

Victim Support Europe Contribution

INCEPTION IMPACT ASSESSMENT ON THE EU STRATEGY FOR
A MORE EFFECTIVE FIGHT AGAINST CHILD SEXUAL ABUSE



About Victim Support Europe

Victim Support Europe (VSE) is the leading European umbrella organisation advocating on behalf of all victims of crime, no matter what the crime, no matter who the victim is. VSE represents 61 member organisations, providing support and information services to more than 2 million people affected by crime every year in 31 countries.

Founded in 1990, VSE has been working for almost 30 years for a Europe, and a world, where all victims have strong victims' rights and services, whether they report the crime or not. We work towards this mission through advocacy to improve European and international laws, through research and knowledge development and through capacity building at the national and local level.

Introduction

Being sexually exploited during childhood causes life-long suffering to victims, who may experience difficulties with establishing interpersonal relationships or sexual functioning. Studies suggest that a significant proportion of children in Europe – between 10 % and 20 % – are sexually abused during their childhood.¹

We are living in an era of incredible technical advancements, which are fundamentally changing our way of life but also the way of criminal behaviours. In such an environment we are seeing a change in ways child sexual abuse is taking place. In some cases, the full extent of the abuse can happen online – without any physical contact between the abuser and the child themselves, while at other times the internet is used to groom children online for abuse, or to disseminate content which was obtained through child sexual abuse.

Recent reports indicate that globally, the largest proportion of child sexual abuse material is stored on servers located in the EU.² Cases where sexual violence has been either facilitated or perpetrated by the use of information and communication technologies, come with the additional burden of the danger that such material may remain online for a long time, even forever, that it crosses borders and that it may come back to haunt victims long after the abuse has stopped, hence reversing the course of their recovery.

While the EU Victims' Rights Directive aims to ensure rights for all victims of all crimes, it recognises the necessity to provide particular protection to children and to victims of sexual violence. The Directive, therefore, creates a legal environment in which it is of utmost importance to insist that child victims of sexual abuse are not only provided with the support they need, but also with protection, recognition, access to justice and compensation. At the same time, it is necessary that all actors across the board – including governmental services, civil society and businesses – work in a collaborative manner, putting the child victim in the centre of their work. Of course, the best form of protection from crime is prevention. However, when child sexual abuse unfortunately occurs, these actors need to ensure that child victims' needs are fully met and that they are supported in their full recovery as a matter of priority.

¹ According to a child sexual abuse prevalence study by Stoltenborgh et al. (2011), estimated prevalence rates for girls in Europe were 13,5 %, and 5,6 % for boys in Europe. However, it is worth noting that self-report studies yielded an estimated prevalence that was 30 times higher than the rate estimated from informant studies.

² https://ec.europa.eu/home-affairs/news/20200428_increased-amount-child-sexual-abuse-material-detected-europe_en

In this contribution, we will use the three key objectives as described by the roadmap to navigate the approach of child sexual abuse, namely: reducing child sexual abuse and ensuring improved identification and protection of victims of child sexual abuse; ensuring effective prevention, investigation and prosecution of child sexual abuse offences; and providing holistic support to Member States in the fight against child sexual abuse, online and offline, ensuring coordination to maximise the efficient use of resources and avoiding duplication of efforts.

I. Preventing the abuse of online infrastructure for child sexual abuse by offenders

The development of new technologies has gone hand in hand with the rise in child sexual abuse. This development requires a novel approach to prevent child sexual abuse from happening in the first place, but also to prevent revictimisation and secondary victimisation of vulnerable children.

1. Using new technologies to prevent and tackle child sexual abuse

New technologies, such as artificial intelligence or virtual and augmented reality, can be used to detect, identify and prevent potential abusive behaviours such as grooming, but also to prevent and intercept the dissemination of child sexual abuse material before it reaches a broader audience.³ Such technologies could also play a role in preventing repeat or secondary victimisation, as victims will not be at risk of being exposed to online material of their traumatic experience. Removing child sexual abuse material is, therefore, a key component of this work. While hotlines receive and act on reports of illegal material from members of the public, the tech industry also has an important part to play a proactive role in restricting access to child sexual abuse material.

