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## STATE PREVENTION TARGETING PERSONS ATTRACTED TO MINORS IN EUROPE

by Aleydis Nissen

### Introduction

To this day, displaying or engaging in sexual activities with children – one of the most destructive events for child development – is tolerated in various contexts and situations, while stigma, misplaced guilt and powerlessness keep survivors from speaking out.<sup>1</sup> For example, Japanese convenience stores display magazines with women that ‘appear to be’ minors on the cover.<sup>2</sup> Various minors in legal marriages in Morocco are required to have sexual relations with their adult husbands against their will (but without legal avenues to claim redress).<sup>3</sup>

In the 1970s, radical feminists in the United States started questioning such approaches by making child sexual abuse visible. By considering child sexual abuse as a political and social issue,<sup>4</sup> they brought ‘prevention’ of child sexual offences (CSOs) into the mainstream.<sup>5</sup> Preventive programmes have focused on potential victims, survivors, persons who (fear they will) commit offences, situations and communities.<sup>6</sup>

There are primary and secondary preventive programmes. Primary prevention initiatives, such as World Vision’s Child Safe Tourism initiative, focus on general deterrence and developmental prevention.<sup>7</sup> Secondary prevention initiatives stage interventions when there is a more imminent risk.<sup>8</sup> For example, there are banners and pop-ups on various search engines that make it more difficult to access websites designed to promote children for sex. Less known are secondary

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<sup>1</sup> Nancy Whittier, *The Politics of Child Sexual Abuse* (OUP 2009) 24 and 36; Jerusha Sanjeevi and others, ‘A Review of Child Sexual Abuse: Impact, Risk and Resilience in the Context of Culture’ (2018) 27 *Journal Child Sexual Abuse* 622.

<sup>2</sup> X, ‘Concern About “Sexualise” Children Often Misses The Point’ *The Economist* (21 July 2018), <https://www.economist.com/international/2018/07/19/concern-about-sexualised-children-often-misses-the-point>; Ciaran Varley, ‘Is Japan Turning a Blind Eye to Paedophilia’ *BBC* (7 March 2018), <https://www.bbc.co.uk/bbcthree/article/57eaaf23-ocf-48c8-961f-41f2563b38aa>. See Mark McLelland, ‘Negotiating “Cool Japan” in Research and Teaching’ in M McLelland (ed.), *The End of Cool Japan: Ethical, Legal and Culture Challenges to Japanese Popular Culture* (Routledge 2017).

<sup>3</sup> Alexia Sabbe, ‘Determinants of Child and Forced Marriage in Morocco: Stakeholder Perspectives on Health, Policies and Human Rights’ (2013) 13 *BMC International Health and Human Rights* 1.

<sup>4</sup> Whittier (n 1) 21-22 referring to, amongst others Sandra Butler, *Conspiracy of Silence: The Trauma of Incest* (Volcano 1985).

<sup>5</sup> Whittier, id., 63

<sup>6</sup> Kieran McCartan and others, ‘Ethics and Issues of Secondary Prevention Efforts in Child Sexual Abuse’ (2018) 62(9) *International Journal of Offender Therapy and Comparative Criminology* 2548, 2551.

<sup>7</sup> *Ibid.*, 2550.

<sup>8</sup> *Ibid.*

intervention programmes for persons who fear that they might commit child sexual abuse and exploitation. Such programmes are specifically targeted at people who have a sexual preference for minors (as opposed to situational child sexual abusers that are driven by other motivations).<sup>9</sup>

A decade ago, instruments that create state obligations to offer preventive programmes and measures for persons who fear that they might commit child sexual abuse or exploitation were adopted in Europe. The Council of Europe included such obligations in Article 7 of the Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse (‘the Lanzarote Convention’) in 2010, while the European Union (EU) has included them in Article 22 of Directive 2011/93 EU on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography (‘Directive 2011/93 EU’; ‘the Directive’).<sup>10</sup> The Council of Europe has 47 member states, including the 27 Member States of the EU. This article aims to review these supranational obligations and their implementation.

The structure of this article is as follows. The first section of this article summarizes current debates in psychiatry and public health. These debates frequently overlook that there exist state obligations in Europe to provide support to persons who fear that they might commit child sexual abuse and exploitation. After breaking down these legal obligations, this article explains the benefits that these obligations can bring to minors, persons who fear that they might offend and the rest of society. However, the last section of this article sets out that the stigma around pedophilia hampers progress at the individual, interpersonal and structural levels in the Member States of the Council of Europe and the EU. In addition, targeted programmes and measures for specific target groups of PAMs, such as women or people with disabilities, are identified as a blind spot. Finally, there is room for improvement in the cooperation between these two international organizations.

## **Current Debates in Psychiatry and Public Health**

The World Health Organization used to define pedophilia as ‘a sexual preference for children, boys or girls or both, usually of *prepubertal or early pubertal* age’ in the tenth edition of the

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<sup>9</sup> United Nations Human Rights Council (HRC), ‘Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography’ (2015) UN Doc. A/HRC/31/58 para 26.

