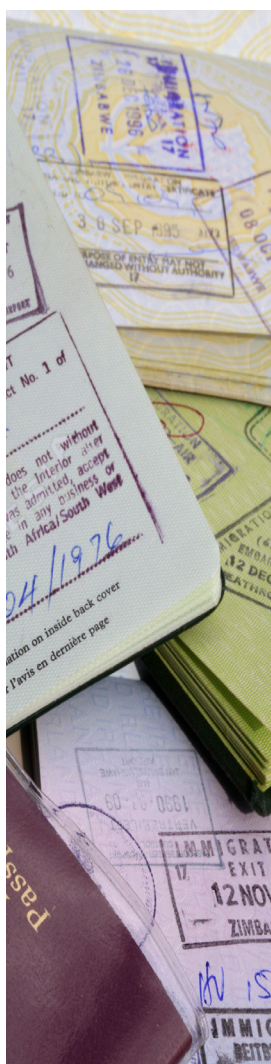


DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C** CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



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DIRECTORATE GENERAL FOR INTERNAL POLICIES

**POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS**

CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

Combatting child sexual abuse online

STUDY

Abstract

This study was commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee. The study provides an overview of existing legislation at European Union, Member State and the international level related to online child sexual abuse. The study also provides an account of the role of law enforcement agencies in combatting child sexual abuse online and other governmental and private sector initiatives. Some of the current trends and phenomena related to online child sexual abuse and various policy responses are discussed, complemented with recommendations for future policy formulation.

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AUTHOR

Ms Petra JENEY, Senior Lecturer, European Centre for Judges and Lawyers, European Institute of Public Administration (EIPA), Luxembourg

RESPONSIBLE ADMINISTRATOR

Mr Alessandro DAVOLI
Policy Department C - Citizens' Rights and Constitutional Affairs
European Parliament
B-1047 Brussels
E-mail: poldep-citizens@europarl.europa.eu

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To contact the Policy Department or to subscribe to its monthly newsletter please write to:
poldep-citizens@europarl.europa.eu

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LIST OF ABBREVIATIONS

BIK	Better Internet for Kids
CAM	Child Abuse Material
CRC	Convention on the Rights of the Child
CSE	Child Sexual exploitation
CEO Coalition	CEO coalition to make the Internet a better place for kids
CoE	Council of Europe
Directive 2011/93	Directive 2011/92/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
ECRIS	European Criminal Records Information System
ELSA	European Law Students Association
eNACSO	European NGO Alliance for Child Safety Online
EPCAT	END Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes
EU	European Union
Eurojust	The European Union's Judicial Cooperation Unit
Europol Decision	Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office
European Framework	The European Framework for Safer Mobile Use by Younger Teenagers and Children
Framework Decision 2004	Council Framework Decision 2004/68/JHA on combating the sexual abuse and sexual exploitation of children and child pornography

Global Alliance Global Alliance against against Child Sexual Abuse Online

iOCTA Internet Organised Crime Threat Assessment

ISP Internet Service Provider

IWF Internet Watch Foundation

Lanzarote Convention Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

Lanzarote Committee Committee of the Parties set up by Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

OPSC Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child Pornography

TEU Treaty on the European Union

TFEU Treaty on the Functioning of the European Union

UN United Nations

UNTOC United Nations Convention against Transnational Organized Crime

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EXECUTIVE SUMMARY

Background

The European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs mandated the European Centre for Judges and Lawyers, European Institute of Public Administration (EIPA), Luxembourg, to prepare a study on the key issues related to child sexual abuse online.

The purpose of the study is to provide an overview of existing legislation at EU, Member State and the international level related to online child sexual abuse. In addition, the study provides an account of the role of law enforcement agencies in combatting child sexual abuse online, including the European Cybercrime Centre EC3 in Europol. The study also takes account of other initiatives, such as the Global Alliance against child sexual abuse online. In the same vein, reference is also made to the role played by law enforcement authorities and private companies in countering such threats. Finally, background information and policy recommendations for the European Parliament regarding the fight against online child sexual abuse are also provided.

Aim

Given its key role in this area, the study will devote most of its attention to the existing EU regulatory framework. In particular, the main focus will be on what changes have been brought about by the introduction of the 2011/93/EU Directive on combating the sexual abuse and sexual exploitation of children and child pornography.

The EU's regulatory regime will be compared with the Lanzarote Convention, the Council of Europe's pivotal instrument on the Protection of Children against Sexual Exploitation and Sexual Abuse, and various other Council of Europe and United Nations instruments sharing the same objective. The comparative analysis of these instruments will show how the various levels of regulation complement and strengthen each other.

The role of the law enforcement agencies and the private sector will be shown through the introduction of Europol's European Cybercrime Centre and the transnational structures of various public and private stakeholders. The structures attempt to ensure that all efforts in the fight against online child sexual abuse work in a complementary manner.

The study will show some of the current trends and phenomena related to online child sexual abuse, including new types of offences, novel technological devices and patterns of offender behaviour. The study will reflect upon the various policy responses that have been launched to fight emerging trends.

On the basis of these findings the last part of the study will provide recommendations on how to enhance the fight against online child sexual abuse and how to make it more effective.

Methodology

The present study is based on a combination of desk research and interviews. Research work encompassed legislative instruments, academic work and publicly available documents. Desk research was complemented by interviews conducted with officials from Europol. A list of interviews is included at the end of the study.

GENERAL INFORMATION

KEY FINDINGS

- The European Union's Directive 2011/93/EU and the Council of Europe's Lanzarote Convention are both comprehensive and up-to date instruments that complement and amplify each other
- In parallel to top down legislative instruments, voluntary undertakings, self-regulation, individual commitments and best practices are indispensable to effectively combat online child sexual exploitation
- Europol's European Cybercrime Centre plays a pivotal role in providing operational support for the EU Member States and producing threat assessments related to online child sexual abuse
- New phenomena and new technologies related to online child sexual abuse increase the difficulties of combatting online sexual abuse
- Comprehensive policy responses are needed to effectively step up the fight against online child sexual abuse

Online child sexual abuse is a phenomenon which is the direct result of the dramatic changes brought about by information and communication technology. Combatting this very grave and serious offence needs a comprehensive approach. The criminalisation of various conducts labelled as child sexual abuse is only one, though clearly indispensable, answer to this problem. Moreover criminalisation and the machinery of criminal justice, no matter how straightforward their application may be, only become available once an offence has already been committed. Online child sexual abuse needs a multi-disciplinary approach, which ensures the concerted efforts of an array of policies to effectively tackle this disturbing phenomenon. Prevention, awareness raising, training and education are all quintessential in the fight against online child sexual abuse. Furthermore, the technology related aspects for ensuring a safer internet should not be underestimated either. Policies designed to combat online child sexual abuse are to be carried out through a multi-agency approach which ensures the participation of law-enforcement agencies, agencies working with children and providing social service, private industry stakeholders (chiefly the ICT industry), the non-governmental sector and other stakeholders from the civil society. More generally, however, the creation and maintenance of social norms which clearly and univocally condemn online child sexual abuse, reject any sexualisation of children and generally provide an environment where any such act is absolutely rejected, is the baseline for the effective prevention of online child sexual abuse.

The discussion below concentrates on the current national, EU and the international level legislation related to online child sexual abuse. This is followed by an account of the role of law enforcement agencies and of other governmental and private sector initiatives. Some of the current trends and phenomena related to online child sexual abuse and various policy responses are highlighted, complemented with recommendations for future policy formulation. The main findings include the complementary nature of top-down and bottom-up regulatory frameworks and the importance of prevention through awareness raising and safe internet programmes. Furthermore, the implementation of the up-to date EU regulatory framework through effective law enforcement measures includes unchartered

areas, such as victim identification and infiltration into online communities, in which Europol's European Cybercrime Centre plays a central role in assisting and supporting national law authorities. Technological developments constantly create newer types of offences and the devices to carry out them. To that end, multidisciplinary and comprehensive policy responses are needed to effectively step-up the fight against online child sexual abuse.

Materials on the subject of sexual offences against children are full of terms and definitions describing the various offences and phenomena related to these crimes, at times in an overlapping manner. One of the major achievements of both European and international level legislation is to provide a common vocabulary and agreed definitions in order to enhance mutual understanding. This is also indispensable for the criminalisation of any conduct under the principle of speciality, a basic requirement guaranteeing the legality of criminal law. This study uses the term **online child sexual abuse** to cover a variety of offences (ranging from accessing websites with child abuse material to online grooming). However, when it comes to the definition of offences it turns to the concretely discussed instruments and uses the precise legal notions defined by a given instrument. The term **child abuse material (CAM)** refers to any form of child pornography, video, pictures or even text. When general reference is made to child sexual abuse content outside the context of a concrete legislative instrument, it is this term that will be used.

1. LEGAL ENVIRONMENT RELATED TO COMBATTING CHILD SEXUAL ABUSE ONLINE

KEY FINDINGS

- The European Union criminal law legislation, Directive 2011/93/EU, is up-to date, sufficiently nuanced and comprehensive to combat online child sexual abuse
- The Lanzarote Convention is the leading, comprehensive and dynamic instrument adopted under the auspices of the Council of Europe promoting the fight online child sexual abuse even in third countries
- The Directive 2011/93/EU works in tandem with Lanzarote Convention, the two instruments complement and amplify each other
- United Nations instruments ensure a global dimension to combat online child sexual abuse
- In parallel to top down legislative instruments, voluntary undertakings, self-regulation, individual commitments and best practices are indispensable to effectively combat online child sexual exploitation

1.1. European Union

1.1.1. Early EU criminal law formation

Ever since the EU was granted with competence in the realm of criminal law - by the Treaty on the European Union as agreed in Maastricht in 1991 - it has been active in stepping up the fight against child sexual abuse, giving voice to a phenomenon that has been greatly accelerated by technological advancement and advocating the need for more effective criminal law responses from the EU Member States.¹

Following the more articulate provisions on the EU's legislative power regarding substantive criminal law introduced by the Treaty of Amsterdam, the EU has been empowered to 'progressively adopt measures establishing minimum rules relating the constituent elements of criminal act and penalties'.² This new competence prompted the adoption of a series of framework decisions aimed at defining the constituent elements of particularly serious criminal offences. It was in this context that the Council adopted the 2004/68/JHA Framework Decision on combating the sexual exploitation of children and child pornography,³ which was the first full-fledged legislative instrument related to combatting

¹ Resolution of the European Parliament of 11 April 2000; Resolution of the European Parliament of 30 March 2000 on the Commission Communication on the implementation of measures to combat child sex tourism ; Joint Action 97/154/JHA of 24 February 1997 adopted by the Council on the basis of K.3 of the Treaty of the European Union concerning Action to combat trafficking in human beings and sexual exploitation of children [1997] OJ L63/2 ; Council Decision 2000/375/JHA of 29 May 2000 to combat child pornography on the Internet [2000] OJ L138/1 ; Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on the implementation of measures to combat child sex tourism (COM(99) 262 final); Communication from the Commission on combating child sex tourism (COM(96) 547 final).

² Article 31 (1)(e) of the Treaty of the European Union as amended by the Treaty of Amsterdam.

³ Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography [2004] OJ L13/44.

online child sexual abuse. The Framework Decision sought to address the sexual exploitation of children and child pornography by a comprehensive approach in which the constituent elements of criminal law are made common to all Member States.⁴ While no longer in force, the Framework Decision was the first attempt at the EU level to define the minimum rules related to the constituent elements of the criminal offence of child pornography, taking into account, albeit in a limited manner, the prolific nature of the offence and including effective, proportionate and dissuasive sanctions.

While the Commission reported that almost all of the Member States had ensured a high level of protection of children from sexual exploitation and abuse, and had adopted the necessary criminal law measures, including an appropriate level of penalties, most of the perceived shortcomings were the consequence of simply not being dealt with by the Framework Decision.⁵ A common European level of understanding on issues including age of consent, victim identification and further methods of the illicit use of the internet in the light of dramatic advancements in electronic communication technologies were considered as highly necessary for effectively combatting the sexual abuse of children. Benefitting from the new treaty environment ensured by the Treaty of Lisbon⁶ and seeking to extend the scope of the Framework Decision, the Commission tabled its new legislative proposal in 2009.⁷ The new instrument was finally adopted, through the ordinary legislative procedure by the Council and the European Parliament in tandem, as the 2011/93/EU Directive on combating the sexual abuse and sexual exploitation of children and child pornography.⁸

1.1.2. 2011/93/EU Directive

Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography not only repeals the previous Framework Decision but transforms its content into the form of a Directive, a type of legislative act that the Treaty of Lisbon made possible. The Directive established a European-level criminal legal framework for the criminalization of child pornography with the aim of remedying the shortcomings of the Framework Decision. As referred to above these shortcomings were mainly due to 'developments in information technology [...] making it easier to produce and distribute child sexual abuse images while offering offenders anonymity and spreading responsibility across jurisdictions'⁹. The many improvements introduced by the Directive include the more refined definition of child pornography, increased criminal penalties, the criminalisation of the possession and acquisition of online child sexual abuse materials, the introduction of the new offence of 'grooming' and a provision related to the removing and/or blocking of websites containing child pornography'. These key areas are considered in turn below.

⁴ Framework Decision 2004/68/JHA Preamble (7).

