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**CONTRIBUTION OF THE LEGAL SERVICE
TO THE DELIBERATIONS OF THE K.4 COMMITTEE EUROPOL**

**Subject : The definition of "traffic in human beings" in the
Annex to Article 2 of the Europol Convention
(doc. 8663/2/97 EUROPOL 76 REV 2)**

1. In the abovementioned document the Europol Working Group rightly observes that the production and traffic in pornographic materials in which images appear of children being used in pornographic performance, is not covered by the present definition of traffic in human beings, contained in the Annex of the Europol Convention. This definition refers to Article 2(2) of the Convention where in the english version the terms "trade in human beings" are used. Given the other linguistic versions of the Convention it must be understood that in this context "trade in human beings" and "traffic in human beings" have the same meaning.

The Europol Working Group points out that it would be useful if Europol could act against the production, sale or

distribution of child pornographic materials and that, in order to bring these fields of criminality under the mandate of Europol, the Convention would have to be modified.

To that end the Working Group proposes to amend the definition of "traffic in human beings" in the Annex to the Convention by adding words to the effect that "traffic in human beings includes also production, sale or distribution activities of child pornographic materials".

Such an addition to the definition of "traffic in human beings" could be realized, according to the Working Group, by a unanimous Council decision in accordance with the procedures of Article 43(3) of the Convention, once the Convention has entered into force.

2. The Council Legal Service has serious doubts as to the legal correctness of such a course of action. It is true that Article 43(3) of the Convention allows the Council to amplify, amend or supplement the definitions of forms of crime contained in the Annex, but in doing so, the Council cannot introduce new categories of offences which have not been covered by any of the serious forms of international crime listed in Article 2(2) or the Annex. Such an introduction would have to follow the normal procedure of amending the Convention, contemplated in its Article 43(1) and (2).
3. The question is therefore whether by adding the sentence "traffic in human beings includes also production, sale or distribution activities of child pornographic materials", one is still defining conduct consisting in trafficking in human beings, or indeed is addressing a distinct kind of criminality.

According to the Council Legal Service the notion "traffic in human beings" can only refer to behaviour which facilitates the entry into, transit through, residence in

or exit from the territory of a Member State of human beings for illicit purposes. The production, sale or distribution of pornographic material, while representing human beings, still concerns traffic in materials and not in human beings. It is therefore substantially and intrinsically different from traffic in human beings⁽¹⁾.

4. In its annex, the Europol Convention refers to various forms of illicit trafficking or trade in materials or substances as distinct from traffic in human beings (e.g. illicit trade in human organs and tissue, illicit trafficking in cultural goods, antiques and works of art, in arms, ammunition and explosives, in endangered animal and plant species and varieties and in hormonal substances). Pornographic material does not appear in this list. This leads to the conclusion that if one wants to confer a competence on Europol to deal with traffic in child pornographic material, one would have to include this form of criminality in Article 2 or the Annex to the Convention through the procedure of amendment of the Convention set out in its Article 43(1) and (2).

(1) The same reasoning seems to have been followed in the Joint Action adopted by the Council on 24 February 1997 concerning action to combat trafficking in human beings and sexual exploitation of children (OJ L62/2 of 4 March 1997), which in Title I under point A(i) defines "trafficking" as any behaviour which facilitates the entry into, transit through, residence in or exit from the territory of a Member State for certain illicit purposes, and under point A(ii)(b) ranges the production, sale and distribution or other forms of trafficking in child pornographic materials and the possession of such materials under "sexual exploitation".