



Combating sexual abuse of children

Directive 2011/93/EU

European Implementation Assessment

STUDY

EPRS | European Parliamentary Research Service

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Ex-Post Impact Assessment Unit

PE 598.614 – April 2017

Combating sexual abuse of children

Study

On 7 May 2015, the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) requested authorisation to draw up an own-initiative implementation report on **Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography** (Rapporteur: Anna Maria Corazza Bildt, EPP, Sweden). The Conference of Committee Chairs gave its authorisation on 19 May 2015. This triggered the automatic production of a European implementation assessment by the Ex-Post Impact Assessment Unit of the Directorate for Impact Assessment and European Added Value, Directorate-General for Parliamentary Research Services (EPRS).

Abstract:

This European implementation assessment analyses the implementation of Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography. This study, written in-house, focuses on the following areas: prevention, identification of victims, investigation and prosecution, and assistance and protection for victims. It begins with a contextualisation of the directive and presents the provisions of the EU legal framework. The assessment highlights a number of outstanding challenges, in particular in prevention of child sexual abuse, where research shows inadequate implementation of the directive. The assessment then examines the issue of identification of child victims and finds several shortcomings, including how victims' disclosures are dealt with. The last section of the assessment focuses on the investigative and judicial proceedings phase, where necessary improvements in the application of child-friendly justice are underlined.

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ACKNOWLEDGMENTS

The authors would like to thank officials of the European Commission, as well as the stakeholders interviewed for this assessment (especially representatives of Europol and Eurojust) for their useful input. They also would like to thank Aida N'Gom, trainee at EPRS, who provided help for background research.

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This paper has been compiled by the Ex-Post Impact Assessment Unit of the Directorate for Impact Assessment and European Added Value, within the Directorate General for Parliamentary Research Services of the Secretariat of the European Parliament.

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LANGUAGE VERSIONS

Original: EN

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Manuscript completed in April 2017. Brussels © European Union, 2017

PE 598.614

ISBN 978-92-846-0872-0

doi:10.2861/23810

QA-01-17-297-EN-N

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List of abbreviations and acronyms

BIK Strategy: 'Better internet for kids' strategy

CAM: Child abuse material

CHI: Child Helpline International Foundation

CoE: Council of Europe

EAW: European Arrest Warrant

EC: European Commission

EC3: Europol Cybercrime Centre

ECPAT: End Child Prostitution in Asian Tourism

ECRIS: European Criminal Records Information System

EDPS: European Data Protection Supervisor

EFC: European Financial Coalition against Commercial Sexual Exploitation of Children Online

ENASCO: European NGO Alliance for Child Safety Online

EPRS: European Parliamentary Research Service

EUCCAN: European Conference on Child Abuse and Neglect

FP Unit: Focal Point Twins Unit (hosted by Europol)

FRA: EU Fundamental Rights Agency

ICSE: International child sexual exploitation database (hosted by INTERPOL)

ICTs: Information and communications technologies

ILO: International Labor Organization

INHOPE: Collaborative network of hotlines worldwide

IOCTA: Internet organised crime threat assessment

IOs: International organisations

IWF: Internet Watch Foundation

JIT: Joint investigation team

LEAs: Law enforcement agencies

LIBE: Committee on Civil Liberties, Justice and Home Affairs

NGOs: Non-governmental organisations

NSPCC: National Society for the Prevention of Cruelty to Children (UK)

PNR: Passenger name records

UNWTO: World Tourism Organization

VIDTF: Victim Identification Taskforce (hosted by Europol)

WHO: World Health Organization

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Methodology

This analysis deliberately follows the different sequences encountered by the child victim of sexual abuse: identification; how the abuse is investigated and prosecuted; and the extent to which the child is properly assisted and protected before, during and following the judicial proceedings. This focus on the child's perspective is preceded by a thorough assessment of the fundamental issue of prevention of child sexual abuse.

The analysis, in addition to conducting an assessment of the directive's implementation at Member State level, aims at identifying good practices which might also inform future action at EU level.

To examine the directive's proper implementation – the provisions of which were to be transposed by the Member States by 18 December 2013 – the analysis draws on two European Commission reports released in December 2016, which assess the extent to which the Member States have taken the necessary measures to comply. However, the Commission reports at this stage only evaluate the existence of national transposition measures, and do not consider whether these measures are in conformity with the directive.

This analysis is therefore supplemented by additional and substantial documentary analysis, including official reports from the EU Fundamental Rights Agency, the Council of Europe, UN agencies and NGOs, as well as academic research in the field of child abuse. In addition, semi-structured interviews with officials from Europol and Eurojust were conducted in July 2016.

This study was peer-reviewed in-house, and was also submitted to the European Commission for comment.

Executive summary

This assessment begins with a **contextualisation of the Child Sexual Abuse Directive (2011/93/EU) and analyses its main features (Part I)**. We note that measuring the scale of the phenomenon of child sexual abuse at EU level is a difficult task and that more systematic and coherent data collection is crucial to improving evidence-based policy and action. Despite these difficulties, several trends can be identified at EU level. A strong feature of child sexual abuse, in the vast majority of cases, is that perpetrators are known to the victims (figures vary from 70 to 90 %). Concerns have also emerged recently over the spread of forms of abuse via the internet, such as live streaming of sexual abuse, or unwanted circulation or commodification of self-generated sexual content available online. This assessment, while recognising the specific challenges posed by new developments related to the widespread use of technologies and social media, also suggests that focusing on the 'online' aspects should not replace the comprehensive approach to child sexual abuse taken by the Child Sexual Abuse Directive.

In addition to provisions in substantive criminal law, the Child Sexual Abuse Directive includes provisions on criminal procedure and judicial cooperation. It also deals with administrative and policy measures. Given the directive's complexity, and the heterogeneity of measures Member States had to transpose into domestic legislation, this assessment highlights a number of challenges remaining as regards its implementation. Among these challenges, this assessment focuses primarily on **prevention of child sexual abuse (Part II)**. It stresses the need to educate children and increase awareness on the issue of child sexual abuse. This analysis also reviews how the risk of child sexual abuse is prevented, and how recidivism is tackled for individuals convicted of such abuse. Research suggests that implementation of the directive's provisions on this matter is poor across the Member States, despite numerous calls from the expert community for the development of a 'culture of prevention' around child sexual abuse. Experts advocate preventative therapies, both for persons who fear that they might offend and for offenders alike. Further research into the factors conducive to child abuse across Europe is vital to improving knowledge of those at-risk of offending and offenders, and to developing differentiated approaches to the problem, depending on their age, motivations and therapeutic needs. In particular, this report stresses the need to develop adapted policies for juvenile offenders. Moreover, whereas in practice all Member States have some form of intervention programme for convicted offenders, their content and availability across domestic structures vary enormously. Interesting data from Spain, the United Kingdom (UK), and Belgium, suggest that some intervention programmes (especially those that develop a wide-range of therapies in cooperation with offenders), deliver encouraging results in the prevention of recidivism. However, comparable data at EU level on the efficiency of available intervention programmes is lacking and, for the moment, there is no clear consensus on what works in terms of intervention programmes.

Maximising limits to access to online child sexual abuse material, is another important component of prevention. This assessment underlines that, while Member States have adopted several types of measures to ensure the prompt removal of web pages containing or disseminating child abuse materials hosted both within and outside a Member State's territory, about half of EU Member States have chosen also to apply

optional blocking measures. On this particular issue, this report notes that debates around the question of the extent to which blocking is a necessary and proportionate measure in addition to removal, continue to trigger heated discussions at EU level, as demonstrated in the context of the recently adopted Directive on Combating Terrorism. Furthermore, discussions on the role and responsibilities of the private sector in the prevention of child sexual abuse online will undoubtedly remain the subject of public debate in a rapidly-evolving digital environment.

A broader consensus exists on the issue of professional disqualifications arising from convictions aimed at protecting children. Nevertheless, this assessment notes that, to prevent individuals with prior convictions related to child abuse temporarily or permanently exercising professional activities involving direct and regular contact with children, EU Member States screen employees in very different ways. Another measure encouraged in the directive in order to better monitor child sexual offenders, is the establishment of sex offender registers (found in at least three Member States). This report underlines here that such registers raise sensitive issues with regard to data protection issues and the reintegration of convicted offenders into society. Improvements could nevertheless be made in the field of exchange of information on criminal records. While most Member States have transposed the directive's requirement to transmit information on criminal convictions and disqualifications, a few do not appear to ensure that information is transmitted when other Member States request information on previous criminal convictions. This situation points to an inadequate implementation of the directive.

The assessment then analyses **the issue of identification of child victims (Part III)**. Low disclosure rates are a defining factor of child sexual abuse. Research not only shows that children encounter many difficulties to disclose the abuse(s) they have suffered, but also demonstrates that many of them wait years before being able to confide in someone, if they disclose the abuse at all. This raises the issue of 'limitation periods' for initiating judicial proceedings (also referred to as 'prescription'). While most of the Member States have specific provisions in place that appear to allow sufficient time for the victims to obtain prosecution, in others the statute of limitations for some offences runs from the date the offence was committed. This means that child victims, in particular those abused at a very young age, may not have enough time, once they reach the age of majority, to launch criminal proceedings. This situation runs in contradiction to the provisions of the directive, which state that Member States shall take the necessary measures to enable prosecution for a sufficient period of time following the victim reaching majority.

Moreover, wide variations are found across Member States in levels of professional training and education on preventing and identifying child abuse. Across the EU, there are considerable differences in professionals subject to mandatory reporting, and in the procedures to follow to report abuse. This lack of consistent referral systems throughout EU Member States is further illustrated by the helplines in place in all EU Member States. These helplines encounter significant obstacles in responding to children in need of assistance, including a lack of cooperation agreements and protocols with other sectors of child protection systems.

The final section of this assessment focuses on **the moment at which Member State authorities commence an investigation into child sexual abuse, once a victim is**

identified (part IV). At this stage, the limits to law enforcement's investigative capabilities are clear. Some Member States have developed dedicated operational systems and forensic capabilities aimed at investigating child sexual abuse, but most of these do not have specialised investigative services, nor the financial means to acquire forensic materials, such as specific software for enabling online investigation. The online environment poses particular problems for investigation and prosecution. Use of encryption by criminals, enabling them to hide their activities, has led to discussion at EU level as to how to allow effective law enforcement action, without simultaneously undermining IT security, and while respecting fundamental rights standards. Access to electronic data can also lead to jurisdiction issues, particularly when data is transferred to 'cloud' storage. Furthermore, when child sexual abuse spans multiple Member States, the national authorities are not making effective use of EU cooperation tools and agencies such as Europol and Eurojust. These EU instruments are key to sharing information, identification of victims, and the coordination of investigations and prosecutions. In particular, the means and support of the Focal Point Twins Unit within Europol and the possibilities offered by Joint Investigation Teams (JITs) are infrequently explored. This is an area where police and judicial authorities should be better familiarised with EU cooperation tools and the work of EU agencies through relevant training programmes. Another issue arises when EU nationals commit child sexual abuse abroad (outside the EU). Here, their crimes often go unpunished, and most Member States have put legislation in place that allows for prosecution of their nationals or habitual residents for offences committed abroad in accordance with the directive. However, if in most Member States such prosecution is not conditional to a report made by the victim or a denunciation, not all Member States guarantee that such offences will be prosecuted without a formal complaint by the victim.

Finally, this assessment focuses on assistance and support provided to victims before, during and after criminal proceedings. According to the Child Sexual Abuse Directive, this assistance must not depend on a victim's willingness to cooperate in either the investigation or the judicial proceedings. Specific protective measures are provided for, in particular when the offender is a member of the child's family. Young victims must, if required, have access to free-of-charge legal advice and representation. Studies, in particular those conducted by the Fundamental Rights Agency (FRA), however, show that there is a long way to go before criminal justice systems are able to fully guarantee the rights of child victims in practice. This will only be achieved through a proper and coherent implementation of a number of interrelated international and EU standards affecting children and victims in criminal proceedings. Despite these challenges, good practices have also emerged in the form of 'children's houses', which are protection centres with an integrated and multidisciplinary approach between social services, law enforcement and medical professionals. The home-like setting is intended to reduce children's anxiety, and is key to conducting individual assessments that will help to adequately answer the victim's needs. These centres also help to limit the number of times that the child has to report the details of a crime, and thus limit the trauma associated with reporting. They also ensure that appropriate therapeutic and medical assistance is available throughout all stages of the investigative and adjudicative process. The idea originates from Iceland (the *Barnahus* model) and has since been adopted by several EU Member States.

Part I: The Child Sexual Abuse Directive in context

Key findings:

(1) Measuring the scale of the phenomenon of child sexual abuse at EU level is problematic, as available statistics are difficult to compare across Member States, and vary significantly. More systematic and coherent data collection on child sexual abuse is crucial to improving policy and action.

(2) In the vast majority of cases of child sexual abuse, perpetrators are known to the victims (figures vary from 70 to 90 %). Concerns have recently emerged over forms of sexual abuse enabled by the internet and new technologies. However, some legal experts suggest that the Child Sexual Abuse Directive is well-equipped to respond to these forms of abuse. Furthermore, any new substantive criminal law provisions will need to be demonstrated by the necessary factual evidence.

(3) The Child Sexual Abuse Directive is a comprehensive instrument: in addition to provisions in substantive criminal law, the directive includes provisions affecting criminal procedure and judicial cooperation. It also deals with administrative and policy measures. However, given the complexity and the variety of the measures to be transposed in domestic laws, challenges appear regarding implementation in Member States.

In 2009, the European Commission (EC) proposed a directive on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA. This directive, adopted in 2011 (Directive 2011/93/EU), establishes minimum rules concerning the definition of criminal offences and sanctions and introduces provisions to strengthen the prevention of those crimes and protection of the victims. To understand the context in which the directive was adopted and the developments that have followed, this section begins by highlighting the main features of child sexual abuse in Europe (1), while providing data on victims and offenders (2). An examination of the impacts on victims and the long-lasting consequences of such abuses (3) follows. This background information is key to presenting the scope of the directive as it was originally intended (4).

1. Main features of child sexual abuse in the EU

Measuring the scale of the phenomenon of child sexual abuse and exploitation is an extremely difficult task. For reasons described below, the statistics available must be considered with caution (1.1). However, specific trends can be identified at EU level (1.2).

1.1. Measuring the scale of the phenomenon: the issue of statistics

Numerous studies which estimate the prevalence¹ of child sexual abuse in Europe have been published to date in the scientific literature. However, results demonstrate a great variation.

The Council of Europe (CoE) estimated in 2010 that about one in five children in Europe are victims of some form of sexual violence.² This estimate emerged from a combination of the results of various studies undertaken by research teams in many European countries, statistics advanced by UNICEF, the International Labour Organization (ILO) and the World Health Organization (WHO). This regional figure (which includes all CoE Member States), however does not exclude that there may be a variation in the prevalence of sexual violence in individual countries.

At the EU level, the WHO 2013 European Report on Preventing Child Maltreatment mentions several studies that indicate great variations in the rate of prevalence across EU Member States. A 2011 National Society for the Prevention of Cruelty to Children (NSPCC) report, for example, estimated that 3.9 % of 0-17 year olds in the UK had experienced one or more instances of physical, sexual or emotional abuse or neglect by a parent or guardian in the previous year,³ while a study conducted in Germany in a sample of children and adolescents estimated that 1.9 % had been severely sexual abused.⁴ These statistics are particularly difficult to compare, due to significant variation in the methodologies used and the sample chosen. Furthermore, studies in this field tackle abuses involving physical contact (sexual molestation, penetration), and those not necessarily involving physical contact (grooming, exploitation, persuading children to perform sexual acts), in different ways. Therefore, although the above-mentioned statistics can be seen as an indicative source, they must be considered with caution and cannot be used in a comparable manner.

Crime statistics do not necessarily help to overcome the large variations in prevalence rates. Crime statistics only reveal the relatively small number of cases that reach the prosecution stage.⁵ Child sexual abuse and exploitation is an area where only a small proportion of victims file official complaints or bring a case to court. The issue of delay in disclosure is an additional challenge to the reliability of crime statistics.⁶ Many victims of child sexual abuse only disclose their suffering many years after the abuse took place, as described in more detail in Part III.

¹ The prevalence rate is the proportion of people in a population who have been affected by a particular phenomenon at a specified point in time, or over a specified period of time.

² Lalor K., McElvaney R., 'Overview of the nature and extent of child sexual abuse in Europe', in *Protecting children from sexual violence - A comprehensive approach*, Council of Europe, 2010.

³ Radford L. et al., *Child abuse and neglect in the UK today*, London, NSPCC, 2011.

⁴ Häuser W. et al., 'Misshandlungen in Kindheit und Jugend: Ergebnisse einer Umfrage in einer repräsentativen Stichprobe der deutschen Bevölkerung', *Deutsches Ärzteblatt*, 2011, 17, p.287-294

⁵ May-Chahal C. and Herczog M. (ed.), *Child sexual abuse in Europe*, Council of Europe Publishing, 2003, p.17.

⁶ McElvaney R., 'Disclosure of Child Sexual Abuse: Delays, Non-disclosure and Partial Disclosure. What the Research Tells Us and Implications for Practice', *Child Abuse Review*, 24, 3, May/June 2015, p.159-169.

In consequence, regional and global figures⁷ should be used with great care. These shortcomings were already described in a CoE report in 2003,⁸ and the lack of reliable statistics and comparable data still holds true today.⁹ As the CoE noted, states have regularly been called upon to carry out more systematic and coherent data collection on the ill-treatment and sexual exploitation of children. UNICEF also recently highlighted that momentum is growing for improved data collection as a basis for policy and action.¹⁰

1.2. Main trends

Despite the lack of reliable data and statistics on the scale of the phenomenon, three areas of concern can be identified based on crime statistics and additional research findings:

- In the EU, as elsewhere in the world, child sexual abuse mostly takes place in the child's immediate environment (figures vary from 70 to 90 % of abuses);
- Children in the EU are solicited and sometimes trafficked for the purpose of sexual exploitation;
- The widespread use of the internet and new technologies have led to increased opportunities for sexually abusing children.

An overall consensus exists that, in the vast majority of cases of child sexual abuse, perpetrators are known to the victims. In its explanatory report on the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (known as the Lanzarote Convention), the CoE noted that, 'the available data shows that, in European countries, the majority of sexual abuse against children is committed within the family framework, by persons close to the child or by those in the child's social environment'.¹¹ Research findings have consistently confirmed this fact,¹² and this remains a key feature of child sexual abuse.

Child exploitation and child trafficking for sexual purposes are not an isolated phenomenon in the EU. The latest EUROSTAT report on human trafficking indicates that, among registered victims of human trafficking for the purpose of sexual exploitation (as reported in 16 Member States), 14 % are children (between 0 and 17 years old).¹³ In the

⁷ The World Health Organization (WHO) in its 2013 *European Report on Preventing Child Maltreatment* for instance stated that analyses of community surveys showed a prevalence rate of 9.6 % for sexual abuse (13.4 % in girls and 5.7 % in boys). It noted that applying these figures to the population of children in Europe suggests that 18 million children in Europe suffer from sexual abuse. However the report is cautious about these figures, and recognised shortcomings in the methodologies used.

⁸ May-Chahal C. and Herczog M. (ed.), *Child sexual abuse in Europe*, Council of Europe Publishing, 2003, p.16-20.