<sup>10</sup> Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (adopted 25 October 2007, entered into force 1 July 2010) CETS 201; EU (European Parliament and Council), Directive Nr 2011/93/EU 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 [2011] OJ L 335.

International Statistical Classification of Diseases and Related Health Problems (ICD-10).<sup>11</sup> However, the most recent edition of this Classification (ICD-11) refers only to pedophilic disorder, a sustained, focused, and intense pattern of sexual arousal involving *prepubertal* children.<sup>12</sup> Hebephilia – attraction to children who are in the early to mid-stages of pubertal development – is thus no longer included in the World Health Organization’s Classification.<sup>13</sup> In order for pedophilic disorder to be diagnosed, the individual must have acted on thoughts, fantasies or urges or be markedly distressed by them. (This diagnosis does not apply to sexual behaviours among pre- or post-pubertal children with peers who are close in age.) The ICD-11 definition is clearly inspired by the fifth edition of the Diagnostic and Statistical Manual of Mental Disorder (DSM-5), the standard classification of mental disorders.<sup>14</sup> To be diagnosed as a person with pedophilic paraphilia, the individual needs to experience intense sexually arousing fantasies or urges involving sexual activity with prepubescent children over a period of at least six months and have ‘acted on’ these sexual urges, or, alternatively, the urges have caused serious distress. The DSM-5 extends the prepubescent age to 13. But the diagnosed person should be at least 16 years of age and at least 5 years older than his or her victim (unless it concerns an individual in late adolescence who is ‘involved in ongoing sexual relationships with, say, 12 or 13-year-olds’). The DSM-5 has been criticized for not accounting sufficiently for hebephilia.<sup>15</sup> I will not discuss this issue further. It suffices to state here that one of the reasons why it is not included in the DSM-5 would be the potential forensic impact.<sup>16</sup> A more comprehensive conceptualization might allegedly be ‘used and misused in legal and clinical decision-making’.<sup>17</sup>

Due to the many misconceptions and stigmas that exist around the term ‘pedophilia’, there has been a search for another term. The NGO B4U-Act used the term ‘Minor-Attracted Person’ at a

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<sup>11</sup> World Health Organization, International Statistical Classification of Diseases and Related Health Problems (10th edition, 2010) para 65.4 (emphasis added).

<sup>12</sup> World Health Organization, International Statistical Classification of Diseases and Related Health Problems (11th edition, 2019) para 6D32 (emphasis added). Note that it is valuable that this definition does no longer refer to gender constructs such as ‘boys’ and ‘girls’.

<sup>13</sup> ECPAT International, ‘Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse’ (2016), [https://www.ohchr.org/documents/issues/children/sr/terminologyguidelines\\_en.pdf](https://www.ohchr.org/documents/issues/children/sr/terminologyguidelines_en.pdf)86-87.

<sup>14</sup> American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorder (5th edition, 2015) (DSM-V).

<sup>15</sup> Ray Blanchard and others, ‘Pedophilia, Hebephilia, and the DSM-V’ (2009) 38(3) Archives of Sexual Behaviour 335. See Robert Prentky and Howard Barbaree, ‘Commentary: Hebephilia—A Would-be Paraphilia Caught in the Twilight Zone Between Prepubescence and Adulthood’ (2011) 39(4) Journal of the American Academy of Psychiatry and the Law, 506.

<sup>16</sup> Patrick Singy, ‘Hebephilia: A Postmortem Dissection’ (2015) 44 Archives of Sexual Behaviour 1109, 1115.

<sup>17</sup> Skye Stephens and Michael Seto, ‘Hebephilic Sexual offending’ in A Phenix and H Hoberman (eds), *Sexual Offenders: Predisposing Antecedents, Assessments, and Management* (Springer 2016), 31.

conference in 2011.<sup>18</sup> This term refers to individuals who may not fully relate to the term ‘pedophile’ but feel a sexual (or emotional) attraction to children or adolescents.<sup>19</sup> I will, however, use the term ‘Persons Attracted to Minors’ (PAM) in this article because this formulation is less ambiguous.

Since the 1980s, researchers from the disciplines of public health and psychiatry have turned their attention to preventive strategies to support people who self-identify as PAMs and want to work to not commit a CSO.<sup>20</sup> There is currently no evidence of whether pedophilic paraphilia is curable.<sup>21</sup> But, there is a consensus that most PAMs can manage their behaviour. PAMs can, amongst others, learn self-control, cope with shame and stigma-related stress, and improve the quality of their lives.<sup>22</sup> Trained professionals can support them in taking such steps. Programmes have been set up by civil society organizations and medical facilities in various countries around the world. For example, in a research project that was funded by the European Commission, users of the Dutch and British Stop it Now! Helplines said they were better able to understand the problematic and illegal nature of CSOs, to identify triggers, to manage behaviour, and to put in place protective factors that could reduce their risk of offending.<sup>23</sup> Ideally, such support is offered in a setting where PAMs who have not offended are not mixed with PAMs who have offended.<sup>24</sup> More research on such programmes is needed. There is currently no reliable empirical evidence for or against the impact of a specific programme in preventing CSOs.<sup>25</sup> There are considerable methodological problems. For example, PAMs who seek help are a self-selected sample of motivated people, so it is hard to measure differences. There is also an ethical problem which makes it difficult to put PAMs in a control group in which no treatment is offered.

