

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation Rec(2001)16
of the Committee of Ministers to member states
on the protection of children against
sexual exploitation

*(Adopted by the Committee of Ministers
on 31 October 2001
at the 771st meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Determined to contribute effectively to the common goal of affording children adequate protection against sexual exploitation committed by anybody, especially by those who are or manage to be in close contact with them or who have authority over them;

Recalling its Recommendation No R (91) 11 concerning sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults;

Observing that the sexual exploitation of children in the form of pornography, prostitution, sexual slavery, sexual tourism and trafficking in human beings is destructive of a child's health and psychosocial development;

Considering that this exploitation has taken on worrying dimensions at both national and international level and that preventing and combating it require international co-operation;

Considering that the well-being and best interest of children are fundamental values shared by all member states and must be promoted without any discrimination;

Considering that experiences linked to sexual exploitation are detrimental to a child's health and psychosocial development;

Aware that children do not always experience the benefit of adequate protection, in particular against sexual exploitation;

Considering that sexual exploitation is linked, *inter alia*, with neglect and physical, psychological and sexual abuse, within or outside the family, as well as with illegal adoptions and certain social phenomena that can make children more vulnerable;

Recognising the role that advertising and the media, particularly the Internet, can play, in the spreading as well as in the prevention of this phenomenon;

Considering that it is the responsibility and in the interest of Council of Europe member states actively to work together to co-ordinate and reinforce their national and international actions to deal with this problem;

Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the European Social Charter (1961) and the Convention on the Exercise of Children's Rights (1996);

Also bearing in mind the United Nations Convention on the Rights of the Child, especially Article 34 thereof, which requires states to take all appropriate national, bilateral and multilateral measures to protect children from sexual exploitation, the optional Protocol on the sale of children, child prostitution and child pornography, the additional Protocol to the United Nations Convention against Transnational Organized Crime on the prevention, suppression and punishment of trafficking in persons, especially women and children, as well as ILO Convention No. 182 on the worst forms of child labour;

Recalling Council of Europe Parliamentary Assembly Recommendations 1065 (1987) on the traffic in children and other forms of child exploitation; 1121 (1990) on the rights of children; 1286 (1996) on a European strategy for children; 1336 (1997) on combating child labour exploitation as a matter of priority; 1371 (1998) on abuse and neglect of children as well as Resolution 1099 (1996) on the sexual exploitation of children;

Bearing in mind recommendations of the Committee of Ministers of the Council of Europe No. R (79) 17 concerning the protection of children against ill-treatment; No. R (85) 4 on violence in the family; No. R (85) 11 on the position of the victim within the framework of criminal law and procedure; No. R (87) 21 on assistance to victims and the prevention of victimisation; No. R (89) 7 concerning principles on the distribution of videograms having a violent, brutal or pornographic content; No. R (90) 2 on social measures concerning violence within the family; No. R (93) 2 on the medico-social aspects of child abuse; No. (97) 13 concerning intimidation of witnesses and the rights of the defence; and in particular Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation;

Recalling the Convention on cyber-crime, especially Article 9 thereof,

Recommends that member states' governments ensure that effective measures are taken to protect children against sexual exploitation, review their legislation and practice in the light of the principles contained in the present recommendation and ensure that their implementation is followed closely, assessed on a permanent basis and accompanied by adequate technical assistance.

I. Aims and definitions

1. The present recommendation has the following aims:

a. promoting the well-being and best interest of any child and his or her health and physical and mental, moral and social development to assist him or her in leading a life free from sexual abuse, violence and exploitation;

b. planning and implementing measures, policies and practices with regard to the fight against sexual exploitation which take into consideration the views and experiences of children themselves;

c. promoting co-operation among member states so that they may more effectively address the various aspects of sexual exploitation nationally and internationally;

d. eliminating child pornography, child prostitution and trafficking in children, committed by natural or legal persons on an individual or organised basis, within the country or outside of it, by nationals or residents, with or without the child's consent.