⁹ Singh M. et al., 'An Epidemiological Overview of Child Sexual Abuse', *Journal of Family Medicine and Primary Care*, 3, 4, 2014, p.430-435.

¹⁰ UNICEF, *Measuring Violence against Children: Inventory and assessment of quantitative studies*, 2014.

¹¹ CoE, *Explanatory Report to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*, Lanzarote, 25 October 2007.

¹² CoE Report, *Protecting children from sexual violence. A comprehensive approach*, Council of Europe Publishing, 2010; Martellozzo E., *Online child sexual abuse: grooming, policing and child protection in a multi-media world*, Routledge, 2012, p.161.

¹³ Eurostat, *Trafficking in human beings*, 2015, p.30 and seq.

context of the current refugee crisis, concerns have been raised by several NGOs¹⁴ regarding the phenomenon of unaccompanied migrants at risk of becoming victims of sexual abuse and exploitation, and preventive action has been taken in this field, for instance in hotspots.¹⁵ As regards 'sex tourism', while Western European countries have long been known as a 'source' of travelling child sex offenders, some are now also becoming destinations for child sexual abuse. Some Eastern and Central European nations are also emerging as both source and destination countries.¹⁶ As noted in the End child prostitution in Asian tourism (ECPAT) report dedicated to this issue, children's vulnerability (for both girls and boys) has increased in this area in Europe.

The risks that children become victims of sexual abuse are amplified by the possibilities offered by the internet and the use of new technologies.¹⁷ Specific concerns have emerged with the development of ICTs: the opportunities they offer offenders; and their increasing use by children themselves.¹⁸ The opportunities for child sexual abuse the internet offers at global level include:

- a multiplication of online platforms for the dissemination of child sexual abuse materials;
- extended possibilities for offenders to come in contact with children;
- possibilities for offenders to hide their identities.

Moreover, technological developments such as web streaming possibilities create new practices for offenders – such as live streaming of child sexual abuse, identified as an established phenomena in the 2015 and 2016 Europol reports.¹⁹ In addition, the increased use of smartphones and webcams by children themselves has led to the production of what is now referred to as 'self-generated sexual content and material'. While this activity may of course be consensual between peers who are close in age, and as such is not in itself reprehensible or socially unacceptable,²⁰ the production of self-generated sexual content and material can become problematic if circulated and disseminated without the consent of all the protagonists featured. Risks of abusive dissemination of such content

¹⁴ See: Missing Children Europe, ECPAT, ENASCO, *A survey on the transposition of Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children and child pornography*, 2015; Scherrer A. and Werner H., *Trafficking in Human Beings from a Gender Perspective. Directive 2011/36/EU, European Implementation Assessment*, EPRS, April 2016, PE 581.412, p.9-10.

¹⁵ See European Asylum Support Office [dedicated webpage](#). The NGO Missing Children also published in 2016 a *Handbook on preventing and responding to unaccompanied children going missing*.

¹⁶ ECPAT, *Offenders on the move: Global study on sexual exploitation of children in travel and tourism*, ECPAT international, 2016, p.29 and seq.

¹⁷ Jeney P., *Combatting child sexual abuse online*, Study for the European Parliament, Policy Department C - Citizens' Rights and Constitutional Affairs, PE 536.481, 2015.

¹⁸ See: Jeney P., op.cit; UNODC, *Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children*, 2015.

¹⁹ Virtual Global Taskforce, *Child Sexual Exploitation Environmental Scan*, Europol, 2015, p.7; Europol, *Internet Organised Crime Threat Assessment (IOCTA)*, 2016.

²⁰ See: Interagency Working Group (IWG), *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*, ECPAT International, 2016. With regard to consensual sexual activities, the Child Sexual Abuse Directive leaves it to the discretion of Member States to decide whether or not certain practices are punishable where they involve persons who are close in age and in their degree of psychological and physical development or maturity, and which may be regarded as the normal discovery of sexuality.

were illustrated recently by a case in Italy, where a teenager committed suicide after self-generated sexual content of herself was circulated without her consent.²¹ The related 'sexting' phenomenon is a form of self-production of sexual images, including the sharing of these images through mobile phones and/or the internet. While such activity is also not illegal, 'unwanted sexting' can become a form of sexual bullying and harassment.²² 'Sextortion' is an additional term that has emerged recently, describing a form of blackmail in which sexual information or images are used to extort sexual favours and/or money from the victim.²³

As explained in section 4.2, some legal experts suggest that the Child Sexual Abuse Directive is well-equipped and sufficiently nuanced to respond to these areas of concern, including those occurring in online environments.

2. Who are the victims and the offenders?

While risk and vulnerability factors have been identified in cases of child sexual abuse, there is no consensus in the scientific literature over typical profiles of child victims. However, consensus exists that anyone can become a victim (2.1). The literature is similarly cautious as regards child sex offenders, since this category in reality comprises a heterogeneous group of people with different motivations (2.2). Well-informed assessments in this field bear significant relevance for the elaboration of prevention programmes, as described in Part II.

2.1. Victims

As regards the victims, several elements can be highlighted in relation to gender, age range, and risk factors.

As suggested in a 2013 World Health Organization (WHO) report, analyses of community surveys show that child sexual abuse mostly affects girls (prevalence rate of 13.4 % in girls and 5.7 % in boys). However, studies also demonstrate that boys may be especially inhibited from disclosing sexual abuse, including for reasons related to societal assumptions towards males.²⁴ Under-reporting of sexual abuse by boys may be linked to 'community assumptions that have often labelled them as future perpetrators: as homosexual; or, because they fear being treated as social outcasts, liars, or as emotionally weak'.²⁵ The recent child sexual abuse cases reported in the UK within football clubs illustrate how late disclosures of such abuses occur. The number of cases referred to 'Operation Hydrant' (the over-arching inquiry into these child sexual abuse allegations), has at the time of writing, reached 1 016 people, of which 98 % of the victims are male.²⁶

²¹ For an example in Italy, see this [press article](#) published in the Guardian in September 2016.

²² Interagency Working Group (IWG), *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse*, op.cit., p.44.

²³ Europol, *Internet Organised Crime Threat Assessment*, 2016, p.24.

²⁴ See: Fergus L., Keel M., 'Adult victim/survivors of childhood sexual assault', ACSSA Wrap 1, 2005.

²⁵ Ibid.

²⁶ See, for a recent update on this case, [this article](#) published by the BBC (consulted in January 2017).

Therefore, figures that infer a strong gender dimension to child sexual abuse should be nuanced.

It is difficult to estimate the age range at which children are most at risk of sexual abuse. A Swedish study, conducted in 2000, revealed that the average age of onset of abuse was nine years for boys and girls.²⁷ A 2011 study conducted in the UK found that teenage girls aged between 15 and 17 years reported the highest rates of sexual abuse.²⁸ However, these estimates are directly related to disclosure of sexual abuse, which is particularly difficult for younger victims.²⁹

In terms of risk factors, the above-mentioned WHO report analyses several risk factors for maltreatment of children, including sexual abuse, as well as other physical, mental abuse, and/or neglect of children. The authors describe individual, relationship, community, and societal factors, and identify environments particularly prone to child maltreatment.

Despite these identified risk factors, there is also caution in research regarding identification of factors conducive to child abuse. Rather, the scientific literature stresses a wide range of factors that interact to increase or reduce the risk: 'these can relate to the individual characteristics of parents, caregivers, other adults and children, relationships within families and the communities and societies in which people live'.³⁰ As underlined by experts in the field, typical victim profiles therefore have numerous limitations, and the vast majority agree that if gender, economic vulnerabilities and social isolation/fragmentation can be contributory factors, victims may exist in all social groups.

While children in all social groups can be victims of child sexual abuse, a category of children is however widely recognised as particularly vulnerable: children with disabilities. As underlined in the 2010 CoE report,³¹ if children and young people with disabilities are at risk of sexual abuse in the same way as other children, they are at additional risk because of their disabilities and because of their placement in specialist service settings. Moreover, children with disabilities tend to be hidden and/or marginalised within ordinary child protection processes.³² Recent systematic review and meta-analysis found that, compared to their non-disabled peers, children with disabilities were around three times more likely to suffer from physical or sexual violence.³³ This aspect is explicitly acknowledged in the Child Sexual Abuse Directive, in which abuse

²⁷ Edgardh K, Ormstad K., 'Prevalence and characteristics of sexual abuse in a national sample of Swedish seventeen year-old boys and girls' *Acta Paediatrica*, 2000, 89, p.310–319.

²⁸ Radford L. et al., *Child abuse and neglect in the UK today*, NSPCC report, op.cit.

²⁹ News reports worldwide sometimes refer to sexual abuse of infants occurring in childcare infrastructures. In 2010, the Dutch media widely reported a child sexual abuse scandal occurring in child day care in Amsterdam that involved a child pornography ring.

³⁰ World Health Organisation, *European Report on Preventing Child Maltreatment*, op.cit., p.34.

³¹ Bown H., 'Sexual abuse of children with disabilities', in *Protecting children from sexual violence. A comprehensive approach*, Council of Europe Publishing, 2010, Chapter 7.

³² Ibid, p.104

³³ Jones L. et al., 'Prevalence and risk of violence against children with disabilities: a systematic review and meta-analysis of observational studies', *Lancet*, 2012, 380, p.899-907.

committed against children with a mental or physical disability is recognised as an aggravating circumstance (Article 9).

It should also be noted that several studies have underlined the specific vulnerability to sexual exploitation of certain groups of people in Europe, such as the Roma people.³⁴

2.2. Offenders

As previously noted, child sexual abuses continue to mainly take place in the child's immediate environment. As often underlined by practitioners, NGOs or academic experts, the 'stranger danger' warning can indeed be misleading. Furthermore, there is no typical profile of child sexual offender: offenders are found across all social groups and no specific socio-economic environments are immune. This category of offenders is quite heterogeneous, and in order to promote sound evidence-based policies, several commonly held misconceptions need to be addressed. This section emphasises in particular that:

- Not all child sex offenders are paedophiles;
- Perpetrators of child sexual abuse are not always adults, nor are they always male;
- Offenders are not necessarily sexually motivated: motivation can also be financial. Child sexual abuse sometimes involves facilitators or enablers operating in a criminal market where sexual exploitation involving children occurs;
- Another type of facilitators or enablers include people who assist offenders in committing their crimes, or are accomplices in the commission of those crimes.

There is a distinction to be made between paedophilia (which is a pathology) and child sexual abuse (which is a crime). As indicated by research in this field, only half of child sexual abuse offenders are paedophiles.³⁵ Moreover, not all paedophiles become child sexual offenders: they are referred to as 'abstinent', 'passive', or 'non-offending' paedophiles.³⁶ Charities and NGOs working in this field often highlight that many terms used to describe people who sexually abuse children, such as 'paedophile', or 'sexual predator', are often misused according to their clinical or legal definition, and may

³⁴ See: Dimitrova K. et al., *Child Trafficking among vulnerable Roma communities: results of country studies in Austria, Bulgaria, Greece, Italy, Hungary, Romania and Slovakia*, Center for the Study of Democracy, 2015). In a report published in 2016, assessing the implementation of the EU framework for national Roma integration strategies, the European Commission notes that, despite some positive trends, serious bottlenecks have been identified in fighting anti-Roma discrimination. See: European Commission Communication, *Effective Roma integration measures in the Member States*, 2016.

³⁵ See: Beier et al., 'Can paedophiles be reached for primary prevention of child sexual abuse? First results of the Berlin Prevention Project Dunkelfeld (PPD)', *The Journal of Forensic Psychiatry & Psychology*, 20, 6, 2009.

³⁶ Moore Center for the Prevention of Child Sexual Abuse, 'Child Sexual Abuse: A Public Health Perspective', 2015; Muller R.T., 'Non-Offending Pedophiles Suffer From Isolation', *Psychology Today*, March 2016.

actually make it more difficult to recognise or acknowledge inappropriate behaviours in the immediate environment.³⁷ ECPAT underlines the following:

‘An aspect which requires further scrutiny and clarity is the demand factor. As existing literature clearly shows, the child sex offender population is diverse and includes men and sometimes women and adolescent offenders. Contrary to common perceptions and stereotypes, there are indications that most child sexual exploitation of post-pubertal adolescents is by men who are not paedophiles nor have specifically sought children for sex. Nevertheless, attention devoted to demand to date has focused mainly on paedophilia and this has often resulted in unsuitable interventions to address the crime with all age groups of children’³⁸.

As noted in the above quote, perpetrators of child sexual abuse are not always adults. The issue of child offenders in child sexual abuse cases is now well-documented, even if, once again, statistics are lacking in this area.³⁹ As studies have shown, a scientific consensus suggests that child and adolescent sexual abusers have to be apprehended differently from adult sexual abusers.⁴⁰ In these particular cases, specific environmental and family-related factors (aggressive behaviours in families, lack of affection, social isolation), can explain child sexual abuse behaviour.⁴¹ Dealing with children involved in abusive sexual acts with another child requires particular attention and specific care.⁴² This will be analysed in the section dedicated to prevention and intervention programmes (Part II).

While perpetrators are not always adult, they are neither always male. Whereas statistically, the prevalence of female child sexual abuse perpetrators tends to remain low, cases reported in the media attract public attention. As underlined by many researchers, this aspect of child sexual abuse remains a real taboo in society, consequently there is a lack of treatment programmes in this field.⁴³ Much work ‘remains to be done in understanding the scale of the problem, its impacts, the key differences and similarities in assessment and treatment when compared to male sexual abusers of children and the efficacy of interventions’.⁴⁴

³⁷ See: [Stop it Now](#) campaign.

³⁸ ECPAT, *Unfinished business; Ending child prostitution, child pornography and child trafficking for sexual purposes*, ECPAT International, 2014, p.26.

³⁹ Jaffé P., ‘Child and adolescent sexual abusers - For a rehabilitative approach driven by scientific evidence’, in *Protecting children from sexual violence. A comprehensive approach*, Council of Europe Publishing, 2010, Chapter 17.

⁴⁰ Ibid., p.225.

⁴¹ Rich P., *Understanding, Assessing and Rehabilitating Juvenile Sexual Offenders*, John Wiley, Second Edition, 2010.

⁴² Jaffé P., ‘Child and adolescent sexual abusers - For a rehabilitative approach driven by scientific evidence’, in *Protecting children from sexual violence. A comprehensive approach*, Council of Europe Publishing, 2010, p.228.

⁴³ Brown J. et al., *Sexual Abuse. A public health challenge*, London, NSPCC Report, 2011; Gannon T., Cortini F. (ed.), *Female Sexual Offenders Theory Assessment and Treatment*, John Wiley, 2010; McLeod D., ‘Female Offenders in Child Sexual Abuse Cases: A National Picture’, *Journal of Child Sexual Abuse*, 24, 2015, p.97-114.

⁴⁴ Brown J. et al., *Sexual Abuse. A public health challenge*, London, NSPCC Report, 2011; Gannon T., Cortini F. (Eds.), *Female Sexual Offenders Theory Assessment and Treatment*, John Wiley, 2010, p.29.

It is important to distinguish sexually motivated offenders from ‘facilitators’ (or enablers) engaged in exploitation of children for the purpose of financial gain. Indeed, child exploitation is also a profit-driven (and not only a sexually-driven) criminal market. This is particularly true for child sexual exploitation and the production/selling of child sexual abuse material, including online. It is anticipated that over the next few years, with improved access to high-speed internet in countries with high levels of poverty, this crime type will escalate rapidly.⁴⁵ The latest Europol Internet Organised Crime Threat Assessment (IOCTA) underlines that the targeting and commoditisation of sexually explicit images of a child and/or sexual activity with a child can be content driven (for sexual purposes) and/or financially driven (with an economic motivation).⁴⁶

The Child Sexual Abuse Directive tackles this issue by providing, in Article 7, that aiding and abetting any of the offences referred to in the directive is punishable. The provision therefore also covers individuals who help offenders to commit abuse, even if not driven by financial motivation. A particularly well-known illustration of this type of criminal behaviour is seen in the *Dutroux* case in Belgium in the 1990s. The perpetrator, Dutroux, kidnapped six girls between 1995 and 1996, ranging in age from 8 to 19 years, four of whom were murdered. The subsequent investigations uncovered the role of Dutroux’s wife, Michelle Martin, who aided Dutroux in the kidnapping, sexual abuse, torture, and ultimately murder, of child victims.⁴⁷

3. Impact of child sexual abuse on victims

An area of certainty in the field of child sexual abuse concerns the devastating consequences of child sexual abuse on victims. Victims suffer from multiple and long-lasting physical and/or psychological traumas that can follow them well into adulthood.

⁴⁵ Global alliance against child sexual abuse online, *Threat Assessment Report*, 2015.

⁴⁶ Europol, *Internet Organised Crime Threat Assessment*, 2016, op.cit.

⁴⁷ See: [Press Article](#) from The Independent, 29 August 2012.

Table 1: Child sexual abuse: impact on victims

<p>Physical integrity</p> <ul style="list-style-type: none"> • damage to internal organs • sexually transmitted disease • sexual dysfunction and/or disturbed sexual functioning • eating disorders • physical symptoms in the absence of medical conditions • cognitive impairment and developmental delays
<p>Mental health</p> <ul style="list-style-type: none"> • anxiety, acute and posttraumatic stress disorder (PTSD) • depression • lack of self-esteem • suicidal ideas • multiple or borderline personality disorder
<p>Social integration</p> <ul style="list-style-type: none"> • family and/or community disenfranchisement • lack of trust and poor relationships • learning difficulties and disabilities • difficulties in social adaptation and integration

Sources: EPRS: based on several references⁴⁸ and compiled by the authors.

These realities also have societal and economic costs,⁴⁹ including increased use of health care, social welfare, and justice, as well as lower educational attainment and employment prospects, which affect victims' opportunities on the job market. Furthermore, with the increasing opportunities offered by ICTs to share and disseminate sexual abuse materials, victims may face repeated victimisation that impairs their resilience capacity. These long-lasting consequences of child sexual abuse require strong prevention and protection measures, described in Parts II and IV.

In addition to these multiple traumas, children and adults who have suffered from child sexual abuse often suffer from prejudices that too often lead to victim's evidence being treated with scepticism. Specific guidelines have been developed in some Member States,

⁴⁸ Beitchman J. et al., 'A review of the long-term effects of child sexual abuse', *Child Abuse & Neglect*, 16, 1, 1992, p.101-118; Spataro J. et al., 'Impact of child sexual abuse on mental health. Prospective study in males and females', *The British Journal of Psychiatry*, 184, 5, 2004, p.416-421; Astbury J., 'Violating children's rights: The psychological impact of sexual abuse in childhood', *Australian Psychological Association*, 35, 5, 2013; Nemeroff C., 'Paradise Lost: The Neurobiological and Clinical Consequences of Child Abuse and Neglect', *Neuron*, 89, 5, 2016.

⁴⁹ World Health Organization, *European Report on Preventing Child Maltreatment*, 2013, op.cit., p.25 and seq.

to challenge these assumptions, including in courtrooms.⁵⁰ Such prejudices include those associated with presumed consent ('the victim invited sex in the way they dressed or acted; drank alcohol or used drugs, and therefore was available sexually', or 'was in a relationship with the alleged offender and thus is a willing sexual partner'); a lack of resistance ('the victim didn't scream, fight or protest and therefore not sexual assault'); delay in reporting ('if the victim did not complain immediately, it was not sexual assault'); difficulty in remembering traumatising events ('a victim who has been sexually assaulted will remember events consistently'). Such, often persistent, misconceptions lead to significant challenges, including in properly identifying victims, described in Part III.