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<sup>18</sup> B4U Act, ‘Pedophilia, Minor-Attracted Persons, and the DSM: Issues and Controversies’ Symposium, Baltimore, MD, 17 August 2011. This concept has also been spelled as ‘Minor Attracted Person’ in the literature (e.g. Candice Christiansen and Meg Martinez-Dettamanti, ‘Prevention of Action: Exploring Prevention Initiatives and Current Practices’ in R. Lievesley and others (eds), *Sexual Crime and Prevention* (Springer 2018) 27, 29).

<sup>19</sup> Christiansen and Martinez-Dettamanti id.; Natasha Knack and others, ‘Primary and Secondary Prevention of Child Sexual Abuse’ (2018) 31 *International Review of Psychiatry* 181, 183.

<sup>20</sup> E.g. Kirsten Jordan and others, ‘Sexual Interest and Sexual Self-Control in Men with Self-Reported Sexual Interest in Children—A First Eye Tracking Study’ (2018) 96 *Journal of Psychiatric Research* 138.

<sup>21</sup> Paul Fedoroff, ‘Pedophilia: Interventions that Work’ (2016) 33(7) *Psychiatric Times*.

<sup>22</sup> Kris Vanhoeck, ‘Preventieve Hulp voor Mensen met Pedofiele Gevoelens’ (2015) 45/3 *Tijdschrift Klinische Psychologie* 167.

<sup>23</sup> EU (Commission), ‘Preventing Child Sexual Abuse: Evaluating and Implementing a European Model of Stop it Now!’ (2011) JUST/2011/DAP/AG/3031 [https://ec.europa.eu/justice/grants/results/daphne-toolkit/content/preventing-child-sexual-abuse-evaluating-and-implementing-european-model-stop-it-now\\_en](https://ec.europa.eu/justice/grants/results/daphne-toolkit/content/preventing-child-sexual-abuse-evaluating-and-implementing-european-model-stop-it-now_en).

<sup>24</sup> Susanna Niehaus, Delia Pisoni and Alexander Schmidt, ‘Präventionsangebote für Personen mit Sexuellen Interessen an Kindern und ihre Werking’ (2020) *Forschungsbericht* 4/20, <https://www.bsv.admin.ch/bsv/de/home/sozialpolitische-themen/kinder-und-jugendfragen/kinderschutz/praevention-paedosexuelle.html>, 68.

<sup>25</sup> Niehaus et al. (n 24) 65; Rosanna Di Gioia and Laurent Beslay, ‘Fighting Child Sexual Abuse: Prevention Policies for Offenders – Inception Report’ (2018) EUR 29344 EN, 7.

In various countries, PAMs are advised to seek help from healthcare professionals in general practices (as opposed to specialized medical facilities).<sup>26</sup> Unfortunately, such professionals are not always able or willing to provide help.<sup>27</sup> The treatment of PAMs is frequently not incorporated in training curricula of healthcare professionals.<sup>28</sup> In addition, some professionals are resentful of PAMs due to stigmatization. In a recent survey amongst 427 therapists in community practice in Switzerland, 45 percent of those surveyed stated that they would be unwilling to treat PAMs, even if this PAM had not committed a CSO.<sup>29</sup> Healthcare professionals in general practice who want to work with PAMs can, nevertheless, do valuable work because the geographical and other barriers to access general services are lower than those of specialized programmes. Such professionals need specific training to acquire knowledge of the therapeutic management of PAMs. These professionals should also benefit from the support of a larger network, and have sufficient time to reflect upon their behaviour during therapy to avoid any judgmental and stigmatizing attitudes.<sup>30</sup> It is a particularly difficult balancing act for professionals to master the skill of helping PAMs to cope with their stigmatized tendencies, while minimizing potential risk against children. If they alienate the PAM, there is a risk that the PAM's mental health deteriorates.<sup>31</sup>

## Legal Framework

A number of international law provisions are relevant. The 1959 Declaration of the Rights of the Child states 'The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form'.<sup>32</sup> It was not until the United Nations (UN) Convention on the Rights of the Child (1989) – which has since been ratified by all states apart from the United States and Somalia – that human rights law seriously engaged with the distinctiveness of childhood.<sup>33</sup> This Convention obliges States Parties to protect children from all

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<sup>26</sup> Lanzarote Committee, '2<sup>nd</sup> Implementation Report Protection of Children Against Sexual Abuse in the Circle of Trust' (2018) T-ES(2017)12\_en final, 104.