Additionally, internet and tech companies should incorporate ‘safety by design’ in their mechanisms to ensure that their products are safe for children and can help prevent child sexual abuse. We call on the EU and Member States to develop **active partnership with the IT sector, in cooperation with victims and victim support organisations** to develop effective responses to online child sexual abuse.

2. Derogation from the e-Privacy Directive

The Interim Regulation on the processing of personal data for the purpose of combatting child sexual abuse would ensure that providers of online communications services could continue to apply voluntary measures for the detection, reporting, and removal of child sexual abuse material online. Since the Interim Regulation has not been adopted, voluntary practices to detect, report and remove child sexual abuse material is not possible as of 21 December 2020, when the European Electronic Communications Code came into full effect.

The consequences of the vote against the Interim Regulation will mean that as of 2021:

- Paedophiles operating online will again be able to store child pornography and other child sexual abuse material on European online platforms;
- Sexual predators will again be able to groom children for sexual exploitation without fear of being detected;

³ These technologies could also recognise and prevent abusive behavioural patterns, both on the side of the perpetrator and in general, to prevent online contact between the (potential) victim and the perpetrator who is after them.

- Child sexual abusers will again be free to share explicit content involving children as young as several weeks old in online messaging without the fear of being detected.

VSE strongly advocates for the protection of all fundamental rights. The e-Privacy Directive seeks to protect Articles 7 and 8 of the Charter of Fundamental Rights, which we strongly support. However, the **e-Privacy Directive has failed to properly consider and mitigate risks to Articles 1, 2, 3, 4, 5, 6 and 24 of the Charter.**⁴ The implementation of the e-Privacy Directive without appropriate safeguards for fundamental rights puts in danger thousands of children’s lives, their personal dignity and integrity and the interests of a child as a primary consideration. Studies show that the life-long consequences of child sexual abuse include post-traumatic symptoms, depression, substance abuse, helplessness, suicidal and aggressive behaviour, conduct problems, eating disorders, and psychotic disorders.⁵ This is not a balanced approach.

VSE therefore encourages the EU to **adopt policy option 3**, a legal framework that creates a binding obligation for relevant service providers to detect, report, and remove child sexual abuse from their services, applicable to both known and new material, and to text-based threats such as grooming. This framework would also set out the relevant public authority/authorities, at EU level or national level, to which reports should be made.

II. Ensuring measures for the detection, removal and reporting of online child sexual abuse are implemented where they are currently missing

1. Ensure effective investigation and prosecution

Child sexual abuse cases are notoriously difficult to prosecute, as often children are groomed to protect their abuser, and even when the crime becomes known and prosecuted, the evidence often must rely on the testimony of a child. Research shows that less than one in five reported cases went forward to prosecution, with about half of those cases resulting in a conviction or guilty plea.⁶ It is, therefore, fundamental to ensure an environment where child victims of sexual abuse have a better guarantee of access to justice, through ensuring effective investigations that are aimed at a successful prosecution and trial.

To ensure effective investigation and prosecution, it is important that the right measures are in place so that child victims feel safe to tell their story. Law enforcement and justice practitioners need to work with children in a respectful way, making the information they receive understandable, enabling them to be heard, and recognising that all children are different and need to be treated in an individual way. Article 22 of the Victims’ Rights Directive imposes an obligation for individual assessments of each victim; this is especially important for child victims. There needs to be an **individual assessment of each child**⁷, aiming to reduce the trauma that children face through the legal proceedings. This

⁴ The victims’ right to human dignity (Art. 1), the right to life (Art. 2), the right to integrity (Art. 3), the freedom from torture and degrading treatment (Art. 4), the freedom from slavery and forced labour (Art. 5), the right to liberty and security (Art. 6) and the rights of the child (Art. 24) are at stake. Art. 24 (2) stresses that the child’s best interest must be a primary consideration in all actions relating to children.