4. Child Sexual Abuse Directive: genesis and scope

The 2011 Child Sexual Abuse Directive was originally intended mainly to transpose the provisions set out in the 2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (hereafter, the Lanzarote Convention).⁵¹ However, the directive went much further in many respects, including in the provision of minimum sanctions, common offence definitions, and provisions for victims' protection.

4.1. Purpose

In 2009, the European Commission (EC) proposed a directive on combating the sexual abuse, sexual exploitation of children and child pornography to the Council and the Parliament, repealing Framework Decision 2004/68/JHA, together with a proposal to revise Framework Decision 2002/629/JHA on combating trafficking in human beings. The two proposals were part of a package on organised crime. They were part of the first directives proposed after the Lisbon Treaty, whereby with the abolition of the 'third pillar' of the European Union, police and judicial cooperation in criminal matters became a 'Community policy'.⁵²

The proposal was presented with an impact assessment⁵³ that underlined differences and divergences across EU Member States in investigations and prosecutions, and emphasised the cross-border aspects of child abuse. The assessment acknowledged the spread of information technology and the great variety of the actors involved (users, websites publishers, internet service providers, telecom companies), and stressed the need to take these elements into account in new provisions. Finally, the assessment outlined several weaknesses in existing EU instruments to tackle child abuse effectively, including those designed to surrender people for the purpose of conducting a criminal prosecution (the European Arrest Warrant (EAW)), and the computerised system for the

⁵⁰ See, as an example: UK Crown Prosecution Service, *Guidelines on Prosecuting Cases of Child Sexual Abuse*; DeMarni Cromer L., Goldsmith R., 'Child Sexual Abuse Myths: Attitudes, Beliefs, and Individual Differences', *Journal of Child Sexual Abuse*, 19, 6, 2010, p. 618-647.

⁵¹ Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007.

⁵² Peers S., *EU Justice and Home Affairs*, Oxford University Press, 2011.

⁵³ European Commission, Commission staff working document accompanying document to the Proposal for a Council Framework Decision on combating the sexual abuse, sexual exploitation of children and child pornography, COM(2009) 135.

exchange of information on criminal convictions between Member States (the European Criminal Records Information System (ECRIS)).⁵⁴ The purpose of the directive was therefore to overcome these weaknesses and propose a more robust legal framework than the Lanzarote Convention.

4.2. Scope and transposition

As adopted, this directive establishes minimum rules concerning the definition of criminal offences and sanctions. It also introduces provisions to strengthen prevention of these crimes and the protection of their victims. As such, the directive introduces certain innovations, compared to other multilateral instruments, as it extends the scope of the offences (ruling out any reservations) and introduces standard minimum levels of penalties.⁵⁵ In its summary of the directive, the Commission outlines:

⁵⁴ Ibid, p.9-10. On the EAW, the Commission noted that it eliminates the double criminality requirement for sexual exploitation of children and child pornography, but only for the purpose of surrendering offenders, not to establish jurisdiction for offences committed outside the country. On the ECRIS decision (which was under discussion at that time), the Commission underlined that the decision allows limits to the exchange of information for purposes other than criminal proceedings and contains no obligation on Member States to include information on exclusion from certain activities in their national systems, or to recognise such prohibitions imposed by other Member States.

⁵⁵ Ruelle E., 'Sexual violence against children – The European legislative framework and outline of Council of Europe conventions and European Union policy', in *Protecting children from sexual violence. A comprehensive approach*, Council of Europe Publishing, 2010, Chapter 3.

Table 2: Main provisions of the Child Sexual Abuse Directive

<p>Offences and sanctions</p>	<ul style="list-style-type: none"> • About twenty criminal offences identified divided into four categories: sexual abuse, sexual exploitation, child pornography and the solicitation of children online for sexual purposes • Thresholds for maximum terms of imprisonment • Incitement to commit an offence also punishable and a legal person may be held liable and sanctioned • Aggravating circumstances are provided for (such as the abuse of a vulnerable child, when the abuse is committed by a member of the child's family or where the offender holds prior convictions of the same nature)
<p>Professional activities involving contact with children</p>	<ul style="list-style-type: none"> • Employers exercising employment involving direct and regular contact with children must be able to request information on the existence of a conviction or a disqualification from exercising this type of employment. This information must also be sent to other Member States
<p>Travels for committing child abuse</p>	<ul style="list-style-type: none"> • MS can try their citizens for offences of this type committed abroad • MS may also extend their competency to offences committed abroad when the offender of the crime regularly resides in their territory, or if the offence has been committed on behalf of a legal person established in their territory, and also when the victim is one of their citizens
<p>Child abuse content and material</p>	<ul style="list-style-type: none"> • MS must ensure that child pornography sites hosted within their territory are promptly removed and must strive to remove those hosted abroad. Furthermore, under certain conditions regarding transparency and internet user information, MS have the possibility to block access to these sites in their territory.
<p>Investigations and prosecutions</p>	<ul style="list-style-type: none"> • Investigations and prosecutions must not solely depend on a report or accusation being made by the victim, and criminal proceedings must be able to continue even if that person has withdrawn his or her statement. Specific provisions for individual assessment, interviews and hearings • For the most serious offences, prosecutions must be possible for a sufficient period of time after the victim has reached the age of majority
<p>Assistance, support and protection for victims</p>	<ul style="list-style-type: none"> • Assistance and support must be provided to victims before, during and after criminal proceedings. They must not depend on their willingness to cooperate in the investigation or the legal proceedings • Specific protective measures are provided for, in particular, when the offender is a member of the child's family. • Young victims must have, if required, access to free-of-charge legal advice and representation
<p>Prevention</p>	<ul style="list-style-type: none"> • Specific programmes aimed at reducing the risks of recidivism must be proposed to persons convicted or prosecuted for sexual offences against children

Source: EPRS, based on the summary of the directive.⁵⁶

Regarding offences and sanctions, the areas of concern identified earlier in Section 1.2 are taken into account. The directive indeed criminalises the act of engaging in sexual activities with a child who has not reached the age of sexual consent, as well as the act of coercing, forcing or threatening a child into sexual activities with a third party (Article 3). Article 4 covers offences concerning sexual exploitation, while Article 5 is dedicated to

⁵⁶ Combating the sexual exploitation of children and child pornography, [EC website](#).

offences related to child sexual abuse content and material. Article 6 explicitly criminalises the solicitation of children online for the purpose of sexual abuse and exploitation (often referred to as ‘online grooming’).

The directive also envisages aggravating circumstances (Article 9), including: offences committed against a child in a particularly vulnerable situation; offences committed by a member of the child’s family, a person cohabiting with the child, or a person who has abused a recognised position of trust or authority; or offences committed by several persons acting together. The directive further includes provisions in areas of prevention that are key to tackling child sexual abuse efficiently (see Part II).

Concerning new developments related to the widespread use of technologies, including by children themselves, the directive, as mentioned above, makes explicit provisions concerning grooming. As regards the new phenomena of live streaming of sexual abuse, and unwanted circulation/commodification of self-generated sexual content (see 1.2), many commentators underline that international and EU laws, and above all, the Child Sexual Abuse Directive, offer robust legal avenues for prosecution of people involved in these crimes.⁵⁷ A comprehensive study on combatting child sexual abuse online⁵⁸ concluded, for instance, that both the Child Sexual Abuse Directive and the CoE Convention (the Lanzarote Convention) are up-to-date instruments, sufficiently nuanced and comprehensive to combat child sexual abuse occurring in an online environment. In its resolution on an EU approach to criminal law,⁵⁹ the European Parliament underlined that any new substantive criminal law provisions must be supported by factual evidence. At the time of writing, no substantial research points to the need to adopt further minimum rules at EU level concerning the definition of criminal offences related to sexual abuse occurring in an online environment.

Of course, child sexual abuse occurring online raises specific challenges in terms of investigation and prevention, including improved collaborative work between the public and the private sectors. Important initiatives have been taken at EU and international level in this field (such as the Internet Watch Foundation, the European Financial Coalition),⁶⁰ and these measures are undoubtedly critical in tackling child sexual abuse using the internet, as described in Part II. However, focusing on the ‘online’ aspects should not undermine a comprehensive approach to child sexual abuse – such as that of the Child Sexual Abuse Directive – especially when statistics show that the vast majority

⁵⁷ Lievens E., ‘Bullying and sexting in social networks from a legal perspective: between enforcement and empowerment’, ICRI Working paper, 7, 2012. As reported in the survey conducted by Missing Children Europe, ECPAT, ENASCO, the UK is the only Member State to have passed a new law in addition to the law on grooming, introducing the offence of sexting, which states that it is now illegal for an adult to communicate sexually with a child under the legal age of consent in view of the sexual gratification of the adult. See Missing Children Europe, ECPAT, ENASCO, *A survey on the transposition of Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children and child pornography*, op.cit., p.20.

⁵⁸ Jeney P., *Combatting child sexual abuse online*, op.cit.

⁵⁹ European Parliament resolution of 22 May 2012 on an EU approach to criminal law (2010/2310(INI)); See: van Ballegooij W., ‘Measuring the Added Value of EU Criminal Law’, EUCRIM, 2016/2, p. 90-94.

⁶⁰ These initiatives are described in Jeney P., *Combatting child sexual abuse online*, op.cit., p.35 and seq.

of abuses occur in the child's immediate environment and 'offline'. In a joint statement by the European Parliament and the Council on solicitation of children for sexual purposes, related to the adoption of the Child Sexual Abuse Directive and focusing on provisions on 'online grooming', European policy-makers highlighted the importance of not overlooking 'real-life' solicitation of children for sexual purposes (offline grooming). Member States were asked 'to check carefully their criminal law definitions as regards the criminalisation of 'real-life' solicitation of children for sexual purposes, and to improve and correct their criminal law, if necessary',⁶¹ in line with Recital 19 of the directive. Whereas the offence of 'offline' grooming was not a requirement of the directive, many Member States seem to have opted to also criminalise this practice.⁶²

In addition to provisions in substantive criminal law (offences, level of penalties, statutes of limitation, incitement, aiding and abetting, attempt), the directive includes provisions on criminal procedural code (reporting, extraterritorial jurisdiction, investigative tools, participation of children in criminal proceedings, legal representation), and on criminal records registers (disqualifications, access to information, exchange of records). The directive also deals with administrative (police and judiciary training, protocols on children in judicial proceedings), and policy measures (cooperation with the private sector, prevention campaigns). Given the complexity and the variety of the measures to be transposed into domestic laws, challenges have arisen as regards implementation of the directive by Member States. In December 2016, the European Commission (EC) released two reports assessing the extent to which the Member States have taken the necessary measures to comply with the Child Sexual Abuse Directive (hereafter, the EC transposition reports),⁶³ where it appears clear that Member States need to make further efforts to apply the directive to its full potential.

Since the introduction of the Child Sexual Abuse Directive and the Directive on trafficking in human beings, two additional EU instruments have now come into play: Directive 2012/29/EU on the rights of the victims⁶⁴ and Directive 2016/800 on procedural safeguards for children suspected or accused in criminal proceedings.⁶⁵ Interaction and consistency between these EU instruments also needs to be taken into account and are analysed further in Part IV.

⁶¹ See Annex: Joint statement of the European Parliament and of the Council on solicitation of children for sexual purposes, P7_TA(2011)0468.

⁶² See: *A survey on the transposition of Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children and child pornography*, op.cit.

⁶³ (1) Report from the Commission to the European Parliament and the Council assessing the extent to which the Member States have taken the necessary measures in order to comply with Directive 2011/93/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, COM (2016) 871; (2) Report from the Commission to the European Parliament and the Council assessing the implementation of the measures referred to in Article 25 of Directive 2011/93/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, COM(2016) 872.

⁶⁴ Directive 2012/29/EU on the rights of the victims.

⁶⁵ Directive 2016/800 on procedural safeguards for children suspected or accused in criminal proceedings.

4.3. European Parliament's role

The European Parliament has been an important driver in EU efforts to tackle child abuse. In 1999, and prior to the introduction of Framework Decision 2004/68/JHA, it adopted a legislative resolution which strongly supported this initiative.⁶⁶ In 2009, Parliament provided recommendations to the Council in view of the work carried out on a revised text: in particular, it supported a revision that raised 'the level of protection to at least the level provided by the CoE Convention and by tightening the focus on abuses related to the internet and other communication technologies'.⁶⁷ These recommendations were followed by a legislative resolution in 2011 on the Commission's proposal for a directive.⁶⁸

Since the adoption of the Child Sexual Abuse Directive, the European Parliament has established an Intergroup on Children's Rights in 2014, following a motion for a resolution on the 25th anniversary of the UN Convention on the Rights of the Child.⁶⁹ This intergroup unites MEPs across parties and nationalities, aiming at mainstreaming children's rights and assessing the impact of legislative and non-legislative work on children. Nominated child rights focal points in each parliamentary committee alert the intergroup about files that have an impact on children. The intergroup's work is based on the Child Rights Manifesto,⁷⁰ prepared by a coalition of child-focused organisations working towards the implementation of the EU's legal and policy commitments to promote and protect children's rights, and obligations set out in the UN Convention on the Rights of the Child.

In March 2015, a European Parliament adopted a resolution⁷¹ specifically targeting online child sexual abuse, which was followed up by the Commission.⁷²

Subsequently, in May 2015, Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) requested authorisation to draw up an own-initiative implementation report on the Child Sexual Abuse Directive. On 19 May 2015, the European Parliament's Conference of Committee Chairs gave its authorisation, triggering the automatic production of this European implementation assessment.⁷³

⁶⁶ European Parliament legislative resolution on the initiative of the Republic of Austria with a view to adopting a Council decision to combat child pornography on the Internet, 1999/0822(CNS).

⁶⁷ European Parliament recommendation of 3 February 2009 to the Council on combating the sexual exploitation of children and child pornography, 2008/2144(INI)

⁶⁸ European Parliament legislative resolution of 27 October 2011 on the proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, 2010/0064(COD))

⁶⁹ Motion for a resolution on the 25th anniversary of the UN Convention on the Rights of the Child, 2014/2919(RSP)

⁷⁰ This manifesto is available [online](#).

⁷¹ European Parliament resolution on child sexual abuse online, 2015/2564(RSP)

⁷² Follow up to the European Parliament resolution on child sexual abuse online, adopted by the Commission on 3 June 2015. See: Commission response to text adopted in plenary, available on the EP's legislative [observatory](#).

⁷³ For information on the process, see Anglmayer I., *Evaluation and ex-post impact assessment at EU level*, EPRS, PE 581.415, 2016

Part II: Prevention of child sexual abuse

Key findings:

(1) Development of a ‘culture of prevention’ around child sexual abuse is missing at EU level, and Member States’ practices vary considerably in this field. Despite some promising results in some Member States where specific and targeted programmes have been implemented, there is no consensus on what works to prevent child sexual abuse and what intervention programmes are effective in preventing recidivism.

(2) Preventing access to websites with child sexual abuse content is another important component of prevention measures. The issue of removing/blocking of harmful online content is heavily debated at EU level, and disagreements over the issue are far from settled. These debates raise the more general challenge of the involvement of the private sector in the prevention of child sexual abuse that takes various forms, including co-regulation and self-regulatory initiatives.

(3) Preventing an individual who has been convicted of child sexual abuse from temporarily or permanently exercising professional activities involving direct and regular contact with children is a widely accepted measure across the EU. However, challenges remain in the screening of employees likely to come in contact with children. The provisions of the Child Sexual Abuse Directive on this matter is closely intertwined with the application of the European criminal records information system (ECRIS) decision on the exchange of criminal records information. Here, some Member States continue to neglect to ensure that information is transmitted when other Member States request information on previous criminal convictions. In some Member States, it is not a legal obligation to provide such information.

‘Prevention’ in the field of child sexual abuse has two main components:

- before a crime is committed, where information and awareness-raising campaigns targeted at both potential victims and offenders are key;
- once a crime has been committed, where adequate intervention programmes and prevention of recidivism are critical.

The Child Sexual Abuse Directive includes these components in its Articles 10, 21 to 24, and 25. The directive provides that Member States are required to take ‘appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of sexual exploitation of children’, as well as ‘appropriate action, including through the internet, such as information and awareness-raising campaigns, research and education programmes, where appropriate, in cooperation with relevant civil society organisations and other stakeholders, aimed at raising awareness and reducing the risk of children, becoming victims of sexual abuse or exploitation’ (Article 23). The directive also aims at adopting measures against advertising abuse opportunities and child sex tourism (Article 21).

The directive furthermore contains specific provisions related to intervention programmes or dedicated measures for offenders, which should be made available and followed on a voluntary basis in the course of, or after, criminal proceedings. To avoid

the risk of repeat offences, Member States are required to take the necessary measures to 'ensure that a natural person who has been convicted of any of the offences referred to in Articles 3 to 7 [of the directive] may be temporarily or permanently prevented from exercising at least professional activities involving direct and regular contact with children'.

As described hereafter, assessing the implementation of prevention measures is a difficult task, as the provisions of the directive, while comprehensive, are quite broad and outlined in very general terms. Furthermore, prevention measures often comprise a mix of legislative and non-legislative provisions (such as action plans or administrative measures), which are hard to evaluate. In addition, a great variety of practices and varying degrees of effort, are found across the Member States in this field. If efforts at the European and international levels to collect and gather comparable best practices in this field have multiplied,⁷⁴ prevention is an area where further evidence-based research is badly needed.

1. Before abuse takes place: reducing risk for children

1.1. Advertising abuse opportunities and child sex tourism

On the demand side, the Child Sexual Abuse Directive mainly focuses on discouraging and reducing demand via the adoption of preventive and prohibitive measures against advertising abuse opportunities and child sex tourism. On this matter, the European Commission report assessing the extent to which EU Member States have taken the necessary measures to comply with the Child Sexual Abuse Directive (hereafter, the EC transposition report),⁷⁵ points to several transposition measures⁷⁶ on the directive's related provisions (mainly Article 21). The adoption of preventive and prohibitive measures against advertising abuse opportunities and child sex tourism is indeed found in the forms of criminal offence penalising the advertising specified in the directive, or through the criminal offence of public incitement. Most Member States have, moreover, taken a variety of measures to transpose the provision that concerns prohibition and prevention of the organisation for others of travel arrangements with the purpose of offending. Where offenders are travelling abroad to commit abuse, one should note that various initiatives have been put in place by the relevant industries, often in cooperation with international organisations (IOs) and NGOs, such as The Code:

⁷⁴ See for instance initiatives taken by the CoE following the adoption of the Lanzarote Convention, including an international conference on preventing sexual abuse of children, with dedicated sessions on a 'good practices circuit'. See also the initiative taken by the European Economic and Social Committee (EESC) to provide a collection of best practices in the field of prevention of child abuse. However, this catalogue has not been updated since 2011.

⁷⁵ EC transposition report, COM (2016) 871, op.cit.

⁷⁶ It should be noted that the EC reports at this stage evaluated the existence of transposition measures, but did not assess the conformity of these measures as regard the directive.

