

21 May 2024

**Regulations on an administrative approach to online child pornography
(Administrative Approach to Online Child Pornography Act)**

AMENDED BILL

I, Willem-Alexander, by the Grace of God, King of the Netherlands, Prince of Orange-Nassau, etc.

Greetings to all who shall see or hear these presents! Be it known:

Whereas We have considered that it is desirable to adopt legislation to combat the storage and transmission of online child pornography;

We therefore, having heard the Advisory Division of the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

(...)

Article 14 Amendment to the Criminal Code

The Criminal Code is amended as follows:

(...)

4. An article is inserted after Article 253, reading as follows:

Article 253a

A person who distributes, offers, openly exhibits, manufactures, imports, exports, acquires or possesses an object with an external appearance of a child or a part of the body of a child below the age of 16 years that is intended for carrying out sexual acts shall be punished by a term of imprisonment of up to 4 years or a fifth-category fine.

5. In Article 254(1)(c), '253' is replaced with '253a'. (...)

EXPLANATORY NOTES

The petitioner proposes, in line with the main objective of the Bill to protect children, a ban on child sex pictures. The appearance of child sex pictures on the Dutch market has been a worrying development for many years, and the possession and circulation of these normalises a subculture of child sexual abuse. The WODC (Research and Data Centre) QuickScan into a ban on child sex dolls revealed that it is not ruled out that a particular group of users may increase the risk of child abuse. In England, customs also found child pornography material in 75 % of searches in connection with child sex dolls.

For this reason, the petitioner believes that continuing to allow child sex dolls is in conflict with the responsibility of the public authorities to protect children. This high importance offsets some degree of empirical uncertainty as regards the relationship between child sex dolls and child abuse. An age limit of 16 years instead of 18 years has been chosen, because a child sex doll must be sufficiently distinctive from a sex doll with the appearance of an adult. This is done in accordance with the age limit in Article 240c of the Criminal Code. The maximum sentence of 4 years chosen also corresponds to the penalty limit laid down in Article 240c of the Criminal Code, which criminalises preparatory acts for child sexual abuse independently. The maximum penalty is lower than the comparable offence of possession, dissemination and production of child pornography (the current Article 240b of the Criminal Code, new Article 252 of the Criminal Code from 1 July 2024), which provides for a maximum sentence of 6 years.

Initially, a ban on child sex dolls was part of the Sexual Offences Act. However, in June 2023, for procedural reasons, it was decided to remove the ban from the Bill and a separate bill was announced. Nothing has been learned since then, while child sex dolls can still be legally imported into the Netherlands and are available.

The information provided by the Council of State recommended that the ban on child sex pictures be notified, as the ban is a possible restriction on the free movement of Services. The petitioner supports in principle this interpretation of the Services Directive. In addition to countries such as Australia, Canada, the United Kingdom and the United States, a number of European Member States have now introduced a ban on child sex dolls. A number of countries, including Denmark, have not notified the ban. As a result, no infringement procedure was launched by the European Commission. Germany has notified the ban on child sex dolls. In the Czechia and Portugal, among others, the provisions on the possession and dissemination of child pornography are interpreted in such a way as to include child sex dolls. These forms of bans on child sex dolls have not, to the best of our knowledge, been challenged by the European Commission. The petitioner considers it important that the Dutch ban on child sex pictures is also legally sustainable and does not raise any (procedural) objections from the European Commission. If the ban is notified, a standstill period of 3 months shall apply from the moment of notification.

The present Bill makes it possible for parts of the Bill to enter into force at different times. The petitioner can well imagine that when this amendment is adopted, the government announces that the ban will only enter into force after the successful completion of the notification procedure. Should it prove that the European Commission requires amendments, the Government may decide not to put the ban into force before a draft repair bill has been examined by both Chambers.

Issued,

The Minister for Justice and Security,