⁵ Cashmore, J. & Shackel, R. (2013). *The long-term effects of child sexual abuse*. Retrieved from: <https://aifs.gov.au/cfca/publications/long-term-effects-child-sexual-abuse/impact-child-sexual-abuse-mental-health>

⁶ Block, S.D. & Williams, L.M. (2019). *The prosecution of child sexual abuse: A partnership to improve outcomes*. Retrieved from: <https://www.ncjrs.gov/pdffiles1/nij/grants/252768.pdf>

⁷ See also Article 56 of the Victims’ Rights Directive.

assessment needs to be child-focused and ensure, in particular, elimination of secondary victimisation. We insist in child victims' participation in the proceedings being maximised to the extent they want to, utilising innovative practices to help victims safely participate in the justice system and give the best testimony they can (e.g. by allowing facility dogs), whenever possible and appropriate, given the child's age and maturity as well as their own preferences.

III. Enabling a coherent, coordinated approach to online and offline child sexual abuse

To ensure a sustainable approach to the prevention of child sexual abuse, apart from the already existing law enforcement and investigative techniques, a more long-lasting solution can be seen in the combination of two elements: (1) EU legislation on child sexual abuse must be implemented fully and effectively by Member States and the EU must ensure this, and (2) the EU and Member States need to invest in resilience through broader societal action, including education.

1. Full and effective implementation of EU law

Crime has a significant and long lasting impact on millions of people in Europe. However, not enough is being done to support victims in general, and the most vulnerable in particular. Namely, despite wide ranging EU legislation⁸, many of the rights laid down in this legislation are far from being fully and appropriately implemented.

We believe that it is critical to ensure victims' access to their rights under EU law. An important step in doing so is to **ensure full and meaningful transposition** of EU legislation related to victims. In addition, it is also fundamental to identify actions to reduce gaps and ensure **full practical implementation** of such transposed legislation. Despite the significant legislative effort of the EU, the Member States appear to be repeatedly failing their most vulnerable – child victims of sexual abuse – at this first step. In 2019 the Commission opened infringement procedures against 23 Member States for possible non-conformities in the transposition of the Child Sexual Abuse Directive and another set of infringement proceedings for the failures to transpose the Victims' Rights Directive. This came around the time when VSE published findings of an extensive study into practical implementation of the Victims' Rights Directive across 26 EU Member States.⁹ The report found that not a single Member State is fully implementing the entirety of the minimum guarantees by the Directive. The study also showed that not a single right from the Directive is fully implemented across all 26 observed states.

Similar experiences are present in respect of the **European Protection Order Directive and Regulation**. Unfortunately, while the intention behind this legislation was to ensure equal protection of victims in accordance with the free movement, victims still face significant differences across the EU in the protection they are afforded. These differences range from the types of measures available, to the differences in the criteria to impose measures, duration of different measures and the requirements for

⁸ In particular : Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography; Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime; Council Directive 2004/80/EC relating to compensation to crime victims; Directive 2011/99/EU on the European Protection Order (EPO); Regulation (EU) No. 606/2013 on mutual recognition of protection measures in civil matters; Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims; Directive (EU) 2017/541 on combating terrorism and the Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

⁹ See Victim Support Europe, Victims of Crime – Implementation and Analysis of Rights in Europe (VOCIARE), July 2019, available at: https://victimsupport.eu/activeapp/wp-content/uploads/2019/08/VOCIARE_Synthesis_Report-web.pdf

their extension or renewal. Against such background, the mutual recognition system is largely unused and does not address these fundamental problems, with the result of a limited success of this important piece of legislation.

We need to insist that Europe should and can do much better than that. We call on the European Commission to insist on **full transposition** of the Victims' Rights Directive and the Child Sexual Abuse Directive. We call on the European Commission to **examine reasons for the limited success of the European legislation in the area of victims' rights**. We also call for setting out **minimum standards for protection orders** to ensure a minimum equal level of protection, no matter where in the EU the victim is, while at the same time safeguarding the high performance in some Member States.

We need to not only fully transpose and implement the existing legislation, but we need to **continue improving**. EU legislation provides but a minimum requirement for protection of vulnerable victims. EU and Member States need to continue looking into best practices and scientific, technological and social developments in dealing with child sexual abuse and respond through continuous evaluation and monitoring and through adoption of new legislation when needed.