Box 1: Presentation of an initiative to combat child sex tourism: The Code

The World Tourism Organization (UNWTO), in partnership with ECPAT, has elaborated a code of ethics⁷⁷ for the tourism sector, as it considered sex tourism to be a violation of Article 34 of the Convention on the Rights of the Child. Since 2004, what is now referred to as 'The Code', operates as an independent non-profit organisation and is a global multi-stakeholder organisation based in Thailand, with high-level leadership from both the tourism industry and civil society. The Code is now the leading initiative for responsible tourism in the tourism industry, seeking to integrate child protection into its work. When a tourism company joins The Code, it commits to taking six essential steps to help protect children. These include: establishing dedicated policy and procedures; employee training; including a clause in any contracts throughout the value chain stating a zero-tolerance policy; providing information for travellers; providing support and engagement in prevention; implementing reporting in line with the code of ethics.

In 2001, the UNWTO issued a joint statement with the International Air Transport Association (IATA) on the 'protection of children from sexual exploitation in travel and tourism', encouraging airlines and other international travel organisations, including airport authorities, to multiply their awareness-raising efforts towards passengers, especially by means of in-flight magazine articles, and by screening in-flight videos or other publicity in airport passenger lounges, departure gates and on airport buses.⁷⁸

At an operational level, the exchange of information on child sex offenders' international travel has expanded in recent years, involving intensified bilateral agreements to proactively identify and target individuals with previous convictions for child sexual abuse who are traveling to foreign countries. In September 2016, the United States Department of Homeland Security and the Slovak Republic signed an agreement to provide information on the travel of convicted child sex offenders between the two countries.⁷⁹ This is the second agreement of its kind, following the signature of a similar agreement between the US and the UK in June 2015. This issue was mentioned in a January 2017 Commission staff working document on the joint review of the passenger name records (PNR) agreement between the EU and the USA.⁸⁰ However, these bilateral agreements also raise challenging questions, including the extent to which their provisions protect the right of a convicted individual to rehabilitation,⁸¹ and their interaction and compliance with the provisions of the PNR Directive and agreement.

⁷⁷ See the [website dedicated to this initiative](#).

⁷⁸ See the [UNWTO webpage](#) dedicated to this issue.

⁷⁹ This exchange of information is part of the US-led 'Operation Angel Watch'. See: [Press Release](#), 'DHS and Slovak Republic sign agreement to provide information on the travel of convicted child sex offenders', 22 September 2016.

⁸⁰ [Joint review](#) of the implementation of the Agreement between the European Union and the United States of America on the processing and transfer of passenger name records (PNR) to the United States Department of Homeland Security, Brussels, 19 January 2017, SWD(2017) 14 final.

⁸¹ See: [Recommendation No R\(84\)10](#) on the criminal record and rehabilitation of convicted persons, adopted by the Committee of Ministers on 21 June 1984 at the 374th meeting of the Ministers' Deputies.

1.2. Educating children

If prevention campaigns and measures targeting offenders are key, it is widely recognised that educating children to report sexual abuse is also an important component in child sexual abuse prevention strategies.

In 2010, the Council of Europe launched the 'ONE in FIVE campaign' (in reference to the finding that around one in five children in Europe are victims of some form of sexual violence) that had two main goals:⁸²

- to achieve further signature, ratification and implementation of the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention);
- to equip children, their families and carers, and society at large, with the knowledge and tools to prevent and report sexual violence against children, thereby raising awareness of its extent.

Regarding the second objective, the CoE prepared and disseminated a wide range of materials and tools. The campaign was successful, as it was taken up by many CoE members at national levels.⁸³ The partners involved in the campaign recognised the quality of the materials produced for dissemination (available in various languages). The campaign was particularly praised for targeting many of its messages at children between three and seven years old. The 'Underwear Rule' related campaign, for instance, explains to children in dedicated books and short videos, in their own language and using child-friendly features, that a child should not be touched by others on parts of the body usually covered by their underwear, and they should not touch others in those areas. The materials also explain to children that their body belongs to them, that there are good and bad secrets, and good and bad ways to touch. The 'Underwear Rule' has been integrated in many Member States' curriculums.⁸⁴ Campaign materials were also produced targeted at older children, to encourage disclosure and to enhance awareness of these issues.⁸⁵

As from 2015, the CoE initiated the European Day on the Protection of Children against Sexual Exploitation and Sexual Abuse (every 18 November).⁸⁶ This initiative is an occasion to disseminate and further improve existing awareness-raising resources developed under the ONE in FIVE campaign.

Awareness, and in particular awareness among children, is crucial in a digital environment. The EU has been particularly proactive in this field, with the development of a multi-annual (2009-2013) EU programme on protecting children using the internet and other communication technologies: the 'safer internet' programme. The programme

⁸² See the [ONE in FIVE website](#) and the related [Facebook page](#).

⁸³ For a list of the initiatives taken at domestic level, see the [CoE website](#).

⁸⁴ In the UK, see the [campaign](#) led by the NSPCC.

⁸⁵ See, for instance, the short video clip: '[The Lake](#)', available on YouTube.

⁸⁶ See the European Day on the Protection of Children against Sexual Exploitation and Sexual Abuse [dedicated webpage](#).

was evaluated in 2016, and results are very positive.⁸⁷ With a budget of €55 million, the programme co-funded projects across the Member States and in third countries, with a primary aim to increase public awareness, in particular among children, parents and teachers, about opportunities and risks related to the use of online technologies, and means of staying safe online. The programme co-funded initiatives such as 'safer internet centres' in all EU Member States, which carry out activities to raise public awareness and operated as helplines from which children and parents can get support and advice on online related issues.⁸⁸ The programme also included support for the EUKidsOnline network,⁸⁹ and has integrated the 'better internet for kids' strategy (the BIK strategy),⁹⁰ as part of the overall EU digital single market strategy.

1.3. Preventing risk of child sexual abuse among non-offenders

Another preventive aspect tackled by the directive is the implementation of measures to ensure that persons who fear that they might offend have access to effective programmes designed to evaluate and prevent the risk of such offences being committed (Article 22). The EC transposition report underlines that only seven Member States⁹¹ have put explicit measures in place to transpose this provision, whereas the information provided by the remaining Member States was described as 'not conclusive'. As underlined in Part I, not all paedophiles become child sexual offenders, but are referred to as 'abstinent', 'passive', or 'non-offending' paedophiles.

Numerous calls from the expert community seek the development of a 'culture of prevention' around paedophilia, and advocate preventative therapy for both non-offenders and offenders alike.⁹² As noted by experts in the field, 'the stigma of paedophilia and the fear of criminal consequences often prevent non-offending paedophiles from seeking help. Non-offenders who confess sexual urges toward children are usually turned away by professionals who are untrained or unwilling to help, leaving these adults or adolescents to struggle on their own'.⁹³ Healthcare personnel attitudes to treating people at risk of committing sexual offences against children are recognised as critical in the prevention of abuse. Unprofessional, judgmental attitudes may have damaging effects, discourage help-seeking behaviour, and contribute to stigmatisation

⁸⁷ Report from the Commission to the European Parliament, the Council, the EESC and the CoR, *Final evaluation of the multi-annual EU programme on protecting children using the Internet and other communication technologies (Safer Internet)*, Brussels, 6 June 2016 COM(2016) 364 final.

⁸⁸ These Centres are operated by the INSAFE and INHOPE networks.

⁸⁹ See the [EUKidsOnline network](#) dedicated website.

⁹⁰ See the [Better Internet for Kids](#) dedicated website.

⁹¹ Austria, Bulgaria, Germany, Finland, the Netherlands, Slovakia and the UK. See: EC transposition report, COM (2016) 871, op.cit., p.18.

⁹² Moore Center for the Prevention of Child Sexual Abuse, 'Child Sexual Abuse: A Public Health Perspective', 2015; See also the reflection of the International Association for the Treatment of Sexual Offenders (IATSO), which holds regular conferences on this topic with preminent specialists.

⁹³ Muller R.T., 'Non-Offending Pedophiles Suffer From Isolation', *Psychology Today*, March 2016 op.cit.

and isolation, with the unintended consequence that more children can become victims.⁹⁴ An additional layer of difficulties is of an ethical nature: health professionals may, in some Member States, have reporting obligations in the prevention of child sexual abuse. Mental health experts have expressed concern that such requirements potentially discourage abstinent paedophiles from seeking out help that could reduce their likelihood of offending.⁹⁵ Stigmatisation of paedophiles is recognised as counter-productive, as social isolation of persons with paedophilia has negative consequences for child sexual abuse prevention.⁹⁶ In Germany, where there is no reporting obligation on therapists, interesting experiments in prevention have been put in place, in particular as part of the 'Dunkelfeld project':

Box 2: Presentation of the Dunkelfeld project

Launched in Germany in 2005, the 'Dunkelfeld project' is a European level pioneer project targeting non-offending males attracted to children. Operating within a harm reduction framework, the project offers cognitive behaviour therapy sessions. Since 2005, more than 4 000 people have sought help in one of the Dunkelfeld network's ten centres.⁹⁷ The project's initial results are encouraging: in receiving therapeutic help working on the degree of responsibility accepted in critical situations, the prevention network's experience demonstrates that it is possible to improve participants' ability to empathise with and take the perspective of a potential victim, as well as increase their sexual control and self-efficacy.⁹⁸ The development of such programmes is key to supporting, without criminalising, non-offender paedophiles, and to some extent, preventing child abuse.

Further research on the demand factor across Europe is vital to improving knowledge of people at risk of offending, offenders, and differentiated approaches towards them depending on their age, motivations and therapeutic needs.

2. After abuse has been committed: prevention of recidivism

2.1. Intervention programmes

Intervention programmes are an important component of the prevention of recidivism after abuse has been committed and a person convicted. The EC transposition report notes that the transposition of this provision remains largely 'inconclusive' across the Member States:⁹⁹

⁹⁴ See: Swedish Research Council for Health, Working Life and Welfare, 'Preventing sexual abuse of children: risk assessment and interventions for adults at risk of offending', 2015.

⁹⁵ For an illustration of these tensions, see this press article published in 2016, with testimonies from health professionals in the USA.

⁹⁶ Jahnke S, Imhoff R, Hoyer J., Stigmatization of people with pedophilia: two comparative surveys, *Archives of Sexual Behavior*, 44(1), p.21-34, 2015.

⁹⁷ See this press article from the AFP published in May 2016.

⁹⁸ See Beier KM. et al., The German Dunkelfeld project: a pilot study to prevent child sexual abuse and the use of child abusive images, *Journal of Sexual Medicine*, 12(2), 2015, p.529-542.

⁹⁹ See: EC transposition report, COM (2016) 871, op.cit., p.18.

- Availability of effective intervention programmes or measures does not seem to be guaranteed across all Member States;
- Access to intervention programmes or measures does not seem to be ensured for persons subject to criminal proceedings across Member States, as required by Article 24(3);
- The transposition of a risk assessment approach, as required under Article 24(4) is found in a very limited number of Member States.
- The convicted individuals' rights to be informed and to give consent to a participation in an intervention programme does not seem to be guaranteed across the Member States.

On the other hand, Member States appear to have transposed Article 24(2) of the directive, which requires that the intervention programmes or measures meet the specific developmental needs of children who sexually offend, more clearly. According to the EC report, Member States have transposed this provision through various means, such as legislation, a combination of legislation and other legal instruments, or other measures.

In practice, although all Member States have some form of intervention programme for convicted offenders, their availability across domestic structures (prisons, probation centres), and their content, vary enormously. Intervention programmes range from one-off face-to-face sessions to long-term psychotherapy, from psychoanalysis to cognitive behavioural therapy, and from therapy to chemical interventions and, sometimes, irreversible surgical treatments.¹⁰⁰ Some of these programmes are offered on a voluntary basis; others are made compulsory. Concerning the latter, concerns have been raised in Poland over chemical castration imposed on certain convicted offenders.¹⁰¹ In Germany and the Czech Republic, even if rare and not compulsory, surgical interventions remain possible. The practice of irreversible surgery is highly controversial in Europe: the Council of Europe's Anti-Torture Committee has on numerous occasions described such practice as 'invasive, irreversible and mutilating'.¹⁰²

On the other hand, interesting data, underlying encouraging approaches that have given promising results in reducing recidivism, are found in Spain, in the UK, and in Belgium.

In Spain, specific intervention programmes target child offenders. This includes the programmes developed by the Agencia de la Comunidad de Madrid para la redución del menor infractor – the agency for reinsertion of child offenders in the Madrid region – including the DIAS programme (*Programa de Desarrollo Integral Para Agresores Sexuales*).¹⁰³

¹⁰⁰ Treatments can include chemical castration or surgical castration. Chemical castration involves administering medication, via injection or tablets, to remove sexual interest and make it impossible for a person to perform sexual acts. The effects are reversible, once the person stops taking the drug. Physical castration removes the testicles, and the effects are irreversible.

¹⁰¹ In 2010, Poland became the first country in Europe to make chemical castration compulsory for certain sex offenders. Under the law, some convicts are required to take drugs to reduce their sex drive on their release. Courts are required to consider the opinions of psychiatrists before ordering chemical castration. See this [press article](#) published by the BBC in June 2010.

¹⁰² See for instance the [2015 CoE CPT report](#), referring to the Czech Republic at Paragraph 42.

¹⁰³ Agencia de la Comunidad de Madrid para la redución del menor infractor (agency for reinsertion of child offenders in the Madrid región), *Programa de Desarrollo Integral Para Agresores Sexuales*.

The DIAS programme has developed specific and tailored measures and individualised protocols for children convicted of child sexual abuse, especially those aged from 14 to 18 years. The programme was developed according to the profile of the offenders: these include specific programmes for offenders who have abused an individual of a similar age, or an adult, and for offenders who have abused younger victims. The programme starts from the viewpoint that the teenage years are key to the development of adult behaviour. The objectives of the programme are to develop education in sexuality, to raise awareness on the importance of consented sexual relationships, and to raise self-esteem. It further aims at developing anger and violence management. Interventions combine individual and group therapies. Collaboration with the offenders' family members is an integral part of the programme. According to a report released in 2012,¹⁰⁴ a three-year follow-up of a group of 39 minor sexual offenders was undertaken for three years after the offenders followed the programme above. In this group, 27 benefited from the full treatment programme (the remaining offenders could not finish the treatment because of transfer to other structures, or the short duration of imposed measures). Among the 27 offenders, none of them re-offended sexually during the three years post-treatment follow-up. However, seven did commit other types of crimes, such as robbery with use of violence.

In Belgium, a report released in 2011 showed that therapeutic treatments with offenders in prison have a positive impact on recidivism after their release.¹⁰⁵ The study showed that, compared to an internationally recognised average rate of recidivism in the field of child sexual abuse of 10-15 % after five years,¹⁰⁶ Belgium has a rate of 7.9 % after six years, which suggests that available treatments contribute positively to preventing recidivism. A second evaluation phase followed 131 convicted offenders who were offered treatment during their stay in prison between 2009 and 2013. The report is to be released in December 2017.

In the United Kingdom, a range of sex offender treatment programmes (SOTP) are available, providing a menu of treatments, offered according to the level of risk and offender's needs. In addition to these programmes, the UK has created specialist treatment centres for rehabilitation, such as the centre at Whatton (Nottinghamshire), which is Europe's biggest prison for sex offenders.¹⁰⁷ Since the 1990s, this centre has pioneered a new approach to rehabilitation, working with probation staff, academics, police and NGOs. Some of the organisations involved claim that such an approach,

¹⁰⁴ Ibid, p.46-47.

¹⁰⁵ See: Centre de Recherche en Défense Sociale et Unité de Psychopathologie Légale, Étude du parcours post institutionnel d'Auteurs d'Infractions à Caractère Sexuel (AICS) suite à la prise en charge post pénitentiaire en Région Wallonne. Évaluation en continu des caractéristiques délictueuses, des aspects diagnostiques, de l'environnement social et de la prise en charge des AICS au sein d'équipes de Santé Spécialisées en Région Wallonne, 2011.

¹⁰⁶ Overall, follow-up studies typically find sexual recidivism rates of 10-15 % after five years, 20 % after 10 years, and 30-40 % after 20 years. See: Hanson R K, Morton K E, Harris A J, 'Sexual offender recidivism risk: what we know and what we need to know', *Annals of the NY Academy of Sciences*, 2003. More recent findings suggest that sexual recidivism rates among child sexual offenders range from 5 % after 3 years to 24 % after 15 years, see: results of the US SMART project, Chapter 5, 2014.

¹⁰⁷ For an exploration of this initiative, see this press article published by the BBC in March 2015.

developed in rehabilitation centres, produces an '83% reduction in reoffending rates among the sex offenders it takes on'.¹⁰⁸

However, although some data showing promising results are now available, comparable data across the EU are scarce and, most importantly, further evidence is required to identify the programmes that have a durable impact on prevention. A systematic review of scientific evidence related to various intervention programmes developed worldwide to treat juvenile and adult offenders has recently been undertaken by the Swedish Research Council for Health, Working Life and Welfare (FORTE). The results are presented in a report released in 2015,¹⁰⁹ which shows very mixed results and no clear consensus on what works in terms of intervention programmes. The overall conclusion of the report is that the evidence is insufficient to determine the effects of such interventions in preventing sexual abuse of children. This conclusion applies to both psychological, and medical or pharmacological treatments.

Despite these mixed conclusions, scientific reviews in the field¹¹⁰ also underline practices that have had encouraging results:

- Intervention programmes aiming at reducing recidivism seem to have better results if they take the individual therapeutic needs of the offenders into account: research on sex offender treatment indicates that treatment may be more successful if it follows the 'risk, need and responsiveness' (RNR) model.¹¹¹ Risk assessment (see 2.2 below) should therefore always be sensitive to the particular circumstances and history of the individual.
- A general consensus has emerged among health professionals on the need to develop multi-systemic types of therapy with offenders, i.e. treatment programmes that are intensively family and community-based and that focus on addressing all environmental systems that impact criminal behaviour. Multi-faceted interventions appear to increase opportunities for effective intervention with offenders. Such interventions are tailored to the individual, and incorporate an individualised programme that also works with the individual's wider social environment of family, school and peers.¹¹²
- Growing attention among the scientific community is paid to more holistic and human rights-based approaches towards offenders, such as the 'good lives model' (GLM) approach, developed more than a decade ago in New Zealand. This model focuses on enhancing offenders' lives and constitutes a positive rehabilitation approach for working with sexual offenders. Research literature

¹⁰⁸ See the [Report](#) published in The Guardian in March 2015.

¹⁰⁹ Swedish Research Council for Health, Working Life and Welfare, '[Preventing sexual abuse of children: risk assessment and interventions for adults at risk of offending](#)', 2015.

¹¹⁰ Ibid. See also: Report of the SOMECEC - Serious offending by Mobile European Criminals (an EU funded Project): '[What Works in work with Violent Offenders. An Overview](#)', 2015.

¹¹¹ RNR model is focused on identifying and targeting criminogenic factors (i.e., dynamic risk factors that include deviant sexual arousal, antisocial attitudes, negative social influences, and employment instability) to reduce the likelihood of the individual engaging in future sexual offending behaviour.

¹¹² See SOMECEC overview, op.cit., p.28.

suggests that appropriate integration of the GLM concepts into treatment programmes has the potential to enhance treatment engagement and improve the outcomes for the participants.¹¹³ However, further research would be required to establish whether GLM-consistent programmes provide significant reductions in recidivism.¹¹⁴

2.2. Risk assessment approaches

Risk assessment is an attempt to evaluate the likelihood that someone who has already abused will do the same thing, or something similar, again. Article 24(4) of the Child Sexual Abuse Directive, provides that 'Member States shall take the necessary measures to ensure that the persons referred to in paragraph 3 [of the directive] are subject to an assessment of the danger that they present and the possible risks of repetition of any of the offences referred to in Articles 3 to 7 [of the directive], with the aim of identifying appropriate intervention programmes or measures'.

