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## **DRAFT REPORT**

on the implementation of 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  
(2015/2129(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Anna Maria Corazza Bildt

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## **EXPLANATORY STATEMENT - SUMMARY OF FACTS AND FINDINGS**

### **Procedure**

In compliance with the EP resolution of 11 March 2015 on child sexual abuse online the Committee on Civil Liberties, Justice and Home Affairs requested authorisation to draw up a report on the implementation of 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 and the authorisation was given in May 2015.

Pursuant to Article 28 of Directive 2011/93/EU the Commission was obliged to submit by 18 December 2015 to the European Parliament and the Council a report assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive and a report assessing the implementation of the measures referred to in Article 25.

Due to the delays in the transposition of the Directive by certain Member States, the Commission delayed the publication of those reports by one year and submitted them to the Parliament only on 16 December 2016.

### **Directive 2011/93/EU - context, scope and transposition**

Child sexual abuse online and off line is a growing tragedy that has as victims children as young as the age of two. It is a cross-border crime that requires cross-border cooperation in order to be tackled. Criminal networks of child sexual abuse online are sophisticated and our law enforcement authorities face the challenge of working with legislations that are not always future-proof. Directive 2011/93/EU (the Directive) is a comprehensive legal instrument, which contains provisions on substantive criminal law and criminal procedure, administrative measures and policy measures. It gives Member States clear minimum standards for sanctions and measures to prevent abuse, combat impunity and protect victims.

The most important improvements introduced by the Directive include more detailed definition of child pornography, increased criminal penalties, the criminalisation of possession and acquisition of online child sexual abuse material, the introduction of a new offence 'grooming' and provisions to remove and/or block websites containing child sexual abuse material (CSAM). The Member States had a two-year deadline for transposition of the Directive, which expired on 18 December 2013.

The Commission implementation reports assessed to which extent the Member States have transposed the Directive into their national legislation without however being able at this stage to evaluate the implementation of its provisions in practice. The overall conclusion of the Commission is that, despite the Member States' major efforts to transpose this complex legal instrument and the improvement that this process brought with regard to the protection of children from sexual abuse, there is still considerable scope for the Directive to reach its full potential.

The rapporteur identifies the areas where Member States should do more and clarifies certain provisions in the Directive to facilitate the correct and full implementation by the Member States: investigation and prosecution; prevention; assistance and protection of victims; blocking and removing CSAM online.

The rapporteur also recommends Member States to go beyond the simple obligation to transpose the Directive, and encourages them to build capacity and share best practices. The Rapporteur addresses the situation of migrant children, especially unaccompanied, who are particularly vulnerable to abuse, trafficking and sexual exploitation and calls on the Member States to take concrete actions to protect missing children. In the draft report, she also includes new forms of crimes, such as revenge porn and sex extortion, that are spreading on the internet and affect many youngsters, in particular girls causing them serious harm and sometimes even leading victims to commit suicide.

### **Investigation and prosecution**

Directive 2011/93/EU sets out an obligation for the Member States to provide law enforcement authorities and prosecution with effective tools to investigate child sexual abuse offences and identify the children victims at an early stage. The Directive also provides for an extended jurisdiction for child sexual abuse offences and for abolition of the principle of dual criminality.

Investigation and prosecution of online child sexual abuse offences still pose challenges for law enforcement authorities and the judiciary. The experts who presented evidence before the LIBE Committee identified several factors that reduce the effectiveness of investigative techniques online: encryption of the communications online, the discrepancies in the applicable data retention rules in the Member States, the increasing use of anonymization tools and the use of cloud-storage. In those situations it is often unclear which country has jurisdiction and which legislation will apply to the collection of evidence. In this regard, enhanced international and EU cooperation is essential.

The Rapporteur calls, therefore, on the Member States to increase their police and judicial cooperation as well as to make full use of the existing EU cooperation tools provided by Europol and Eurojust so as to ensure a successful investigation and prosecution of perpetrators. To that end, she stresses that Europol and Eurojust should be given the appropriate resources to fulfil their task in this field.

She also encourages the Member States to share best practices in investigative tools and prosecution methods.

### **Prevention**

The Directive provides specific provisions on preventive measures from information and awareness-raising campaigns, education and training to disqualification arising from convictions and preventive intervention programmes for offenders to tackle recidivism.

Both the Commission's transposition report and the EPRS study highlighted that the provisions on preventive measures are the most challenging for the Member States.