2. Ensuring support for child victims

A critical factor in the harm that victims experience is disempowerment – the loss of control over their lives. That disempowerment is felt not only as a direct result of the crime (primary victimisation), but also through other negative experiences that are secondary to the incident and that occur during contact with the criminal justice system and other associated systems (secondary victimisation). While increasing resilience is an important preparatory step, it is still important to put in place necessary support services for child victims of sexual abuse and ensure that every child victim has access to all the services they need to achieve a full recovery.

While there are at least some forms of support for child victims of sexual abuse, it is alarming to note that a number of EU Member States is still failing to ensure nation-wide generalist support services, which should exist for the benefit of all victims, including child victims of sexual abuse and their families. There is little information about the availability and sufficiency of specialist services for vulnerable child victims and there is no concerted effort to establish the need for such specialist services. At the same time, in a number of Member States there is a lack of sustainable and stable funding for victim support services, leaving vulnerable victims, including child victims of sexual abuse, to receive support from time-limited initiatives, such as projects, hence risking end of support with the end of the project.

To ensure that children and their families are properly supported, support for child victims of sexual abuse needs to be delivered through a collaboration of societal services – such as education, healthcare, social services, law enforcement and judiciary, and civil society, through both generalist and specialist forms of support. We call on the European Commission to **insist that Member States ensure full access to high quality generic and specialist victim support services for all child victims of sexual abuse**, which are delivered in collaboration between the State authorities, societal services, civil society and the private sector. It is particularly important to ensure that civil society is recognised as an important contributor to victim support and to accept that the non-governmental sector needs to be encouraged and enabled to continue supporting vulnerable victims. In this regard, we are particularly calling for the European Commission to require the **establishment and development of national generic victim support services** in Member States where these services still do not exist, and further support and funding to such services in countries where they already exist.

We are also inviting the European Commission to ensure that safe, child-focused **referral mechanisms** between law enforcement, victim support organisations, and other actors are established, based on **individual assessment of victims' support and protection needs**. The EU should encourage and support cooperation between State authorities and civil society to deliver services in unison. While there are some needs of victims which can only be delivered by the State (e.g. justice or protection), there is a range of other needs that can be better catered to through a collaboration between different actors for the benefit of all victims.

We further call for **exploring new psychosocial support techniques and therapies and improving existing ones**. Cutting-edge technologies developed in other sectors could be adapted to the area of victimology, such as virtual and augmented reality. These technologies can help victims in their recovery and help them overcome PTSD. EU-wide support for the development of state-of-the-art therapies will ensure that not only the best is available, but also that it is accessible to all. Moreover, other novelty services should be explored and pursued, such as the development of facility dog (FYDO) services across the EU.¹⁰

3. Strengthen cooperation and coordination

The EU should support **cross-border exchange of information and cooperation on individual cases** by supporting referral and coordination of services, both at a national and international level. With an increase in mobility and the use of the internet, cross-border victimisation issues are also increasing. This requires recognition at a policy level, but also at the level of provision of services to all victims, regardless of where they were victimised or what their needs might be.

The EU has to prioritise cross-border cooperation of law enforcement agencies to tackle child sexual abuse, and move quickly to assist police authorities to pursue criminals across borders. **It is necessary to create an EU Centre for Preventing and Combatting Child Sexual Abuse**. Such a centre would greatly increase cross-border cooperation between States and help prosecute offenders.

Additionally, since a large proportion of the child sexual abuse material hosted in the EU is created outside of the EU, it is critical to pursue the development of effective enforcement and justice systems in countries where the creators of this content are based. To this end, cooperation between national law enforcement authorities, internet providers, social media platforms, Europol and Interpol should be intensified. Additionally, it might be worthwhile looking into defining **child sexual abuse as an international crime**, to reinforce responsibility and increase the possibility of prosecution. We also need to ensure sufficient support for cross-border child victims of sexual abuse. Child victims in cross-border situations need to have a **guarantee of continued support when they go from one Member State to another**.

¹⁰ Facility dogs are specially bred and selected dogs that go through a special training programme for about two years, to be able to support the most vulnerable victims in their recovery from crime. Child victims of sexual abuse are frequent users of this important service, and many Barnahus locations provide this service to their users. Even though there have been several isolated cases of facility dogs being placed in service to support victims, VSE is currently working with a number of partners to launch a European FYDO initiative in the near future.