Two general models are found throughout the Member States' instruments and tools developed in the last three decades to accurately predict risk for sexual recidivism: the actuarial model, and the clinical model. Following the actuarial model, risk estimate is based on statistical comparison between the characteristics and past behaviour of the individual and of known recidivists. According to the clinical model, risk estimate is based on observation and professional judgement.

A range of tools for assessment and intervention with children and young people who display sexually harmful behaviour have been developed and are used across Europe and beyond. They range from guidelines to checklists, lists of risk factors to prediction scales.¹¹⁵ According to a review of the scientific literature, if these tools have made an important contribution to risk assessments, their ability to guide future action is limited, as they are often based on historical information, so cannot be used to measure change in risk over time.¹¹⁶ Therefore, systematic instruments or tools for assessing risk of sexual recidivism in child sexual offenders appear to have moderately high predictive values or precision in determining the risk of reoffending, and none of the modern risk assessment instruments targeting this population is clearly superior to others.¹¹⁷ The expert community in this field often underlines the need to acquire a greater understanding of the dynamic influences on risk, guided by tools that support structured professional judgement.¹¹⁸ 'One-size-fits-all' approaches to risk assessment related to re-offending –

¹¹³ Chu C. M., and Ward T., 'The good lives model of offender rehabilitation: Working positively with sexual offenders', in N. Ronel and D. Segev (eds.), *Positive criminology: The good can overcome the bad*, Abingdon, UK: Routledge, 2015, p. 140-161.

¹¹⁴ Swedish Research Council for Health, Working Life and Welfare Report, 2015, op.cit.

¹¹⁵ The most commonly used tools include: Offender Group Reconviction Scale (OGRS), Psychopathy Checklist Revised (PCL-R), Risk Matrix 2000, Violence Risk Appraisal Guide (VRAG), Classification of Violence Risk (COVR), Historical Clinical Risk Management – 20 (HCR-20), Violence Risk Scale (VRS), Short Term Assessment of Risk and Treatability (START). For a review, see: SOMEK overview, op.cit., p.18.

¹¹⁶ Ibid.

¹¹⁷ Swedish Research Council for Health, Working Life and Welfare Report, 2015, op.cit.

¹¹⁸ Ibid.

often found in actuarial assessment grids – does not seem to be efficient, and more well-researched multi-approaches are needed to incorporate both static and dynamic risk factors.

2.3. Assessment of intervention programmes and risk-based approaches

The scientific community has widely acknowledged the need for more high-quality studies on treatment effectiveness and risk assessment approaches, which is key for both policy and practice. More empirical evidence that specifies what works for certain types of offenders, and in which situations, is required. Efforts in comparable data collection at the EU level would be helpful for assessing intervention programmes in the course of, or following, criminal proceedings, as required by the directive.

Responding to this need for more research would help to develop evidence-based programmes, in a context where a general imbalance between preventive and protective services is found at both the European and international levels. As noted in the WHO 2013 report on preventing child maltreatment, European countries, as in many other countries in the world such as the USA, tend to prioritise child protection (once the abuse has been committed) over prevention.¹¹⁹ The report further notes that this imbalance between preventive and protective services may be increasing in some countries, due to budgetary cuts.

Given the enduring impact sexual abuse can have on its victims, prevention measures at different levels are a public health issue. The collection and gathering of comparable data across the EU would be extremely helpful to building a consensus on effective intervention programmes and identifying good practices.

3. Preventing access to online child sexual abuse materials

Preventing access to sites with child sexual abuse content is another important component of prevention measures. In this field, the role of the private sector is key. The provisions laid down in the E-commerce Directive constitute the basis for the development of notice and takedown procedures for illegal content. At the EU level, ICT industry and private sector involvement in the prevention of child sexual abuse takes various forms, including self-regulatory and co-regulatory initiatives.

Self-regulatory initiatives¹²⁰ in the private sector include the CEO Coalition (a cooperative voluntary intervention designed to respond to emerging challenges arising from the diverse ways in which young Europeans go online), the ‘Alliance to better protect minors online’ (aiming at improving the online environment for children and young people), the ‘European Framework for Safer Mobile Use by Younger Teenagers and Children’, and the ‘Safer Social Networking Principles for the EU’ (an agreement signed by the major social networking service providers active in Europe, committed to implementing measures to ensure the safety of minors using their services).¹²¹

¹¹⁹ Ibidem.

¹²⁰ These initiatives are presented in the European Commission’s presentation of a self-regulation for a ‘better internet for kids’. See: *Self-regulation for a Better Internet for Kids*, [EC Website](#).

¹²¹ These principles are available [online](#).

The co-regulatory approach includes the European Financial Coalition (EFC),¹²² which brings together key actors from law enforcement, the private sector and civil society in Europe, with a shared objective to fight the commercial sexual exploitation of children online. Members of the EFC join forces to take action against the payment and ICT systems that are used to run these illegal operations.¹²³ Europol's EC3 is currently chairing the EFC and a number of strategic assessments on commercial sexual exploitation of children online have been issued in the last few years.¹²⁴

Another illustration of this approach is found in the establishment of hotlines in all EU Member States as a one-stop shop for reporting illegal content online. These hotlines are coordinated by INHOPE, which represents a network of 51 hotlines in 45 countries, including all EU Member States and is supported by the safer internet programme mentioned above. As underlined by the EC report, the hotlines have memoranda of understanding with their corresponding national law enforcement agencies (LEAs), which set out procedures for handling the reports received from internet users.¹²⁵ These hotlines ensure that the matter is investigated and, if found to be illegal, the information is passed to the relevant LEA, and in many cases the internet service provider hosting the content, as described in a hearing organised by the Group of the European People's Party (EPP) at the European Parliament in June 2016.¹²⁶ However, as described in Part IV, memoranda of understanding between hotlines and law enforcement authorities encounter limitations and challenges, and the current state of play appears unsatisfactory in the context of a lack of harmonised approaches in the Member States towards the removal and blocking of illegal content in accordance with Article 25 of the directive. This article has generated a separate and dedicated transposition report from the European Commission,¹²⁷ and was explored in a study for the European Parliament.¹²⁸

The EC transposition report notes that about half the EU Member States have chosen to apply optional blocking measures. The report also notes that Member States have adopted two types of measure to ensure the prompt removal of web pages containing or disseminating child pornography hosted in a Member State's territory: measures based on Directive 2000/31/EC 16 (E-commerce Directive), and measures based on national criminal law. This lack of a harmonised approach at EU level regarding removal and blocking of online content is partly explained by ongoing debates largely based on

¹²² See the European Financial Coalition [website](#) for further information.

¹²³ Membership of the EFC includes, among others, Europol, Eurojust, International Center for Missing and Exploited Children, Missing Children Europe, Google, VISA, Paypal, Mastercard, Microsoft, INHOPE, Internet Watch Foundation, EPCAT and various national competent authorities from EU Member States.

¹²⁴ Jeney P., *Combatting child sexual abuse online*, op.cit.

¹²⁵ Report from the Commission to the European Parliament and the Council assessing the implementation of the measures referred to in Article 25 of Directive 2011/93/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, COM(2016) 872, op.cit

¹²⁶ [EPP Hearing on Combatting sexual abuse of children on the internet](#), 29 June 2016

¹²⁷ Report from the Commission to the European Parliament and the Council assessing the implementation of the measures referred to in Article 25 of Directive 2011/93/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, COM(2016) 872, op.cit.

¹²⁸ Jeney P., *Combatting child sexual abuse online*, op.cit.

proportionality grounds. The difference between removing and blocking a website is the following: removing a website ensures complete eradication of its content, while blocking a website renders its content (temporarily) inaccessible. Blocking, especially if insufficient safeguards are in place to authorise it, is considered to bear the risk of possible interference with the right to freedom of expression, for instance by occasionally also blocking legitimate content. Many experts have recalled that any interference with online content must be clearly prescribed by law, have a legitimate aim and, most importantly, be proportional and not go beyond what is necessary to achieve that aim. As a result of these controversies, Article 25 of the directive is particularly cautious on the issue of blocking. While Member States are required to take 'the necessary measures to ensure the prompt removal of web pages containing or disseminating child pornography hosted in their territory and to endeavour to obtain the removal of such pages hosted outside of their territory', they are encouraged (but not required) to 'take measures to block access to web pages containing or disseminating child pornography towards the internet users within their territory'. Furthermore, the directive provides that 'the [blocking] measures must be set by transparent procedures and provide adequate safeguards'.

Arguments in favour of blocking measures include the speed of preventing access to illegal content: the time needed to block is counted in minutes, whereas removal is counted in days.¹²⁹ Arguments against blocking range from the fundamental rights concerns mentioned above, and the technical inefficiency of blocking since, from a technical point of view, blocking methods can all be circumvented easily with the use of widely available technologies, such as encryption or proxy servers.¹³⁰

The recently adopted Directive on Combatting Terrorism nevertheless confirmed an EU approach in favour of removal and optional (non-mandatory) blocking of illegal content.¹³¹

The EC report notes that most Member States have adopted criminal law provisions which allow for the removal of illegal content hosted in their territory, but also outside their territory. The report however underlines that some Member States do not seem to have takedown mechanisms or lack criminal law provisions to specify prompt removal.¹³² This appears to be an element of unsatisfactory implementation of the directive as, as is correctly underlined in the European Commission report, 'harm is caused not only when the abuse is actually recorded or photographed, but also every time the images and videos are posted, circulated and viewed. For the victims, the realisation that the images and videos in which they are abused are "out there", and that they could even encounter someone who has seen the material, is a major source of trauma and additional suffering'.¹³³

A related fundamental discussion concerns the responsibilities for upholding the law that should, or should not, be given to the private sector. At the time of the negotiations on

¹²⁹ Jeney P., *Combatting child sexual abuse online*, op.cit.

¹³⁰ See: Demeyer K. et al., 'Blocking and Removing Illegal Child Sexual Content: Analysis from a Technical and Legal Perspective', *Policy and Internet*, 4 (3-4), 2012.

¹³¹ See, in particular, recital 22 of the Directive.

¹³² *Ibid.*, p.9.

¹³³ See: EC transposition report, COM (2016) 871, p.3.

the directive, the European Data Protection Supervisor (EDPS) for example, raised questions as regards the role of the private sector in a law enforcement context – as those implied by blocking measures require the full involvement of internet service providers. The EDPS raised strong doubts regarding the legal certainty of any blocking operated by private parties.¹³⁴ In addition, several calls have been made in the last decade to make the private sector more accountable, including through legally binding requirements, for preventing sexual exploitation of children through information and communication technologies.¹³⁵ These discussions on online content regulation will undoubtedly continue to fuel debates in the coming years.

4. Child protection: monitoring offenders

4.1. Disqualification arising from convictions

Despite a lack of consensus on the efficiency of intervention programmes in the prevention of child sexual abuse, and on the best ways to prevent access to sites with child sexual abuse content, preventing an individual who has been convicted of child sexual abuse from temporarily or permanently exercising professional activities involving direct and regular contact with children is a widely accepted measure across the EU. This measure is provided in Article 10(1) of the Child Sexual Abuse Directive and appears to have been adequately transposed by the vast majority of Member States (where temporary, permanent exclusion, or a mix of both are found).¹³⁶ Similarly, most Member States have put measures in place to ensure that employers are entitled to request information on criminal convictions or disqualifications when recruiting for professional or voluntary activities – a requirement provided by Article 10(2) of the directive.

As regards disqualifications arising from convictions, the following aspects can be underlined:

- EU Member States have adopted either judiciary (whereby the disqualification arises from convictions as an additional part of the sentence delivered by the criminal courts), or regulatory disqualification (whereby the disqualification, while still linked to the conviction, is established by a regulatory system administered by public authorities, with possible assistance of private bodies).¹³⁷

¹³⁴ Speaking points: Giovanni Buttarelli at LIBE hearing on combating sexual abuse, sexual exploitation of children and child pornography, Tuesday 28 September 2010.

¹³⁵ See for example: ECPAT International Submission to the Office of the High Commissioner for Human Rights, 2016.

¹³⁶ EC transposition report, COM (2016) 871, p.16-17.

¹³⁷ See: *A survey on the transposition of Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children and child pornography*, op.cit. According to the Report, this concerns Estonia, Ireland, Slovenia, Sweden and the UK.

- The length of these disqualifications varies across the Member States: they are either temporary, permanent, or a mix of both.¹³⁸
- Almost all Member States have opted for some form of compulsory screening of employees working with children at recruitment,¹³⁹ going beyond the directive's requirement, which only entitles employers to request information on previous convictions. However, the features of this screening vary considerably across the Member States. In Member States where screening is mandatory, this obligation does not always cover both professional and voluntary activities. Furthermore, this obligation is sometimes restricted to specific activities, such as institutions providing care for children or education.¹⁴⁰
- In terms of process, in most of the Member States, required applicants have to obtain a copy of their criminal record from the competent authorities and provide a copy. Employers only rarely have direct access to criminal records. In many cases however they can request and obtain information from the competent authorities.¹⁴¹

In terms of screening, the survey on transposition of the directive conducted in 2015 by several NGOs describes the system in the Netherlands in particular. The survey notes that 'from the point of view of the screening mentioned in para. 2 of Art. 10 of the Directive, the Dutch system presents three important features:

- It is based on a very balanced analysis, integrating "objective" and "subjective" criteria, of the potential risk presented by the employment of the convicted offender;
- It includes a "continuous" screening mechanism with regard to persons active in child care and supervision, child playground activities or "guest parenting". Any relevant change in the "judicial information" kept and monitored on convicted persons will be immediately forwarded to the Judicial Information Service. If it concerns persons active in child care and supervision, child playground activities or "guest parenting", it will then be communicated to Justis (the screening authority);
- It will then be the responsibility of Justis to decide whether the person concerned has to be screened again. If this is the case, the employer will be informed that the person concerned needs to apply for a new certificate of conduct. The examination of that application will be based on the entire file of that person, not exclusively on the most recent developments'.¹⁴²

¹³⁸ In Italy for instance, only permanent disqualification is applicable, whereas they are optional in other Member States such as Austria, Croatia, and Germany. For Member States who only apply temporary disqualifications, the length varies greatly: 1-20 years in Belgium, up to 10 years in the Czech Republic, 3 months to 20 years in Spain. See *A survey on the transposition of Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children and child pornography*, op.cit., p.29.

¹³⁹ With the exception of Luxembourg, Poland and Romania. See Ibid., p.33.

¹⁴⁰ Ibid., p.33.

¹⁴¹ Ibidem, p.35.

¹⁴² See: *A survey on the transposition of Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children and child pornography*, op.cit., p.37-38.

The Dutch system is here described as ‘very thorough’, because it takes into account the ‘balancing of the interest of the person concerned and of the protection of society’.¹⁴³ This delicate balance is indeed difficult to strike concerning disqualification arising from convictions. Similar mechanisms developed in some Member States aim at safeguarding this balance. In the above-mentioned survey, Austria is underlined as an example.¹⁴⁴ In Austria, disqualification is limited to one to five years. Indefinite period only applies when the risk of recidivism is recognised as high. In this case, disqualification is assessed every five years by a Court that takes into account a number of circumstances, including if the person has successfully undergone therapy.

4.2. Sex offender registries

In Recital 43, the Child Sexual Abuse Directive provides that ‘Member States may consider adopting additional administrative measures in relation to perpetrators, such as the registration in sex offender registers of persons convicted of offences referred to in this directive. Access to those registers should be subject to limitation in accordance with national constitutional principles and applicable data protection standards, for instance by limiting access to the judiciary and/or law enforcement authorities’. The main function of such a register is to monitor the reintegration into society of convicted sex offenders once they have served their sentence. Convicted sex offenders are required to notify the relevant authority of personal information, such as their name, address and date of birth, and to immediately inform this authority if their personal circumstances change.

At the international level, the most extended version of such registers is to be found in the USA, where the National Sex Offender Public Registry allows ‘parents, employers, and other concerned residents to use the website’s search tool to identify location information on sex offenders residing, working, and attending school not only in their own neighbourhoods but in other nearby states and communities’.¹⁴⁵ Since its inception, the US sex offender registry has very often been criticised as discriminatory and for its detrimental effect on reintegration of former convicts. Indeed, former offenders often face discriminatory treatment (for instance on the job market), due to the nature of their convictions, as well as social stigma even after they have served their sentence. In the USA, laws applicable to juvenile offenders also restrict where registered sex offenders can live.¹⁴⁶ The effect of publicly accessible child offender registries is said to be particularly detrimental for juvenile sex offenders, and some US states are currently rethinking policies in this field.¹⁴⁷ Human Rights Watch published a report on this particular issue in

¹⁴³ Ibid.

¹⁴⁴ Ibidem, p.29.

¹⁴⁵ See the National Sex Offender Public [Website](#) (NSOPW).

¹⁴⁶ Recent case law shows the extent of restrictive provisions in the USA: for example, in 2012 a California appellate court struck down an Orange County law which barred sex offenders from entering public parks and beaches. And in 2013, a California law requiring registered sex offenders to post signs on their front doors on Halloween was successfully challenged by Human Rights advocates. See: Mark W., ‘Sex Offenders Rally to Fight Discriminatory Laws’, *Prison Legal News*, February 2016, p.18.

¹⁴⁷ See: Pew Charitable Trust, ‘[States Slowly Scale Back Juvenile Sex Offender Registries](#)’, 2015. As noted in this report, some US courts have recognised that putting juveniles’ names and photos on a

2013, analysing the long-term negative impacts of placing children on sex offender registries.¹⁴⁸

At EU level, the Survey conducted by Missing Children Europe, ECPAT and ENASCO, suggests that at least three Member States have implemented specific sex offender registers (Croatia, France and the UK), and a fourth is currently putting similar provisions in place (Portugal).¹⁴⁹ However, unlike the USA, these registers are only accessible to specific authorities and are not open to the public. In 2014, the European Parliament considered a petition advocating the ‘creation of a European agency for the registration of paedophiles who have come into contact with the law’.¹⁵⁰ In its response, the European Commission recognised that the creation and functioning of these registers raises sensitive issues with regard to the reintegration into society of convicted offenders and data protection issues, thus requiring ‘a careful analysis of all the interests at stake and which needed further consideration’. The Commission therefore deems the consensus found in the Child Sexual Abuse Directive (an optional measure) as appropriate.

The debate around an EU-wide obligation to set up registers for child sex offenders is therefore far from being settled. A consensus is unlikely to be found on this issue, and agreement on the idea of a single Europe-wide sex offenders register is even more unlikely. On this issue, the European Commission, but also the Council of Europe,¹⁵¹ are more in favour of improving exchange of information at EU and international level, rather than establishing a centralised register.¹⁵² This aspect is described hereafter.

4.3. Exchange of information on criminal records

Article 10(3) of the Child Sexual Abuse Directive requires Member States to ‘take the necessary measures to ensure that (...) information concerning the existence of criminal convictions for any of the offences referred to in Articles 3 to 7, or of any disqualification from exercising activities involving direct and regular contact with children arising from those criminal convictions, is transmitted in accordance with the procedures set out in Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States when requested under Article 6 of that framework decision with the consent of the person concerned’.

registry – even one only available to law enforcement, as in some states – stigmatises them in their schools and neighbourhoods and makes them targets for the police, sometimes for inappropriate behaviour rather than aggressive crimes. Also of concern are laws that add youth sex offenders to adult registries once they turn 18 or 21, even though they were tried as juveniles, not adults.

