



**Missing  
Children  
Europe**

Survey And Workshop On Transposing Directive  
2011/93/EU

ELSA FOR CHILDREN

FINAL CONFERENCE

20/03/2013

With the support of



# Object of survey and workshop

- **Survey:**
  - commissioned by NGO coalition (MCE, ECPAT, NSPCC, Save the Children, eNACSO)
  - 7 topics /11 EU MS
  - Date of submission: 18.6.2012
  - Network coordinated by Allen & Overy
- **Workshop of 14.12.12:**
  - Inform on survey findings
  - Identify: potential problems, potential best practices
  - Formulate recommendations

# Directive 2011/93/EU

- Based on Art. 82(2) and 83(1) of TFEU
- Harmonised minimal rules :
  - Defining criminal offences
  - Defining sanctions
- Deadline for transposing by EU MS: 18.12.13

## 7 Topics selected

- **Knowingly obtaining access**, by means of information and communication technology, to child pornography, (Article 5 ( 1) and (3) & Recital 18)
- **Online grooming** (solicitation by means of information and communication technology of children for sexual purposes) (Article 6 & Recital 19)
- **Disqualification** arising from convictions, **screening** and transmission of information concerning criminal records ( Article 10 & Recitals 40-42)
- **Victim identification** (Article 15(4) )
- (Extraterritorial) **jurisdiction** (Article 17 & Recital 29)
- **Assistance, support and protection** measures for child victims (Articles 18, 19, 20 & Recitals 30, 31,32)
- **Measures against websites** containing or disseminating child pornography (Article 25 & Recitals 46 & 47) –Take down and blocking measures

# Selected topics-comparison (1)

## Dir. 2011/93/EU

- Knowingly obtaining access: Art. 5(1) and(3)
- Online grooming: Art. 6(1)
- Disqualification: Art. 10(1)
- Screening: Art. 10(2)
- Exchange of info on criminal records: Art. 10(3)

## Lanzarote Convention

- Art. 20(1)f but possible reservation under (4)
- Art. 23
- Art. 5(3)
- Art. 5(3)
- Art. 37(3)

## Selected topics-comparison (2)

### Directive

- Victim identification: Art. 15(4)
- Jurisdiction: Art. 17: no reservations but optional extension
- Assistance, support and protection: Art. 18-20
- Measures against websites: Art. 25

### Lanzarote Convention

- Art. 30(5)
- Art. 25 – reservations possible
- Art. 31-36
- No equivalent

## 11 Members States selected

- 11 EU MS who, at the date of commissioning (Feb 2012), had not (signed or) ratified the CoE 2007 Lanzarote Convention:
  - Not signed: CZ, LV
  - Not ratified: BE, CY, CZ, DE, IE, IT, LT, PL, SE, UK
- Meanwhile Italy ratified the Lanzarote Convention (Law n° 172 of 1 October 2012)

# Overview of findings (1)

DOES YOUR NATIONAL LEGISLATION/PRACTICE COMPLY WITH THE PROVISIONS OF THE DIRECTIVE? TOPIC 1-7 <sup>1</sup>											
	BE	CY	CZ	DE	IE	IT	LT	LV	PL	SE	UK
Topic 1	Complies	Does not/mostly not comply	Does not/mostly not comply	Complies	Does not/mostly not comply	Does not/mostly not comply	Does not/mostly not comply	Does not/mostly not comply	Does not/mostly not comply	Complies	Complies
Topic 2	Does not/mostly not comply	Does not/mostly not comply	Does not/mostly not comply	Complies	Does not/mostly not comply	Does not/mostly not comply	Does not/mostly not comply	Complies	Complies	Complies	Complies
Topic 3	Does not/mostly not comply	Mostly complies but shortcomings	Mostly complies but shortcomings	Complies	Does not/mostly not comply	Does not/mostly not comply	Mostly complies but shortcomings	Mostly complies but shortcomings	Mostly complies but shortcomings	Does not/mostly not comply	Complies
Topic 4	Complies	Does not/mostly not comply	Complies	Complies	Does not/mostly not comply	Complies	Mostly complies but shortcomings	Does not/mostly not comply	Complies	Mostly complies but shortcomings	Complies
Topic 5	Complies	Mostly complies but shortcomings	Complies	Mostly complies but shortcomings	Mostly complies but shortcomings	Complies	Mostly complies but shortcomings	Mostly complies but shortcomings	Complies	Mostly complies but shortcomings	Complies
Topic 6	Mostly complies but shortcomings	Does not/mostly not comply	Does not/mostly not comply	Mostly complies but shortcomings	Does not/mostly not comply	Complies	Mostly complies but shortcomings	Mostly complies but shortcomings	Does not/mostly not comply	Mostly complies but shortcomings	Mostly complies but shortcomings
Topic 7	Complies	Does not/mostly not comply	Does not/mostly not comply	Complies	Does not/mostly not comply	Does not/mostly not comply	Does not/mostly not comply	Does not/mostly not comply	Does not/mostly not comply	Complies	Complies