The exchange of information on convictions of child sexual abuse offenders among the Member States has proved to be difficult to implement because the Directive does not provide an obligation for Member States to send information to the other Member State that requested it, and in some Member States additional conditions for sending the information have been envisaged by national law. The Rapporteur believes that further development in this area is needed and calls therefore on the Member States to update their list of offenders and share

information on criminal convictions and disqualification with other Member States so as to prevent offenders from moving unnoticed from one Member State to another for work or for volunteering with children or children's institutions.

### **Identification of victims**

Child sexual abuse is an offence whose disclosure and reporting is particularly difficult. Self-reporting is limited because the children are too young, too traumatized or dependant of the perpetrator which factors make them reluctant to disclose. In this regard, the children helplines play an important role by providing assistance adapted to the children's needs and helping children to report the crime. It is also important that Member States set up effective hotlines to find missing children and increase cooperation for cross-border cases. The identification of children victims of child sexual abuse online heavily depends on the law enforcement authorities' investigative capabilities in term of use of new technologies and trained staff. Member States should invest more in developing and using new forensic tools in order to be more effective and save child victims.

### **Assistance and protection of victims**

Directive 2011/93/EU also requires Member States to introduce in their criminal procedure law measures guaranteeing the protection of child victims throughout the whole criminal proceedings and also to ensure that they receive assistance and support. The Rapporteur considers that Member States should fully implement the Directive 2012/29/EU on the rights of victims of crimes and step up specific measures to protect more effectively victims of child sexual abuse, by also improving the role of national helplines and share best practices.

### **Removal and/or blocking**

Article 25 of the Directive is aiming at ensuring prevention of the child sexual abuse and exploitation and decreasing the secondary victimisation by cutting the access to the child pornography online. It requires from the Member States to remove promptly material on websites hosted within their territory and to endeavour securing their removal if they are hosted elsewhere. The Member States have transposed this provision by measures based on e-commerce Directive (notice and take down procedure) or by criminal law measures for the material hosted on their territory. Member States have transposed the Directive as regards the material hosted outside their territory either by measures involving establishing a hotline authorised to assess the material and to contact the country where it is hosted through INHOPE hotlines network, or through Europol or Interpol.

Article 25 paragraph 2 introduces possibility for the Member States to cut the access to the child sexual abuse material by blocking measures. Only half of the Member States have opted to transpose this provision. Blacklists of websites with child abuse material are commonly used to implement the blocking. Different safeguards ensuring the freedom of speech have been provided for.

The evidence gathered in the preparation of this report demonstrated that blocking in practice is more efficient because it is far quicker than removal. If sufficient safeguards to protect fundamental freedoms are in place, it should be more widely used by the Member States.

The cooperation with the information society service providers is vital for disrupting the

availability of the child sexual abuse online. Without their active participation, often on voluntary basis, the process of removal and blocking will not be possible. The Rapporteur believes that the industry and internet stakeholders should take their shared responsibility and develop innovative solution in order to be able to combat child sexual abuse online.

**Sources:**

Apart from the Commission implementation reports, the rapporteur has collected information from following sources, among others:

- a hearing held in the Committee on Civil Liberties, Justice and Home Affairs on 25 April 2017;
- an Ex-Post Impact Assessment by Parliament's EPRS services, published in April 2017;
- a hearing organised by the EPP political group on combatting sexual abuse of children on the Internet, 29 June 2016;
- a study of the Policy Department C on Citizens' Rights and Constitutional Affairs prepared for the LIBE Committee on combating child sexual abuse online published in October 2015;
- meeting with Mr Benyam Dawit Mezmur, Chair of the UN Committee on the Rights of the Child.

## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### **on the implementation of 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 (2015/2129(INI))**

*The European Parliament,*

- having regard to Articles 3 and 6 of the Treaty on European Union (TEU) and Articles 82(2) and 83(1) of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Articles 7, 8, 47, 48 and 52 of the Charter of Fundamental Rights of the European Union,
- having regard to the UN Convention on the Rights of the Child of 20 November 1989, and the protocols thereto,
- having regard to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 25 October 2007,
- having regard to the Council of Europe Convention on Cybercrime of 23 November 2001,
- having regard to 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, and replacing Council Framework Decision 2004/68/JHA<sup>1</sup>,
- having regard to 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<sup>2</sup>,
- having regard to its resolution of 27 November 2014 on the 25th anniversary of the UN Convention on the Rights of the Child<sup>3</sup>,
- having regard to its resolution of 11 March 2015 on child sexual abuse online<sup>4</sup>,
- having regard to the report from the Commission of 16 December 2016 assessing the extent to which the Member States have taken the necessary measures to comply with Directive 2011/93/EU (COM(2016)0871), and the report from the Commission of 16 December 2016 assessing the implementation of the measures referred to in Article 25 of Directive 2011/93/EU (COM(2016)0872),
- having regard to the Europol report of 2016 on the Internet Organised Crime Threat

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<sup>1</sup> OJ L 335, 17.12.2011, p. 1.