⁵ Report from the Commission based on Article 12 of the Council Framework Decision of 22 December 2003 on combating the sexual exploitation of children and child pornography Brussels, 16.11.2007 COM(2007) 716 final.

⁶ Through the abolishment of the so-called third pillar of the European Union, police and judicial cooperation in criminal matters have become a 'Community policy' hence legislation is adopted with the European Parliament, the Court of Justice's jurisdiction is unqualified and there is no further use of specific third pillar legislative acts. For a detailed discussion of the impact of the Lisbon Treaty on this area see Peers, Steve EU Justice and Home Affairs Oxford University Press, Oxford, 2011.

⁷ Proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA COM/2010/0094 final - COD 2010/0064.

⁸ 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 OJ L 335 .

⁹ Proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA COM/2010/0094 final - COD 2010/0064. p2.

Definitions

The definition of the '**age of child**' as a 'person below the age of 18 years'¹⁰ was taken over from the 2004 Framework Decision, which at the time was a considerable innovation.¹¹ Yet this standardization of age, while being in line with other international instruments,¹² had caused internal incoherence in national criminal legislation on sexual offences. The disaccord between the standard age of child as 18 for the purposes of criminalizing sexual offences against children required by EU law and national provisions on age of consent for engaging in sexual activities was difficult to reconcile at the national level.¹³ This at times meant that while a person under 18 years could consent to sexual activity, any other activity related to making or distributing pornographic images of him or herself was now criminalized. The 2011/93 Directive overcomes this problem in the following way. For the purposes of adequate protection of minors from exploitation, the age is fixed at under 18 years. Yet it is in the discretion of the Member States to decide whether to criminalize the possession or production of pornographic material by children who have attained the age of sexual consent, provided that the material is for private use and is the result of consensual sexual activities and did not involve any abuse.¹⁴

The Directive has considerably broadened the material scope of the legislation by extending the notion of '**child pornography**' beyond pornographic material involving children to material depicting adults who look like children (youthful adult pornography) and computer generated pornographic material involving children (virtual child pornography).¹⁵ It is apparent that with the inclusion of the virtual child pornography category the justification for criminalizing this aspect of social conduct has shifted from the 'harm' caused to the child depicted in the pornographic material, and moved away from the protection of children. Here the rationale for criminalization is to denounce a behaviour that might be used to encourage or seduce children into participating in such acts and hence creating a subculture in which child abuse is accepted. While the parallel provisions of the Council of Europe's Cybercrime Convention also reinforce this broadening of criminalized conduct,¹⁶ it is worth mentioning that most European jurisdictions did not have corresponding legislation prior to the Directive and the Cybercrime Convention. It is of interest to note a similar provision of the United States' Child Pornography Prevention Act 1996 (CPPA) was held to be unconstitutional by the United States Supreme Court as violating the First Amendment right to free speech.¹⁷ In Europe, no similar constitutional debate arising from the broadening of the ambit of criminalized conduct have erupted, and the preamble of the Directive¹⁸ explicitly denies that material with child pornography content could have any construction as an expression of an opinion. At the same time, the boundaries of legislation were certainly pushed to novel areas.

Sexual abuse and sexual exploitation of children and child pornography offences

The Directive covers a number of offences related to sexual abuse and sexual exploitation of children and child pornography, which are now broadened to fully cover:

- causing, for sexual purposes, a child to witness sexual activities, even without having to participate;

¹⁰ Directive 2011/92/EU Article 2(a) and Framework Decision 2004/68/JHA Article 1(a).

¹¹ Prior to the Framework Decision many EU Member States defined a child for the purposes of the criminal offence of child pornography as a person below 14 or even 16 years, e.g. England and Austria respectively.

¹² See United Nations Optional Protocol on the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography referring to the UN Convention on the Rights of the Child.

¹³ The same difficulty arose in the context of the Council of Europe Cybercrime Convention, which solved the issue setting the age limit at 18 years but allowing Contracting state to define a child as a minor only under the age of 16.

¹⁴ Directive 2011/93/EU Article 8.

¹⁵ Directive 2011/93/EU Article 2 (c) (iii)-(iv).

¹⁶ Article 9 of the Cybercrime Convention.

¹⁷ *Ashcroft v Free Speech Coalition* 122 S Ct 1389 (2002).

¹⁸ Directive 2011/93/EU Preamble (46).

- causing, for sexual purposes, a child to witness sexual abuse, even without having to participate;
- engaging in sexual activities with a child, where abuse is made of a recognised position of trust, authority or influence;
- engaging in sexual activities with a child, where abuse is made of a particularly vulnerable situation of the child (in particular mental or physical disability or a situation of dependence);
- engaging in sexual activities with a child, where use is made of coercion, force or threats, coercing, forcing or threatening a child into sexual activities with a third party;
- causing or recruiting a child to participate in pornographic performances, or profiting from or otherwise exploiting a child for such purposes;
- coercing or forcing a child to participate in pornographic performances, or threatening a child for such purposes;
- knowingly attending pornographic performances involving the participation of a child;
- causing or recruiting a child to participate in child prostitution, or profiting from or otherwise exploiting a child;
- coercing or forcing a child into child prostitution, or threatening a child for such purposes;
- engaging in sexual activities with a child, where recourse is made to child prostitution;
- acquisition or possession of child pornography;
- knowingly obtaining access, by means of information and communication technology to child pornography;
- distribution, dissemination or transmission of child pornography;
- offering, supplying or making available child pornography;
- production of child pornography;
- soliciting a child for sexual purposes, where a proposal is made, by means of information and communication technology, by an adult to meet a child who, for the purpose to engage in sexual activity or to produce child pornography, where that proposal was followed by material acts leading to such a meeting.¹⁹

Member States have been left some limited discretion regarding exempting consensual sexual activities between peers who are close in age and degree of psychological and physical development or maturity. In this vein, it is left for Member States to decide whether to criminalize the acts causing to witness or to engage in sexual activities, pornographic performance, production, acquisition or possession of material involving children in the context of consensual sexual activities, provided no abuse, exploitation or remuneration is involved.²⁰

The following discussion will largely focus on the information technology aspect of the above criminal offences.

¹⁹ Directive 2011/93/EU Article 3-6.

²⁰ Directive 2011/93/EU Article 8.

Child pornography

Acquisition and possession of child pornography is to be criminalized by Member States. The Directive does not define acquisition or possession and refers to child pornography, as defined in Article 2, as covering both online and physical/real material. The result is that the Directive does not explicitly mention that acquisition or possession may well occur through the means of information and communication technology (ICT). As it will be shown below, the wording of the Lanzarote Convention, also supported with an explanatory memorandum, is more precise in this regard, distinguishing between possession and knowingly obtaining access through information and communication technologies.²¹ The criminalisation of access to child pornographic material through ICT in the subsequent provision of the Directive also strengthens the interpretation that encompasses acquisition and possession if made through ICT. In any case, it has to be ensured that both the implementation and the application of the Directive supports the interpretation where acquisition and possession of child pornography includes offences through ICT.

Knowingly obtaining access, by means of information and communication technology, to child pornography is a new offence made punishable in EU Member States by the Directive. The previous Framework Decision had no corresponding provision. This offence complements the prohibition of acquisition and possession of child pornographic materials by pulling the intentional access of by means of ICT such material under the scope of criminal law. It has to be emphasised that access through ICT to child pornography is an offence that incurs criminal liability only if carried out intentionally; this is the reason for the notion of 'knowingly' obtaining. Hence, a person who inadvertently accesses such an internet site does not fall within the ambit of criminal law. The person both needs to intentionally enter such a website containing child pornography and also to know that such content can be found there. Intention may be deduced from the reoccurrence of the offence or through the making of a payment in return for the ICT service.

Distribution, dissemination or transmission of child pornography were already criminalized in the 2004 Framework Decision, yet only in relation to 'computer systems'. The additional value of the Directive lies in the broadened notion of ICT that is used throughout the Directive and most importantly in the much wider notion of child pornography itself, covering 'any material' that visually depicts a child for sexual purposes, thereby going beyond real children and real images.

Offering, supplying or making available child pornography, were also covered by the 2004 Framework Decision. Except for the offence of 'offering', this is a further area where the Directive expands the scope of captured offences.

Production of child pornography was also made punishable by the Framework Decision. The Directive merely repeats the Framework Decision in this regard.

While the criminalization of the above offences is an obligation for the Member States, they may derogate from this in various aspects. Firstly, Member States may decide not to criminalize the production, acquisition or possession of material involving children who have reached the age of sexual consent where that material is produced and possessed with the consent of those children and is for the private use of the persons involved only, in so far as the acts did not involve any abuse. The provision for this derogation exempts self-generated sexual images produced in the context of consensual sexual activities of children under the age of 18 years who, however, have reached the age of consent to enter into sexual activities.²² Secondly, Member States may also decide that activities of persons who

²¹ Lanzarote Convention Article 20(1) (e) and (f), Explanatory Memorandum 139 and 140.

²² Directive 2011/93/EU Article 8(3) read together with Article 5.

only appear to be under aged (youthful adult pornography),²³ do not trigger criminal liability. Thirdly, Member States may also exempt virtual child pornography if that is produced and processed solely for private use, no real child pornography material has been used for its production and there is no risk of dissemination.²⁴

It has to be borne in mind as well that only intentional conduct triggers criminal liability where acts are committed 'without a right'. While the normative provisions of the Directive do not define the term '**without a right**', the preamble sheds light on what is meant by this term.²⁵ In the context of child pornography, the term 'without right' allows Member States to provide a defence with respect to conduct relating to pornographic material but having a medical, scientific or similar purpose. It further allows domestic legislation to exempt activities undertaken by authorities for the purposes of criminal proceedings or the prevention, detection or investigation of crimes, in which cases they may legitimately possess child pornography. This interpretation fully accords with the Lanzarote Convention.²⁶ In short, the exemption from the ambit of criminal law of such activities where 'child pornography material' is legitimately used is an issue left for EU Member States' legislation.

According to the Directive Member States shall criminalize the incitement, aid and abetment of offences related to child pornography, save where they have derogated from criminalizing a certain aspect of the offence.²⁷ In addition, an attempt to commit the offence of distribution, dissemination, transmission, offering, supplying, making available or the production of child pornography shall also be punished.²⁸ The Directive also provides for aggravating circumstances (e.g. where the offence is committed against vulnerable children; by a family member of the child; by several persons; as a member of a criminal organisation; where the offender has been previously convicted for the same offence; where the child's life was seriously endangered; where the offence involved serious violence), which are now common to the Member States²⁹

Solicitation and other criminal offences related to ICT

According to the Directive, **pornographic performance** where a child is coerced or forced to participate in pornographic performances, or threatening a child for such purposes shall be punishable.³⁰ Pornographic performance is defined by the Directive as 'a live exhibition aimed at an audience, including by means of information and communication technology' where the child is 'engaged in real or simulated sexually explicit conduct or the sexual organs of a child for primarily sexual purposes'.³¹ The Directive goes beyond the Framework Decision by explicitly including online pornographic performances on public and private peer-to-peer (P2P) networks. This novelty in the regulation has been triggered by new phenomena brought on by the accelerated developments of ICT. **Causing and recruiting** a child to participate in pornographic performances or profiting from or otherwise exploiting a child for such purposes is closely connected to the above and is also made punishable by the Directive. **Knowingly attending pornographic performances** involving children shall also be punishable where this is an intentional conduct. With regard to all the offences related to pornographic performances Member States shall criminalize the incitement, aid, abetment and attempt of such offences.³²

²³ Directive 2011/93/EU Article 5(7).

²⁴ Directive 2011/93/EU Article 5(8) read together with Article 2(c).

²⁵ Directive 2011/93/EU Preamble (17).

²⁶ Lanzarote Convention Article 20(1) (e) and (f), Explanatory Memorandum 14.

²⁷ Directive 2011/93/EU Article 7(1).

²⁸ Directive 2011/93/EU Article 7(2).

²⁹ Directive 2011/93/EU Article 9.

³⁰ Directive 2011/93/EU Article 4(3).

³¹ Directive 2011/93/EU Article 2(c).

³² Directive 2011/93/EU Article 7.

The criminalization of **solicitation for sexual purposes (grooming)** is certainly one of the most important novelties of the Directive, effectively making punishable the intentional conduct of proposing, by means of ICT, to meet a child for the purposes of sexual engagement or the production of child pornography where the proposal is followed by material acts leading to such a meeting.³³ While the criminalization of grooming is a definite departure from the Framework Decision, it has to be noted that this conduct was already made punishable by the Lanzarote Convention and the Directive verbatim takes over the Convention's definition.³⁴ Grooming is considered a 'threat with specific characteristics in the context of the Internet, as the latter provides unprecedented anonymity to users because they are able to conceal their real identity and personal characteristics, such as their age'.³⁵ With regard to grooming Member States shall criminalize the incitement, aid, abetment and attempt of such an offence.³⁶ The same aggravating circumstances discussed above apply to grooming and other ICT related offence.

Liability of legal persons

The Directive not only provides for the criminal liability of natural persons, but obliges Member States to sanction legal persons should they be liable for the enlisted offences.³⁷ The scope of liability and available sanctions provided for in the Directive follow the wording and arrangements that were already introduced by the previous Framework Decision and the Lanzarote Convention.³⁸ In this context, however, it's worth mentioning that the Directive does not single out Internet Service Providers for the purposes of the Directive, and treats legal persons generally.

