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FIGHT AGAINST SEXUAL ABUSE AND ONLINE EXPLOITATION OF CHILDREN – KEY PRIORITY AT THE EUROPEAN UNION LEVEL

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Abstract

We are experiencing a period full of physical and virtual uncertainty and insecurity, the Covid-19 period being a milestone regarding the increase of the phenomenon of sexual abuse and online exploitation of children. The wide accessibility of technology creates the opportunity for offenders to commit such crimes on children. Protection of children against any form of violence or abuse is a key priority at the European Union level, aiming at fighting the online and offline abuse on children, including production and diffusion of materials showing abuses on children, such as online sexual exploitation of children. In this regard, the European Union efforts aim at creating a specific legal framework in order to make easier for the Member States to detect and report the cases of online sexual abuse, to prevent such situations, and to support the victims. Thus, the Commission wants to clarify the role that the online service providers should have in order to protect the children. The main problem identified is the scarce reporting of such crimes, and therefore, the impossibility of identifying the victims.

Key words: *sexual abuse, sexual exploitation, legal framework, European Union, children.*

INTRODUCTION

A widely spread phenomenon with devastating consequences especially on the child's psyche, is the online and offline sexual abuse on children, that can have extremely different forms. The latest years of the humanity as a consequence of the Covid-19 period, when we all experienced uncertainty and insecurity, have shown that we are witnessing an increase in sexual abuse cases. Studies show that, being confined at home, makes Internet become a valuable source of information and socialization. The increased digitization of society as a strategy to face the Covid19 pandemic may have significantly exposed

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citizens to privacy risk violations, especially children. (*Lobe B., Velicu A., 2021, pp. 27-33*).

Confinement at home implies big challenges for children safety online and offline, such challenges including social isolation, lack of peer and mentor support, increased time online, anxiety, stress and other mental health impacts. There are strong indications there has been an increase in the number of cases of child sexual abuse, particularly in relation to material accessed and distributed on the surface web and in peer-to-peer networks, but also related to activities on dark web forums. (*Europol, Exploiting isolation, 2020, pp. 4-12*).

Children are the victimised category mostly exposed to online approaches and sexual allurements, their protection against such crime-related manifestations proving to be inefficient. Adopting in 2011 the Directive on combating the sexual abuse, sexual exploitation of children and child pornography did not have the expected result, although some Member States transposed its contents into the national legislation, considering as offences the deeds representing the sexual abuse and sexual exploitation of children, and also the materials containing sexual abuse of children. In 2020, as a result of the legislative gaps identified, it continued with adopting the Strategy for a more effective fight against child sexual abuse, a key instrument in combating online and offline child sexual abuse. To complete this document, they adopted the EU Strategy on the rights of the child, bringing consolidated measures to protect children against all types of violence, including online abuse.

The social reality is pretty dramatic, as the use of internet, of informatic technology and of communications, has become a concern at world level, not only for children, but also for offenders. The online and offline protection of children is seriously threatened, which makes it an EU priority.

1. SEXUAL ABUSE AND SEXUAL EXPLOITATION OF CHILDREN. ONLINE AND OFFLINE MANIFESTATIONS

Sexual abuse and sexual exploitation of children are among the most serious forms of violence against children. The Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (*Lanzarote, Spain, 25 October 2007*) specifying in this regard the sexual abuse, child prostitution, child pornography, participation of children in pornographic shows, sexual corruption of children and allurements of children for sexual purposes.

Therefore, they take into account fighting and combating sexual exploitation and sexual abuses committed against children, protection of rights of children who are victims of sexual exploitation and sexual abuse, and also promoting cooperation at national and international level against sexual exploitation and sexual abuses committed against children.

The European Commission makes sustainable efforts to reach the objectives provided in the Lanzarote Convention, ratified by all Member States,

taking legislative measures and or other types of measures in order to prevent any form of sexual exploitation and sexual abuse of children.

The sexual abuse and sexual exploitation of children can cover many factual ways, both offline, by practicing sexual activities with a child or making the child take part in child prostitution acts, and online, the offenders using different strategies, more and more often by means of Internet. The online child sexual exploitation can involve any form of sexual abuse, which supposes the use of information and communication technologies with the view of obtaining an advantage, a benefit or a promise in this regard. Thus, web cameras, smartphones, different platforms of social communication or other online platforms (Skype or Messenger-type ones), different webpages dedicated to online games, any of them representing means by which the children can be coerced to take part in sexual activities.