¹⁴⁸ Human Rights Watch, *Raised on the Registry. The Irreparable Harm of Placing Children on Sex Offender Registries in the US*, 2013.

¹⁴⁹ See: *A survey on the transposition of Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children and child pornography*, op.cit., p.32.

¹⁵⁰ Petition 2147/2014 on registration of paedophiles in Europe.

¹⁵¹ CoE, *Reinforcing measures against sex offenders*, resolution 1733 (2010) Final version.

¹⁵² As indicated in the Commission’s reply to the Petition 2147/2014 on registration of paedophiles in Europe.

The importance of exchange of information concerning criminal records across EU Member States was particularly revealing in the *Fourniret* case, which is often referred to when exchange of information is presented in EU official documentation. In 2003, when Michel Fourniret, a French national, was arrested in Belgium for attempting to kidnap a girl, the Belgian Police discovered that, as early as 1987, Fourniret had been convicted in France of indecent assault and rape of minors. Following his release from prison after this first conviction, he moved to Belgium where he was employed in several jobs, including as a school supervisor. Only upon his subsequent arrest in Belgium, did the exchange of information between France and Belgium lead to the re-opening of former investigations of several missing children in both Belgium and France. In 2008, Fourniret was convicted for life for the rape and murder of seven women ranging in age from 12 to 21 years.

As recalled by the European Commission, 'stories such as the *Fourniret* case and numerous subsequent studies have demonstrated that national courts frequently were passing sentences on the sole basis of past convictions featuring in their national register, without any knowledge of convictions in other Member States. Consequently criminals were often able to escape their past simply by moving between EU Member States'.¹⁵³

General principles governing the exchange of information and the functioning of the system are regulated in the 2009 framework decision on exchange of information on criminal records. The European Criminal Records Information System (ECRIS) was furthermore established by the Council Decision 2009/316/JHA of 6 April 2009, in application of Article 11 of the framework decision.

ECRIS is a decentralised system: criminal records data is stored solely in national databases and exchanged electronically between the central authorities of the Member States upon request. The nationality of a person determines which Member State is the central repository of all convictions handed down to that person, regardless of the convicting Member State. Convicting Member States must notify the authorities of other EU Member States of convictions regarding their nationals. The convicting Member State authorities must store and update all information received, and communicate this when requested.¹⁵⁴ The large majority of EU Member States had implemented the system by 2012. In January 2016, the Commission adopted a report on the implementation of Council Framework Decision 2009/315/JHA,¹⁵⁵ which notes that 25 Member States now exchange information via ECRIS,¹⁵⁶ and that the annual volume of exchange reached over 1.8 million messages (including notifications, requests, and responses to requests) by the end of 2015. On average, over 24 000 requests are made each month, with over 30 % leading to a 'positive hit'.

However, despite significant progress in the exchange of information, the Commission implementation report on the framework decision on the exchange of criminal records

¹⁵³ See the EC website on [ECRIS](#)

¹⁵⁴ ECRIS mechanism is described on the [EC website](#)

¹⁵⁵ [Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from criminal record between Member States](#), Strasbourg, 19 January 2016 COM(2016) 6 final.

¹⁵⁶ Malta, Portugal and Slovenia were, at the time of the report, not yet operational.

information also reveals a wide range of practices at Member State level, as well as important shortcomings that could affect proper prevention of child sexual abuse. This concerns in particular requests for purposes other than criminal proceedings, as laid down in Article 7(2) of the framework decision that stipulates that if information is requested for purposes other than criminal proceedings, the central authorities may reply in accordance with national law.

As mentioned earlier, the Child Sexual Abuse Directive contains special provisions laying down an obligation on Member States to transmit information on criminal convictions for child sex abuse offences and resulting disqualifications (Article 10(3)), following a request under Article 6 of the framework decision on the exchange of criminal records information. The EC transposition report on the Child Sexual Abuse Directive notes here that if 'most Member States have transposed the requirement to transmit the information on criminal convictions and disqualifications in accordance with the procedures set out in the framework decision on the exchange of criminal records information, (...) a few Member States still do not seem to ensure that information is transmitted if other Member States request information on previous criminal convictions'. The report furthermore notes that, in some cases, Member States do not make sending that information a legal obligation.¹⁵⁷

As in the issues of disqualification and sex offender registers, the exchange of information on criminal records raises significant challenges related to the rights of the individuals and reintegration of former offenders. After analysing a selected list of offence codes from ECRIS, and interviewing law enforcement officials from 18 Member States and probation services representatives from 16 Member States, the EU-funded SOMEK project (serious offending by mobile European criminals), underlines that even though consensus was found that the ECRIS codes properly reflect serious violent or sexual offences, 'issues of interpretation and transferability to national legal frameworks were highlighted'.¹⁵⁸ Probation personnel argued, for instance, for further contextualisation in the information provided as part of the exchange of information, including some sort of risk assessment 'to establish whether the potential harm was still apparent, had increased, or had reduced'. They underlined that exchange of information raises ethical issues that require proper safeguards to ensure that rights to privacy and data protection are observed.¹⁵⁹

The inclusion of non-EU citizens in the ECRIS system is currently under discussion at EU level. In order to make it possible to determine whether third country nationals were previously convicted in other Member States, the Commission proposes to upgrade ECRIS to 'help Member States find out easily and quickly in which other Member States criminal record information on a third country national is stored, thus significantly

¹⁵⁷ See: EC transposition report, COM (2016) 871, op.cit., p.17. Here the report refers to Belgium, Czech Republic, Ireland, Latvia, Malta and Sweden.

¹⁵⁸ Hilder S. and Kemshall H., 'Serious violent or sexual offenders travelling across European Union Borders: Ideological and ethical challenges of information exchange', *European Journal of Probation*, 8,3, 2016, p.128-145.

¹⁵⁹ Ibid., p.133

reducing the administrative burden'.¹⁶⁰ The Committee on Civil Liberties, Justice & Home Affairs (LIBE) adopted its report on 30 May 2016, as well as a mandate to begin inter-institutional negotiations which are, at the time of writing, ongoing. In March 2017, in its Fifth progress report towards an effective and genuine Security Union, the Commission announced that it was examining technical solutions for a centralised infrastructure to support the exchange of criminal records. In view of the recommendations of the High Level Expert Group on Information Systems and Interoperability to be presented in April 2017, the Commission plans to present a modified legislative proposal in June 2017.¹⁶¹

¹⁶⁰ European Commission - Fact Sheet: ECRIS to be upgraded to allow a better exchange of criminal records relating to non-EU nationals, 2016. See also this initial appraisal of this proposed measure prepared by EPRS: Dalli H., Exchange of Information on Third Country Nationals – European Criminal Records Information System (ECRIS), PE 528.831, 2016

¹⁶¹ For a follow-up on this proposal, please consult the Legislative Train designed by EPRS

Part III: How to identify victims of child sexual abuse?

Key findings:

- (1) Child sexual abuse is a field where disclosure and reporting is particularly difficult for the victims. This raises the issue of limitation periods for launching judicial proceedings. While the Child Sexual Abuse Directive provides that Member States must allow for a sufficient period of time after the victim has reached the age of majority to launch criminal proceedings, in several Member States limitation periods may hamper victims' ability to bring a case to court at a later stage in their lives.
- (2) Educators and other professionals in close contact with children are vital in the identification of victims. Research suggests that insufficient training among key professionals is exacerbated by inadequate – or unclear – reporting procedures for incidences of child abuse at national level.
- (3) The Child Sexual Abuse Directive encourages the establishment of helplines dedicated to children who seek assistance and need someone to talk to. However, research shows that while every EU Member State has one dedicated helpline, their nature, organisation and available resources vary greatly, creating discrepancies in the help and assistance provided to children across the EU.
- (4) Investigative capabilities are crucial to identifying victims, but these are distributed unevenly across the EU. A growing number of states are dedicating resources to expanding forensic capabilities focused on victim identification (including specialised staff and software/hardware solutions), but these capabilities require considerable financial resources, and their use appears to be limited to some Member States.

Giving due consideration to the difficulties for child victims to self-report the abuse of which they are the victims (Recital 26), the Child Sexual Abuse Directive includes provisions that aim at facilitating the detection of abuse victims via reporting obligations, whether for individuals (Article 16, Recital 28), or professionals likely to come into contact with them (Article 16, Recital 36), or via the promotion of hotlines and helplines (Recital 35). The directive also stresses the importance of effective investigatory tools for law enforcement authorities (Article 15, Recital 27). The implementation of these provisions are detailed hereafter.

1. Child victims: difficulties of self-reporting

The difficulties of self-reporting sexual abuse for a child are well-documented,¹⁶² and research shows that, in addition to the general feeling of shame often felt among victims, children are reluctant to disclose their suffering for a variety of reasons:¹⁶³

¹⁶² For the state of the literature in this field : Townsend C., *Child sexual abuse disclosure: What practitioners need to know*, Charleston, Darkness to Light, 2016.

¹⁶³ Those reasons are outlined in the literature review compiled by: Townsend C., *Child sexual abuse disclosure: What practitioners need to know*, op.cit.

- Difficulties hampering disclosure include threats to the child, fear of the perpetrator, a lack of opportunity, a lack of understanding of child sexual abuse or a relationship with the perpetrator. They can also include fear of causing trouble in the family or in a social environment. For evident reasons, children who are abused by a family member are less likely to disclose and more likely to delay disclosure than those abused by someone outside the family.
- The younger the victims, the more difficulty they experience even to recognise that they are the victim of abuse: often these victims come to the attention of competent authorities through their behaviour, rather than through explicitly disclosing abuse.
- Often, victims feel a need for self-reliance or 'close off' from events, and this self-protective behaviour often leads to a minimisation of problems and operates as a barrier to disclosure.
- Research strongly suggests a gender dimension in disclosure rates: boys and men rarely report their abuse. However, while girls and women are more likely to report their abuse, they often delay disclosure because they feel responsibility for the abuse and fear not being believed.
- As further evidence of the tremendous difficulties in sharing such traumatic events, research also shows that even if evidence of abuse is provided (such as medical evidence or confession by the abuser), some children remain unwilling to disclose the abuse.
- Additional layers of complexity can arise when a child has tried to tell someone, but was not listened to: past experiences of attempts at disclosure, followed by inadequate support and help, have a significant influence on how comfortable these victims feel about talking and their willingness to trust and talk to practitioners.

Research not only shows that children encounter many difficulties in disclosing the abuse(s) from which they have been suffering; it also shows that many wait years before being able to confide in someone (if they disclose at all),¹⁶⁴ and as underlined in Part I, low disclosure rates are a defining factor of child sexual abuse.

This raises the issue of limitation periods for launching judicial proceedings (also referred to as 'prescription time') that can prevent a victim from bringing a case to court. Article 15 of the Child Sexual Abuse Directive provides the following: 'Member States shall take the necessary measures to enable the prosecution of any of the offences referred to [in the directive] for a sufficient period of time after the victim has reached the age of majority and which is commensurate with the gravity of the offence concerned'. Most of the EU Member States have limitation periods for initiating criminal proceedings. Among those, some have specific provisions for sexual crimes committed on minors. In France, for instance, crimes of sexual nature committed on minors have longer prescription limits (20 years after the victim has reached the age of majority).¹⁶⁵ In Belgium, this prescription

¹⁶⁴ Ibid.

¹⁶⁵ Article 7 du Code de procédure pénale, version en vigueur au 12 août 2011.

limit is set at 15 years after the age of majority.¹⁶⁶ The directive, while not being specific on the length of the statutory limitation, however, provides that the victims should be given 'sufficient period of time' after they have reached their majority to launch legal action. In its transposition report on the Child Sexual Abuse Directive, the Commission notes that, while most of the Member States have legislation in place that seems to allow sufficient time, in other the statute of limitations for some offences runs from the date the offence was committed, which means that 'child victims, in particular those abused at a very young age, may not have enough time after they have reached the age of majority to obtain prosecution'.¹⁶⁷

Debates over length of prescription for initiating legal action in cases of sexual abuse re-emerge regularly across the EU, particularly following widely publicised and dramatic revelations of abuse.¹⁶⁸ The debate often revolves around two opposing arguments: some argue in favour of eliminating time limits for prosecution of sex crimes, especially those committed on minors; others argue that this would undermine the very purpose of statutory limitation periods, which is to protect defendants' rights. In the specific case of sexual abuse of minors, the proponents of retaining current prescriptions stress that if these were lifted, judicial proceedings could be brought long after the circumstances which in question have passed. Furthermore, delays are likely to lead to relevant evidence being lost, thus undermining the judicial process.

As recognised by many legal experts, tackling statutory limitation periods is delicate. Nevertheless, there is a consensus that a fair balance needs to be found between statutory limits that aim at ensuring that defendants' rights are fully respected, and the general right of all victims to have their abuses recognised and determined by a court.

In that sense, the directive leaves a large margin of discretion to the Member States, while providing that the difficulties for victims to disclose their abuse must be taken into account. In its response to a petition submitted to the European Parliament that covered the 'obstacle of prescription' for the prosecution of child sexual abuse, the Commission again stressed this argument, and reminded the petitioner that the directive indeed 'obliged to enable prosecution of child sexual abuse offences for a sufficient period of time after the victim has reached the aged of majority and which is commensurate with the gravity of the offence concerned'.¹⁶⁹

¹⁶⁶ Loi de 2012 modifiant la législation en ce qui concerne l'amélioration de l'approche des abus sexuels et des faits de pédophilie dans une relation d'autorité, 2011009810.

¹⁶⁷ See: EC transposition report, COM (2016) 871, op.cit., p.12-13. Those Member States include Bulgaria, Czech Republic, Germany, Finland, Italy, Lithuania, the Netherlands and Slovakia.

¹⁶⁸ See, for a recent illustration, allegations made regarding the famous photographer David Hamilton: [Press Article](#) published in the New York Times in November 2016. Following this case, proposals in France include extending the prescription time up to 30 years after the victim has reached the age of majority.

¹⁶⁹ Petition 1238/2011 by Francesco Zanardi (Italian), on behalf of Rete l'Abuso, on combating the sexual abuse and sexual exploitation of children and child pornography, related to Directive 2010/0064, PE491.035v01-00.

2. Identifying and reporting child victims: the key role of professionals and helplines

2.1. Key professionals

Many studies have underlined the importance of understanding the dynamics of disclosure in order to develop adequate intervention strategies. There is overwhelming evidence that the vast majority of children who do disclose, do so to a friend or a peer.¹⁷⁰ Many also disclose to one or both of their parents, if the abuser is not a family member. Educators and other professionals are also key in the disclosure process, while studies show that children are reluctant to disclose their abuse to the police.¹⁷¹

Recital 36 of the directive provides that 'professionals likely to come into contact with child victims of sexual abuse and sexual exploitation should be adequately trained to identify and deal with such victims. That training should be promoted for members of the following categories when they are likely to come into contact with child victims: police officers, public prosecutors, lawyers, members of the judiciary and court officials, child and health care personnel, but could also involve other groups of persons who are likely to encounter child victims of sexual abuse and sexual exploitation in their work'. Article 23(3) also provides that Member States are required to 'promote regular training for officials likely to come into contact with child victims of sexual abuse or exploitation, including front-line police officers, aimed at enabling them to identify and deal with child victims and potential child victims of sexual abuse or exploitation'.

In 2012, a manual for policy-makers and professionals was produced as an outcome of an EU project funded under the Daphne III programme on the prevention of child abuse.¹⁷² The project compared child welfare systems in Germany, Hungary, Portugal, Sweden and the Netherlands. Despite significant variations in the welfare systems in these Member States, there were common features: all these Member States provided a range of universal and preventive services, including health care for children and young people, early child education and support, and parenting support. All countries also provided care services for victims of child sexual abuse and their families, such as psychological services and parenting programmes. However, a wide variation was found in levels of professional training and education on preventing and identifying child maltreatment.¹⁷³ The manual in particular notes that not all countries allow front-line professionals an explicit role or duty in detecting child abuse and neglect and/or train them to do so. According to the manual:

'there are several ways to ensure that all professionals working with children will play a role in detecting child abuse. This includes training to make them aware of the key signals and symptoms to look for in children, young people and in parents indicating the likelihood of different kinds of abuse. In addition, professionals in

¹⁷⁰ Townsend C., *op.cit.*

¹⁷¹ *Ibid.*

¹⁷² Netherlands Youth Institute, *Prevent and Combat Child Abuse: What works? An overview of regional approaches, exchange and research partners.*

¹⁷³ *Ibid.*, p.38-49

specific sectors need to be made aware of specific risk factors for and/or key signs and symptoms for the groups of children that they are working with.¹⁷⁴

As an addition to insufficient training in detecting child victims, the manual notes that in most Member States investigated, the reporting procedures for child abuse (i.e., notifying the competent authorities of possible child abuse or neglect) were not always adequate.¹⁷⁵ Article 16 of the Child Sexual Abuse Directive on that matter does not impose mandatory reporting, but ensures that confidentiality rules imposed by national law on certain professionals whose main duty is to work with children do not constitute an obstacle to the possibility, for those professionals, of their reporting to the services responsible for child protection any situation where they have reasonable grounds for believing that a child is the victim of sexual abuse.

The manual underlines that there are great differences for whom there is mandatory reporting and where to make these reports. Portugal is the only country where there is mandatory reporting for everyone, professionals as well as all other stakeholders. However, in various countries, including Sweden, they are encouraged to do so. In some countries, there are repercussions for professionals for not reporting. For example, in Germany, professionals can be prosecuted, if they grossly disregard their obligation to act. There are also repercussions for 'non reporting professionals' in Hungary.

Reasons for not reporting include a lack of awareness of the signs of child maltreatment and of processes for reporting to child-protection agencies. To overcome these difficulties, it is noted that professionals in all sectors need to know which steps to take as a professional, whether alone or in conjunction with others, including where to report their suspicions.

Best practice in the field of detection and proper reporting has been identified in this context in the Netherlands, where the 'RAAK' approach is used ('Raak' means 'effective', or 'on target' in Dutch). The RAAK approach promotes agreements between local and regional partners, as well as training and education of professionals.¹⁷⁶ Between 2003 and 2006, the approach was tested in four regions, with very promising results.¹⁷⁷ The approach was then adopted nationally. The two main goals of the RAAK approach are:

- Every professional working with children must have enough knowledge and skills to recognise child abuse and neglect, and depending on their function, also to stop child abuse and neglect and/or treat the consequences;
- Every professional works in accordance with the regional action protocol. Who does what and when after detection of signs of child abuse and neglect is described in this protocol.

¹⁷⁴ Ibid., p.12.

¹⁷⁵ Netherlands Youth Institute, *Prevent and Combat Child Abuse: What works? An overview of regional approaches, exchange and research partners*, op.cit.

¹⁷⁶ Netherlands Youth Institute, *Combating child abuse and neglect in the Netherlands*, 2011.

¹⁷⁷ Ibid.

Furthermore, in the Netherlands there is a single one-stop-shop reporting service: if professionals do suspect child sexual abuse, they can report their suspicions to the Advice and Reporting Centre on child abuse (AMK), or receive advice from them on their possible role and options. In November 2011, the Dutch government launched a new action plan against child abuse: 'children safe', and established a Children's Ombudsman.¹⁷⁸ The Netherlands is also the promoter of the European Conference on Child Abuse and Neglect (EUCCAN), a conference organised every two years that brings together a wide range of specialists in the field of child abuse and neglect, ranging from paediatricians to social workers to lawyers.