2. For the purposes of this recommendation the following definitions are employed:

a. a child is any person under the age of 18;

b. the term *sexual exploitation* is a comprehensive term which mainly includes: child pornography, prostitution and sexual slavery as well as trafficking in children for such purposes;

c. the term *child pornography* shall include material that visually depicts a child engaged in sexually explicit conduct, a person appearing to be a child engaged in sexually explicit conduct or realistic images representing a child engaged in sexually explicit conduct. Child pornography includes the following conducts committed intentionally and without right, by any means:

– producing child pornography for the purpose of its distribution;

– offering or making available child pornography;

– distributing or transmitting child pornography;

– procuring child pornography for oneself or for another;

– possessing child pornography.

d. the term *child prostitution* means offering, obtaining, providing, procuring or using a child for sexual activities for remuneration or any other kind of consideration;

e. the term *trafficking* in children includes recruiting, transporting, transferring, harbouring, delivering, receiving or selling of children for purposes of sexual exploitation;

3. No provision in this recommendation shall prevent member states from applying rules more favourable to the promotion of the protection of children against sexual exploitation.

II. General measures

a. Public awareness, education and information

4. Bring this recommendation, by all appropriate means, to the attention of all relevant public and private bodies, (in particular politicians, police and judicial authorities, diplomatic missions, migration authorities, professionals in the social, medical and education fields and non-governmental organisations and the media).

5. Appoint an independent, competent and easily accessible individual or agency to promote the rights of all children and, in particular, to raise public awareness about the sexual exploitation of children.

6. Making information on sexual exploitation, its nature and its devastating effects available to the public and raising public awareness that the sexual exploitation of children in all its forms is a criminal offence that will be prosecuted.

7. Promote and organise programmes aimed at furthering awareness and training for those who are responsible for children in the fields of education, health, social welfare, justice as well as law enforcement agencies in order to enable them to identify cases of sexual exploitation and to take the necessary measures.

8. Include in the programmes of primary and secondary school education information about the risks of sexual exploitation and abuse to which children might be exposed, and about how they may defend themselves.

9. Make available to children who are out of school information on the risk of sexual exploitation, the variety of forms it may take and the ways to protect themselves.

b. Collection and exchange of information

10. Promote the collection of information in all sectors and across all agencies on the nature and prevalence of sexual exploitation of children on a national basis.

11. Establish a national mechanism to provide regular information on the best practices and most effective measures to prevent, combat and deal with the effects of sexual exploitation of children.

12. Promote international co-operation in the exchange of information, knowledge and expertise.

13. Identify areas in which technical assistance and expertise in the development of appropriate measures for preventing, combating and addressing the effects of sexual exploitation of children are particularly necessary.

c. Prevention, identification and assistance

14. Develop and financially support a multi-agency and multi-disciplinary approach to the prevention and identification of sexual exploitation of children and to provide psychological, legal, social or any other form of appropriate support or treatment to the victims, paying particular attention to high-risk groups.

15. Create or develop specialised public and/or private services for the protection of children at risk or already victims in order to prevent and identify all forms of sexual exploitation.

16. Recognise and support the central role played by NGOs in preventing sexual exploitation and in helping the victims.

17. Ensure that there are a variety of means whereby anyone, and in particular children, can reveal instances of sexual exploitation (including telephone hotlines, agencies, printed material and Internet sites).

18. Ensure that children in care are sufficiently protected by appropriate regulations, guidelines and procedures and that all members of staff responsible for them have the required qualifications and licences.

d. Media

19. Encourage the media to contribute in a constructive way to a general awareness of sexual exploitation of children and its effects and to develop appropriate rules of conduct and regulations for the written, audiovisual and electronic media, in particular referring to the respect of the privacy, identity and dignity of children.

20. Encourage representatives of the media to be involved and to participate in training and awareness programmes on sexual exploitation.

21. Encourage the media to act in a responsible way, while portraying children and childhood in general.

e. The Internet

22. Involve Internet service providers in raising awareness about sexual exploitation and its risks, especially on the Internet and through the use of modern communication technologies.

23. Ensure that Internet service providers work alongside the authorities to identify and to combat the various means through which the Internet can be used for the purpose of sexual exploitation of children.
24. Encourage Internet service providers to develop a code of conduct appropriate to the modern information and communications technologies to prevent the sexual exploitation of children, identify abuses of such a code and to take measures to inhibit and suppress such abuses.
25. Recognise that it is necessary for law-enforcement agencies to be able to use connection data to trace suspicious content and subsequently locate, identify and question those who edit or disseminate child pornography or encourage or incite child prostitution.
26. Provide information to parents, carers, all others responsible for children and children themselves on the risks of sexual exploitation on the Internet, the forms it may take and on how to limit access to it.
27. Create hotlines and encourage citizens to report cases of child pornography or of incitement to child prostitution on the website, thus enabling the appropriate law enforcement authorities to take specific action.