Jurisdiction

As opposed to other EU criminal law instruments the Directive provides for elaborate jurisdiction rules that go beyond those based on the widely favoured territoriality and nationality principles.³⁹ Jurisdiction exercised on the basis of the territoriality principle is extended to enable prosecution of offences covered by the Directive that relate to information and communication technology accessed from the territory of a Member State, whether or not the host is based on their territory. Member States may establish jurisdiction over an offence if it is committed outside their territory but against one of their nationals or a legal person established on their territory (passive personality principle). Member States are also instructed not to make the exercise of jurisdiction conditional on whether the offence under the Directive was also a criminal offence at the place where it was committed, hence the double criminality principle is to be suspended to that effect. Nor can be the exercise of jurisdiction be made conditional so 'that the prosecution can only be initiated following a report made by the victim in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed'.⁴⁰

Blocking websites

With regard to the innovations brought by the Directive, removing and possibly blocking websites are certainly one of the major achievements. Member States are obliged 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'⁴¹. While there is no obligation to do

³³ Directive 2011/93/EU Article 6.

³⁴ Lanzarote Convention Article 23.

³⁵ Directive 2011/93/EU Preamble (19).

³⁶ Directive 2011/93/EU Article 6(2) and Article 7.

³⁷ Directive 2011/93/EU Article 11-12.

³⁸ Lanzarote Convention Articles 26-27.

³⁹ Directive 2011/93/EU Article 17.

⁴⁰ Directive 2011/93/EU Article 17(5).

⁴¹ Directive 2011/93/EU Article 25(1).

so, Member States are free to take measures to block access to web pages containing or disseminating child pornography towards Internet users within their territory'.⁴² The blocking of websites was one of the most contentious issues during the negotiation of the Directive, and the solution arrived upon is far from satisfactory. Blocking certainly seems to be the most efficient technical solution in cleansing illegal content from the internet. However, two observations need to be made. First, while blocking is the swiftest way to make a website's content inaccessible, it does not mean that the illegal content is deleted. The content is merely hidden, and the applied filter may be bypassed and access can be regained. In addition, no judicial authorisation is needed for blocking. Given that the Directive does not provide an obligation for the Member States to ensure the blocking of websites with child pornography content, self-regulation measures and voluntary action by Internet Service providers is of great relevance in this area.⁴³

Victim protection

Supported by the Budapest Roadmap, victim protection is at the heart of EU criminal law policy.⁴⁴ The EU has adopted a series of legislative instruments to ensure the strengthening of the rights and protections of victims through the establishment of minimum standards. Directive 2011/93/EU completes this picture with special regard to children victimized by sexual abuse, exploitation or pornography. The provisions of the Directive are to be applied in a manner that ensures the best interest of the child, providing support and assistance immediately and taking account the views, needs and concerns of the child.⁴⁵

Assistance and support shall be provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings. This shall not be made conditional on the child victim's willingness to cooperate in the criminal investigation, prosecution or trial. The Directive contains very detailed rules on ensuring the full compliance of victim's rights and protection for children throughout the criminal investigation and prosecution process, providing for a special representative for the child, legal representation and legal counselling free of charge, including the claiming of compensation. In conducting criminal investigations a series of protective measures are required such as interviewing the child without undue delay, at a place adapted for this purpose, by the same persons, limiting the number interviews and allowing the presence of an adult of the child's choice.⁴⁶ Criminal court proceedings may not be made in public or alternatively the child victim be heard through the use of appropriate communication technologies outside the courtroom.⁴⁷ Member States shall take the necessary measures 'to protect the privacy, identity and image of child victims, and to prevent the public dissemination of any information that could lead to their identification'.⁴⁸

Prevention

The Directive requires Member States to take appropriate steps to prevent and prohibit the dissemination of any material advertising opportunities to commit any of the offences enlisted by the Directive. In the same manner, the organization of sex tourism is prohibited.⁴⁹ Member States shall also take measures to ensure education and training in order to cut back the demand for the forms of the sexual exploitation of children.⁵⁰ Member States' measures to prevent child sexual abuse should also include awareness-raising campaigns, research and education programmes, and working together with civil society

⁴² Directive 2011/93/EU Article 25(2).

⁴³ See the discussion at Chapter 3.3.1.

⁴⁴ Resolution of the Council of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings OJ C 187, 28.6.2011.

⁴⁵ Directive 2011/93/EU Article 19.

⁴⁶ Directive 2011/93/EU Article 20 (1)-(4).

⁴⁷ Directive 2011/93/EU Article 20 (5).

⁴⁸ Directive 2011/93/EU Article 20 (5).

⁴⁹ Directive 2011/93/EU Article 21.

⁵⁰ Directive 2011/93/EU Article 23 (1).

organisations and other stakeholders.⁵¹ Regular training for officials who may come into contact with child victims of sexual abuse or exploitation must also be ensured.⁵²

Preventive intervention programmes or measures

Member States are also required to ensure that persons who fear that they might commit any of the offences criminalized by Directive have access to effective intervention programmes to prevent the risk of such offences being committed.⁵³

Relation to other EU criminal law instruments

The 2011/93 Directive is the central criminal law instrument ensuring that EU Member States share the same constituent elements of crimes, jurisdiction, sentencing levels and sanctions in the combat against children sexual abuse online. However, this instrument cannot be seen in isolation. It is rather a part of the EU legislation on criminal law. In this broader context the fight against online child sexual abuse also benefits from other criminal law instruments, most importantly the series of EU mutual recognition instruments which abolish the double criminality requirement with respect to child pornography. Hence, the European Arrest Warrant, the European Investigation Order, the Directive on Confiscation, the Framework Decision on Custodial Sentences, just to name the most relevant, all become readily available once child pornography offences, including online sexual abuse, are committed. It has to be particularly mentioned that the EU Directive on trafficking in human beings also adds to the scope of EU substantive criminal law criminalising child sexual abuse by making sexual exploitation a part of the definition of trafficking.⁵⁴

Transposition into Member States' national legislation

The discussion of the national transposition and degree of compliance of national laws with Directive 2011/93/EU is beyond the scope of this study, particularly as the European Commission has yet to issue its report on the state of implementation. In 2013, however, an NGO coalition, comprised of Missing Children Europe, eNACSO and ECPAT and ELSA, launched a legal research group dedicated to the national implementation of Directive 2011/93/EU. The research concentrated on the following central issues:

- knowingly obtaining access, by means of information and communication technology, to child pornography (in the below table indicated as ICT CAM),
- online grooming (solicitation by means of information and communication technology of children for sexual purposes) (in the below table indicated as online grooming),
- disqualification arising from convictions, screening and transmission of information concerning criminal records (in the below table indicated as disqualification)
- victim identification (in the below table indicated as victim ID),
- (extraterritorial) jurisdiction (in the below table indicated as jurisdiction),
- assistance, support and protection measures for child victims (in the below table indicated as victim protection),
- measures against websites containing or disseminating child pornography (in the below table indicated as tacking down websites).

⁵¹ Directive 2011/93/EU Article 23 (2).

⁵² Directive 2011/93/EU Article 23 (3).

⁵³ Directive 2011/93/EU Article 22.

⁵⁴ DIRECTIVE 2011/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA OJ 2011 L 101/1. Article 2.

The results of the research, based on the national reports prepared by national NGOs, were presented in a survey and are summarized, albeit in a simplified manner, in the table below. Although only some of the national reports are available and reports were prepared based on replies to a questionnaire, the following general observations can be made.⁵⁵ According to the research group the overall assessment of the degree of compliance is quite satisfactory. Problematic topics, as expected, relate to the implementation of novel criminal offences on 'knowingly obtaining access, by means of information and communication technology, to child pornography' and 'online grooming'. Also, the measures taken against websites with child abuse material (CAM) appear to present difficulties when it comes to aligning national legislation to the Directive. A number of questions related to the scope, definition and use of terms have also been identified. Regarding online grooming, the main question that arises is whether the offence encompasses the situation when the child proposes to meet, and the exact meaning of 'material acts leading to a meeting'. Some incoherence in the wording of the provision of disqualification makes transposition difficult. While Article 10 paragraph 1 of the Directive refers to 'professional activities', paragraph 2 refers to 'employers', but includes 'organisations active in volunteer work' and activities involving direct or indirect contact with children. Concerns were raised not to make victim assistance and support conditional on the child's willingness.

Table 1: Survey of the Implementation of the 2011/93/EU Directive in selected Member States as of 2013

Issue	BE	CY	CZ	DE	IE	IT	LT	LV	PL	SE	UK
1. ICT CAM											
2. online grooming											
3. disqualification											
4. victim ID											
5. jurisdiction											
6. victim protection											
7. tacking down websites											

Complies	Mostly complies but shortcomings	Does not/mostly not comply
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Source: Survey and Workshop on Transposing Directive 2011/93/EU ELSA FOR CHILDREN FINAL CONFERENCE 20/03/2013⁵⁶

Assessment

The 2011/93/EU Directive is a comprehensive instrument designed to combat the new challenges posed by the era of information and communications technologies in relation to child sexual abuse. It ensures harmonized and detailed offences and sentencing levels within EU Member States, extended jurisdiction for Member States, including extraterritorial jurisdiction. It also contains obligations in relation to making the justice

⁵⁵ http://www.coe.int/t/dg3/children/News/ELSA%20Panel%20discussion/MCE_Survey%20And%20Workshop%20On%20Transposing%20Directive%202011.pdf
⁵⁶ http://www.coe.int/t/dg3/children/News/ELSA%20Panel%20discussion/MCE_Survey%20And%20Workshop%20On%20Transposing%20Directive%202011.pdf

system more child friendly, to provide protection, assistance and support to victims, to ensure professional disqualification and to taking down websites with CAM content. While the full picture of the degree of compliance is yet to be seen, at the minimum it can be stated that the Directive has already ensured that those EU Member States who have not ratified the Lanzarote Convention are now subjected to the same or in some cases more stringent obligations. However, the goals of the Directive go beyond ensuring that the obligations set out by the Lanzarote Convention are met.

1.1.3. Non-criminal law instruments

While progressive criminalisation of offences and effective and dissuasive sentence levels are crucial to combatting online child sexual abuse, complementary non-criminal law measures are equally important and also require a European level approach. Two aspects of regulatory frameworks outside the remit of criminal law will be highlighted here. Firstly, the regularisation of electronic commerce and audio-visual media services broadcasting will be explored. Secondly, measures for ensuring safe internet for children through EU programmes on awareness along with voluntary undertakings and self-regulation of the IT sector encouraged by the EU will be discussed.

Regulating e-commerce and audiovisual media services

The difficulty of any legislation involving content regulation of the internet, especially regulation other than criminalisation, is the risk of the violation of fundamental rights, and of the freedom of expression in particular. In addition, there are important national differences in the social, cultural and political constructions of what content is harmful or not. For these reasons, European legislation on regulating the internet has been particularly cautious.

The **e-commerce Directive**⁵⁷ ensures the proper functioning of the internal market by ensuring the free movement of information society services between the Member States. This is accomplished by approximating certain aspects of information society services relating to the internal market, most importantly the establishment of service providers, commercial communications, electronic contracts, the liability of intermediaries, and cooperation between Member States. The Directive maintains the 'country of origin principle', which means that should service providers comply with the laws of their country of origin, then the service is deemed legal and cannot be restricted by other Member States. In the academic literature the issue of how the country of origin principle can be reconciled with criminal law has been a source of debate.⁵⁸ The problem is largely rooted in the territoriality principle of criminal law, hence the breach of rules on the territory of the state, irrespective of the country of origin principle, which mitigates to deem the service legal if meeting the rules of the home state. In addition, the Directive does not iron out the relationship between the country of origin principle and the remit of national criminal law as it merely provides Member States with the possibility to derogate from the freedom to provide information society services. Such derogation has to be justified as being necessary for reasons of 'public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons'.⁵⁹ At the same time the measure has to be taken against an information society service prejudicing the objectives of the Directive on

⁵⁷ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') OJ L 178, 17.7.2000.p1-16.

⁵⁸ Summers, Schwarzenegger, Ege and Young: The Emergence of EU Criminal Law – Cybercrime and the Regulation of Information Society, Hart Publishing 2014. pp105-107.

⁵⁹ E-commerce Directive Article 4(a).

e-commerce, has to be proportionate. With increased criminal law harmonisation at the EU level it is believed that, despite the academic arguments, the possible friction between the country of origin principle in the e-commerce Directive and national criminal laws is largely superseded. The e-commerce Directive also provides for liability rules for legal persons, yet curiously enough it does not directly address the liability of Internet Service Providers (ISP), only the liability of intermediary service providers.⁶⁰

The **Audiovisual Media Services Directive**,⁶¹ which was adopted 10 years after the e-commerce Directive, settles the issue between the country of origin principle and the applicability of criminal law in a more satisfactory way, obviously taking into account the then existing EU criminal law framework. The Directive simply allows Member States to derogate from the country of origin principle if a television broadcast coming from another Member State 'manifestly, seriously and gravely infringes' the 'physical, mental or moral development of minors, in particular programmes that involve pornography'.⁶² In short, the Directive directly allows Member States to step up against such programmes.

