



Open letter to Vice-President Viviane Reding and Commissioner Cecilia Malmström

Dear Commissioner Malmström, dear Vice-President Reding,

Re: EU legislation to combat child sexual abuse, sexual exploitation and child abuse images ('child pornography')

We, the undersigned NGOs, would like to congratulate on your appointments as Commissioners responsible for Home Affairs and Justice, Fundamental Rights and Citizenship respectively. We welcome your public commitment (as stated during the European Parliament hearings) to combating child sexual abuse, exploitation and child abuse images ("child pornography").

The principles enshrined in international law oblige EU Member States to adopt legislation that protects children from all forms of violence, including sexual abuse and sexual exploitation. Child sexual abuse and exploitation are severe violations under the UNCRC and these crimes have far reaching and devastating implications for the health and development of the child.

The Stockholm Programme presents a crucial opportunity to significantly improve existing EU legislation and cooperation to protect children from sexual abuse by inviting the Council and Parliament to adopt new legislation on combating sexual abuse, exploitation and child pornography. The current EU legislative framework in this area needs to be urgently updated to catch up with recent developments, in particular in the online environment. In addition, the current approach is focused on the punishment of crimes against children, and this needs to be broadened to include measures related to the prevention of sexual crimes against children and protection of victims.

We firmly believe that any proposal for new legislation should not regress from the text proposed in the Framework Decision (March 2009). Furthermore it should consider Article 3 of the Lisbon Treaty and be fully in line with the best interests of the child as per UN Convention on the Rights of the Child (UNCRC) which all EU member states have ratified. Furthermore, the Council of Europe's Convention on the Protection of children against sexual exploitation and sexual abuse should be used as a model for any revised proposal. We strongly believe that a failure to do so would compromise the rights of children and leave them exposed to harm.

To this end, new legislation must ensure that:

1. **Victim identification, protection and assistance remain central aspects** of all actions taken to address crimes of child sexual abuse, child sexual exploitation and child abuse images;
2. Options for **decriminalization of offences** governed by the legislation are **carefully balanced** and restricted;
3. It is made **punishable to attempt to commit offences** governed by the legislation, including attempting to download child abuse images;

4. The common penalties system, in particular the severity of the penalties, acts as a strong deterrent message and **fully reflects the long-term physical and psychological harm** that child sexual abuse and exploitation can have on children;

5. **Extra-territorial jurisdiction** where the sex offender or the **victim is a national of or resident in the Member State is established**. The new legislation should also oblige Member States to abolish the double incrimination requirement for establishing jurisdiction, and to establish jurisdiction in case of refusal of extradition and;

6. **“Sex tourism” is made punishable under law** including travel outside the home State for the purpose of engaging in child sexual abuse and exploitation and organising or advertising travel arrangements to this end;

7. An effective approach to minimising the risk of repeated offences including **disqualification, risk assessment and intervention programmes** is taken;

8. That Member States undertake necessary measures to enable competent judicial or police authorities to order or similarly obtain **the blocking of access to internet** sites which contain or disseminate child abuse images ('child pornography')

9. Member States are obliged to legislate to ensure that ISPs based in EU Member States adopt a technical solution which has the effect of **blocking access to all known web sites and Newsgroups containing child abuse images** (full briefing attached for more information).

Child abuse images are visual representations of a child being abused. On top of the devastating impact of sexual abuse itself, research indicates that it creates additional distress for the child to have to live with the knowledge that once an image has been uploaded to the internet it may be replicated and downloaded an unlimited number of times. Child abuse images on the internet have massively increased in prevalence over the last few years¹ and the internet has enabled a shift from small-scale, 'amateur', nonprofit production of images, to the distribution of images by members of organised crime in order to benefit financially.

One way² of combating child abuse images is for Internet Service Providers (ISPs) to use technologies to 'block' sites known to contain child abuse images, so anyone accessing the internet through that ISP cannot view sites containing child abuse images which are blocked, whichever country the sites are based in. In the UK, ISPs use a list generated by the Internet Watch Foundation (IWF) of sites containing child abuse images, and block all the sites on this list. 98.6% of UK-based ISPs are currently blocking, indicating that there is no reasonable technical argument against implementing such a policy. However a remaining 1.45% continue to resist blocking, which is not currently a legal requirement in the UK. Some smaller ISPs seemingly claim that cost is a major factor for them; however, we do not think that such a factor is acceptable.

¹ Figures from an Action for Children (formerly NCH) study show that in 1995 the Greater Manchester Police seized 12 images of child abuse images on paper and video (Carr, 2004). In 2004 the same Manchester police force arrested one man who alone was found to be in possession of almost 1,000,000 images (Carr, 2004). In 1996 the Internet Watch Foundation processed 615 complaints of online abuse images (85% relate to suspected child abuse websites), compared with 34,871 in 2007 (Internet Watch foundation annual report, 2006).

² There is also a need for governments and the industry to begin discussions about how to combat the use of peer to peer software for the distribution of child sex abuse images, and the ways in which anonymity and encryption software can also aide this trade as well as other illegal activity online. In addition urgent consideration should be given at an international level to finding ways of preventing the trade in child abuse images, or the hosting of such images, shifting to countries with poorly developed laws on cyber crime or few resources locally to enforce such laws.

We consider that the ability to block access to child abuse images has to be accepted as part of the cost of doing business. Technologies must be used in the right ways and their justifiability must depend on the context in which they are used. While filtering and blocking can be used oppressively in some contexts, this does not mean they should never be used.

We urge the Commission to fully consider the EU's obligations towards protecting children's rights³ and to show leadership by proposing legislation that sends strong signals that child sexual abuse, child sexual exploitation and child abuse images ('child pornography') are severe crimes in the EU, and that the EU is taking serious action to address such crimes within, and outside its borders.

We would be happy to provide you with full briefings on all of the issues highlighted above. Please do not hesitate to contact us if you have questions or would like to discuss these issues further.

Yours sincerely,

On behalf of ECPAT International, NSPCC, Save the Children and eNACSO⁴,

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³ All EU Member States have ratified the UN Convention on the Rights of the Child. The European Court of Justice has expressly recognized the need to respect children's rights and requires EU law to take due account of the UN Convention on the Rights of the Child (See e.g., Case C-540/03 European Parliament v. Council of the European Union [2006] ECR 5769). The Lisbon Treaty provides that protecting the rights of children is an objective of the EU, both internally and in its relations with the wider world. The EU Charter of Fundamental Rights clearly reaffirms the EU's commitment to human rights and, within that content, expressly to the rights of the child (Article 24).

⁴ Action Innocence Belgium; Action Innocence France; ECPAT Holland; ECPAT Austria; Innocence in Danger Germany; Instituto de Apoio à Criança Portugal; ISPCC Ireland; Kek Vonal Hungary; Estonian Union for Child Welfare; Nobody's Children Foundation Poland; NSPCC UK; ISPCC Ireland; Our Child Foundation Czech rep; Protegeles Spain; Save the Children Denmark; Save the Children Finland; Save the children Italy; Save the Children Romania