<sup>2</sup> OJ L 315, 14.11.2012, p. 57.

<sup>3</sup> OJ C 289, 09.08.2016, p. 57.

<sup>4</sup> OJ C 316, 30.08.2016, p. 109.

Assessment (iOACTA),

- having regard to Rule 52 of its Rules of Procedure, as well as Article 1(1)(e) of, and Annex 3 to, the decision of the Conference of Presidents of 12 December 2002 on the procedure for granting authorisation to draw up own-initiative reports,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Culture and Education and the Committee on Women's Rights and Gender Equality (A8-0000/2017),
- A. whereas Directive 2011/93/EU is a comprehensive legal instrument containing provisions on substantive criminal law and on criminal procedures, measures for assistance and protection of victims and for prevention, including administrative measures, and its implementation requires the close involvement of actors from different sectors such as the law-enforcement authorities, the judiciary, non-governmental organisations, internet service providers and others;
- B. whereas child sexual abuse related crimes are often not reported and victims are exposed to secondary victimisation; whereas, when these crimes are committed by persons who are close to or know the victims, this should be deemed as aggravating circumstances;
- C. whereas child sexual abuse and exploitation online is an evolving phenomenon and new forms of crime, such as revenge pornography and sex-extortion, have come into being on the Internet and need to be addressed with concrete measures by the Member States;
- D. whereas law enforcement authorities face new challenges posed by peer-to-peer and Darknet networks exchanging child sexual abuse material; whereas there is a need to raise awareness at an early stage among girls and boys about the risks and the importance of respecting the dignity and privacy of others in the digital era;
- E. whereas migrant children - especially girls - are particularly exposed to child sexual abuse and sexual exploitation at the hands of traffickers and smugglers along the way and once they reach Europe;
- F. whereas the sex tourism industry affects significant numbers of children, especially girls;

### ***Main conclusions and recommendations***

1. Notes that the Member States have faced significant challenges in transposing and implementing the Directive, in particular as regards the provisions on prevention, investigation and prosecution as well as protection and assistance to victims;
2. Regrets that the Commission was not able to present its implementation reports within the deadline set out in Article 28 of Directive 2011/93/EU and therefore calls on the Member States to ensure that legal transposition is translated into effective implementation so as to ensure the protection of child victims and zero tolerance for child sexual abuse;



### ***Substantive Criminal Law (Articles 3, 4 and 5 of the Directive)***

3. Takes note of the fact that the substantive criminal law provisions of Directive 2011/93/EU have been transposed by the Member States; is concerned nevertheless that some Member States have not fully transposed the provisions on offences concerning sexual exploitation (Article 4), offences concerning sexual abuse when abuse is made of a recognised position of trust, authority or influence (Article 3(5)(i)) or abuse is made of a particularly vulnerable situation of the child (Article 3(5)(ii)), and concerning the liability of legal persons (Article 12);
4. Considers, in particular, that the Member States should do more to combat the impunity of perpetrators who are close to child victims and are in a position of trust, authority or influence over the child; considers it to be of the utmost importance that the Member States ensure the liability of legal persons, where the lack of monitoring or supervision of a person who is a member of that legal entity, has permitted or facilitated the commission of crimes;
5. Is particularly concerned about the threats and risks which the online dimension poses to children, in particular as regards the online recruitment of children, as well as grooming and other forms of incitement; stresses the necessity of increasing the level of protection of children online;
6. Underlines the need to address new forms of crime online, such as revenge porn and sexual-extortion, that affect many youngsters, in particular teenage girls; calls on the Member States to step up their efforts to adopt concrete measures to combat this new form of crime and calls on the internet industry to take its share of responsibility for tackling these crimes;