Complies      Does not/mostly not comply      Mostly complies but shortcomings

<sup>1</sup> Topics:

1. Knowingly obtaining access, by means of information and communication technology, to child pornography, (Article 5 (1) and (3) & Recital 18)
2. Online grooming (solicitation by means of information and communication technology of children for sexual purposes) (Article 6 & Recital 19)
3. Disqualification arising from convictions, screening and transmission of information concerning criminal records (Article 10 & Recitals 40-42)
4. Victim identification (Article 15(4))
5. (Extraterritorial) jurisdiction (Article 17 & Recital 29)
6. Assistance, support and protection measures for child victims (Articles 18, 19, 20 & Recitals 30, 31, 32)
7. Measures against websites containing or disseminating child pornography (Article 25 & Recitals 46 & 47) – Take down and blocking measures



# Overview of findings (2)

## 1. Member States

- DE and UK reported as complying but with shortcomings
- BE and SE reported as largely complying
- LT, LV, PL reported as halfway
- CY, CZ, IE, IT reported as not there yet

## 2. Topics

- 3 topics may be considered as problematic:
  - Knowingly obtaining access to c.p. without right (7/11 MS not ok)
  - Measures against websites (idem)
  - Online grooming (6 /11 MS not ok)

3. **Overall assessment:** quite satisfactory (R: situation at end of 1st semester of 24 months transposing period)

## Some identified problems (1)

- **Online grooming**
  - Proposal to meet made by child ?
  - “material acts ‘leading’ to a meeting
- **Removal of websites and access blocking**
  - Optional nature of access blocking: pros and cons
  - Safeguards in case of self regulatory systems
  - Responsibility of ISPs : “prompt removal”

## Some identified problems (2)

- **Disqualification:**

- 9/11 MS with shortcomings, only 2/11 ok

- Questions about precise scope:

- Art. 10 (1) refers to “professional activities”
- Art. 10(2) refers to “employers” but includes “organisations active in volunteer work”
- “activities involving direct and regular contacts with children”

## Some identified problems (3)

- Assistance and support to child victims
  - May not be “conditional on the child victim’s willingness to cooperate”
  - Who conducts the interview of the child ?
  - Individual assessment of the specific needs of the child: guidelines ?
  - Child may be accompanied by “adult of his choice”
  - Child’s right not to testify

# Recommendations (1)

## 1. Clear unconditional obligation:

- a. Obligation to make offences punishable
- b. Obligation to take specific measures relating to prevention or investigation,
- c. Obligation to take specific measures relating to support for child victims during investigation

*Type of recommendation: full implementation within deadline*

# Recommendations (2)

## 2. Obligation to provide framework

- a. for preventive measures: disqualification and screening
- b. for assistance and support to victims

*Type of recommendation: refer to the cbi rule :*

- *Widest possible protection when considering preventive measures: e.g. include voluntary and self employed activities wherever possible*
- *Widest possible protection and support*

# Recommendations (3)

## 3. Optional clauses

- Optional further extension of jurisdiction
- Optional blocking of webpages

*Type of recommendation: refer to the cbi rule:*

- *Jurisdiction:*
  - *Why would the nationality or the habitual residence of the child victim not be a ground of jurisdiction ?*
  - *What is the use of providing liability of legal persons (Art. 12) and sanctions on them (Art. 13) if it is not used as a ground for jurisdiction ?*
  - *Why refuse protection to a child when the offender is a habitual resident ?*
- *Blocking: additional measure which aims at preventing further victimisation of child each time the CAM is accessed*

# Further action ?

- Proposal to extend survey in 2013:
  - By updating existing 11 reports
  - By covering additional Member States
    - All MS where MCE has member organisations ?
      - + AU, BG, EE, FR, EL, HU, NL, PO, RO, SK, ES (= +11)
    - All MS ?
      - + FI, HR, LU, MT, SI
  - Deadline for survey: 1.9.13
  - Assistance of ELSA ?
  - Assessment conference: 20.11.13 ?
  - Support : EU Commission and Presidency (LT) ?



# Thank you !

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