Such online behaviours are:

- online viewing with children subjected to sexual abuse;
- sexual abuse by means of web cameras ("live streaming") – video broadcasting in real time of sexual abuse of children;
- online allurement of the minor child for sexual purposes (activity known as "grooming") – which involves a series of crimes, such as prostitution, child pornography or child trafficking;
- involvement of the child in sexual activities or in sexual actions or behaviours, such as pornographic show in the virtual space;
- online sharing of materials containing child sexual abuse ("online sharing").

Hence, the forms of sexual abuse or sexual exploitation are extremely diversified, they suppose a wide range of practical methods, meant to have an impact on the physical and mental health of children. Here, we also have the materials of sexual abuse, in terms of the Commission, by "online sexual abuse of children" one should understand not only the dissemination of the materials known as being sexual abuse of children, but also the dissemination of new materials, not confirmed as such "as yet", by an authority (*European Commission, Proposal for Regulation, 2022, pp. 11-12*). By "the material containing sexual abuses of children" one should understand any type of material representing child pornography or pornographic show and that can be disseminated by using the hosting or interpersonal communication services (*Directive 2011/93/UE, p.7*).

At present, the companies operating in the technology are those facilitating, by means of their platforms, the cases of child sexual exploitation and child sexual abuse. The Internet is a favourable ground for offenders who become more and more experienced, using the benefits of encryption thoroughly for crime-related purposes. Although the purpose of this technology is to ensure the confidentiality of information and the security of communications, at the same time, they facilitate the access of offenders to safe channels to share illegal

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materials. Thus, the use of encryption and anonymisation technologies make the identification of the authors of crimes even impossible. The new EU rules in matters of fighting this type of crime mainly have in view today the obligation of the suppliers to report such cases, prevention of child sexual abuse and granting support to victims (*European Commission, Proposal for Regulation, 2022, pp. 31-32*).

2. ABUSIVE USE OF ONLINE SERVICES FOR CHILD SEXUAL ABUSE – A SERIOUS THREAT AT THE EUROPEAN UNION LEVEL

At present, at the European Union level, there is no homogenous legislative framework towards which the Member States could relate to in the fight against the forms of sexual exploitation and sexual abuse of children. The safety in the online environment represents the premise of initiatives at European level. The actions voluntarily carried out by the online service agencies regarding the tracking, reporting and removal of such illegal material did not manage to have an optimum result, which is a premise for the Commission efforts to stand guarantee for a safe online environment.

Recently, they have adopted a legislative act aiming at a unique market for digital services, including unitary rules that should be respected by all the online agents who offer their services on the unique market, regardless of being resident within the European Union or outside it (*EU Regulation 2022/2025, pp.2-3*). By these rules, they want to ensure a better visibility of online platforms, to remove the illegal content and, thus, to ensure an effective protection of the fundamental rights of all the online users. In this regard, they establish tasks for online content suppliers who offer go-between services (internet access suppliers), hosting services (cloud or web services), online platforms (online markets and software application stores) and very big online platforms which present significant risks concerning the dissemination of illegal contents.

For the first time, we have a common set of rules regarding the obligations and responsibilities of the suppliers from the entire unique market, that the Commission wants to complete with specific provisions about child online sexual abuse. This problem represents a serious threat at the European Union level, and there is a need for a consolidated action at the level of all States in order to ensure the improvement of prevention.

Thus, we justify the reason for which the Commission launches a legislative proposal regarding a new legislative act with a view to prevent and fight the child online sexual abuse, the goal being the protection of children against some repeated abuses, prevention of online recurrence of such materials, investigation of crimes related to such phenomenon, bringing the offenders to justice and especially granting support to victims. By this legislative instrument, they establish actual obligations for the online content providers, that could be used inappropriately for online child sexual abuse, to track, report or remove from

their services the materials containing child sexual abuses, namely (*European Commission, Proposal of Regulation, COM (2022) 209 final, pp. 44-67*):

