

26 -04- 2010

CAB/D/342
CAB/A/301

Dear Mr Krisch,

I refer to your open letter to me and Vice-President Reding and Commissioner Kroes concerning blocking of access by users to Internet pages containing child pornography.

As you may know, the Commission adopted on 29 of March a 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.

The proposal is largely based on the proposal for a Framework Decision which the Commission adopted in 2009, and which became redundant by the date of entry into force of the Lisbon Treaty. Similarly to the 2009 proposal, it contains a provision in Article 21, paragraph 1, obliging Member States to block access of users to Internet pages containing child pornography. However, the proposed Directive also contains a provision, in Article 21, paragraph 2, imposing an obligation on Member States to removing such content from the Internet at source. Member States will have to meet both of those obligations, which are complementary tools to fight the illegal dissemination and viewing of child pornography.

Blocking of access to Internet pages containing child pornography is a measure that is already in place in a number of Member States, as well as in some third countries. It is a measure that authoritative voices committed to fighting child sexual exploitation have called for, including the UN Special Rapporteur on the sale of children, child prostitution and child pornography, and the latest World Congress against sexual exploitation of children.

The Commission is aware of, and has carefully considered, the arguments against blocking which you re-iterate in your letter. Computer experts claim that certain types of Internet blocking technologies are easy to circumvent, but most people are not computer experts and technologies obviously evolve over time. Figures from several Member States which apply blocking suggest that hundreds or even thousands of attempts to access child sexual abuse images are stopped every day. Blocking access to child pornography websites thus reduces access, and the opportunities for criminals to disseminate child pornographic images.

Some argue that removal of child pornographic content at source is effective and that blocking of users' access is therefore unnecessary. However, while "notice and take down" procedures work relatively well within the EU, attempts to implement such procedures outside the EU are not always successful. We are addressing this issue in relations with third countries, and it is notably high on the agenda of our relations with the United States. However, this is inevitably a long-term process involving several third countries and complex legal and practical issues.

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As for your concern of "mission creep", let me stress that the Commission's proposal on internet blocking (and removal at source) is strictly limited to child pornography. The proposal in no way encourages Member States to extend blocking to other types of content, and the Commission has no plans to propose any such extension. Moreover, the relevant provision contains strong legal safeguards, notably by creating an obligation to inform users of the reasons for blocking and allowing challenges of decisions to block Internet pages.

You appear to perceive blocking of access to Internet pages as a threat to human rights or to privacy. The Commission is strongly committed to the defence of fundamental rights. I fail, however, to see how making it more difficult to access child pornography websites violates those rights. You referred in your letter to the general principles applied by the European Court of Human Rights. In fact, when dealing with the broader issue of child sexual abuse and the Internet, the Court has stressed the need to ensure respect of fundamental rights, and in particular the fundamental right to private life *of the child*.¹ Child pornography consists primarily of images of children suffering sexual abuse in real life. It is the physical and moral integrity of those children that is harmed by the sexual abuse. It is the images of those children that are distributed, exposing the abuse to a global audience. And it is the rights of those children that States have a positive obligation to respect.

Finally, the provision on blocking and removal at source should be seen in its proper context. It is part of an ambitious package of legal provisions which include criminalisation of new forms of abuse, minimum penalties, rules to ensure punishment of abuse committed abroad, measures to facilitate investigation and prosecution, ensuring EU-wide implementation of measures disqualifying offenders from working with children, non-punishment of victims of sexual exploitation, assistance, support and protection of child victims, in particular in criminal proceedings, and intervention programmes for offenders. Those legal provisions dovetail with many non-legislative initiatives supported by the Commission to fight child sexual exploitation and child pornography, including projects funded under different financial programmes such as Prevention and Fight against Crime, Daphne or Safer Internet, and efforts to enhance cooperation between national authorities, Europol, Eurojust, the private sector, civil society, and international organisations.

Therefore, the Commission does not propose blocking of access to Internet pages containing child pornography *instead* of effective alternative forms of action. It proposes that as part of a range of actions, including the obligation remove such content at source wherever possible. Only *together* will these actions be effective in fighting the sexual abuse and sexual exploitation of children.

Yours sincerely,



Cecilia MALMSTRÖM

¹ ECHR case of K.U. v. FINLAND, 2 December 2008