III. Criminal law, procedure and coercive measures in general

28. Ensure that the acts and activities defined under article 2. *c*, *d* and *e* are fully covered by their criminal law, whether these offences are committed on or outside their territory, on an individual or organised basis.
29. Invite police and other appropriate services to give special attention to prevention, detection, and investigation of offences involving sexual exploitation of children, and allocate sufficient means to them towards that end.

a. Measures concerning victims

30. Ensure that the rights and interests of children are safeguarded throughout proceedings, in particular by enabling them to be heard, to be assisted or, where relevant, to be represented, while respecting the rights of the alleged offenders.
31. Invite the relevant judicial authorities to give priority to cases involving sexual exploitation of children and to ensure that these cases are dealt with as quickly as possible.

32. Ensure throughout judicial, mediation or administrative proceedings the confidentiality of records and respect for the privacy of children who have been victims of sexual exploitation.
33. Provide special conditions for the taking of evidence from children who are victims of or witnesses to sexual exploitation, in order to reduce the number of statements and hearings of the child and thus minimise the harm caused to the victims, witnesses and their families and increase the credibility of their statements while respecting their dignity.
34. Grant victims and their families the possibility, where appropriate, to stay on the territory of the state so that they are able to fully participate in judicial proceedings, provide for measures designed to protect victims, witnesses and their families from intimidation, in particular where there are criminal networks; during this period make sure victims have access to welfare, medical and legal assistance.
35. Establish a scheme to fully repair any damage suffered by children victims of sexual exploitation and provide mechanisms to assist them to come to terms with their experiences.
36. Ensure that children who have been victims of sexual exploitation cannot be prosecuted for any act connected with this exploitation.

b. Measures concerning perpetrators

37. Seek to ensure that the limitation period for bringing criminal proceedings in the field of sexual exploitation only starts to run when the victim has ceased to be a child.
38. Take measures to punish offenders and provide treatment when appropriate.
39. Provide for the seizure and confiscation of the proceeds from offences relating to the sexual exploitation of children.
40. Develop and resource relapse prevention programmes for offenders.
41. Provide for the possibility of banning persons found guilty of offences involving the sexual exploitation of children from carrying out certain forms of employment or activities which could bring them into contact with children.

42. Make provisions for the temporary or permanent closure of, or withdrawal of licence from, establishments and businesses, whatever their nature, involved in sexual exploitation of children.

43. Ensure that legal entities may be held responsible for offences involving sexual exploitation of children and introduce specific sanctions to that end, while taking care not to prejudice the criminal liability of natural persons.

IV. Measures relating to pornography involving children

44. Introduce appropriate criminal sanctions taking into account the gravity of the offence committed by those involved in the production and distribution of any pornographic material, by whatever means, involving children or simulating the images of children.

45. Introduce criminal sanctions for mere possession, in whatever form, of pornographic material involving children or simulating the images of a child.

46. Organise information campaigns raising awareness of the fact that the mere possession of child pornography is liable to be criminally sanctioned.

47. Launch information campaigns on legal procedures and other forms of assistance available to victims of child pornography.

V. Measures relating to the prostitution of children

48. Introduce appropriate criminal sanctions against a person accepting the services of and/or using any child involved in prostitution.

49. Ensure the children involved in prostitution are provided with material, psychological and other appropriate forms of assistance, so that they are able to escape prostitution.

50. Give priority to educational programmes, including vocational training, and reintegration programmes, aimed at children.

51. Create or develop special police units and improve their working methods, in order to combat child prostitution.

52. Place social workers trained in preventive work with children, in particular those involved in street work, to help children escape from prostitution.

53. Involve the tourism industry in raising awareness about sex tourism and in the detection of it.

54. Organise information campaigns intended to discourage potential travellers from engaging in sex tourism.

VI. Measures relating to trafficking in children

55. Introduce appropriate criminal sanctions for trafficking in children taking into account the gravity of the offence.

56. Organise information campaigns in order to increase public awareness of high risk situations that may lead to organised trafficking in children, mainly girls.

57. Provide information on trafficking in and sexual exploitation of children and appropriate training to diplomatic and consular representatives, public authorities, the media, NGOs and other public and private bodies working in the countries of origin of potential victims.