<sup>27</sup> Amandine Scherrer and Wouter van Ballegooij, 'Combating Sexual Abuse of Children Directive 2011/93/EU' (2017) PE 598.614, 34

<sup>28</sup> Niehaus et al. (n 24) 69.

<sup>29</sup> *Ibid.*, p 73.

<sup>30</sup> Di Gioia and Beslay (n 25) 9; Scherrer and van Ballegooij (n 27) 32; Robert Lehmann, Alexander Schmidt and Sara Jahnke, 'Stigmatization of Paraphilias and Psychological Conditions Linked to Sexual Offending' (2020) 4 *The Journal of Sex Research* 438.

<sup>31</sup> Niehaus et al. (n 24) 66.

<sup>32</sup> Declaration of the Rights of the Child (adopted 20 November 1959), General Assembly Res. 1386 (XIV).

<sup>33</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1989) 1577 UNTS 3 (CRC); However, the pertinent provisions of this Convention, like those in Articles 1, 11, 21 and 32-37, are formulated in general and broad terms (Jacqueline Bhabha, 'The Child: What Sort of Human' (2006) 121(5) *PMLA* 1526, 1528.)

forms of sexual exploitation and abuse, abduction, sale and trafficking, any other form of exploitation and from cruel or inhuman treatment.<sup>34</sup> States Parties shall take legislative, administrative, social and educational measures for prevention.<sup>35</sup> More specifically, Article 9(1) of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000) determines that States Parties shall adopt, strengthen or implement measures to prevent the three abuses to which its name refers.<sup>36</sup> The Convention and the Optional Protocol do, however, not list specific measures for prevention.<sup>37</sup> In her interpretation of the Optional Protocol, the former UN Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography Maud de Boer-Buquicchio has, nevertheless, referred to preventive programmes for PAMs who want to seek support when they fear that they would be capable of committing a CSO.<sup>38</sup> She mentioned the German ‘Dunkelfeld project’, a project that offers pharmacologic treatment and psychotherapy to PAMs. Furthermore, the Stockholm Declaration and Agenda for Action of the First World Congress (1996) – an influential instrument on the issue of sexual exploitation and sexual abuse in the commercial field – contains one preventive provision that targets potential offenders.<sup>39</sup> It encourages, in particular, the targeting of ‘those involved with commercial sexual exploitation of children with information, education and outreach campaigns and programmes to promote behavioral changes to counter the practice’.<sup>40</sup>

More concrete obligations were stipulated in regional charters, in particular in Europe.<sup>41</sup> In 2010, de Boer-Buquicchio – then Council of Europe Deputy Secretary-General – stressed the importance of regional instruments because existing international instruments were simply ‘not working’.<sup>42</sup> All 47 Council of Europe Member States are States Parties to the Lanzarote Convention. It entered into force on 1 July 2014, and the last state to ratify was Ireland, in 2020.

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<sup>34</sup> Art 34 CRC.

<sup>35</sup> Art 19(2) CRC.

<sup>36</sup> Art 9(1) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (adopted 25 May 2000, entered into force 18 January 2002) 2171 UNTS 227.

<sup>37</sup> See Wouter Vandenhoe and others, *Children’s rights* (Edward Elgar 2019) 336.

<sup>38</sup> A/HRC/31/58 (n 9) 51; HRC, ‘Sale and Sexual Exploitation of Children. Report of the Special Rapporteur on the Sale and Sexual Exploitation of Children, including Child Prostitution, Child Pornography and other Child Sexual Abuse Material’ (2020) UN Doc. A/HRC/43/40 para 64.

<sup>39</sup> World Congress against Commercial Sexual Exploitation, Stockholm Declaration and Agenda for Action (1996), <http://www.csecworldcongress.org/en/stockholm/Outcome/index.html>.

<sup>40</sup> *Ibid.*, para 3.1.

<sup>41</sup> Cf Ton Liefwaard and Julia Sloth-Nielsen, ‘25 years CRC: Reflecting on Successes, Failures and the Future’ in T Liefwaard and J Sloth-Nielsen (eds), *The United Nations Convention on the Rights of the Child Taking Stock After 25 Years and Looking Forward* (Brill 2017) 1, 2

<sup>42</sup> Daniel Edelson, ‘Accountability and Responsibility: Why South Korea Should Support a Regional Convention Modeled after the Council of Europe on the Protection of Children Against Sexual Exploitation and Sexual Abuse’ (2014) 27 *Korea University Law Review* note 63.