2.2. Helplines

As an addition to the promotion of adequate reporting among professionals in regular contact with children, the Child Sexual Abuse Directive also encourages the establishment of helplines, also called hotlines, (Recital 34) and recalls that hotlines under the numbers 116 000 for missing children, 116 006 for victims of crime and 116 111 for children¹⁷⁹ should be promoted.

The 116 111 number is specifically for children to seek assistance and find someone to talk to. The service helps children in need of care and protection, and links them to the appropriate services and resources; it provides children with an opportunity to express their concerns and talk about issues directly affecting them.¹⁸⁰ This naturally includes sexual abuse.

The Child Helpline International Foundation (CHI) is a global network with 181 members in 139 countries (as of December 2016). Throughout the EU, every Member State has one dedicated helpline. However, child helplines across the EU differ widely, especially as regards the nature of the organisation and its position in the overall child protection system, funding structures, human resources, and means of communication and hours of operation. A report released in 2016 by the Child Helpline International Foundation focusing on Croatia, Denmark, France and Poland notes the following:¹⁸¹

- The same contact number (116 111) is not used in all Member States;
- Helplines across the EU are either non-governmental structures or embedded in governmental structures: this can affect the funding structure of the helpline, but also its position in the overall child protection system;
- Part of the role of helplines is to convince, if required, a child to consent to a referral to competent authorities. In some Member States, the decision-making process with regard to referrals is prescribed by law (such as in France). In others, there is no overall coordination of referrals within the child protection systems;

¹⁷⁸ For recent information (in Dutch) see: <http://www.stopkindermishandeling.nl/>.

¹⁷⁹ As introduced by Commission Decision 2007/116/EC of 15 February 2007 on reserving the national numbering beginning with 116 for common numbers for harmonised services of social value.

¹⁸⁰ See the DG MARKT [dedicated webpage](#).

¹⁸¹ Child Helpline International, *The importance of Child Helplines for Child Protection in Europe*, 2016.

- Some Member States have some protocols with the authorities (with child protection services and/or with the police), but some have none;
- Functioning of child helplines across the EU differs, including in the means of communication (some have, in addition to phone calls, expanded possibilities to receive text messages, use online chats.) and hours of operation (some are available 24/7, but not all).

The main challenges of helplines in the EU are recognised as: uncertainty on positioning of child helplines within national child protection systems; few cooperation agreements and protocols with other parts of child protection systems (which may impede the processes of referral, feedback and follow-up); and the lack of 24/7 helpline availability.¹⁸² The Child Helpline International Foundation presented its report to the Intergroup on Children’s Rights of the European Parliament in June 2016.

Child helplines must be distinguished from the hotlines dedicated to the reporting of online child sexual abuse described above (see Part II, Section 3). Such hotlines, gathered in the INHOPE network, offer the public anonymous reporting of internet material, including child sexual abuse material they suspect to be illegal.

3. Limits of law enforcement capabilities in detection of victims online

In Article 15(4), the Child Sexual Abuse Directive requires Member States to ‘take the necessary measures to enable investigative units or services to attempt to identify the victims of the offences referred to in Articles 3 to 7, in particular by analysing child pornography material, such as photographs and audiovisual recordings transmitted or made available by means of information and communication technology’.

The EC transposition report of the directive notes on this aspect that, whereas most Member States have measures in place that transpose this provision, for at least nine Member States,¹⁸³ the information provided was not conclusive. The survey on transposition of the directive conducted in 2015 by several NGOs notes that, except for Cyprus and Greece who seem to have opted for a formal transposition of Article 15(4), other Member States have only referred to the general provisions of their criminal code and code of procedure, to conclude that they correctly transposed the directive in their national law.¹⁸⁴

At the EU level, the limits to law enforcements’ investigative capabilities appear clearly. Some Member States have developed dedicated operational systems aimed at identification of child victims, but most do not have specialised investigative services.¹⁸⁵ Furthermore, not all Member States have provisions in their national law that allow for covert surveillance to support the investigation of online sexual offences against minors,

¹⁸² Ibid., p.22.

¹⁸³ See: EC transposition report, COM (2016) 871, op.cit, p.13. The report here refers to: Bulgaria, Czech Republic, Estonia, France, Hungary, Ireland, Lithuania, Portugal, Slovakia and the UK (Gibraltar).

¹⁸⁴ See: *A survey on the transposition of Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children and child pornography*, op.cit., p.42.

¹⁸⁵ Interviews conducted at Europol and Eurojust, July 2016.

whereas this method is seen as efficient in identifying individuals attempting grooming, for instance.¹⁸⁶

Good practice in the conduct of online investigations has been identified in Germany, the Netherlands, Sweden and the UK.¹⁸⁷ However, in these Member States, it is noted that investigators face important difficulties, notably a lack of resources and proper training.

Two of the main objectives of the 'WePROTECT' (Global Alliance to End Child Sexual Exploitation Online) are dedicated to enhancing efforts to identify victims and prosecute offenders. The 'WePROTECT' initiative is the result of the merger of WePROTECT and the Global Alliance Against Child Sexual Abuse Online. This latter initiative was launched by Attorney General Eric Holder and Commissioner Cecilia Malmström in December 2012, with the aim of uniting decision-makers around the world in a commitment to more effectively identifying and rescuing child sexual abuse victims, investigating and prosecuting online exploitation offences, increasing public awareness of the risks posed by children's online activities, and reducing the amount of child sexual abuse images available online. In its 2015 report, the Global Alliance¹⁸⁸ reported back on specific actions taken worldwide to improve victim identification. These include the mainstreaming of victim identification into investigations and prosecutions, the improvement of forensic capabilities, and increased use of the INTERPOL database.

As regards forensic capabilities, the report notes that a growing number of states are dedicating resources to expanding forensic capabilities focused on victim identification. Such capabilities include specialised software and hardware solutions, designed to reduce the time needed to evaluate image and video files, forensic tools that enable investigators to focus on images containing unidentified victims when examining a large collection of child exploitation images seized from an offender, or image analysis tools that focus on the child pornography images most likely to hold clues related to their initial production, thereby enhancing victim-identification efforts.¹⁸⁹ Another example of forensic tool is the establishment of a secure national database of child exploitation images, accessible to all local police forces, which categorises images to increase the efficiency of investigations and enable law enforcement to devote more resources to victim identification.

However, these forensic capabilities require important financial resources, and their use appears to be limited to some Member States (the Global Alliance refers for instance to the UK, Norway, and Belgium).

As the online environment spans various jurisdictions, as do child sexual abuse materials, interconnecting victim databases is important to facilitating their identification. The international child sexual exploitation (ICSE) database, managed by INTERPOL and funded by the European Commission, is thus seen as key to allowing specialised investigators to share intelligence and leads with colleagues worldwide. The Global

¹⁸⁶ Interview with Europol, July 2016.

¹⁸⁷ See: *A survey on the transposition of Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children and child pornography*, op.cit.

¹⁸⁸ Global Alliance Against Child Sexual Abuse Online, *Annual Report*, 2015.

¹⁸⁹ The report refers in particular to 'NetClean Digital Investigator'.

Alliance report notes that, as of April 2015, the database included information on more than 6 300 identified child sexual abuse victims from over 40 countries, as well as many unidentified victims. The database includes both victim images and the hash values (a unique string of characters generated by an image or video file; essentially, digital DNA), associated with each victim. As further noted in the Global Alliance report, ICSE uses image comparison software to make connections between victims, abusers and the location that the offence occurred. According to the report, the total number of identified victims contained in the database more than doubled between the end of 2012 and April 2015 (from 2 891 to 6 301).¹⁹⁰ INTERPOL is also developing a project that involves the monitoring of websites to develop a 'worst of' list of sites that are illegal in all countries.

At EU level, the Europol 'Focal Point Twins Unit' plays a crucial role in enhancing identification of victims across the EU. In addition to coordination support for investigations, this Unit provides Member States with forensic capabilities, including equipment such as tools allowing the identification of GPS data on the content, or recognition of camera origin and serial number. The Unit has a Victim Identification Taskforce (VIDTF), which is activated during regular operations. During these 'action days' (the third and latest of which, VIDTF3, was organised in January-February 2017),¹⁹¹ experts from Member States, third countries and INTERPOL, join forces to identify victims of child sexual abuse and exploitation. As a result of VIDTF3, victims of this damaging crime have been located living in several countries in the EU and beyond. The different teams uploaded 265 new contributions to the ICSE database, and made more than 350 additions to existing contributions, thereby increasing the chances of the depicted victims being identified and safeguarded. In the cases of victims based in third countries, Europol, as an addition to regular cooperation with INTERPOL, maintains points of contact with local law enforcement agencies and NGOs. The role of this Unit in supporting child abuse investigations is described further in Part IV.

Proper victim identification and detection is vital to ensuring protection for children in need and to assist during criminal investigations and judicial proceedings, as described below.

¹⁹⁰ Global Alliance Against Child Sexual Abuse Online, op.cit., p.11.

¹⁹¹ See Europol [Press release](#) of 17 February 2017.

Part IV: Criminal investigations and judicial proceedings

Key findings:

(1) Member State authorities make insufficient use of EU cooperation tools and agencies such as Europol and Eurojust when child sexual abuse spans across multiple Member States, despite their importance in the sharing of information, identification of victims and the coordination of investigations and prosecutions.

(2) For child sexual abuse committed outside of the EU, most EU Member States have put legislation in place that allows them to prosecute their nationals or habitual residents, but not all of them guarantee that such offences will be prosecuted without a complaint by the victim.

(3) The online environment poses particular problems for investigation and prosecution. The use of encryption by criminals to hide data and potential evidence poses a particular problem for law enforcement. Access to electronic data can also lead to jurisdiction issues, particularly when data is stored in the cloud.

(4) There is a long way to go before Member State criminal justice systems are able to fully guarantee the rights of child victims in practice. This will only be achieved through a proper and coherent implementation of a number of interrelated international and EU standards affecting children and victims in criminal proceedings.

1. Investigation and prosecution

This section focuses on the moment at which Member State authorities initiate an investigation, followed by the prosecution of offences concerning child abuse mentioned in Articles 3 to 6 of the Child Sexual Abuse Directive.

An important requirement of the directive is that these investigations and prosecutions must not be solely dependent on a report or accusation being made by the victim (Article 15(1)). On this point, the European Commission (EC) transposition report states that national laws either follow that principle explicitly, or apply a public interest test (as in the UK and Ireland).¹⁹² Additionally, the confidentiality rules imposed by national law on certain professions whose main duty it is to work with children should not constitute an obstacle to them reporting any situation in which they have reasonable grounds to believe that a child is the victim of abuse to the child protection services (Article 16). On this point the EC report identifies various approaches in the Member States.¹⁹³

The directive furthermore provides that Member States should try their nationals for child sexual abuse offences committed in third countries (outside of the EU), as these crimes often go unpunished in the location they take place. Member States can extend jurisdiction to habitual residents, legal persons established on their territory, in cases

¹⁹² Report from the Commission to the European Parliament and the Council assessing the extent to which the Member States have taken the necessary measures in order to comply with Directive 2011/93/EU of 13 December 2011 on combatting the sexual abuse and sexual exploitation of children and child pornography, COM (2016) 871, op.cit., p. 12.

¹⁹³ Ibid., p. 13.

where the offence is committed against one of their nationals or habitual residents, or where an offence is committed by means of information and communication technology access from their territory (Article 17). The EC report states that most Member States have put legislation in place that allows prosecution of their nationals and habitual residents for offences committed in third countries. Fewer Member States have transposed the option of prosecuting legal persons on their territory. A majority of Member States have general provisions establishing jurisdiction over crimes committed on their territory, covering crimes committed through internet and communication technology.¹⁹⁴ However, according to the survey conducted by Missing Children Europe, ECPAT and ENASCO,¹⁹⁵ not all Member States guarantee that child sexual abuse offences committed abroad will be prosecuted without a complaint by the victim. Furthermore the survey claims that not all offences listed in the directive are included in Member States' national legislation when it comes to extraterritorial jurisdiction.¹⁹⁶

As already touched upon in Part III, the particular vulnerability of child sexual abuse victims requires swift law enforcement action to identify the victims, in particular by analysing child abuse material, and effectively investigate and prosecute the suspects. Many child sexual abuse cases have cross-border elements either due to the fact that the victim was trafficked, the offender travelled abroad to commit the crime, or the abuse took place abroad and the material was distributed or even live streamed across the internet. In these cases, cross-border cooperation is crucial to ensuring that the investigators completely expose the full extent of the criminal network, find out whether investigations into the same network are occurring in other Member States, how evidence can best be exchanged and where to initiate prosecution. Unfortunately, as indicated in the EC implementation report dedicated to the implementation of Framework Decision 2009/948/JHA on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings, judicial authorities in the EU Member States still do not sufficiently avail themselves of the tools provided by the EU to prevent parallel investigations and prosecutions.¹⁹⁷

2. EU cooperation tools and agencies

At the same time, the possibility to start a Joint Investigation Team (JIT) with authorities of other Member States is not often enough explored. As already concluded in the European Parliamentary Research Service Cost of Non-Europe Report on Organised Crime and Corruption, police and judicial authorities are insufficiently familiar with EU tools and avenues for cooperation available through the relevant training programmes.¹⁹⁸ This report also underlined the added value of police and judicial authority cooperation

¹⁹⁴ Ibid., p. 14.

¹⁹⁵ *A survey on the transposition of Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children and child pornography*, op.cit.

¹⁹⁶ Ibid., p.50.

¹⁹⁷ Report from the Commission to the European Parliament and the Council on the implementation by the Member States of Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings, COM (2014) 313.

¹⁹⁸ Van Ballegooij W. and Zandstra T., *The Cost of Non-Europe in the Area of Organised Crime and Corruption*, EPRS, 2016, PE 536.370, p. 9.

with Europol and Eurojust.¹⁹⁹ This is particularly true in cases of child abuse, including online child abuse.

2.1. Europol

In accordance with the Europol Regulation,²⁰⁰ this Agency supports and strengthens action by the competent authorities in the Member States, including their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism, and forms of crime which affect a common interest covered by a Union policy. The above-mentioned Focal Point Twins Unit (FP) (see Part III, Section 3), part of Europol's European Cybercrime Centre (EC3), supports the competent authorities in the Member States in preventing or combating all the forms of criminality associated with the activities of criminal networks involved in the production and distribution of child abuse materials and associated forms of crime.²⁰¹ The FP coordinates investigations, provides technical operational support, including as regards victim identification, and analytical support as regards crime trends, on the basis of information provided by the Member States. Based on Article 25 of the regulation, Europol may cooperate with third countries and international organisations such as INTERPOL. The Europol mandate will also allow Europol to receive information directly from private parties; although in accordance with Article 26(2) it has to forward this data to the competent national unit. This unit may then decide to resubmit the data to Europol for processing. At present, EC3 deals with 15-20 open cases, some of which are under investigation by a Joint Investigation Team.²⁰²

Europol assists national investigations by providing analysis and facilitating information exchange between Member State authorities. An example is a case in which a Polish child victim of sexual exploitation and abuse was identified through the combined efforts of Romanian and Polish police, working together with Europol specialists.²⁰³ Cooperation between Member State law enforcement authorities however suffers from a lack of proper transposition, and crucially implementation, of the EU framework on police cooperation. Addressing this implementation gap is a priority for the Commission in accordance with its communication on the establishment of a security union.²⁰⁴ Problems also occur due to differences in national standards as regards the age of sexual consent, policing measures allowed, including as regards undercover investigations, and the requirements for the retention and exchange of information. Furthermore, levels of capabilities and resources devoted to combatting child abuse vary between Member States.²⁰⁵

¹⁹⁹ Ibid.

²⁰⁰ [Regulation 2016/794](#), O.J. L 135/53 of 24 May 2016.

²⁰¹ For an example see the [Police2Peer project](#) – police are present and sharing files on file sharing networks to inform and deter those that distribute images and videos of children being sexually abused.

²⁰² Interview Europol, July 6, 2016.

²⁰³ Europol Press Release, 23 February 2017: '[Europol supports Poland and Romania in operation against online child sexual exploitation](#)'.

²⁰⁴ Commission Communication, [Delivering on the European Agenda on Security to fight against terrorism and pave the way towards an effective and genuine Security Union](#), COM(2016) 230 final.

²⁰⁵ Interview Europol, 6 July 2016.

As noted in Part III (section 3), Europol has hosted a dedicated Victim Identification Taskforce. Despite the excellent work done by the individuals on the taskforce, working under very difficult (psychological) circumstances, they have only been able to analyse the tip of the iceberg in terms of child abuse material. Much more could be achieved with additional resources.²⁰⁶

Europol cooperates with INHOPE through a Memorandum of Understanding. Nevertheless, the current state of play is unsatisfactory from Europol's perspective, as it does not ensure a harmonised approach in the Member States towards the removal and blocking of illegal content in accordance with Article 25 of the directive, as discussed in Section II.3.²⁰⁷

On 9 June 2016, the Council adopted conclusions on improving criminal justice in cyberspace, in which it called on the Commission to take concrete actions based on a common EU approach to improve cooperation with service providers, make mutual legal assistance more efficient and to propose solutions to the problems of determining and enforcing jurisdiction in cyberspace. In line with these conclusions, the Commission presented a progress report on 7 December 2016,²⁰⁸ in which the following aspects are addressed:

- Direct cooperation with service providers;
- Mutual legal assistance (both within the EU and from third countries, notably the USA); and
- Enforcement of jurisdiction in cyberspace.

The Commission is due to propose practical improvements aimed at streamlining cooperation, notably the issue and execution of European investigation orders (for electronic evidence) and enhancement of cooperation with internet service providers in June 2017. Long-term solutions regarding access to data located in third countries, notably the USA, could include the option of direct access, in accordance with the General Data Protection Regulation.²⁰⁹ However, several studies caution that operational challenges in cybercrime law enforcement do not change the obligation for EU institutions and Member States to ensure the safeguarding of EU fundamental rights.²¹⁰

The use of encryption by criminals to hide data and potential evidence poses a particular problem for law enforcement. On 20 May 2016, Europol and ENISA issued a joint statement in which they call for 'feasible solutions to decryption' without weakening the

²⁰⁶ Ibid.

²⁰⁷ Ibidem.

²⁰⁸ Commission Services, *Non-paper: Progress Report following the Conclusions of the Council of the European Union on Improving Criminal Justice in Cyberspace*, Council doc. 15072/1/16 REV 1.

²⁰⁹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), OJ L 119, 4.5.2016, p. 1–88.

²¹⁰ Hayes B. et al, *The law-enforcement challenges of cybercrime; are we really playing catch-up?*, Study for the European Parliament, PE 536.471, 2016; CEPS, *Access to Electronic Data by Third-Country Law Enforcement Authorities Challenges to EU Rule of Law and Fundamental Rights*, 2015.

protection of personal data.²¹¹ This was followed by a political discussion between Justice Ministers in July 2016. Taking the recommendations of the Horizontal Working Party on Cyber Issues into account, the Slovak Presidency of the EU presented a progress report in November 2016.²¹² During the Justice and Home Affairs Council of 8 and 9 December 2016, Ministers expressed different views, both on the technical and political aspects of the matter, unanimously underlining the need to approach this issue carefully. The Ministers were in favour of continuing the discussion, in order to identify solutions that strike a balance between individual rights and citizens' security and privacy, and allowing law enforcement agencies to do their work.²¹³

2.2. Eurojust

The Eurojust mandate is currently under review.²¹⁴ In accordance with its current mandate, however, this Agency facilitates national investigations and prosecutions through the coordination of cross-border investigations and prosecutions. Eurojust acts to provide analytical support and facilitation of judicial cooperation through the setting up of Joint Investigation Teams (JITs), and aims at obtaining evidence, freezing and confiscating criminal assets, arresting and surrendering for prosecution, and the execution of sentences.