58. Disseminate widely, in every member state, information on the risk that trafficking in, and sexual exploitation of, children entails to the life as well as the mental and physical health of children.

59. Make media more aware of issues related to trafficking in children and their role to prevent it.

60. Ensure that school curricula include information on risk of sexual exploitation and trafficking in children and ways of protecting themselves; this information should be also available to children outside the education system and to parents and guardians or other legal representatives of children.

61. Organise special training for diplomatic, consular, judicial, customs and police personnel to enable them to identify cases of trafficking in children for the purpose of sexual exploitation and respond appropriately.

VII. Research priorities

62. To promote research at national and international levels, respecting cultural diversity and in particular consider the study of:

– the number of criminal proceedings related to cases of sexual exploitation, prostitution, pornography and trafficking of children, each year for each country and with reference to the length of those proceedings;

– the experiences of children who have been sexually exploited and their experience of the justice and welfare systems;

– the specific links between sexual exploitation and organised crime;

- the specific links between sexual exploitation and previous experience with incest, sexual abuse and pornography;
- the nature of the process leading victims to become perpetrators;
- an audit of the available literature and research on sexual exploitation and how best to prevent it and to deal with it if it has occurred;
- the nature and scale of different forms of sexual exploitation of children, especially in its cross-cultural aspects;
- the long term effects of sexual exploitation and its effects on mental health, social and family relationships of adults in different countries;
- the extent and nature of sexual exploitation by adolescents;
- the nature of paedophilia and the ways in which perpetrators sexually exploit children;
- an audit of the measures and programmes directed at those who have sexually abused children;
- the links between adoption and sexual exploitation;
- the needs of families where a family member has been sexually exploited;
- an evaluation of the use of the Internet in the prevention of sexual exploitation;
- the training needs of personnel working with children who have been sexually exploited and with their families;
- items III. 5-10 of Recommendation N° R (91) 11 should also be included.

VIII. International co-operation

63. Consider taking such measures as may be necessary in order to establish extra-territorial jurisdiction over the offences defined under article 2. *c*, *d* and *e* in cases where:

- a.* these offences are committed by their nationals;
- b.* these offences are committed by any person who has his/her habitual residence on their territory; and, as appropriate,
- c.* the victim is one of their nationals.

64. Consider the possibility of establishing jurisdiction over offences of sexual exploitation of children, also in cases where the facts are not punishable under the law of the state where they are committed in particular on account of the age of the victim.

65. Bear in mind that trafficking in children usually falls within the scope of transnational organised crime.
66. Ensure that the offences defined under article 2. *c*, *d* and *e* are extraditable according to national legislation and international treaties and ensure that, where extradition cannot be granted for reasons of nationality, the facts be submitted to the competent authorities of the requested state in order that proceedings may be taken as appropriate.
67. Promptly afford one another the widest possible measure of mutual legal assistance in connection with proceedings brought in respect of any of the offences defined under article 2. *c*, *d* and *e*.
68. Take measures in order to facilitate the communication, between states, between states and international organisations such as Interpol, and between states and NGOs, of information concerning sexual exploitation of children.
69. Ensure that the fact that victims or witnesses are in a far away country, or otherwise do not appear in person, does not constitute an obstacle to the continuation of the proceedings, in particular where the evidence has been heard by a judicial authority, by using, for instance, the video-conferencing system.
70. Consider the possibility of transferring to other states proceedings in respect of the prosecution of any of the offences defined under article 2. *c*, *d* and *e*, in cases where transfer is considered to be in the interests of both the child and the administration of justice.
71. Take all feasible measures to avoid delays that are specific to cases having an international character, for example, by providing translations of documents and interpreters, when needed, or making use of appropriate measures in order to establish the age of a child or trace a child.
72. Encourage international co-operation by means of bilateral and multilateral agreements for the prevention and effective punishment of offenders of sexual exploitation of children, including sex tourism, in particular by way of co-ordinating investigation and prosecution.
73. Ratify and fully apply the international instruments relevant in this field, in particular the United Nations Convention on the Rights of the Child and its optional protocol on the sale of children, child prostitution and child pornography as well as ILO Convention No. 182 on the worst forms of child labour.
74. Promote European and international co-operation in the fields of technical or other assistance.
75. Take all other necessary measures for an effective pan-European strategy to fight against the phenomenon of the sexual exploitation of children and its contributing factors.