Tunisia was the first non-Council of Europe Member State to accede to the Convention. Directive 2011/93 EU was intended to transpose the Lanzarote Convention into EU Member State legislation.<sup>43</sup> The Directive was adopted in 2011 and all EU Member States were held to implement it by 18 December 2013.<sup>44</sup> Measures that are adopted to implement the Directive shall contain a reference to the Directive or be accompanied by such a reference on the occasion of their official publication.<sup>45</sup>

The ‘age of sexual consent’ is ‘the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child’.<sup>46</sup> The Lanzarote Convention and the Directive determine that a ‘child’ is any person under the age of 18 years.<sup>47</sup> The age of sexual consent is determined in the national context, and ranges from 14 to 18 in Council of Europe (and EU) Member States.<sup>48</sup> For most states that have an age of sexual consent at the lower end of this range, there are various circumstances in which a child can still not give consent. There are, amongst others, exemptions for children who have reached the age of sexual consent, but are not ‘mature’. In addition, consent is often not possible when children who have reached the age of sexual consent engage in sexual activities with persons in a position of authority. Furthermore, there are close-in-age exemptions for sexual activities between (young adults and) minors, even when they are younger than 14 in various states (such as Cyprus and Italy).<sup>49</sup>

Article 7 of the Lanzarote Convention explains that *persons* who fear that they might commit sexual offences against children may have access, where appropriate, to effective intervention programmes or measures designed to evaluate and prevent the risk of such offences being committed. Article 22 of Directive 2011/93 EU echoes this provision. There should be support for PAMs who fear that they will engage in, aid or abet sexual abuse (including sexual corruption, causing children to witness sexual abuse or sexual activities, even without having to participate), solicitation of children for sexual purposes, child prostitution, child pornography or the participation of a child in pornographic performances. While these offences are covered by both

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<sup>43</sup> Scherrer and van Ballegooij (n 27) 22.

<sup>44</sup> Art 27.1 Directive.

<sup>45</sup> Art 27.3 id.

<sup>46</sup> Art 18.2 Convention; art 2.b Directive.

<sup>47</sup> Art 3.a Convention; art 2.a Directive.

<sup>48</sup> Art 18.2 Convention; art 2.b Directive; Guangxing Zhu and Suzan van der Aa, ‘Trends of Age of Consent Legislation in Europe: a Comparative Study of 59 Jurisdiction on the European Continent’ (2017) 8 *New Journal of European Criminal Law* 14, 22.

<sup>49</sup> See art 18(2) Convention; art 8 Directive. For a discussion see, Hoko Horii, ‘Adolescents’ “Consent” to Sex: Law and Morality in the Age of Consent Laws’ *Leiden Law Blog* (20 May 2020), <https://www.leidenlawblog.nl/articles/adolescents-consent-to-sex-law-and-morality-in-the-age-of-consent-laws>.



instruments, the definitions of such offences are not exactly the same in the Convention and the Directive. They are, generally speaking, slightly more elaborate in the Directive.<sup>50</sup>

The scope of preventive programmes and measures for PAMs is not entirely clear, because the jurisdiction clauses in both legal instruments – Article 25 of the Lanzarote Convention and Article 17 of Directive 2011/93 EU – refer to the criminalization of CSOs that *have been* committed, aided, abetted or attempted. It is, therefore, likely that all PAMs who *fear that* they would commit, aid, abet or attempt a CSO within the jurisdiction of the Convention and/or the Directive need to be able to benefit from preventive programmes or measures. The non-binding Explanatory Report to the Lanzarote Convention agrees with this interpretation.<sup>51</sup> This report furthermore stresses that persons who have committed CSOs but have not been brought to the attention of the authorities also need to benefit, if they so wish, from preventive intervention.<sup>52</sup> Article 7 of the Lanzarote Convention thus applies to all PAMs who are not being investigated or prosecuted or serving a sentence. (PAMs who are being investigated, prosecuted or serving a sentence fall within the ambit of Article 16 of the Lanzarote Convention.)

Accordingly, there exist state obligations to offer preventive programmes and measures to PAMs in the following instances under Article 25 of Lanzarote Convention and Article 17 of Directive 2011/93 EU. First, all offences committed by nationals of States Parties to the Convention (or EU Member States) are regulated. This means that such nationals need to be able to access programmes when they fear committing abuses against children. This includes nationals who fear that they will engage in sex tourism outside Europe. Second, the Convention extends jurisdiction to persons who have a habitual residence in the territory of a Council of Europe Member State.<sup>53</sup> All Council of Europe Member States, apart from those who have made reservations to this type of provision (Germany, Hungary, Ireland, Latvia, Montenegro, Poland, Slovenia and Switzerland), thus need to extend their programmes to habitual residents who are not nationals. Third, all CSOs – in whole or in part – committed in the territory of the State Party to the Convention (or the EU Member State) are regulated.<sup>54</sup> This includes offences on board a ship flying the flag of that State Party, or on board an aircraft registered under the laws of that Party.

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<sup>50</sup> Scherrer and van Ballegooij (n 27) 22.