Safe internet for children

The Digital Agenda for Europe,⁶³ among other objectives, aims to ensure that the Internet becomes a place of opportunities for children, to communicate, to access information, and to develop their skills. To that end, a number of specific actions were proposed in the area of trust and security of the Internet, including support for reporting of illegal content online and awareness campaigns on online safety for children and fostering self-regulation in the use of online services.⁶⁴

It was in this context that the European Commission in the 'Strategy for a Better Internet for Children', also known as 'Better Internet for Kids- BIK',⁶⁵ proposed a series of actions to be undertaken by the European Commission, EU Member States and by the related ICT industry. It is very important to emphasise that the bulk of the proposed measures are not of a legislative nature, but relate to ensuring high quality content, awareness raising and empowerment, thereby enhancing online safety. The objective is that by completing the proposed actions of the strategy children will acquire better internet and computer literacy skills. Moreover, both children and parents will benefit from a more safe online content due to effective tools for reporting abuse, age appropriate privacy settings, content classification schemes and parental controls.

Voluntary undertakings and self-regulation

The CEO Coalition to make the Internet a better place for kids (CEO Coalition) was launched in December 2011, where signatory companies⁶⁶ committed themselves to take positive action to make the internet safer for children. The CEO Coalition is a cooperative voluntary intervention under the Commission's Strategy for Better Internet for Kids, designed to respond to emerging challenges arising from the diverse ways in which young

⁶⁰ E-commerce Directive Article 12-16.

⁶¹ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) OJ L 95, 15.4.2010.

⁶² Article 3(2) a) in conjunction with Article 27.

⁶³ The Digital Agenda is one of the seven pillars of the Europe 2020 Strategy and proposes to better exploit the potential of Information and Communication Technologies (ICTs) in order to foster innovation, economic growth and progress.

⁶⁴ <https://ec.europa.eu/digital-agenda/en/our-goals/pillar-iii-trust-security#Our Actions>

⁶⁵ Communication from the European Commission European Strategy for a Better Internet for Children Brussels, 2.5.2012 COM(2012) 196 final

⁶⁶ Apple, BSKyB, BT, Dailymotion, Deutsche Telekom, Facebook, France Telecom - Orange, Google, Hyves, KPN, Liberty Global, LG Electronics, Mediaset, Microsoft, Netlog, Nintendo, Nokia, Opera Software, Research In Motion, RTL Group, Samsung, Skyrock, Stardoll, Sulake, Telefonica, TeliaSonera, Telecom Italia, Telenor Group, Tuenti, Vivendi and Vodafone.

Europeans go online. According to the Statement of Purpose⁶⁷ of the CEO Coalition the following areas will be targeted: reporting tools for users, age-appropriate privacy settings, content classification, parental controls, taking-down of child sexual abuse material.

The Safer Social Networking Principles for the EU

The Safer Social Networking Principles adopted in 2009⁶⁸ are a self-regulatory agreement signed by the major social networking services providers present in Europe.⁶⁹ In the Principles the supporting companies undertook to implement measures to ensure the safety of minors on their services.

European Framework for Safer Mobile Use by Younger Teenagers and Children

The European Framework for Safer Mobile Use by Younger Teenagers and Children (European Framework) dates back to 2007, in which leading European mobile providers and content providers committed themselves to ensure that, on their services throughout Europe, access control is made for adult content. Further objectives are the classification of commercial content according to national standards of decency and appropriateness, the fight against illegal content on mobiles and finally the launch of awareness raising campaigns for parents and children.

1.2. Council of Europe

The standard setting mission of the Council of Europe can be recognised through the elaboration of international conventions, which are then opened for signature for States. The criminal law related conventions adopted under the auspices of the Council of Europe (CoE) share three important common features. Firstly, they are comprehensive instruments, thereby addressing not only the strictly speaking criminal law aspect of the given crime but tackling other, closely related, issues such as prevention and victim protection. This is highly relevant as in the context of combatting online child sexual abuse it is particularly important to go beyond the ambit of criminal law and to approach this phenomenon in a complex manner. Secondly, the conventions are open for signature for States which are not members of the CoE. This not only gives a universal character to these conventions but also provides for the broader dissemination of the values that are embodied in the provisions. With regard to combatting online child sexual abuse this is particularly important, since the recourse to ICT inherently make these offences of a transnational nature, necessarily involving third countries which are neither members of the EU nor the CoE. Thirdly, these conventions are dynamic instruments, designed to keep pace with developments regarding the addressed crime and providing the means of responding to new phenomena. To that end the conventions introduce binding procedures in the framework of which parties' compliance with their obligations are verified, and common interpretations and "good practice" are identified.

It was the **Cybercrime Convention**,⁷⁰ (adopted in 2001) which first dealt with online child pornography, albeit in a limited manner. The Convention was designed in response to the growth of information communication and technology in order to cover offences which were inherently computer crimes and where ICT was used to commit conventional crimes. It is in this latter context where the Cybercrime convention is relevant to online child sexual abuse, as it requires contracting states to establish as criminal offences for the following:

- producing child pornography for the purpose of its distribution through a computer system;

⁶⁷ https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/ceo_coalition_statement.pdf

⁶⁸ https://ec.europa.eu/digital-agenda/sites/digital-agenda/files/sn_principles.pdf

⁶⁹ Just to name a few Google, Facebook, Microsoft, Yahoo. Myspace, Netlock etc.

⁷⁰ Convention on Cybercrime CETS No.: 185, Budapest, 23.XI.2001 All EU Member States have ratified the convention except for Greece, Ireland and Sweden For signatures and ratifications see:

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=185&CM=8&DF=&CL=ENG>

- distributing or transmitting, and also offering or making available child pornography through a computer system;
- procuring child pornography through a computer system for oneself or for another person;
- possessing child pornography in a computer system or on a computer-data storage medium.⁷¹

The Convention defines 'child pornography' to include material which depicts:

- a minor engaged in "sexually explicit conduct";
- a person appearing to be a minor engaged in sexually explicit conduct;
- a "realistic" images representing a minor engaged in sexually explicit conduct.⁷²

The Convention obliges contracting states to treat the above as criminal offences if carried out 'without a right'.⁷³ Yet the Convention allows some flexibility for the contracting parties as it does not define notions as 'pornographic material' or 'sexually explicit conduct'. Today, the Cybercrime Convention should be seen as the first European endeavour in criminalizing online activities related to child pornography paving the way for a more full-fledged instrument.

1.2.1. Lanzarote Convention

General considerations

It was the Lanzarote Convention, officially titled as the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse,⁷⁴ is the first far reaching comprehensive instrument to address the subject of sexual exploitation of children.⁷⁵ The Convention aims to prevent the sexual exploitation and sexual abuse of children, to protect the child victims of these offences and to prosecute the perpetrators. The instrument is both comprehensive and pro-active as it seeks to capture the various aspects of the fight against sexual crime and also introduces a monitoring mechanism to support the parties in meeting their commitments. It is the multidisciplinary approach of the Convention which makes it original and which contains its true added value. The Convention, under certain conditions, is open to states which are not members of the Council of Europe. To date the Lanzarote Convention has been ratified by 38 states, with further 9 states having signed but not yet ratified the Convention.⁷⁶

Criminal law provisions

The Convention is truly a milestone regarding the *substantive law notions* which it introduced. First and foremost, the Convention requires parties to criminalize various acts grouped together under the notions of "sexual abuse" and "sexual exploitation", where no distinction was intended to be made between these two and where these notions were not

⁷¹ Convention on Cybercrime Article 9.

⁷² Ibid Article 9(3).

⁷³ See the discussion above at point 1.1.2.

⁷⁴ Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse CETS No.: 201. The Convention was opened for signature in Lanzarote on 25 October 2007, hence the name 'Lanzarote Convention'.

⁷⁵ Eric Ruelle Sexual violence against children – The European legislative framework and outline of Council of Europe conventions and European Union policy in:

⁷⁶ <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/201/signatures> States ratified/acceded to the Convention: Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Georgia, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta Moldova, Monaco, Montenegro, Netherlands, Poland, Portugal, Romania, Russia, San Marino, Serbia, Slovenia, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Turkey, Ukraine States signed but not yet ratified the Convention: Armenia, Azerbaijan, Czech Republic, Germany, Ireland, Norway, Slovakia, United Kingdom.

decidedly confined to offences committed for commercial purposes. The criminalized acts cover: *sexual abuse; offences concerning child prostitution; offences concerning child pornography; offences concerning the participation of a child in pornographic performances; corruption of children and the solicitation of children for sexual purposes.*⁷⁷

With regard to online child sexual abuse, the Convention's true innovations were firstly to broaden the notion of child pornography. While drawing inspiration from the Cybercrime Convention, here the offence is not restricted to child pornography committed by the use of a computer system, but to depart from this and to stretch the scope of regulation to include the ever-increasing use of the Internet, which is indeed the primary instrument for trading such material. The Convention also extends the notion of child pornography to material consisting exclusively of simulated representations or realistic images of a non-existent child, a provision which contracting parties may decide not to apply. Secondly, new offences were criminalized, all related to the use of information and communication technologies and on-line practices such as *knowingly obtaining access, through information and communication technologies, to child pornography and solicitation of children for sexual purposes.*

The *ancillary criminal law provisions* employed by the Convention are also noteworthy. The Convention requires parties to align their national laws to enable them to prosecute the offences referred to in the Convention, by ensuring jurisdiction based not only on the traditional principles of "territoriality" and the "nationality" of the perpetrator, and even in some cases the victim, but uniquely establishing jurisdiction based on the habitual residence of the perpetrator or the victim. While subject to reservation of the parties, this additional grounds for jurisdiction was seen as important to make it possible to make it possible to effectively step-up against sex tourism. Furthermore, the removal of dual criminality in prosecuting such serious offences abroad is an exceptional move in international criminal law instruments. As it was shown above in the context of the EU, this is no longer an issue due to the mutual recognition principle. However in the non-EU context this is certainly a bold move. The Convention further provides for corporate liability, types and levels of sanctions, aggravating circumstances, the taking into account of prior convictions and an array of judicial cooperation tools.⁷⁸

Prevention and assistance to victims

However it is not only the sophisticated and novel substantive law notions and the intensified judicial cooperation provisions, but the very detailed preventive and protective measures which truly make the Convention a remarkable, comprehensive instrument. The Convention specifically addresses the needs that exist in this area, and to that end combines prevention, victim assistance and intervention. It requires contracting parties to set-up specialized authorities and co-ordinating bodies, such as independent institutions to promote and protect the rights of the child.

With regard to **prevention measures** the Convention⁷⁹ provides for the:

- persons working in contact with children should be screened and trained;
- education for children and awareness raising on the safe use of the Internet;
- awareness raising of children of the risks of sexual exploitation and sexual abuse and of how to protect themselves;
- the development of preventive intervention programmes or measures for perpetrators of sexual offences against children, irrespective whether conviction or charge has been made, or no offence has been committed or reported to the authorities;

⁷⁷ Lanzarote Convention Articles 18-23.

⁷⁸ Lanzarote Convention Articles 24-39.

⁷⁹ Lanzarote Convention Articles 4-9.

- awareness raising of the general public;
- participation of children, the private sector, the media and civil society in the design and development of preventive measures.

Concerning **protective measures and assistance to victims**,⁸⁰ the Convention requires contracting parties:

- ensure that professional confidentiality rules do not prevent professionals working in contact with children from reporting sexual exploitation or sexual abuse of a child;
- encourage reporting in good faith of suspicion of sexual exploitation or sexual abuse of a child
- develop assistance services, such as telephone or Internet helplines to provide advice to callers even confidentiality with due regard to their anonymity;
- facilitate the recovery of victims, including therapeutic assistance and emergency psychological care;
- the adoption of specific investigative and criminal procedure measures ensuring that the needs of the child are taken into account;
- special training for personnel involved in criminal proceedings;
- children's procedural rights (right to information, privacy, support evidence, legal aid)
- protection of children from any risk of retaliation and repeat victimisation;
- limitation period to begin when the child reaches majority, in the case of the most serious offences.

To that end parties are to establish social programmes and set up multidisciplinary structures to provide the necessary support for victims.

Concerning **intervention programs and measures**,⁸¹ the Convention requires contracting parties:

- preventing and minimising the risks of repeated offences of a sexual nature against children;
- ensuring the access of offenders of crimes falling within the scope of the convention to access intervention programmes.

Monitoring mechanism

While the substantive provisions may be comprehensive and far reaching, it is the monitoring mechanism set up by the Convention which makes the entire regulatory framework sustainable.⁸² The establishment of the Committee of Parties (Lanzarote Committee) ensures that the obligations undertaken are continuously monitored and their implementation is evaluated. The Committee also facilitates the collection, analysis and exchange of information, experience and good practice between State Parties to the Convention. This allows states to improve their capacity to prevent and combat sexual exploitation and sexual abuse of children. The Committee has been a very important forum for both national representatives and the invited stakeholders to discuss and follow concerted practices.⁸³ For example in the summer of 2015, the Lanzarote Committee adopted an Opinion on Article 23 of the Lanzarote Convention and its explanatory note on

⁸⁰ Lanzarote Convention Articles 11-14.

⁸¹ Lanzarote Convention Articles 15-17.

⁸² Lanzarote Convention Articles 39-41.

