. grounds for divorce or the procedure to apply for divorce.



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Currently, with no Union rules, 26 different sets of conflict-of-law rules on divorce exist in the 24 Member States that participate in judicial cooperation in civil matters in the EU and in the two Member States that may opt in. The current situation may give rise to a number of problems in matrimonial proceedings with an 'international' element. The fact that national laws are very different both with regard to the substantive law and the conflict-of-law rules leads to legal uncertainty. The great differences between and the complexity of the national conflict-of-law rules make it very difficult for 'international' couples to predict which law will apply to their matrimonial proceedings. A large majority of Member States do not provide any possibility for the spouses to choose the applicable law in matrimonial proceedings.

Enhanced cooperation in the area of the law applicable to divorce and legal separation would bring citizens the following benefits:

- Strengthening legal certainty and predictability;
- Increasing flexibility by introducing limited party autonomy;
- Preventing a 'rush to court' by one spouse.

From the institutional standpoint, enhanced cooperation is better than the possibility of interested Member States entering into negotiations on an international agreement on the matter of the law applicable to divorce and legal separation. This alternative would certainly be less advantageous. Even if the acts adopted in enhanced cooperation are binding only on participating Member States, they nevertheless fall under Union control in that area. Thus, the Commission can monitor their correct application under the Treaties and the Court of Justice of the EU has the jurisdiction to give preliminary rulings concerning their interpretation, thus ensuring the coherent and unified interpretation of measures adopted in enhanced cooperation.

The Commission considers that the benefits of using enhanced cooperation in the area of the law applicable to divorce and legal separation are numerous compared to the option of the status quo and that the advantages in this particular case of enhanced cooperation outweigh the possible disadvantages. The common conflict-of-law rules on divorce and legal separation will considerably facilitate the lives of tens of thousands of couples in the participating Member States. Therefore, the Commission proposes authorising the enhanced cooperation between the requesting Member States and has thus adopted COM(2010)104 for the Council to adopt a Decision authorising the enhanced cooperation; whilst in COM(2010)105 the Commission has drafted the Regulation on the law applicable to divorce and legal separation.

The adoption of the common conflict-of-law rules for nine Member States does not affect the rules of the non-participating Member States. The non-participating Member States will continue to have their own private international law rules on the matter of the law applicable to divorce and legal separation.