<sup>51</sup> Council of Europe, 'Explanatory Report to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse' (adopted 25 October 2007) CETS 2011, 64.

<sup>52</sup> Council of Europe (n 51) 64.

<sup>53</sup> Art 25.1e and 25.3 Convention; art 17.2.a Directive.

<sup>54</sup> Art 25.1.a Convention; art 17.1.a Directive.

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<sup>55</sup> This means that PAMs (all over the world) who fear that they will commit (part of) of a CSO against children located in the territory of the State Party to the Convention should be able to access support. Online preventive programmes can be particularly useful for PAMs who are not nationals or habitual residents in Europe (but target children who are located there). Finally, European states can choose to extend jurisdiction to offences committed against children who are its nationals or are habitual residents on its territory, or when the offence is committed to the benefit of a legal person established in its territory. <sup>56</sup> They can, of course, decide to provide preventive programmes for other PAMs. It is also important to keep in mind that this analysis of the scope of the jurisdictional clauses might be a mere academic exercise, as both Article 7 of the Convention and Article 22 of the Directive determine that programmes and measures should only be offered to PAMs ‘where appropriate’.

Particular challenges arise for healthcare professionals when there is an imminent risk to children, or when a PAM says that they committed a CSO that has not been reported to the authorities. The Convention clarifies that hotlines should be established and that a multi-agency approach should be promoted. <sup>57</sup> The Lanzarote Committee – which monitors the implementation of the Convention – urged States Parties to put in place a tool or a procedure to assess the dangerousness and possible risk of repetition of CSOs. <sup>58</sup> Such tools need to help professionals when presumed offences or acute danger to children becomes known. In addition, professionals might need to comply with legal standards to report past CSOs to the authorities. Article 12(2) of the Convention and Article 16(2) of the Directive require that ‘any person’ who knows about or suspects, in good faith, a CSO should be encouraged to report this to the services responsible for child protection. Furthermore, the Convention and the Directive explain that confidentiality rules for professionals shall not obstruct disclosure to the services responsible for child protection of any situation where they have reasonable grounds for believing that a child is the victim of sexual exploitation or sexual abuse. <sup>59</sup> These provisions are, however, limited to ‘professionals working with children’. There are considerable differences in national regulations relating to mandatory reporting, and in the procedures for reporting CSOs. <sup>60</sup> Renée Kool and her co-authors note that France and the Netherlands are exceptional because these countries have enacted a duty to report

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<sup>55</sup> Art 25.1.b and 25.1.c Convention.

<sup>56</sup> Art 25.2 Convention; 17.2.a and 17.2.b Directive.

<sup>57</sup> Arts 10 and 13 Convention; Council of Europe (n 51) 77 and 92; Renée Kool, Senna Kerssies and Tessa van der Rijst, ‘Mind the (Knowledge) Gap’: Towards a Criminal Duty to Report Child Sexual Abuse’ (2021) 17 Utrecht Law Review 33, 38.

<sup>58</sup> Lanzarote Committee (n 26) 8.

<sup>59</sup> Art 12(1) Convention; art 16(2) Directive.

<sup>60</sup> Kool et al. (n 57) 33.

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to criminal justice authorities.<sup>61</sup> The French criminal duty to report applies to all CSOs, but there are certain exceptions for those bound to secrecy.<sup>62</sup> The Dutch criminal duty to report is limited to the offence of rape.<sup>63</sup> One plausible reason why there are no rigid or criminal reporting obligations in the Convention and the Directive is that it has been hypothesized that some prevention programmes and measures – such as the above-mentioned Dunkelfeld project – have been able to produce some innovative results because there are less rigid reporting obligations for therapists.<sup>64</sup> Evaluating the different regulatory approaches, Kool and her co-authors conclude that ‘the specific nature of the case and the ethical dilemmas require room for manoeuvre’.<sup>65</sup> Susanna Niehaus and her co-authors proposed anonymous treatment as a pragmatic way to deal with this ethical dilemma.<sup>66</sup>

The Lanzarote Convention and the Directive do not contain specific models for prevention measures and programmes targeting PAMs. The States Parties to the Convention shall ‘ensure’, while the EU Member States shall take the ‘necessary measures to ensure’ that intervention programmes or measures are available to PAMs who wish to use them.<sup>67</sup> In its 2018 implementation report, the Lanzarote Committee provided further guidance. It recommended that States Parties to the Convention need to pay special attention to minors who fear they may offend.<sup>68</sup> In so doing, the Committee acknowledged that PAMs and their needs vary widely. Unfortunately, however, the Committee did not go far enough. For example, it did not question Austria’s programmes and measures, which only provide specialized preventive services for ‘men and boys’ who fear that they might offend. It even endorsed the fact that female PAMs in Austria can only seek help from ‘general mental health services’, without mentioning the need for specialized training for healthcare professionals in general practice. While female PAMs are a minority, accessible and differentiated programmes for all genders are required. There are various other groups of PAMs who require special attention, including PAMs with intellectual disabilities.<sup>69</sup>

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<sup>61</sup> *Ibid.*, p 33.