⁸³ In the Committee of the Parties each party to the Convention is represented and also other Council of Europe bodies, representatives of the civil society may be invited as observers.

the solicitation of children for sexual purposes through information and communication technologies (Grooming).⁸⁴ In the Opinion, this particular offence is analysed in detail and any questions that may arise in interpreting or applying the provision are addressed. (A very valuable exercise especially in view of the problems faced in transposing the provisions on online grooming of Directive 2011/93/EU.) The Committee is thus a lot more than a body for networking; it genuinely contributes to the fight against child sexual abuse by creating mutual understanding and aligning efforts among States Parties and with the non-governmental sector. In this way the Committee ensures that the spirit and objectives of the Convention remain dynamic over time and new phenomena in relation to child sexual abuse can be understood and fought against through common accord.

Relation between the Council of Europe's Lanzarote Convention and the EU Directive 2011/93/EU

As previously mentioned, Directive 2011/93 draws heavily on the Lanzarote Convention, which all EU Member States have signed, though not necessarily ratified.⁸⁵ In general it has to be noted that the European Union's policy of adopting EU legislation mirroring Council of Europe Conventions has a number of merits. Firstly, this practice generally accelerates the adoption and compliance with the given Convention itself. The use of reservations is limited, as EU Member States obviously cannot make reservations under EU law. The European Commission's scrutiny over the transposition of EU law to national law and the jurisdiction of the Court of Justice of the European Union significantly enhances the proper alignment of the national laws.

The added value of the 2011/93/EU Directive, as compared with the Lanzarote Convention, lies in the following:

- the introduction of **new offences**;
- the **increased harmonisation** of criminal penalties;
- the **requirement for EU Member States to adopt professional disqualification rules**: which essentially prohibition activities involving regular contact with children;
- the introduction of a non-punishment clause for child victims;
- **wider jurisdiction rules**: rules to ensure that offenders face prosecution even if the offences were committed outside the EU;
- **enhanced protection for victims and their families**.

Having said that, it should be noted that the two instruments work in tandem. The Directive enhances full compliance to the Convention among EU Member States, and where appropriate it goes further, setting even stricter standards and obligations. The Convention, however, remains invaluable as an instrument open to both non-EU and non-CoE states, thereby projecting heightened scrutiny, protection standards and vigilance towards countries outside the EU and the CoE. The result is that notions of child sexual abuse, the common degree of criminalization and adequate protection measures become more widely shared among a greater number of states, which in turn leads to a more concerted and effective fight against child sexual abuse.

1.3. United Nations

Under the auspices of the United Nations a number of key international instruments have been elaborated for the protection of children, and more particularly to combat sexual

⁸⁴ [http://www.coe.int/t/dghl/standardsetting/children/T-ES\(2015\)04_enFinalOpinionArticle23.pdf](http://www.coe.int/t/dghl/standardsetting/children/T-ES(2015)04_enFinalOpinionArticle23.pdf).

⁸⁵ <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=201&CM=&DF=&CL=ENG>
[file:///eipafs01/homedrives\\$/pje/Profile/Desktop/Owncloud/documents/petrajeney/research/EU/JHA/EU%20criminal%20law/cyber%20sexual%20abuse/ChercheSig.asp.html](http://eipafs01/homedrives$/pje/Profile/Desktop/Owncloud/documents/petrajeney/research/EU/JHA/EU%20criminal%20law/cyber%20sexual%20abuse/ChercheSig.asp.html)

exploitation and the abuse of children, including through online activities.⁸⁶ The discussion below will focus primarily on the United Nations Convention on the Rights of the Child⁸⁷ and its Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography.⁸⁸ Other UN instruments which are not directly related to online child sexual abuse will only be referred to briefly.

The **Convention on the Rights of the Child (CRC)** sets out minimum standards of protection for children, including protection from harmful influences, abuse and exploitation. The CRC is one of nine human rights treaties elaborated within the UN and is almost universally ratified, with 196 State Parties. Articles 34 to 36 of the CRC specifically require states to protect children from all forms of sexual exploitation and sexual abuse. The Convention requires State Parties to take all appropriate measures at the national, bilateral or multilateral levels to prevent the inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of children in prostitution or other unlawful sexual practices; the exploitative use of children in pornographic performances and materials; the abduction of, the sale of or trafficking in children for any purpose in any form; and to protect children against all other forms of exploitation prejudicial to any aspects of their welfare.

The Convention obliges Parties to provide in a comprehensive manner, appropriate legislative, administrative, social and educational protective measures to ensure the child's safety from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.⁸⁹ State Parties are required to ensure prevention and identification, reporting, referral, investigation, treatment and follow-up of instances of child mistreatment as well as to establish social programmes to provide necessary support for the child and for those taking care of a child. The Convention also sets forth that States must take all appropriate measures to promote the physical and psychological recovery and social reintegration of a child victim.⁹⁰

The **Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child Pornography (OPSC)**, which entered into force in 2002 and now has 171 State Parties, complements the CRC by specifically addressing the sexual exploitation of children. The OPSC prohibits the sale of children, child prostitution, and child pornography and to that end provides definitions of these terms. Child pornography is defined broadly as "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes".⁹¹ The OPSC obliges State Parties to align their respective legislation by criminalizing and adequately punishing the following offences: sale of children *inter alia* for sexual exploitation, offering, obtaining, procuring or providing a child for child prostitution and producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography including an attempt to, and complicity or participation in committing any of the aforementioned acts.⁹² While the OPSC requires State parties to establish criminal, civil or administrative accountability of legal persons as well, the jurisdictional titles are more restricted than the European instruments (Lanzarote Convention, 2011/93/EU Directive) and, not surprisingly, the transnational cooperation foreseen by the Convention is more limited (fewer principles to establish jurisdiction, general rules on extradition and confiscation, judicial cooperation based on mutual assistance). One important aspect, however, that the OPSC does provide for victim protection, asking State Parties to take due regard of child victims' vulnerability and their

⁸⁶ Marta Santos País The United Nations legislative framework for the protection of children from sexual violence, including sexual abuse and exploitation.

⁸⁷ United Nations, *Treaty Series*, vol. 1577.

⁸⁸ United Nations, *Treaty Series*, vol. 2171.

⁸⁹ CRC Article 18.

⁹⁰ CRC Article 39.

⁹¹ OPSC Article 2(c).

⁹² OPSC Article 3.

entitlement to compensation. Again, the scope and elaboration of such rules do not come close to that of the European instruments.

Besides the normative provisions of the OPSC it has also been followed-up by three World Congresses.⁹³ The current agenda of the stakeholders includes the following objectives:

- put into place concrete mechanisms and processes to facilitate co-ordination at national, regional and international levels for enhanced cooperation;
- an effective and accessible system for reporting;
- follow-up and support for child victims of sexual exploitation;
- independent child rights institutions to monitor actions taken for the prevention of the sexual exploitation of children and the protection of victims.

The universal ratification of the CRC and its OPSC is a global priority for the UN, in order to establish a shared normative foundation, channel national efforts into the same direction and ensure that the transnational nature of the crime does not lead to impunity.

The United Nations Convention against Transnational Organized Crime, which entered into force in 2003 and has by now attracted 185 States to become parties, contains a range of provisions concerning international cooperation against transnational organised crime.⁹⁴ The main objective of the Convention is to implement a range of measures to facilitate mutual legal assistance, extradition and international cooperation in the area of law enforcement measures. The measures referred to in the Convention are to be applied in the context of the prevention, investigation and prosecution of any 'serious crime'. The term of 'serious crime' employed by the Convention is flexible enough to cover a range of conduct, including the use of ICTs to abuse or exploit children, provided that the minimum punishment for the specific national crime in question amounts to four years imprisonment or more.⁹⁵ Also the notion of 'benefit', which is a constitutive element of 'organised crime', has been interpreted to include 'sexual gratification', such as the receipt or trade of materials by members of child grooming rings, the trading of children by preferential child sex offender rings or cost-sharing among ring members'.⁹⁶

The **Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children**⁹⁷ supplements the United Nations Convention against Transnational Organized Crime and requires its 168 State Parties to criminalize the trafficking of persons, including children. The relevance of the Protocol to child sexual exploitation is its stipulation that "the transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons'".⁹⁸

Finally **the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime**, adopted in 2005 by the United Nations Economic and Social Council, set forth "good practices based on the consensus of contemporary knowledge and relevant international and regional norms, standards and principles."⁹⁹ The principles and guidelines are relevant with regard to the sexual exploitation and abuse of children insofar as they also pertain, in general, to victims of abuse and exploitation of such crimes, encompassing online child sexual abuse as well.

⁹³ 1996 First World Congress against Commercial Sexual Exploitation of Children, hosted by Sweden jointly organised with Unicef and ECPAT International, with the participation of governments, participated. Followed by congresses in Yokohama in 2001 and in Rio de Janeiro in 2008.

⁹⁴ United Nations, *Treaty Series*, vol. 1577 (entered into force on September 23, 2003).

⁹⁵ UNTOC Article 2(b).

⁹⁶ UNTOC Article 2(a) <http://www.asil.org/insights/volume/15/issue/24/protecting-children-cyber-crime-twentieth-session-un-commission-crime>.

⁹⁷ United Nations, *Treaty Series*, vol. 2237

⁹⁸ Article 3(a).

⁹⁹ Resolution 2005/20 of the United Nations Economic and Social Council.

The greatest contribution of the UN instruments to the fight against child sexual abuse lies in the near universal character of these instruments. Shared notions of child exploitation, child abuse and child pornography is the absolute baseline for any international effort that seeks to step up against such crimes. The global reach of the United Nations ensures that criminalization of sexual offences against children and the protection and assistance to child victims become a worldwide priority. Concrete actions undertaken, for example under the auspices of the Global Alliance against Child Sexual Abuse Online, discussed below, would simply not be feasible in the absence of a mutual understanding of the phenomenon of online child sexual abuse. The UN instruments, and chiefly the OPSC, uniquely foster this vital understanding.

2. ROLE OF LAW ENFORCEMENT AGENCIES AND PRIVATE STAKEHOLDERS IN COMBATTING CHILD SEXUAL ABUSE ONLINE

KEY FINDINGS

- Europol's European Cybercrime Centre plays a pivotal role in providing operational support for the EU Member States and producing threat assessments related to online child sexual abuse
- The Global Alliance against child sexual abuse online is a high level political undertaking established to step up against online child sexual abuse through commitments made in relation to concrete measures
- Initiatives and actions from the private sector, especially from the information and telecommunication industry are indispensable, whether collective or individual, in preventing and tracking down online child sexual abuse

2.1. European Police Office - Europol

Europol's¹⁰⁰ general mandate confers competence to the office in relation to organised crime, terrorism and other forms of serious crime affecting two or more Member States, where 'serious crime' is defined as to include computer crimes. It is in these broad areas where Europol is entrusted to:

- collect, store, process, analyse and exchange information and intelligence;
- notify the competent authorities of the Member States without delay of information concerning them and of any connections identified between criminal offences;
- aid investigations in the Member States, in particular by forwarding all relevant information to the national units;
- ask the competent authorities of the Member States concerned to initiate, conduct or coordinate investigations and to suggest the setting up of joint investigation teams in specific cases;
- provide intelligence and analytical support to Member States in connection with major international events;
- to prepare threat assessments, strategic analyses and general situation reports relating to its objective, including organised crime threat assessments;
- develop specialist knowledge of the investigative procedures of the competent authorities of the Member States and to provide advice on investigations;
- provide strategic intelligence to assist and promote the efficient and effective use of the resources available at national and Union level for operational activities and the support of such activities.¹⁰¹

The broad mandate for Europol is what has allowed it to become the central European hub to combat cybercrime and within this online child sexual abuse.

¹⁰⁰ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (EUROPOL) as of 1st of January 2010. OJ L121/37-66 (Europol Decision).

¹⁰¹ Europol Decision Article 4.

2.1.1. European Cybercrime Centre – EC3

Europol’s general mandate to fight cybercrime was further developed with the establishment of the European Cybercrime Centre in January 2013, in response to the 2010 EU Internal Security Strategy.¹⁰² The placement of the EC3 within the structure of Europol came natural, as in this way the Centre is able to benefit from Europol’s existing law enforcement capacity and also to expand significantly on other capabilities of Europol, particularly the operational and analytical support to Member States’ investigations. The Centre’s chief mission is to strengthen the law enforcement response to cybercrime in the EU. It is entrusted to act in the following areas

- cybercrimes committed by organised groups, particularly those generating large criminal profits such as online fraud;
- cybercrimes which cause serious harm to the victim such as online child sexual exploitation collect, store, process, analyse and exchange information and intelligence;
- cybercrimes (including cyber-attacks) affecting critical infrastructure and information systems in the European Union.

Since its inauguration the EC3 has established itself as the central hub for criminal information and intelligence, through which it supports EU Member States’ operations and investigations by means of operational analysis, coordination and expertise. Since 2010 eight European wide operations have been launched leading to a number of arrests, victim identification and confiscation of material.¹⁰³

Table 2: Example of an EC3 operation

Operation in 2015
<p>‘Swift international police cooperation led to the arrest of a Romanian man suspected of sexually-abusing his own two-year-old daughter, filming the abuse and posting the child abuse material online’.</p>

Source: <https://www.europol.europa.eu/content/international-police-action-leads-rescue-22-month-old-romanian-sex-abuse-victim>

EC3 also provides highly specialized technical and digital forensic support capabilities to investigations and operations, and valuable strategic analysis enabling informed decision making at tactical and strategic level concerning the combating and prevention of cybercrime. EC3 also produces thematic threat assessments. Two most important assessments are: the iOCTA–internet organized crime threat assessment, including online child sexual abuse and the Commercial sexual exploitation of children online.

