This version is out of date

Version: 29 May 2000

Council Decision

of 29 May 2000

to combat child pornography on the Internet

(2000/375/JHA)

Introductory Text	
Article 1	(1) Within the framework of Decision No 276/1999/EC of the...
Article 2	(1) Member States shall ensure the widest and speediest possible...
Article 3	Member States shall engage in constructive dialogue with industry and...
Article 4	Member States shall regularly verify whether technological developments require, in...
Article 5	Member States shall cooperate, in contact with industry, by sharing...
Article 6	(1) The Council shall examine the extent to which Member...
Article 7	This Decision shall apply to Gibraltar.
Article 8	The measures contained in this Decision shall be implemented by...

Council Decision

of 29 May 2000

to combat child pornography on the Internet

(2000/375/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 34(2)(c) thereof,

Having regard to the opinion of the European Parliament,

Having regard to the initiative of the Republic of Austria,

Taking account of the resolutions adopted by the European Parliament on 19 September 1996 on minors who are victims of violence, 12 December 1996 on measures to protect minors in the European Union, 24 April 1997 on the Commission communication on illegal and harmful content on the Internet 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,

Bearing in mind the Declaration and Agenda for Action, unanimously accepted by delegates at the World Congress against commercial sexual exploitation of children, held in Stockholm in August 1996, and the conclusions and recommendations of the European follow-up conference to the World Congress, held in Strasbourg in April 1998;

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;

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;

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;

Recalling Article 34 of the Convention on the Rights of the Child of 20 November 1989;

Bearing in mind Council Joint Action 96/700/JHA of 29 November 1996 establishing an incentive and exchange programme for persons responsible for combating trade in human beings and the sexual exploitation of children;

Bearing in mind the Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, of 17 February 1997 on illegal and harmful content on the Internet;

Bearing in mind Joint Action 97/154/JHA of 24 February 1997 adopted by the Council concerning action to combat trafficking in human beings and sexual exploitation of children;

Bearing in mind the Council decision of 3 December 1998 supplementing the definition of the form of crime "traffic in human beings" in the Annex to the Europol Convention, and having regard to the Declaration of 3 December 1998 approved by the Council;

Taking into account the recommendation adopted by the Council on 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity;

Recalling the action plan adopted by the Council on 28 April 1997 to combat organised crime, approved by the Amsterdam European Council in June 1997, and the 10 principles of the G8 regarding high-tech crime of which the Council took note at its meeting on 19 March 1998 as well as the recommendation of the European Council in Vienna on 11 and 12 December 1998 to ensure an effective follow-up to the initiatives for the protection of children at European and international level, especially in the area of child pornography in the Internet;

Taking into account 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;

Recalling Council common position 1999/364/JHA of 27 May 1999 on negotiations relating to the Draft Convention on Cyber Crime held in the Council of Europe on 27 May 1999;

Whereas the traffic in human beings and the sexual exploitation of children constitute a serious infringement of fundamental human rights and in particular of human dignity;

Aware of the fact that the sexual abuse of children and the production, processing, possession and distribution of child pornography material may constitute an important form of international organised crime, the extent of which within the European Union gives cause for ever-increasing concern;

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;

Aware of the need for further measures by the Union to promote the safe use of the Internet;

In order to prevent and combat the sexual abuse of children and, in particular, the production, processing, distribution and possession of child pornography material through the Internet,

HAS DECIDED AS FOLLOWS:

Article 1

1. Within the framework of Decision No 276/1999/EC of the European Parliament and of the Council and in order to intensify measures to prevent and combat the production, processing, possession and distribution of child pornography material and to promote the effective investigation and prosecution of offences in this area, Member States shall 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.

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 may 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.

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

Article 2

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.

2. To ensure a timely and effective response to these offences, Member States shall 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 referred to 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, may also be used for these purposes. Likewise, existing channels for communication, such as Europol and Interpol shall be used.

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

4. Member States, in appropriate cooperation with Europol, shall examine the possibility of organising regular meetings of competent authorities specialising in combating child pornography on the Internet with a

view to promoting general information exchanges, analysis of the situation and the coordination of measures in criminal tactics.

5. Each Member State shall notify the General Secretariat of the Council of its organisational unit or units acting as points of contact pursuant to paragraph 2. The General Secretariat shall inform all other Member States of these points of contact.

Article 3

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

(a) to advise the competent entities mentioned in Article 1 (1) or the units mentioned in Article 1(2) of child pornography material of which they have been informed or of which they are aware and which is distributed through them;

(b) to withdraw from circulation child pornography material of which they have been informed or of which they are aware and which is distributed through them unless otherwise specified by the competent authorities;

(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;

(d) to set up their own control systems for combating the production, processing, possession and distribution of child pornography material.

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 initiate appropriate new legislation to that end.

Article 5

Member States shall cooperate, in contact with industry, by sharing their experiences and encouraging, as far as possible, the production of filters and other technical means to prevent the distribution of child pornography material and to make possible the detection thereof.

Article 6

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.

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.

3. The assessment specified in Title IV B of Joint Action 97/154/JHA shall not be carried out. It shall be replaced by the evaluation referred to in paragraph 2 of this Article.

4. On the basis of the information received in the course of the evaluation pursuant to paragraph 2, the Council shall examine any further measure it may wish to take in order to make the combating of child pornography and sexual exploitation of children more effective.

Article 7

This Decision shall apply to Gibraltar.

Article 8

The measures contained in this Decision shall be implemented by the Member States at the latest on 31 December 2000.

Done at Brussels, 29 May 2000.