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LIBE Committee
European Parliament
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MOGIS e.V. – A Voice for Victims
Klosterbachstraße 13; 18057 Rostock

Rostock, September 27, 2010

LIBE COMMITTEE HEARING

Draft Directive 2010/64 (COM 2010/94) – Malmström Directive – Angelilli Report

Dear Members of the European Parliament,

MOGIS e.V. is a German association of **victims of sexual child abuse**. MOGIS was founded because society usually only talks about - not with - victims of sexual abuse and sexual exploitation.

We believe that, as victims, we are experts in our own right. We think that any legislative process that tries to tackle the problem of sexual child abuse without talking to the victims is bound to fail. Therefore, in anticipation of the discussions on the draft Directive on Child Exploitation, we would like to provide you with some brief comments.

We believe that **before any new legislation is created** it should be clear that: a) the (perceived) **problem** to be tackled is **properly defined and understood**, b) the **goal of the legislation is properly defined** c) the introduced **measure is necessary** to reach the goal **and doesn't do more harm than good**.

We do not believe this to be the case in relation to key parts of draft directive 2010/64. We will concentrate on five key themes:

- I) The lack of proper research prior to the proposition of the directive.
- II) The problematic definitions of "child" and "child pornography"
- III) The planned mandatory introduction of a blocking infrastructure in the EU
- IV) The criminalization of solicitation in order to dissuade offenders
- V) The help for victims

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MOGIS is registered in Rostock (VR 10117) and recognized as a charity (079/141/16826)

I) The lack of proper research prior to the directive being proposed.

The entire proposal gets off to a bad start, making it clear that it is based on suppositions rather than facts: *“Despite a lack of accurate and reliable statistics, studies suggest that [...] and research also suggests that this phenomenon is not decreasing over time [...].”*

Continuing in the same vein, the Commission considered that, despite the recognized absence of such information, external expertise was not seen as necessary: *“- Collection and use of expertise: There was no need for external expertise.”*

This is a little surprising, particularly if we consider the findings of the Commission-financed European Financial Coalition, which indicate that certain types of crimes regarding child exploitation on the Internet are in fact declining.

II) The problematic definitions of "child" and "child pornography"

Although the proposal refers to the European definition of youth, namely *“children and young people between the ages of 13 and 20”* in its introduction, the terminology and goals of the rest of the document fail to adequately reflect this differentiation.

When fighting abuse it is essential to differentiate between "child" and "adolescent" (youths). "Youth protection" needs to have a different focus from "Child protection". Defining every person under 18 might work in the context of "right of the child" but it clearly does not in the context of "sexual self-determination".

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Also for various reasons the term "child pornography" is very problematic in our opinion, the most important of which being that these representations have nothing in common with the usual definition of the word "pornography" which refers to consensual acts between adults, whereas the term "child abuse images" would be more appropriate for the problems the draft directive tries to tackle.

Also in the interests of sending a signal to people watching this content, you should make clear they are not watching some sort of "pornography" – what they are looking at is the evidence of a crime. So to get the message across it should be always be called "child abuse images" or "child abuse material" or similar.

As for protecting a person under 18 who has reached the age of legal sexual consent from acting in pornographic depictions we encourage the European Parliament to adopt a solution similar to the Chapter 18 U.S. Code § 2257 *“Record keeping requirements”* for any material that is being produced or distributed from an EU member state. This would also free law enforcement unit from chasing down pornography with actors *“appearing to be a ‘child’ ”* (a person appearing to be under 18 in the draft directive).

III) The planned mandatory introduction of a blocking infrastructure

Deletion and investigation of such sites should always be prioritized ahead of blocking, and this is also true for this Directive. In any event, access restrictions in general should be seen as a subject matter that is covered by subsidiarity, under the condition that any such policy implemented by Member States be subject to a specific national law.

The restrictions described in Article 10 of the European Convention on Human Rights (which covers "Freedom of Expression") clearly require a legal basis for interferences such as "internet blocking".

Lawless situations which rely on corporate contract clauses in Scandinavia and in the United Kingdom are incompatible with this provision.

The creation of a legal basis for these measures is therefore the absolute minimum that should be demanded. A second important criterion would be the involvement of a judge with a proper ruling which would provide a justification for the blocking.

Nonetheless, MOGiS e.V. stresses that even though we are victims of sexual exploitation ourselves we reject blocking in principle and believe that it represents a danger for democratic societies.

Especially for victims, the Internet is a very important tool. It allows us to share our hope and sorrow. For this to be possible we need anonymity and confidentiality. These characteristics of the internet are at risk with the technology that is being proposed for internet blocking.

Also **we don't want** there to be **any excuse for not acting** – neither for the police nor any of the other stakeholders involved. Also we don't want to give EU member states a means to hide their inaction and the **failure of international cooperation on fighting sexual child exploitation**.

IV) The criminalization of solicitation in order to dissuade offenders (grooming)

The deterrent effect of penalties in this area of criminality is negligible (unless the penalty was the death penalty or life imprisonment).

Any perpetrator already has to overcome the danger of social revulsion and alienation if found guilty, unless he/she is acting pathologically.

At the point where a person decides to sexually abuse a child, i.e. before the actual solicitation of the child, the calculated risk of social alienation and punishment has already been taken into account.

A further problem with Article 6 of the proposal is that it seeks to punish the person's intention (although, strangely, only if communicating via a telecommunications network). Such an intention will be very difficult to either prove or disprove.

The proposal's intention is undoubtedly good, but it will not dissuade perpetrators (who are experiencing a particular urge to seek contact with children) but might create a climate that scares completely normal people who do not want to run the risk of being branded with the allegation of being a child abuser.

In this way, it could happen that children would be deprived of the healthy human contact that they need in order to avoid slipping into abusive relationships. Perpetrators can exploit this and will continue to present themselves as trustworthy friends.

We want adults to be available for when children need them. So we have to make sure that we don't introduce any legislation that does more harm than good.

At the moment we don't believe that this problem can be fixed in the very limited time frame that this proposal now has to be finished – so in our opinion solicitation should be dropped from the proposal.

V) The help for victims

Help and therapy for victims should not be subject to their willingness to go to court. Also, it should always be the decision of a victim whether he or she wants to testify at the police or in front of a court or not.

We at MOGiS e.V. think that the proposal should become more clear in that respect.

Kind Regards,

Christian Rüdiger Bahls
chairperson MOGiS e.V.