Within the EC3 structure it is the Focal Point (FP) Twins which directly assists EU Member States in preventing and combating all forms of criminality associated with the sexual exploitation of children. The Focal Point Twins provide assistance and expertise in combatting the distribution of child abuse material through all kinds of online environments, and to tackle all forms of criminal online behaviour against children, such as grooming, self-generated indecent material, sexual extortion and web live streaming.

There are two operational areas where the role of the EC3 is particularly noteworthy. In relation to the fight against child abusive material the EC3 specifically supports EU Member States in preventing, intercepting and stopping the sharing of such material through peer-

¹⁰² Communication from the Commission to the European Parliament and the Council of 22 November 2010 - The EU Internal Security Strategy in Action: Five steps towards a more secure Europe [COM(2010) 673 final

¹⁰³ <https://www.europol.europa.eu/category/global-categories/child-sexual-exploitation>

to-peer networks, as well as through commercial platforms. The other operational area concerns victim identification, which is key to effectively tracking down offenders and at the same time to prevent re-victimisation. To enhance its capabilities Europol has hosted a Victim Identification Taskforce to facilitate international cooperation in novel ways, gathering experts in victim identification from several police agencies to work together.¹⁰⁴

Within its outreach functions, EC3 represents Europol at the Committee of the Parties established by the Lanzarote Convention to monitor implementation.¹⁰⁵

2.2. Eurojust

Eurojust (the European Union's Judicial Cooperation Unit) also contributes to the fight against online child sexual exploitation at the European level. Based on its mandate,¹⁰⁶ Eurojust has general competence to enhance prosecution and judicial cooperation activities among the EU Member States in relation to serious crimes affecting two or more EU Member States and which fall within Europol's competence.¹⁰⁷ To that end Eurojust deals with child related crimes as a priority crime area¹⁰⁸ and established a special Contact point for Child Protection Issues in 2007. The Contact Point acts as the lead in coordinating information and operational activity in relation to investigations on child trafficking, sexual exploitation and online child abuse. The Contact Point is also active in the exchange of best practices and as a centre of excellence regarding judicial cooperation cases related to children.¹⁰⁹

2.3. Global Alliance

The Global Alliance was launched on 5 December 2012 in response to the ever increasing challenge of fighting online child sexual abuse. Ministers from 52 countries¹¹⁰ gathered to form the Global Alliance against Child Sexual Abuse Online. Their focus was on the following four political targets:

- enhancing efforts to identify victims and ensuring that they receive the necessary assistance, support and protection;
- enhancing efforts to investigate cases of child sexual abuse online and to identify and prosecute offenders;
- increasing awareness among children, parents, educators and the community at large about the risks;
- reducing the availability of child pornography online and the re-victimization of children.

¹⁰⁴ <https://www.europol.europa.eu/content/victim-identification-taskforce>

¹⁰⁵ <https://www.europol.europa.eu/content/international-police-action-leads-rescue-22-month-old-romanian-sex-abuse-victim>

¹⁰⁶ Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA OJ 2009 L 138/14.

¹⁰⁷ Europol Decision Article 4.

¹⁰⁸ See for example the Eurojust tactical meeting on "Travelling child sex offenders" Final Report September 2011. http://www.eurojust.europa.eu/Practitioners/operational/Child-protection/Documents/2011-09_tcso-report.pdf

¹⁰⁹ Eurojust News, Issue No. 5 - December 2011.

[http://www.eurojust.europa.eu/doclibrary/corporate/newsletter/Eurojust%20News%20Issue%205%20\(December%202011\)%20on%20the%20fight%20against%20child%20abuse/EurojustNews_Issue5_2011-12-EN.pdf](http://www.eurojust.europa.eu/doclibrary/corporate/newsletter/Eurojust%20News%20Issue%205%20(December%202011)%20on%20the%20fight%20against%20child%20abuse/EurojustNews_Issue5_2011-12-EN.pdf)

¹¹⁰ Albania, Armenia, Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Cambodia, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Ghana, Greece, Hungary, Ireland, Israel, Italy, Japan, Kosovo, Latvia, Lithuania, Luxemburg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Nigeria, Norway, Philippines, Poland, Portugal, Republic of Korea, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Thailand, Turkey, UK, Ukraine, United States of America

Each participating state pledged commitments to meet the set objectives and produced a national report to map out the precise operational goals and related actions that were to be undertaken to meet the commitments made. On the basis of the received reports, in 2013 the European Commission issued a report which summarized the commitments.¹¹¹

The pivotal importance of the Global Alliance lies in its highly political nature. Ministers of justice, home affairs and law enforcement from all around the world undertook obligations to ensure that the fight against online child sexual abuse is effectively implemented. The high level political support for law enforcement and other activities in preventing and stepping up against this crime is essential given its transnational nature, the intensive ITC skills required for tracking down suspects and the multiagency approach needed. The commitments made in the context of the Global Alliance might not be entirely novel, yet the coordinated fashion in which they are translated to actions and are actually carried out among fifty-two states worldwide, including African and Asian countries make it an invaluable effort.

2.4. Role of the private/non-governmental sector

2.4.1. European Financial Coalition-EFC

The European Financial Coalition has its origins at the Financial Coalition against Child Pornography established by the United States' National Center for Missing and Exploited Children and the International Center for Missing and Exploited Children. The original goal of the US coalition was to eradicate the commercial viability of child pornography by tracking its financing and shutting down all payment accounts that are used by suppliers of such material. The European Financial Coalition against Commercial Sexual Exploitation of Children Online (EFC), drawing from the US experience, brings together key actors from law enforcement, the private sector and civil society in Europe with the 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.¹¹² 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.

Europol's EC3 is currently chairing the European Financial Coalition (EFC) and a number of strategic assessments on Commercial Sexual Exploitation of Children Online have been issued in the last few years.¹¹³

2.4.2. INHOPE

INHOPE was created in 1999 by internet hotlines that had been set up nationally for reporting child sexual abusive images.¹¹⁴ Today it has become a collaborative network of 51 hotlines in 45 countries worldwide, all targeting illegal content online and taking an active part in the fight against online child sexual abuse.¹¹⁵ INHOPE is largely concerned with online child sexual abuse material and online grooming. The hotlines of INHOPE offer a

¹¹¹ Global Alliance against Child Sexual Abuse Online Report – December 2013. http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/global-alliance-against-child-abuse/docs/global_alliance_report_201312_en.pdf

¹¹² The EFC project is co-funded by the European Commission ISEC Programme.

¹¹³ The latest being the Commercial Sexual Exploitation of Children Online - A Strategic Assessment - Public version prepared by the European Cybercrime Centre (EC3) –Europol, public version 2015.

¹¹⁴ <http://www.inhope.org/gns/who-we-are/Ourhistory.aspx>

¹¹⁵ INHOPE's structure has changed somewhat over the years, currently it's an association and a foundation. The foundation provides assistance to new hotlines in emerging markets.

public avenue for anonymous reporting of online material. INHOPE investigates all reported cases, which if verified are transmitted to the relevant law enforcement agency and to the Internet Service Provider hosting the content. INHOPE plays a pivotal role by providing the means to report illegal content combined with an effective response mechanism for acting upon reports of illegal content.

2.4.3. Internet Watch Foundation

The Internet Watch Foundation (IWF) was established in 1996 to provide a hotline to report online child sexual abuse material in the United Kingdom.¹¹⁶ Today IWF has a global remit as well, and besides remaining the UK hotline for reporting criminal online content it also receives reports on online child sexual abuse materials hosted anywhere in the world. IWF is an independent self-regulatory body comprised of members coming from all segments of the industry (ISP, mobile operators, content providers, hosting providers, filtering companies, filtering, financial sector organisations). IWF activities go beyond reporting as it provides takedown services as well. The Foundation's support to law enforcement agencies through the provision of data is also of utmost importance.

2.4.4. ICT industry

Engagement with the ICT industry, and to a certain extent the financial services industry, is key to combatting online child sexual abuse. Any top down legislation needs to be complemented with voluntary undertakings, self-regulation, best practices and initiatives coming from the market actors themselves, especially the ISPs. At the European level the European Financial Coalition, the CEO Coalition, and the European Framework¹¹⁷ have already been specifically mentioned. The Safer Social Networking Principles¹¹⁸, which is currently the leading self-regulatory instrument related to the combat online child sexual abuse, was discussed. The importance of such concerted and structured measures is unquestionable. While the fostering of joint efforts needs to remain an absolute priority, individual steps to combat online child sexual abuse are also needed. For example, Google and Microsoft have announced expansions to their systems designed to block child abuse material from their search engines. Google 'strictly controls search results for approximately 100.000 terms related to underage sex abuse' and provides warnings and links to expert help.¹¹⁹ A video identification tool has also been developed, which identifies and blocks child sexual abuse videos.¹²⁰ Such individual responses may very well translate large scale objectives into tangible actions, which is absolutely indispensable to step up effectively against online child sexual abuse.

¹¹⁶ <https://www.iwf.org.uk/>.

¹¹⁷ See 1.1.3.

¹¹⁸ Ibid.

¹¹⁹ <http://www.theguardian.com/technology/2013/nov/18/microsoft-google-summit-halt-child-abuse-images>

¹²⁰ Ibid.

3. TRENDS AND POLICY RESPONSES TO COMBATTING ONLINE CHILD SEXUAL ABUSE

KEY FINDINGS

- Available statistics show an increase in child sexual abuse and online child sexual abuse
- New phenomena related to online child sexual abuse include: sextortion, online grooming, self-generated images, commercial web streaming
- New technologies related to online child sexual abuse include: enhanced anonymization, file sharing, alternative payment methods and increased interconnectivity
- Law-enforcement responses include: blocking/removing websites, infiltration, victim identification
- Comprehensive policy responses also include: safer internet and awareness raising

It is an understatement to note that the emergence of the World Wide Web in the mid-nineties and the overwhelming presence of information and communication technologies in current social life¹²¹ have put the issue of child sexual abuse into a new dimension. Before the internet, child sexual abuse was largely a solitary venture of scattered individuals, with a limited supply of physical child pornographic materials which itself was difficult to get hold of. Today it is no longer a 'cottage industry'¹²² but a global one, where information and communication technologies put access to child pornographic material only a mouse click away, provide a plethora of virtual communities for current and future perpetrators, facilitate the production and dissemination of child pornographic material with light speed, and notoriously enables virtual identities and the anonymity of offenders. The link between widespread Internet coverage and the dramatic growth of child sexual abuse is unquestionable, and the result has not only been an ever expanding volume of material but also the creation of new types of offences of child sexual abuse.

It is against this backdrop that effective policy responses needed to be designed. The difficulty is only increased by the fact that both information and communication technologies, along with users attitudes and customs, also change rapidly.

In the following section an account of the trends of children being exposed to the internet, from the viewpoint of child sexual abuse, will be made. This will be followed by a treatment of the trends and forms of child sexual abuse. Finally, some key policy responses for combatting online child sexual abuse will be highlighted.

¹²¹ Iocta2014 estimates 2.8 billion people and over 10 billion Internet-enabled devices worldwide. [file:///eipa-fs01/homedrives\\$/pje/Profile/Downloads/iocta2014_summary_findings_and_recommendations.pdf](file:///eipa-fs01/homedrives$/pje/Profile/Downloads/iocta2014_summary_findings_and_recommendations.pdf).

¹²² Carr, James *The Internet dimension of sexual violence against children* in: Protecting Children from Sexual Violence– A Comprehensive Approach, Council of Europe, 2011. p278, citing Utting, Sir William (1997). *People like us*. London: HMSO.

3.1. Trends in children's use of the internet and exposure to risk

According to a survey by EU KIDS Online¹²³ the internet is ubiquitously present in the daily life of children, with 60% of them going online every day and 93% once per week. Moreover, the internet is accessed at an ever younger age, and its usage is diversified. A study noted that 59% of those surveyed had a social networking profile and 26% of those were public.¹²⁴

In their 2009 report, Livingstone and Haddon identified **three main sources of risk** to children in relation to internet use, each of which can directly or indirectly result in sexual abuse.¹²⁵ These risks have been categorised under the broad headings: content, contact and conduct. The **content** category refers to the way in which a child can become or can be made the recipient of illegal content, including child pornography materials. **Contact** refers to the means through which the Internet can expose children to sexual abuse, typically solicitation that is the prelude of committing actual sexual offences against a child. Solicitation or grooming is especially facilitated by the use of live-streaming, webcams and other devices to engage the child remotely. Finally, **conduct** captures when children become engaged in criminal or harmful activities at their own will or under coercion. These incidents may range from bullying, harassment to more violent form such as coercing other children to engage in child pornography or become subject of sexual exploitation and abuse.¹²⁶

To estimate the gravity and scope of the above risks the survey of the EU KIDS Online found that 41% of the questioned children have encountered one or more of the above risks, where risks increase with age. The survey shows that 14% of the children were exposed to pornography, 6% received online bullying messages, 15% received peer to peers messages with sexual content (sexting) and 30% established online communication with someone whom they had not known before and out of this 9 % have subsequently met the online contact offline.¹²⁷

3.2. Trends and forms of online child sexual abuse

3.2.1. Data collection and statistics

To rely on precise statistics is especially difficult in the area of child sexual abuse. To start with any data relies on cases reported to and known by the authorities. Furthermore the different definitions and methodologies make it difficult to obtain figures on prevalence on a EU-wide scale.¹²⁸ It is even more complicated to estimate the occurrence of online child sexual abuse, due to even more problematic reporting and the novelty of the offences, which again trigger definitional issues. While not comprehensive, the statistics below nonetheless can give a hint about the prevalence of online child sexual abuse.