- *Obligations to assess and soften the risks* – the hosting services providers and the interpersonal communication service providers, identify, analyse and assess, for each service they offer, the risk of its use for online child sexual abuse; also, the providers should take reasonable measures of softening, adapted to the identified risk, to reduce such risk to a minimum. Concretely, such risks suppose the dissemination of materials containing child sexual abuses or allurements of minors for sexual purposes, phenomenon known as "grooming";

- *Obligations of specific tracking, based on a tracking order* – in case there is evidence of a significant risk that a service be used for online child sexual abuse, they will issue a tracking order by the competent court of law or by the independent national authority from the respective Member State; the orders are limited in time and aims at a certain type of content within a specific service. Thus, the hosting service provider or the interpersonal communication service provider found under the jurisdiction of the respective Member State, should take concrete measures to track down the online sexual abuses of children within its service.

- *Obligations to report* – any information indicating eventual online sexual abuses of children within a service, should be transmitted by means of a report by the provider of such service, to the European Union Centre.

- *Obligations to remove* – when they identify materials containing sexual abuses of children, a removal order will be issued by the competent court of law or by the independent national authority from the respective Member State, requesting the hosting service provider to remove one or more materials containing child sexual abuses or to deactivate the access to such material.

- *Obligations to block* – based on a blocking order, an internet access service provider, being under the jurisdiction of the respective Member State, is requested to take reasonable measures to prevent the users to have access to materials known to contain child sexual abuses.

Digitalisation has been booming lately, when the Covid-19 pandemic certified the benefits of digital technology which, in such a context, represented the only way of access to education for children. Hence the concern of the Commission to improve the digital services adapted to age and to make sure that every child is protected and respected in the virtual environment, by adopting a new European strategy for a better internet for children (*European Commission, BIK+, COM/2022/212 final*).

Thanks to this instrument, the children are offered the competences and instruments necessary to surf the digital environment safely and trustworthily. Thus, they want the active involvement of the sector of activity aimed, i.e. to assume the appropriate role in creating a safe digital and age-adapted environment for children, according to the European Union rules.

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3. THE EU CENTRE TO PREVENT AND COMBAT CHILD SEXUAL ABUSE AND TO SUPPORT THE VICTIMS

Prevention is the main course of action in the fight against sexual exploitation, as the competent authorities can intervene only when the phenomenon of abuse or exploitation has taken place. Establishing a clear and homogenous legal framework regarding the prevention and combating the online child sexual abuse, should have in view that the protection measures established should not violate the fundamental rights of the children. At the same time, they should take into account the rights and interests of all the persons involved, both providers and users, meaning that the unitary rules established by the Commission regarding the assessment and softening of risks, should be meant to ensure the legal security of such providers, who have the responsibility to track down, report and remove any form of abuse from their services.

Accomplishing such responsibilities will be achieved by means of an European Centre to prevent and combat child sexual abuse and to support the victims, operating as an independent expertise centre. Establishing such a Centre aims at simplifying the procedure regarding tracking down and reporting the child sexual abuse cases, because, at present, the investigations regarding abuses are achieved by means of the national centre in the US, named National Center for Missing and Exploited Children, thus hindering the investigation of crimes and the granting of support and assistance to victims.

By this initiative of the Commission, the service providers will have the possibility to send the notifications directly to this Centre, making the entire procedure efficient and operative (*European Commission, Proposal for Regulation, 2022, pp. 3-4*). They are the main actors and the most capable of tracking down the eventual online child sexual abuses within the services they provide or manage.

By its activity, the purpose of the EU Centre is to support the member States in the fight against child sexual abuse, collecting data and generating statistics, in this respect:

- has the possibility to collaborate with the law enforcement agencies, making sure that victims are identified and receive assistance as soon as possible;
- offers support to societies by ensuring a unique data base in the European Union, regarding the materials known to contain forms of child sexual abuse;
- forms a control mechanism – aiming at not having erroneous withdrawals or abusive uses of the search instruments to report legitimate contents;
- coordinates and facilitates the removal of the materials containing forms of online child sexual abuse, and also the deactivation of the access to such materials;
- supports the member States in establishing prevention disciplinary measures in order to reduce the frequency of sexual abuses of children within the

EU, considering the different weaknesses of the children, according to age, sex, development or other specific circumstances;

- provides information to decision makers at national level and at EU level, regarding the gaps in matters of prevention and the possible solutions to solve them;

Thus, the Centre has the possibility to identify the legislative gaps and, at the same time, the best practices within the European Union and outside it, bringing an important contribution to the activity of the Commission, by offering concrete and real data that would contribute to the prerequisite of an adequate policy in fighting against child sexual abuses.