<sup>62</sup> *Ibid.*, p 33 referring to art 434(3) Criminal Code (FR).

<sup>63</sup> Kool et al. (n 57) 33 referring to art 424 Criminal Code (NL).

<sup>64</sup> A/HRC/31/58 (n 9) 51; Niehaus et al. (n 24) 62.

<sup>65</sup> Kool et al. (n 57) 44.

<sup>66</sup> Niehaus et al. (n 24) LVI.

<sup>67</sup> Art 7 Convention; Art 22 Directive.

<sup>68</sup> Lanzarote Committee (n 26) para 106.

<sup>69</sup> See for a similar argument in relation to sex offenders, see Bernadette Rainey, ‘Special Offender Groups and Equality – A Duty to Treat Differently’ in K Harrison and B Rainey (eds), *The Wiley-Blackwell Handbook of Legal and Ethical Aspects of Sex Offender Treatment and Management* (Wiley 2013), 63-81.

## Benefits of Swift Implementation

While programmes and measures in the sense of Article 7 Lanzarote Convention and Article 22 Directive would require substantial investment, stalling such investment is even more costly. There are four reasons. These provisions have the potential to prevent trauma of the current and next generations of children, to help PAMs to lead more productive and fulfilling lives, and to save both the criminal justice and the healthcare system substantial resources.

First, trying all means to prevent CSOs is a top priority. Such offences are serious violations of fundamental rights that are destructive to children's health, including their psycho-social development.<sup>70</sup> The scope of this problem should not be underestimated. Between 15.0 and 19.7 percent of women and between 7.6 and 8.0 percent of men are estimated to be survivors of child sexual abuse worldwide.<sup>71</sup> The sexual abuse of boys remains more invisible due to widespread and harmful myths that boys cannot be sexually used or abused.<sup>72</sup> In addition, children whose activity choices, interests, and pretend play fall outside the behaviour typically expressed by their gender face an increased risk of being sexually abused.<sup>73</sup> Minors that are disadvantaged due to multiple and interlocking systems of power, including ethnicity and class, are particularly at risk.<sup>74</sup> Short-term effects of child sexual abuse can include anxiety, aggression and sexually inappropriate behaviour. The impairment of health of survivors can continue well into adulthood.<sup>75</sup> Long-term effects can include poor self-esteem, self-destructive behaviour, feelings of isolation and stigma, gynaecological disorders, heightened risk of the development of post-traumatic stress disorder and personality disorders, dependence on drugs, poor parenting, suicidal ideations and sexual problems.<sup>76</sup>

Second, treatment can support PAMs in being more productive and prosocial members of society.

<sup>77</sup> PAMs will often need support to cope with their thoughts, behaviour and stigma-related stress.

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<sup>70</sup> McCartan et al. (n 6) 2549.

<sup>71</sup> Sanjeevi et al. (n 1) 624

<sup>72</sup> iin6, 'Myths and Facts About Male Sexual Abuse and Assault', <https://iin6.org/get-information/myths/>

<sup>73</sup> Andrea Roberts and others, 'Childhood Gender Nonconformity: A Risk Indicator for Childhood Abuse and Posttraumatic Stress in Youth' (2012) 129(3) *Pediatrics* 410.

<sup>74</sup> Nancy Whittier, *Putting Child Sexual Abuse Back on the Feminist Agenda* (2016)

<https://gendersociety.wordpress.com/2016/02/18/putting-child-sexual-abuse-back-on-the-feminist-agenda/>

<sup>75</sup> Angela Browne and David Finkelhor, 'Impact of Child Sexual Abuse: A Review of the Research' (1986) *Psychological Bulletin* 66; Josie Spataro and others, 'Impact of Child Sexual Abuse on Mental Health' (2018) 184(5) *The British Journal of Psychiatry* 416.

<sup>76</sup> *Ibid.*

<sup>77</sup> Knack et al. (n 19) 186.

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<sup>78</sup> Preventive programmes and measures do not just need to exist, they also need to be advertised and accessible. Shame and fear of consequences are considerable barriers for PAMs to search for help online or in person. <sup>79</sup> PAMs can have concerns about (real or presumed) reporting obligations, stigma and their privacy. <sup>80</sup> Preventive programmes and measures were especially important during the COVID-19 pandemic. There has been a worrying surge in CSOs during this crisis. <sup>81</sup> During the extended lockdown periods, children who live with PAMs have been particularly at risk. Furthermore, children were spending more time than before online, which increased the risk of getting in touch with PAMs. PAMs are known to be more likely to be in danger of committing CSOs when they feel isolated. <sup>82</sup> In response to perceived or real inaction of the authorities during the COVID-19 pandemic, some people started targeting PAMs online to meet up, harass them in real life encounters and expose them on social media. Such encounters had various undesirable consequences, including considerable misinformation. For example, after a Flemish actor admitted upon provocation that he had sexually assaulted children, a magazine published a polemic and viral op-ed to defend the actor with wrong information on, amongst others, the age of consent in Germany. <sup>83</sup>