¹²³ The survey was based on random stratified sample of 25,142 children aged 9-16 who use the internet, plus one of their parents, was interviewed during Spring/Summer 2010 in 25 European countries.

¹²⁴ Livingstone, Sonia and Haddon, Leslie and Görzig, Anke and Ólafsson, Kjartan (2011) Risks and safety on the internet: the perspective of European children: full findings and policy implications from the EU Kids Online survey of 9-16 year olds and their parents in 25 countries. EU Kids Online, Deliverable D4. EU Kids Online Network, London, UK. This version available at: <http://eprints.lse.ac.uk/33731/> p5.

¹²⁵ Livingstone, S, and Haddon, L (2009) EU Kids Online: Final report. LSE, London: EU Kids Online. (EC Safer Internet Plus Programme Deliverable D6.5) p10.

¹²⁶ Ibid. This is also recited by Carr.

¹²⁷ Livingstone, Sonia and Haddon, Leslie and Görzig, Anke and Ólafsson, Kjartan (2011) Risks and safety on the internet: the perspective of European children: full findings and policy implications from the EU Kids Online survey of 9-16 year olds and their parents in 25 countries. EU Kids Online, Deliverable D4. EU Kids Online Network, London, UK. This version available at: <http://eprints.lse.ac.uk/33731/> p6-7.

¹²⁸ Llor, Kevin and McElvaney, Rosaleen *Overview of the nature and extent of child sexual abuse in Europe* in: Protecting Children from Sexual Violence – A Comprehensive Approach, Council of Europe, 2011, p 13. <http://www.coe.int/t/dq3/children/1in5/Source/PublicationSexualViolence/Llor-McElvaney.pdf>

Despite all the definitional and methodological differences the following estimate has been made specifically with regard to child sexual abuse. It has been estimated that the prevalence rates for girls for penetrative abuse range from 2.9% to 10.5% (Sweden); 3% (UK); 4.9% (Turkey); 5.6% (Ireland); 7.8% (Greenland), for boys the figures for penetrative abuse range from 0.6% and 5.5% (Sweden); 1% (UK); 2.7% (Ireland); and 3.2% (Greenland). When broader definitions of contact sexual abuse are employed prevalence rates for girls range from 10% (UK); 11.3% (Turkey); 13.9% (Sweden); 15.8% (Denmark); 19% (Spain); 20.4% (Ireland); 39.8% (Switzerland). For boys the rates are 6% (UK); 6.7% (Denmark); 15.2% (Sweden); 15.5% (Spain); 16.2% (Ireland).¹²⁹

Eurojust also witnessed an increase in the number of cases related to offences against children reported to it (2011-29; 2012-28; 2013-40 cases reported). The greatest number of the reported cases related to child abusive images.¹³⁰

Turning to online child sexual abuse the following statistics are also informative. According to INHOPE's 2013 report¹³¹ Europe hosts 51% of child sexual abuse material and in that year approximately half a million reports were made to INHOPE related to illegal webcontent containing child sexual abuse. In that year 81% of the victims of child sexual abuse material were girls, 19% of those were pubescent, 71 % pre-pubescent and 10 % of an infant age. Although most sites containing child sexual abuse content are non-commercial, in 2013 INHOPE registered 5236 URLs suspected of containing commercial child sexual abuse materials and reported these to Europol. The worldwide statistics of INHOPE show that in 2013 a total of 54.962 and in 2014 89.758 URLs were confirmed to have child sexual abuse content, where 11% and 7% of these sites respectively are actually duplications.¹³² According to INHOPE the following EU Member States can be found: among the top 10 hosting countries the Netherlands, Germany, the Czech Republic, Poland, France and the United Kingdom. This is also confirmed by the 2014 Report of IWF, which estimates that 41% of child sexual abuse URLs are hosted in Europe.

A 2015 report by IWF entitled 'Emerging Patterns and Trends-Online-Produced Sexual Content' reveals that 17.5% of the surveyed content depicted children aged 15 years or younger. Of this, 85.9% of content depicting children aged 15 or younger was created using a webcam, 93.1% of the content depicting children aged 15 or younger featured girls, 89.9% of the total images and videos assessed had been harvested from the original upload location and were being redistributed on third party websites.¹³³

As to the type of websites concerned INHOPE reports that in 2014 30% were websites, 20% file hosting sites, 42% image hosting sites, 5% social networking sites and 3% banner sites.¹³⁴

A possible indicator of the gravity of the problem can be found in the number of sites that are blocked for containing child sexual abuse material. In 2014 IWF alone took action regarding 31,266 instances of publicly available child sexual abuse images hosted on websites around the world.¹³⁵

¹²⁹ Figures are based on the filtering of a number of national surveys. Lalor, Kevin and McElvaney, Rosaleen *Overview of the nature and extent of child sexual abuse in Europe* in: *Protecting Children from Sexual Violence – A Comprehensive Approach*, Council of Europe, 2011, p 32.

<http://www.coe.int/t/dg3/children/1in5/Source/PublicationSexualViolence/Lalor-McElvaney.pdf>.

¹³⁰ Eurojust cases involving crimes against children-Statistics for the years 2004 - 2013 <http://www.eurojust.europa.eu/Practitioners/operational/Child-protection/Documents/CPCPstats2004-2013.pdf>.

¹³¹ http://inhope.org/Libraries/Annual_reports/Inhope_Annual_Report_2013.sflb.ashx

¹³² <http://www.inhope.org/tns/resources/statistics-and-infographics/statistics-and-infographics-2014.aspx>

¹³³ IWF on Emerging Patterns and Trends - Online-Produced Sexual Content 10 March 2015 <https://www.iwf.org.uk/assets/media/resources/Emerging%20Patterns%20and%20Trends%20Report%201%20-%20Online-Produced%20Sexual%20Content%20website%20March%202015.pdf>

¹³⁴ <http://www.inhope.org/tns/resources/statistics-and-infographics/statistics-and-infographics-2014.aspx>

¹³⁵ <https://www.iwf.org.uk/resources/trends/trends-uk-and-international-trends>

3.2.2. File-sharing

While the World Wide Web will remain a key platform for the distribution of child abuse images, file sharing networks (Limewire and Gnutella) are rapidly growing in importance. The increase of distributed networks, such as peer-to-peer (p2p) which facilitate file sharing among users are believed to distribute large volumes of child abuse material. It is the volume of data and the ease of access which makes such platforms very alarming.¹³⁶

3.2.3. Anonymization and its abuse

According to Europol's iOCTA 2014¹³⁷ Darknets and other environments offering a high degree of anonymity are increasingly popular, especially among those with greater security awareness and IT knowledge. Such platforms host hidden services and marketplaces, and are increasingly used by child sex offenders and producers.

3.2.4. Sextortion

Another new phenomenon is sexual extortion, also known as, sextortion, which Europol defines as 'coercion to extort sexual favours or images from a victim, usually by threatening to disseminate existing images of the victim if demands are not met'.¹³⁸ Sextortion in most of the cases is part of the initial grooming process. It has also been reported to be taking place through the hacking the victims personal computer.¹³⁹

3.2.5. Self-generated images

The issue of self-generated images is closely connected to sextortion. While it is widely observed that young people increasingly create their identities through social-media, this includes a sexual identity as well. Sexting, creating sexual images of oneself is very much present in social media and is facilitated by new devices. The problem is that in many cases sexual extortion is the consequence of sexting or self-generated images which initially were made voluntarily between peers. The problem starts with unwanted dissemination, and regardless of whether dissemination amounts to a criminal offence its harmful effects may easily manifest themselves bullying, harassment, self-harming or even suicide.¹⁴⁰

3.2.6. Developments in payment processes linked to commercial CSE online

Another disturbing trend exposed by Europol and other law enforcement agencies is the emerging use of alternatives payment methods (bitcoins etc.). Such unconventional payment systems ensure further anonymity and facilitate the spread of the already emerged phenomenon of 'pay-per-view websites'.¹⁴¹

3.2.7. New patterns related to offenders

Studies and reports on online child sexual exploitation all confirm that current offenders show a much higher degree of computer literacy and forensic awareness. Offenders very much tend to make their own security measures such as password protection, IP masking, evidence elimination, hard drive partitioning and physical secretion of portable hard drives and thumb drives. The other phenomenon related to offenders is the emergence of online communities of like-minded persons sharing the sexual interest in children. Such online hubs enhance the normalisation or legitimisation of sexual interest in children. In addition

¹³⁶ Child Pornography and Sexual Exploitation of Children Online contribution of ECPAT International to the World Congress III against Sexual Exploitation of Children and Adolescents Rio de Janeiro, Brazil 25-28 November 2008

¹³⁷ Internet Organised Crime Threat Assessment, iOCTA 2015, p31.

¹³⁸ Ibid p30.

¹³⁹ Idem.

¹⁴⁰ Idem.

¹⁴¹ Europol Child sexual exploitation factsheet 2012. p5.

to providing 'moral support' such online communities also provide technical and security advice, along with hints on how to access or approach children and a means for share online locations for abuse.¹⁴²

3.2.8. Commercial Live Web Streaming

Today streaming of live images is easily enabled by webcams and chat platforms, and this has led to new phenomena in online child sexual abuse. Web streaming is one of the main tools for sexual extortion, but also 'to orchestrate and view the abuse of a child in real time' in exchange for payment, mostly involving children overseas in very poor circumstances.¹⁴³ The real-time nature of the offence makes it particularly difficult to investigate.

3.2.9. Commercial exploitation of children

As noted above, most of the URLs with child sexual abuse content are not commercial sites. It is estimated that only 8,5 % of the overall child abuse material is accessed through commercial sites.¹⁴⁴

3.2.10. Increasing interconnectivity

The increased interconnectivity of electronic devices open up new opportunities for child abusers to have access to images of children. Hacking devices such as CCTV in schools and other facilities directed on children will create new threats as they allow to track personality traits, behaviour and location of people, offering more possibilities for persons having an a sexual interest in children.¹⁴⁵

3.3. Policy responses

Online child sexual abuse can only be effectively combatted through a comprehensive, multidisciplinary and multi-agency approach. This means that the concerted efforts of an array policies and a broad range of stakeholders are needed to tackle this disturbing phenomenon. Effective interaction between the criminal justice system, social and child care structures and the ICT industry is an absolute base line. The measures which are to be carried out in a joint fashion include traditional criminal law regulation and law enforcement responses as well as wider societal actions. It needs to be emphasised that while criminalisation and the machinery of criminal justice seems to be the most straightforward avenue to fight online child sexual abuse, this is only one side of the coin, as these measures become available once an offence was committed. Prevention, awareness raising, training and education indispensably complement the efforts of criminal law. At the same time the technical side of the fight against online child sexual abuse cannot be underestimated. This includes providing online safety, filtering tools, digital awareness and of course to swiftly eradicate any such online content suspected to be of child sexual abuse nature. All policies, however, need to clearly and univocally condemn online child sexual abuse as being an especially grave and serious crime against the most vulnerable group of society, children.

The discussion below focuses on selected areas of policy responses and provides an overview of the various efforts undertaken by the Global Alliance, the CEO Coalition and the European Financial Coalition to fight online child sexual abuse in a comprehensive manner.

¹⁴² Virtual Global Taskforce, Environmental Scan 2012, Public Version prepared by the European Cybercrime Centre (EC3), Europol p 16-17.

¹⁴³ Ibid p32.

¹⁴⁴ Ibid p31.

¹⁴⁵ iOCTA 2014 p34.

3.3.1. Blocking and removing of websites

Blocking of websites means making the illegal content temporarily inaccessible for the wider public, until the content is definitely removed. Removing a site, by contrast, ensures complete eradication of the content. Given the delays entailed in getting child abuse images eliminated at source, "blocking" has begun to emerge as a key child protection measure in a number of countries. However in Europe blocking is not the mainstream technique to prevent access to sites with child sexual abuse content.¹⁴⁶ Blocking and/or removing of websites fuelled heated debates when the 2011/93/EU Directive was being negotiated, and finally the compromise solution was to oblige EU Member States to remove sites with illegal content and optionally block them they so wish. Despite the status quo at which Member States have arrived, from a child protection and law enforcement perspective the arguments for the blocking of illegal websites are still simply overwhelming. First and foremost the deletion of such sites take too much time to be considered a swift enough response. While the time needed to block is counted in minutes – IWF claims to block 43% of UK hosted sites in less than 60 minutes¹⁴⁷ –, removal is counted in days. INHOPE observes that worldwide on average 93% of these sites are removed within a week.¹⁴⁸ IWF estimates that 91% of these sites are removed within 10 days in Europe. The time lapse between blocking and removal allows the operators to multiply, move or transfer content to other hosts.¹⁴⁹

3.3.2. Infiltration into the online world

While infiltration in the 'real world' is a well known criminal investigative measure, covert agents also being regulated at the European and transnational level,¹⁵⁰ when it comes to the online world both required technological knowledge and limited engagement possibility hinder covert investigations. Undercover operators are said to be as indispensable in combating online child sexual abuse as for any other crimes.¹⁵¹

3.3.3. Victim identification

As mentioned above¹⁵² victim identification is key not only for tracking down online child sexual abuse but also to prevent victimisation, to stop the further spread of damaging material and to ensure that the victim benefits from the available assistance and support facilities. In practice, however, victim identification is very resource intensive and requires high degree of specialisation of the personnel involved. It has been suggested that more resources should be deployed at the national level, which is inevitable to complement efforts taken at the European level.¹⁵³

3.3.4. Sex offender registrations

The 2011/93/EU Directive failed to oblige Member States to introduce the registration of sex offenders in the registers of persons convicted of offences falling into the scope of the Directive.¹⁵⁴ Now Member States have the option not have such a register, there is no European level equivalent either. The practical problem triggered is that sex offenders can

¹⁴⁶ Italy, Denmark, Sweden, Norway, Malta, Finland, Iceland, South Korea, the US and Australia Carr p 281.