4. PREVENTION MEASURES AT THE LEVEL OF THE MEMBER STATES

At present, the Member States did not succeed in fully enforcing the Directive on child sexual abuse (*Directive 2011/93/EU*), respectively those provisions regarding the establishment of some prevention programmes. That is why the Commission makes efforts to establish a prevention network, to facilitate the exchange of good practices and to support the Member States in establishing some prevention measures, that is to reduce the frequency of child sexual abuses within the European Union.

Their focus is on the necessity to strengthen the cooperation at the level of the Member States, and on the support and development of the national capacities to align the technological evolution, as the cases of child sexual abuse escalated at the same time the Covid-19 pandemic broke up. We need top technical capacities in order to efficiently fight against sexual abuses involving digital materials, and at the level of some Member States, there is not any possibility to identify the materials containing forms of child sexual abuse, in order to locate the victims or the authors of the crimes, or to carry out in darknet or in the peer-to-peer networks, as the personnel has no knowledge or the necessary technology. The Commission militate in favour of implementing undercover online investigation techniques at the level of all Member States, so that the law enforcement authorities have the capacity to efficiently infiltrate within the online criminal groups in order to get to know the offender profile.

There are on-going prevention programmes, but their efficiency was not underlined through visible results, that is why the Commission works actively at a prevention network that should contribute to the improvement of the capacities of the Member States in order to fight child sexual abuses more efficiently.

The main element of prevention is the knowledge of the offender profile, especially the knowledge about the potential offender, which supposes a subjective analysis before committing the crime, then during the procedural stages and eventually in the sentencing stage, and post-sentencing respectively. The prevention programs are considered as an important contribution for a resilient and effective approach to fight against child sexual exploitation both in the

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cyberspace and offline, and to raise main stakeholders' awareness to the issue (*Di Gioia R., Belay, L., 2018, p. 11*). In this regard, the prevention network will consider:

- a tight communicate on between researchers and practitioners, by ensuring permanent feedback;

- an enhanced attention for the prevention programmes meant for the authors of crimes and for the persons who are afraid that they could commit crimes;

- the concrete understanding, through substantive researches, of the process by which a person gets to commit crimes; identification of the risk factors and of the triggering factors;

- launching and supporting awareness campaigns – mass media campaigns and training courses based on models of "good practices" – and here we have the organisations working with children, such as the professionals from all the sectors that work with children, including the law enforcement authorities and the legal system, when the minor victims are involved in criminal investigations;

Offering children knowledge and information on specific prevention, for them not to face the abuse – information regarding the way of using the Internet safely, and also regarding some illegal behaviours; children should have access to safe channels, accessible and compliant with their age, in order to be able to report the cases of abuse without any fear.

CONCLUSIONS

The online and offline sexual abuse and sexual exploitation of children represent one of the most serious crimes, being able to cause irremediable traumas in terms of long time physical, mental and social consequences.

A sexual abuse photographed and filmed can produce long time dramatic effects leading, by perpetuation, to trauma. Sharing such images falls under some successive criminal manifestations, by their viewing, which can jeopardize the life to a private life. In this regard, prevention is extremely important and needs to have a starting point right in the technologic environment which makes possible the sharing of such images and videos.

Also, informing the children regarding some inadequate behaviours and regarding the possibility to report the abuses, by safe channels, is the prerequisite for fighting such phenomenon. They have to take into account the circumstances and needs of each category of children, according to their weaknesses, those disabled children or migrant children or trafficked children being more exposed to abuse.

All the instruments at the level of the European Union militate for the well-being and the best interest of the child, as fundamental values to be promoted, with no discrimination, by all Member States.

Focusing on prioritizing such values, these legal instruments, in their contents, refer to important matters regarding the protection of children against sexual abuses: protection and assistance measures of the victim children and their families, establishment of intervention programmes, common procedural rules regarding the investigation, tracking and judging the person who committed crimes, treatment of sexual offenders, creation of a data base allowing the registration and storing of information on offenders, measures of international cooperation to prevent and fight crimes, and also establishment of a monitoring mechanism of the way in which their provisions are implemented by the other state parties.

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