Eurojust maintains a contact point dedicated to child protection situated within its Trafficking of Human Beings Team. An example of a successful operation enabled by Eurojust and supported by Europol, and particularly the added value of establishing a Joint Investigation Team, is 'Operation Ateljé' detailed in the excerpt of the Eurojust press release below:

²¹¹ Europol, ENISA, *Joint Statement on lawful criminal investigation that respects 21st Century data protection*, May 2016.

²¹² Slovak Presidency, *Encryption: Challenges for criminal justice in relation to the use of encryption- future steps*, Council doc. 14711/16 of 23 November 2016.

²¹³ Outcome of the Council meeting, Justice and Home Affairs, 8 and 9 December 2016, Council doc. 15391/16, p. 7.

²¹⁴ A consolidated version of the Eurojust decision is [available online](#).

Box 3: Eurojust press release: child abusers face the courts

'Following the breaking up of a unique worldwide network of paedophiles, the trial of the main coordinator has begun in Sweden. The trial is expected to continue until July. Producers of child sexual abuse material were identified in the Czech Republic; the trial of these suspects has not yet been scheduled.

The network was dismantled and the ongoing sexual exploitation of at least 75 girls stopped following intensive international cooperation involving at least 13 countries. At least five photographers producing child abuse material were arrested. Their cameras, computers, hard drives and other digital devices were seized. The main coordinator of the network, a Swedish citizen, was identified and arrested in Sweden.

A number of customers ordering and buying child abuse material directly from professional photographers or via the coordinator in Sweden have also been arrested. One of the main customers was identified and arrested in Spain.

Children as young as seven were the victims of this network. In Sweden, the authorities identified 13 of the 24 children involved. In the part of the investigation carried out by the Czech authorities, at least 65 children were involved, all of whom have been identified.

The main challenge in this case has been to obtain the images. The national authorities managed to do so using payments, chats and e-mail conversations to gather evidence and by breaking the encryption of computers. Around one million images were found in the possession of the Swedish coordinator, 200 000 of which were custom-made. The successful outcome was only possible through the close judicial cooperation enabled by Eurojust's support, which included encouraging cooperation and enabling legal understanding, and funding for travel to five Eurojust coordination meetings and funding for a joint investigation team (JIT). The JIT members were Sweden, the Czech Republic and Spain. Investigations in the involved countries took place over almost two years.

Leif Görts, National Member for Sweden at Eurojust, commented: "The unique feature of this case is that the producers, buyers and customers of child abuse material have been arrested and the exploitation of the children stopped. The identification of the victims will also enable them to request compensation. This investigation would never have succeeded without the intensive cooperation enabled by Eurojust and supported by Europol."

The Hague, 7 May 2015²¹⁵

However, although Eurojust expresses general satisfaction with the cooperation with Member States' cooperation, like Europol it also notes that differences in training and specialisation at Member State level pose problems.²¹⁶ Cooperation with the USA is considered effective, although at times, slow. Cooperation with the USA is of pivotal importance, given that most IT companies, including those that provide cloud computing services are based in the USA. The USA will therefore often be able to exercise jurisdiction in cases where child sexual abuse material has been stored in the cloud. Cooperation with Russia, China and India is considered less smooth. Several factors can

²¹⁵ See the [Press Release](#) of May 2015.

²¹⁶ Interview Eurojust, 6 July 2016.

be mentioned here, including a lack of trust in the data protection regime of these countries, posing difficulties from both from a security and a fundamental rights perspective, and contributing to delays in judicial cooperation.²¹⁷

3. Assistance, support and protection measures for child victims before, during and after criminal proceedings

Articles 18 to 20 of the Child Sexual Abuse Directive provide provisions related to assistance, support and protection measures for child victims before, during and after criminal proceedings. During these proceedings, victims and their family members should be protected against secondary and repeat victimisation, and from retaliation. Furthermore, their dignity should be protected during questioning and when testifying (Article 19). The relevant articles should be read in conjunction with the Victims' Rights Directive which largely covers the same ground,²¹⁸ and the Council of Europe guidelines on child-friendly justice.²¹⁹

The assistance, support and protection measures for child victims before, during and after criminal proceedings, often depends on the practical implementation of measures and cooperation between the various authorities involved. The Missing Children Europe and al. survey mentions some concerns, analysed below:

- In some Member States difference is made between child victims based on their age. This should instead be assessed on a case by case basis;
- (Mandatory) training and guidelines should be provided to all professionals dealing with children;
- The views of the child need to be taken into account in the individual assessment, the measures taken must be regularly assessed;
- A guidance document similar to that for the Victims' Rights Directive should be considered.²²⁰

3.1. Assistance and support for victims

As mentioned in Part I (section 1.2), 70 to 90 % of child sexual abuse victims already know the offender. In this context, Article 19(1) stipulating the right of the victim to avoid contact with the offender is of paramount importance to ensure the protection of children who report cases of abuse within the family. According to the Missing Children Europe and al. survey, even though a large majority of Member States have taken specific measures to ensure the protection of children who report cases of sexual abuse within

²¹⁷ Interview Eurojust, 6 July 2016.

²¹⁸ European Commission, DG Justice, *Guidance document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, p. 3.

²¹⁹ *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* adopted by the Committee of Ministers of the Council of Europe on 17 November 2010 and explanatory memorandum.

²²⁰ *A survey on the transposition of Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children and child pornography*, op.cit, p. 70-73.

their family, Member States' approaches differ between removing either the perpetrator or the victim, with some only having one of these options available.²²¹ The EC transposition report confirms this situation, although information from a number of Member States are deemed inconclusive.²²²

In accordance with Article 19(2), Member States have to take the necessary measures to ensure that assistance and support for a child victim are not made conditional on the child's willingness to cooperate in the criminal investigation, prosecution or trial. This is especially important for victims of trafficking, as they do not possess a residence permit and might face threats, intimidation and reprisals from offenders.²²³ As pointed out in the European implementation assessment conducted by EPRS on the Trafficking in Human Beings Directive:

'Without protection (that can include the availability of shelters and a safe social environment with support, e.g. social workers) and sufficient amount of time in a secure environment, victims cannot overcome their fear and mistrust, which is a precondition for opening up and, possibly, cooperation with law enforcement authorities.'²²⁴

The EC transposition report refers to most Member States having a variety of provisions on assistance and support.²²⁵ Further assessment is necessary as to what extent these provisions comply with Article 19(2).

In line with Article 19(3) of the Child Sexual Abuse Directive (corresponding to Article 22 of the Victims' Rights Directive), Member States need to take the necessary measures to ensure that the specific actions to assist and support child victims are undertaken following an individual assessment of the child's particular circumstances. Furthermore, child victims of sexual abuse are considered as especially vulnerable victims, and must be treated in the manner which is most appropriate to their situation Article 19(4). Child victims are entitled to the specific protection measures detailed in Article 20 (corresponding to Article 23 and 24 of the Victims' Rights Directive). The EC transposition report mentions that most Member States have implemented this provision. However, information provided by yet a significant list of Member States remains inconclusive. In accordance with Article 19(4), Member States must ensure that child sexual abuse victims are categorised as particularly vulnerable victims. Information on the transposition of this provision is inconclusive as regards a number of Member States.²²⁶

Moreover, the Missing Children Europe and al. survey points to a lack of specifics as regards the actual conduct of the individual assessment procedure by Member State

²²¹ *A survey on the transposition of Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children and child pornography*, op.cit., p.56.

²²² EC transposition report, COM (2016) 871, op.cit., p. 15.

²²³ *A survey on the transposition of Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children and child pornography*, op.cit., p. 57.

²²⁴ See: Scherrer A. and Werner H., *Trafficking in Human Beings from a Gender Perspective. Directive 2011/36/EU, European Implementation Assessment*, EPRS, April 2016, PE 581.412, section 5.2 at p. 18.

²²⁵ EC transposition report, COM (2016) 871, op.cit., p. 15.

²²⁶ Ibid., p. 15.

authorities and whether those authorities are sufficiently trained to recognise child abuse victims.²²⁷ In the Commission Directorate General for Justice guidance document on the transposition of the Victim's Rights Directive, the EC promises to produce best practices among Member States in conducting individual assessments.²²⁸

The Commission guidance document mentions that children's houses or child protection centres, with an integrated and multidisciplinary approach between social services, law enforcement and medical professionals, are particularly well placed to conduct individual assessment of child victims.²²⁹ The home-like setting is meant to reduce anxiety among children. These centres also help to limit the number of times that the child has to report the details of a crime, and thus limit the trauma associated with reporting. They also ensure that appropriate therapeutic and medical assistance is available throughout all stages of the investigative and adjudicative process.²³⁰ The idea originated in Iceland and has since been adopted by several Member States, including Sweden:

Box 4: The *Barnahus* Model

In Sweden, children's houses are called *Barnahus*. The activities in a *Barnahus* function in four different 'rooms', where each meets a different need. The four activities are criminal investigation, child protection, the child's physical health, and the child's mental health. Research shows that collaboration between the different agencies has not always automatically led to the achievement of all the goals envisaged; both police and child protection and psychosocial support to the child.²³¹ A quality review of 23 *Barnahus* provided a number of recommendations, including expanding the coverage to include witnesses, ensuring prompt investigations, the documentation of interviews, coordination and information exchange between authorities, as well as the consistent quality of the medical and psychological support provided in *Barnahus* across the country.²³²

PROMISE, an ongoing Commission-funded project, is providing common standards and guidance to enrich the *Barnahus* model and establish *Barnahus* in a number of other Member States.²³³

²²⁷ A survey on the transposition of Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children and child pornography, op.cit, p. 58.

²²⁸ European Commission, *Guidance document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, op.cit., p.44.

²²⁹ Ibid.

²³⁰ Global Alliance, *Annual Report, 2015*, op.cit., p.15.

²³¹ Kaldal A. and Svedin C. G., 'Children's Houses- *Barnahus*: Today and in the future', in S. Mahmoudi, P. Leviner, A. Kaldal and K. Lainpelto (eds.), *Child Friendly Justice, A quarter of a century of the UN Convention on the Rights of the Child*, Brill, Nijhoff, 2015.

²³² Landberg A. and Svedin C.G., *A quality review of 23 Swedish Barnahus*, *Rädda Barnen*, 2013.

²³³ PROMISE, Putting the child's story at the centre, further information in its vision paper.

3.2. Protection of child victims in criminal investigations and proceedings

The EC transposition report finds that, in a majority of Member States, a guardian or ‘special representative’ is appointed for child victims,²³⁴ in accordance with Article 20(1). However, some Member States do not seem to have a framework in place, or arrangements are deemed insufficient.²³⁵ Furthermore, the procedures that Member States have in place vary widely: different names, different persons, different functions, qualifications and appointment procedures.²³⁶ To overcome these problems, the European Commission and the Fundamental Rights Agency (FRA) produced a handbook to reinforce guardianship systems in the EU.²³⁷ This handbook provides a set of core common principles and key standards for guardianship and legal representation, notably covering aspects related to: non-discrimination, independence and impartiality, quality, accountability, sustainability and the child’s right to participation.

Article 20(2) of the Child Sexual Abuse Directive (corresponding to Article 13 of the Victims’ Rights Directive) contains provisions on access to legal counselling and legal representation, free of charge in cases where the victim has insufficient financial resources. According to the 2014 European Commission publication on children’s involvement in criminal judicial proceedings in the Member States, as of 1 June 2012, child victims have a right to legal representation in all jurisdictions except for Cyprus, Ireland and the UK. In Ireland, legal representation for child victims was possible in one circumstance only: when he or she was a victim of sexual violence and the defendant’s lawyers wished to question the child on their sexual experience generally. In 14 Member States, legal aid was subject to a means test, in 3 Member States to a merit test,²³⁸ and no conditions were set for child victims in 5 Member States.²³⁹ The EC transposition report on the directive illustrates a discrepancy in these data, as it singles out more Member States for which the information was inconclusive. The Directive on legal aid for suspects and accused persons has further detailed requirements for Member States to take into account when applying the means and merits tests.²⁴⁰ Irrespective of the difference in rationale between providing legal aid to suspects and victims, tightening up the criteria for legal aid could be envisaged in future amendments of the Child Sexual Abuse and/or Victims’ Rights Directive.

²³⁴ EC transposition report, COM (2016) 871, op.cit., p. 16.

²³⁵ *A survey on the transposition of Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children and child pornography*, op.cit, p. 59.

²³⁶ Ibid.

²³⁷ European Commission, FRA, *Guardianship for children deprived of parental care. A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*, 2015.

²³⁸ The means test is process to determine if a client qualifies for legal aid to cover some or all of their defence costs. The merit test determines whether a client is entitled to legal aid based on merit.

²³⁹ European Commission, DG JUST, *Summary of contextual overviews on children’s involvement in criminal judicial proceedings in the 28 Member States of the European Union*, 2014, section 4.4.

²⁴⁰ *Directive (EU) 2016/1919* of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings, OJ L 297, 4 November 2016, p. 1-8 (Article 4).

In accordance with Article 20(3) of the Child Sexual Abuse Directive (corresponding to Articles 23 and 24 of the Victim's Rights Directive), a series of requirements have to be taken into account when conducting a criminal investigation involving child victims. According to the above-mentioned 2014 European Commission publication on children's involvement in criminal judicial proceedings, all Member States except for Malta and Romania, interviewed or heard children in physical settings that were adapted to avoid secondary victimisation. In a few Member States, such adaptations were only made in cases of child victims below a certain age.²⁴¹ The EC transposition report lists eight Member States which have put the necessary measures in place to transpose this paragraph. The information provided by the other Member States was inconclusive.²⁴²

Interviews have to be conducted without unjustified delay (Article 20(3)(a)). According to Missing Children Europe and al., only a few Member States have enacted a law or regulatory act that meets the requirement of this article. A positive example is Sweden where interviews with child victims should be carried out within two weeks following reporting of the crime to the police.²⁴³

Interviews should take place in premises designed or adapted for the purpose of conducting interviews with child victims (Article 20(3)(b)). As confirmed by a recent FRA study on child-friendly justice, making the hearing environment child-friendly decreases both children's stress and the risk of secondary victimisation.²⁴⁴ Available research suggests that in most Member States, police stations and courts have rooms designed or adapted for interviewing children.²⁴⁵ In some Member States, the interview may take place in the child's home. The *Barnahus* model described above again provides an example of best practice. Another positive example is found in France, where new rooms for child victims have been created within some hospitals, facilitating the combination of the needs of an investigation with medical, psychological and social support for victims.²⁴⁶ These structures (called '*Unités d'accueil médico-judiciaire*' (UAMJ)) are not, however, available everywhere in France, despite their added value in child sexual abuse investigations. However, according to Missing Children Europe and al., other Member States have unclear provisions, with differing age limits for providing adapted premises, and a lack of availability of such premises in some regions.²⁴⁷

In line with Article 20(3)(c), interviews with child victims have to be carried out by or through professionals trained for this purpose. They have to be conducted by the same persons, if possible and where appropriate Article 20(3)(d), and the number of interviews

²⁴¹ European Commission, Directorate-General for Justice, *Summary of contextual overviews on children's involvement in criminal judicial proceedings*, op.cit., section 4.6.

²⁴² EC transposition report, COM (2016) 871, op.cit., p. 16. The eight Member States are: Greece, Croatia, Lithuania, Malta, Portugal, Romania, Sweden and the UK.

²⁴³ *A survey on the transposition of Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children and child pornography*, op.cit, p. 62.

²⁴⁴ Fundamental Rights Agency, *Child-friendly justice – perspectives and experiences of children and professionals*, 2017, p. 28.

²⁴⁵ Ibid.

²⁴⁶ French Ministry of Justice, *Guide relatif à la prise en charge des mineurs victimes*, 2015 (in French), p.58.

²⁴⁷ *A survey on the transposition of Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children and child pornography*, op.cit, p. 62 and 63.

should be as limited to as few as possible (Article 20(3)(e)). However, as suggested above when analysing the role of key professionals (Part III, section 3.1), there appears to be no guarantee that, professionals have in practice received the appropriate training and that this training is available across the EU. If this is indeed the case, it also constitutes non-implementation of Article 25 of the Victims' Rights Directive.

Only in a few Member States does the law state that the same person(s) should conduct all interviews with the victim. In some Member States, such as Sweden, this is laid down in guidelines, including exceptions if the person interviewing and the child did not relate well during the first interview.²⁴⁸ Most Member States have regulations limiting the number of interviews, unless special circumstances require more. In some Member States this limitation only applies under a certain age.²⁴⁹

Moreover, the child victim may be accompanied by a legal representative or adult of his or her choice (Article 20(3)(f)). In most Member States, victims seem to be entitled to be accompanied by their legal representative, or an adult of their choice, during the interviews. However, some Member States apply this right differently according to the age of the child, and in others there is no statutory provision that allows victims to be accompanied by an adult of their choice.²⁵⁰

The EC transposition report states that most of the Member States have taken measures to ensure that interviews with the child victim are recorded audiovisually, in accordance with Article 20(4) of the directive (see also Article 20 of the Victims' Rights Directive).²⁵¹ Missing Children Europe and al., however, pointed to a number of Member States that only record interviews on an optional basis, or with children below a certain age.²⁵²

Article 20(5) also requires Member States to put measures in place to ensure that hearings can be ordered to take place without a public presence, or in the child's absence (see also Articles 10 and 19 of the Victims' Rights Directive). According to the EC transposition report, most Member States have transposed this provision.²⁵³ Missing Children Europe et al. mention the example of Italy, where there is a legal obligation to hold child hearings in cases of sexual abuse behind closed doors. In other Member States, this depends on the age of the victim and the nature of the crime.²⁵⁴ National laws differ regarding the child's capacity to testify in court, or the age at which a child is to be heard.²⁵⁵

Finally, in accordance with Article 20(6), Member States must take measures to protect the privacy, identity and image of child victims, and prevent the public dissemination of any information that could lead to their identification (see also Articles 10, 19, 20, and 21

²⁴⁸ Ibid.

²⁴⁹ Ibidem. p. 65-67.

²⁵⁰ Ibidem.

²⁵¹ EC transposition report, COM (2016) 871, op.cit., p. 16.

²⁵² *A survey on the transposition of Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children and child pornography*, op.cit, p. 67-68.

²⁵³ EC transposition report, COM (2016) 871, op.cit., p. 16.

²⁵⁴ *A survey on the transposition of Directive 2011/93/EU on combating sexual abuse and sexual exploitation of children and child pornography*, op.cit, p. 68.

²⁵⁵ Ibid. p. 69.

of the Victims' Rights Directive). The EC transposition report states that most EU Member States have taken measures to transpose this provision.²⁵⁶

²⁵⁶ EC transposition report, COM (2016) 871, op.cit., p. 16.

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This is a publication of the Ex-Post Impact Assessment Unit
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European Parliament

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PE 598.614
ISBN 978-92-846-0872-0
doi:10.2861/23810
QA-01-17-297-EN-N

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