¹⁴⁷ <https://www.iwf.org.uk/resources/trends/trends-uk-and-international-trends>

¹⁴⁸ <http://www.inhope.org/tns/resources/statistics-and-infographics/statistics-and-infographics-2014.aspx>

¹⁴⁹ <https://www.iwf.org.uk/resources/trends/trends-uk-and-international-trends>

¹⁵⁰ See the European Investigation Order Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters OJ L 130, 1.5.2014, p. 1–36; the EU Mutual Assistance Convention of 2000 Council Act establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000/C 197/01) and the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters CETS 030.

¹⁵¹ Interview.

¹⁵² See 2.11.

¹⁵³ Interview.

¹⁵⁴ Directive 2011/93/EU preambles 42-24.

easily avoid professional disqualification by cross-border movement. It has to be noted that national criminal records even interconnected through ECRIS,¹⁵⁵ serve different purposes and are accessed solely by judicial authorities and law enforcement agencies, some employers simply do not ask for a certificate from national authorities. Sex offender registers would serve, among others, this purpose. It has been suggested that in the absence of a European level sex offender registration a common European certification system could be at least introduced, especially in relation to professions where there is contact with children. This would ensure that no prior conviction for such offences have been made.¹⁵⁶

3.3.5. Management of the convicted

Intervention programmes are prescribed by both Directive 2011/93/EU and the Lanzarote Convention. Follow-up measures and care should be a common European undertaking going beyond controlling measures to also encompass assistance and support programmes.¹⁵⁷

3.3.6. Safer Internet

Content labelling, filtering, age appropriate privacy settings, parental controls, age rating and age classification are technological tools to make the internet a safe environment for children. Such tools serve are most effective if they are complemented with teaching digital literacy and online safety.¹⁵⁸

3.3.7. Awareness raising

Raising the awareness of both children and adults and especially, parents and those in contact with children to the increasing risks posed by online activities related to child sexual abuse is vital. Areat number of campaigns and measures have been launched.¹⁵⁹ It has to mentioned as well that increased sexualisation of children in the media shall be also voiced, as this risks that children’s engagement in sexual activity whether virtual or not becomes socially accepted in a tacit manner.¹⁶⁰

3.3.8. Selected examples of comprehensive policy responses

Below the leading policy responses at the European level will be briefly summarized in order to provide an overview of various measures identified and committed to for ensuring the effective combat of online child sexual abuse.

Action set forth by the Better Internet for Children(BIK)

The actions proposed by the European Commission in the Communication for a European Strategy for Better Internet for Children¹⁶¹include the following:

- high-quality content online for children and young people

¹⁵⁵ 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 OJ L 93, pp23-32.

¹⁵⁶ Interview.

¹⁵⁷ Interview.

¹⁵⁸ The leading European initiative in the pursuit of this objective is the European Schoolnet set up by EU ministries of education promoting responsible use of technologies. www.eun.org/home.

¹⁵⁹ The European initiative with the biggest scope being the Safer Internet Centres organised by pan-European network called INSAFE setting up awareness centres and helplines in all the Member States, Iceland, Norway and Russia. These centres also host INHOPE’s hotlines to report online child sexual abuse. <https://ec.europa.eu/digital-agenda/en/safer-internet-centres>.

¹⁶⁰ Richardson, Janice *Awareness raising to combat online sexual violence* in: Protecting Children from Sexual Violence, Council of Europe, 2011. http://www.coe.int/t/dg3/children/1in5/WhatWeKnow/Publication_en.asp p291.

¹⁶¹ Communication from the European Commission: European Strategy for a Better Internet for Children Brussels, 2.5.2012 COM(2012) 196 final pp16-17.

- stimulating the production of creative and educational online content for children
- promoting positive online experiences for young children
- stepping up awareness and empowerment
 - digital and media literacy and teaching online safety in schools
 - scaling up awareness activities and youth participation
 - simple and robust reporting tools for users
- creating a safe environment for children online
 - age-appropriate privacy settings
 - wider availability and use of parental controls
 - wider use of age rating and content classification
 - online advertising and overspending
- fighting against child sexual abuse and child sexual exploitation
 - faster and systematic identification of child sexual abuse material disseminated through various online channels, notification and takedown of this material
 - cooperating with international partners to fight against child sexual abuse and child sexual exploitation

Workplan of the CEO Coalition

The work plan of the CEO sets forth a number of concrete actions with performance indicators and deadlines.¹⁶² These actions were subsequently followed-up with a set of recommendations for the industry 'to make the internet a better and safer place for kids'.¹⁶³ The key actions to which members of the CEO Coalition committed to take positive action are the following:

- simple and robust reporting tools;
- age appropriate privacy settings;
- wider use of content classification
- wider availability and use of parental control
- effective takedown of child sexual abuse material.

Deliverables undertaken by the European Financial Coalition

EFC currently works in five working groups and is to produce various deliverables summarized in the table below.¹⁶⁴

Table 3: Deliverables undertaken by the European Financial Coalition

Support international law enforcement (LE) investigations; wherever possible through cooperation with private stakeholders	A mechanism to support and analyse test purchases, involving payment system providers and Member States' (MS) law enforcement authorities (LEA) able to conduct covert operations
Assess and study the commercial child sexual exploitation on the Internet through all kinds of Internet environments: hosting services, newsgroups	Collection and analysis of quantitative data on the problem of commercial sexual exploitation of children online: <ul style="list-style-type: none"> ● on the basis of data already collected by other stakeholders; ● by collecting data on the cases dealt with by members of the EFC,

¹⁶² http://ec.europa.eu/digital-agenda/sites/digital-agenda/files/ceo_coalition_statement.pdf

¹⁶³ CEO Coalition 2014: progress reports on actions to make the Internet a Better Place for Kids http://ec.europa.eu/newsroom/dae/itemdetail.cfm?item_id=14391

¹⁶⁴ http://www.europeanfinancialcoalition.eu/working_group.php

	<ul style="list-style-type: none"> using a unified data collection template to be developed; <p>Authoritative landscape describing the current environment : two updates of the strategic analysis previously published</p>
Protect legitimate private business interests from possible misuse of their services perpetrated by criminals with the aim of distributing child sexual abuse content through different information and communication technologies	<ul style="list-style-type: none"> Template for contractual terms of reference for providers of financial or Internet services Update of the Best Practice Guide for payment system providers Best Practise Guide for Internet Service Providers
Empower law enforcement authorities (LEA) and private companies in counteracting the problem through the delivery of training and sharing of resources	<p>1 training book for LEA; 2 annual training sessions for LEA & payment system providers :</p> <ul style="list-style-type: none"> Legal, technical and operational issues Sharing of best practice
Inform decision makers and raise awareness among the public about the EFC's activities	<p>Leaflets on the problem of commercial sexual exploitation of children and on the role of the EFC; Public website providing information on the EFC (members, events, goals, news, etc.), a contact form, publications etc. ; E-newsletters; 2 awareness raising conferences; 2 press conferences + regular press releases / media contacts</p>

Source: http://www.europeanfinancialcoalition.eu/working_group.php

Actions set forth by the Global Alliance

The commitments made under the auspices Global Alliance are undertakings made by ministers of the participating states represent a high political will to combat online child sexual abuse and are of the great geographical stretch. The comprehensive nature of the actions to be pursued are demonstrated in the below table.¹⁶⁵

Table 4: Commitments made under the framework of the Global Alliance

Policy target	Operational goal	Action
<p>Policy Target 1: Enhancing efforts to identify victims and ensuring that they receive the necessary assistance, support and protection</p>	<p>Increase the number of identified victims in the International Child Sexual Exploitation images database (ICSE database) managed by INTERPOL by at least 10% yearly</p>	<p>Action 1: Mainstreaming victim identification into investigations and prosecutions Action 2: Improving use and content of the ICSE database Action 3: Improving forensic capabilities Action 4: Improving victim assistance, support and protection</p>

¹⁶⁵ Global Alliance against Child Sexual Abuse Online Report - December 2013. pp7-21. http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/global-alliance-against-child-abuse/docs/global_alliance_report_201312_en.pdf

<p>Policy target 2: Enhancing efforts to investigate cases of child sexual abuse online and to identify and prosecute offenders</p>	<p>Establish the necessary framework for the criminalization of child sexual abuse online and the effective prosecution of offenders, with the objective of enhancing efforts to investigate and prosecute offenders</p> <p>Improve the joint efforts of law enforcement authorities across Global Alliance countries to investigate and prosecute child sexual abuse online</p>	<p>Action 1: Comprehensive substantive criminal law Action 2: Removing procedural hurdles Action 3: Disqualification, treatment and prevention of repeat offending</p> <p>Action 1: Improving capacity and coordination of law enforcement authorities Action 2: Increasing international operational and strategic cooperation Action 3: Improving cooperation with other public authorities and the private sector</p>
<p>Policy target 3: Enhancing efforts to increase public awareness of the risks posed by children's activities online, including grooming and self-production of images that results in the production of new child pornography that may be distributed online</p>	<p>Develop, improve, or support appropriate public awareness campaigns or other measures which educate parents, children, and others responsible for children regarding the risks that children's online conduct poses and the steps they can take to minimize those risks</p>	<p>Action 1: Creating awareness-raising materials, channels and campaigns Action 2: Research on trends and threats Action 3: Training</p>
<p>Policy target 4: Reducing as much as possible the availability of child pornography online and reducing as much as possible the re-victimization of children whose sexual abuse is depicted</p>	<p>Encourage participation by the private sector in identifying and removing known child pornography material located in the relevant State, including increasing as much as possible the volume of system data examined for child pornography images.</p> <p>Increase the speed of notice and takedown procedures as much as possible without</p>	<p>Action #1: Improving cooperation with the private sector Action #2: Development and use of technologies and training to identify and remove child pornography images</p> <p>Action 1: Improving cooperation with the private sector on notice and takedown</p>

	jeopardizing investigations	criminal Action 2: Facilitating reporting and establishing or supporting hotlines Action 3: Providing for the appropriate legal framework for notice and takedown procedures Action 4: Removing and disabling access to child sexual abuse images
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Source: Global Alliance against Child Sexual Abuse Online Report – December 2013.

4. RECOMMENDATIONS

On the basis of previous discussions concerning the legislative framework on child sexual abuse online, current trends and phenomena, the role of the law enforcement authorities and other policy responses, the following recommendations are made.

Legislative policy formulation

- while the EU criminal law instrument, Directive 2011/93/EU, is complete and up-to date, it presents however compromise solutions, which need to be revisited:
 - primarily a re-opening of the blocking/removing of websites with child sexual abuse content is suggested in light of the implementation of the Directive and the passage of almost five years since the adoption of the Directive;
 - the registration of sex offenders, or any other solution ensuring that cross border movement does not eradicate a criminal past, needs to be addressed;
- national legislation fully aligned to the Directive 2011/93/EU is of utmost importance.

Law enforcement policy formulation

- victim identification is key to taking down online child sexual abuse; training and resources are especially needed;
- infiltration is important in combatting child sexual abuse; training and state of the art technological knowledge is the baseline to that end;
- data stored at ISPs are absolutely indispensable for law-enforcement agencies; access to retained data is therefore of pivotal importance;
- child-friendly justice, providing appropriate protection, assistance and support to child victims by properly trained personnel throughout the investigation and prosecution of online child sexual abuse offences and related court procedures needs to be constantly monitored and adapted;
- management of the convicted within and outside the criminal justice system needs to be fostered.

Policy formulation beyond the criminal justice system

- awareness and empowerment campaigns in relation to the safe use of the internet along with increased digital literacy and information about the possible risks posed by the digital devices have to be a part of the school curriculum for children;
- widespread use and availability of technologies ensuring safe internet access need to be facilitated;
- self-regulation and voluntary undertaking by the ICT industry need to be fostered as the bottom-up element of the comprehensive regulatory framework designed to combat online child sexual abuse.

Any policy formulation should necessarily involve law enforcement authorities, agencies working in the field of social services and with children, the ICT industry, private and non-governmental stakeholders, so as to ensure a multidisciplinary and multiagency approach, which is of utmost importance for effectively combatting child sexual abuse online.

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INTERVIEW

Interview with specialists of Europol's European Cybercrime Center, with the participation of Mr. Fernando Ruiz, Ms. Katarzyna Staciwa, and Mr Grégory Mounier on 9 October 2015.

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