### ***Investigation and prosecution***

7. Notes that several Member States have not implemented the requirement to prosecute offences within a sufficient time after the victim has reached the age of majority; encourages, therefore, the Member States to ensure that the statutory limits within which these crimes may be reported and prosecuted are of sufficient length and that, at the very least, they start from the age of majority of the child victim, in order to ensure the possibility of prosecuting the crime;
8. Underlines the importance of implementing Article 17 (3) in order to ensure that the Member States have jurisdiction over offences committed by means of information and communication technology (ICT) accessed from their territory whether or not it is based on their territory;
9. Stresses that the main challenges faced by the law enforcement and judicial authorities in the investigation and prosecution of child sexual abuse offences online stem from the dependence on electronic evidence and digital investigative techniques, which are made less effective by new technologies such as encryption, and also by the discrepancies in data retention rules between the Member States;
10. Calls on the Member States to step up their police and judicial cooperation as well as to make full use of the existing EU cooperation tools provided by Europol and Eurojust to

ensure the successful investigation and prosecution of perpetrators; stresses that Europol and Eurojust should be given the appropriate resources to fulfil their task in this respect and encourages the Member States to share best practices;

11. Calls on the Member States to step up their police and judicial cooperation to combat the trafficking and smuggling of migrant children, who are particularly vulnerable to abuse, trafficking and sexual exploitation, especially girls; calls for an enhanced exchange of information among authorities to trace missing children and for the interoperability of data bases;
12. Encourages the Member States to intensify their efforts to combat child sex tourism and prosecute perpetrators, taking into account the responsibility of all actors involved;

***Prevention (Articles 22, 23 and 24 of the Directive)***

13. Calls on the Member States to put in place effective preventive and intervention programmes, including regular training programmes, for all officials who are in contact with children to better assess the risk of committing crimes and to intervene in those communities where the likelihood of committing the crimes listed in the Directive is higher;
14. Encourages the Member States to share best practices on educational materials and training programmes for all the actors involved, such as teachers, educators and law enforcement authorities, to raise awareness of grooming and other risks to the safety of children online, in particular for girls;
15. Urges the Member States to incorporate into their legislation mandatory background checks for persons applying or volunteering for activities or jobs relating to children, including software and online content developers, travel agents and legal entities/persons, and to systematically exchange information on individuals posing a risk to children;
16. Calls on the Member States to exchange information about child sex offenders in order to prevent them from moving unnoticed from one Member State to another in order to work or volunteer with children or children's institutions; encourages the Member States to enhance information sharing on criminal convictions and disqualifications, as well as to improve data collection in national registers of perpetrators;

***Assistance and protection to victims (Articles 18, 19 and 20 of the Directive)***

17. Calls on the Member States to fully implement Directive 2012/29/EU on the rights of the victims of crime, to adopt specific measures to protect child victims and to share best practices to ensure that children receive proper assistance and support throughout the entirety of criminal proceedings and thereafter;
18. Welcomes the best practices adopted in some Member States for the protection of children, such as the Barnahus in Sweden; calls on the Member States to focus on ensuring the provision of legal aid, psychological support and assistance and to avoid the secondary victimisation of children;

### ***Removal and blocking (Article 25)***

19. Acknowledges that the Member States have put in place legislation and administrative measures to remove webpages containing child pornography hosted on their territory; regrets the fact that only half of the Member States have incorporated provisions into their legislation making it possible to block access to such webpages for users within their territory; calls on the Member States to fully implement Article 25, including blocking child sexual abuse material where possible, and with the relevant safeguards in place;
20. Calls on the Member States to speed up, in cooperation with the Internet industry, the notice and take-down procedures and to establish partnerships with the online industry to prevent networks and systems from being hacked and misused to distribute child sexual abuse material;
21. Recommends that blacklists of websites containing child pornography be updated regularly by the relevant authorities and communicated to internet service providers to avoid, for instance, over-blocking and to ensure proportionality; recommends the sharing of such blacklists of websites among the Member States, with Europol and its European Cybercrime Centre, and with Interpol; considers, in this regard, that newly developed hashing technology, such as PhotoDNA, should be applied;
22. Urges the Member States to make it mandatory for internet service providers (ISP) to report child sexual abuse material detected in their infrastructure proactively to law enforcement authorities, as well as to national hotlines;
23. Recognises the active and supportive role in combating child sexual abuse material on the Internet played by civil society organisations, as is the case with the Internet Watch Foundation in the UK; urges the Member States which have not yet done so to set up such hotlines and takes the view that they should be allowed to search for child sexual abuse material online proactively;
24. Calls on the Commission to continue keeping Parliament regularly informed on the state of play in relation to compliance with the Directive by the Member States; instructs its relevant committee to hold a hearing on the state of play in relation to implementation and possibly consider adopting an additional report on the follow up given to the implementation of the Directive;
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25. Instructs its President to forward this resolution to the Council and the Commission as well as to the parliaments and the governments of the Member States.