Third, prevention saves considerable resources for the criminal justice system. <sup>84</sup> The Directive determines that all CSOs should be criminalized with imprisonment. Prosecution, police services and incarceration are expensive to society. <sup>85</sup> The total costs depend on national practices. The median amount spent for one inmate per day of detention in custody was EUR 64 (EUR 23,360 per year) in the Council of Europe Member States in January 2020. <sup>86</sup> Furthermore, offenders are at risk of psychological and physical violence at expense to the state. <sup>87</sup> While it is difficult to find

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<sup>78</sup> Niehaus et al. (n 24) 66.

<sup>79</sup> McCartan et al. (n 6) 2556.

<sup>80</sup> *Ibid.*

<sup>81</sup> UN Committee on the Rights of the Child, 'General Comment No. 25 on Children's Rights in Relation to the Digital Environment' (2021) UN Doc. CRC/C/GC/25 para 80.

<sup>82</sup> Sara Jahnke, Roland Imhoff and Jürgen Hoyer, 'Stigmatization of People with Pedophilia: Two Comparative Surveys (2015) 44(1) Archives of Sexual Behavior, 21.

<sup>83</sup> Delphine Lecompte, 'Het Lijkt Me Wijzer om te Aanvaarden dat Pedofilie in Elk van Ons Huist' *Humo* (3 August 2021), <https://www.humo.be/meningen/het-lijkt-me-wijzer-om-te-aanvaarden-dat-pedofilie-in-elk-van-ons-huist~b6c4973c/>; Delphine Lecompte, 'Delphine Lecompte Reageert: 'Verschrikkelijk Dom om Alle Pedofielen te Demoniseren' *Humo* (12 August 2021), <https://www.humo.be/meningen/delphine-lecompte-reageert-verschrikkelijk-dom-om-alle-pedofielen-te-demoniseren~b2e0101f/>

<sup>84</sup> McCartan et al. (n 6) 2549.

<sup>85</sup> Robert Prentky and Ann Burgess, 'Rehabilitation of Child Molesters: a Cost-Benefit Analysis' (1990) 60 *American Journal of Orthopsychiatry*, 108.

<sup>86</sup> Marcelo Aebi and Mélanie Tiago, 'Prisons and Prisoners in Europe 2020: Key Findings of the SPACE I Report' (2021), [https://wp.unil.ch/space/files/2021/06/210329\\_Key\\_Findings\\_SPACE\\_I\\_2020.pdf](https://wp.unil.ch/space/files/2021/06/210329_Key_Findings_SPACE_I_2020.pdf). (This cost of imprisonment does not consider differences in the cost of living and other economic indicators across countries).

<sup>87</sup> Tony Ward and Chelsea Rose, 'Punishment and the Rehabilitation of Sex Offenders – An Ethical Maelstrom' in K Harrison and B Rainey (eds), *The Wiley-Blackwell Handbook of Legal and Ethical Aspects of Sex Offender Treatment and Management* (Wiley 2013), 273 referring to Victor Tadros, *The Ends of Harm: the Moral*  
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numbers for Europe, Robert McGrath and his co-authors found that the estimated benefit-to-cost ratio is USD 4.13 saved for every dollar spent on treatment services for PAMs in the US.<sup>88</sup>

Fourth, prevention saves considerable resources for the healthcare system.<sup>89</sup> The many possible physical and mental consequences of sexual abuse tax this system. Such consequences lead to a loss of productivity – including unemployment and reduced earnings – of both survivors and offenders.<sup>90</sup> These costs are trumped by the intangible costs of loss of quality of life caused by CSOs.<sup>91</sup> Aliya Saied-Tessier estimated that the total costs amounted to GBP 3,051,000,000 for child sexual abuse survivors alone in the United Kingdom for the fiscal year 2013.<sup>92</sup>

## Implementation

Despite these forecasted advantages, Member States of the Council of Europe and the EU have, to date, largely failed to implement their legal obligations to offer preventive programmes to PAMs who fear committing an offence. It is likely that states have failed to implement these obligations due to the taboo surrounding ‘pedophilia’. In a 2014 questionnaire on the implementation of Article 7 Lanzarote Convention, most States Parties to the Convention failed to report any measures or reported irrelevant measures. Azerbaijan referred to children who are exploited as beggars; Bulgaria referred to punishment for offenders; France discussed the traffic of children; and Italy interpreted the concepts ‘intentional conduct’ and ‘sexual activities’.<sup>93</sup> Despite a call by the European Parliament to implement Article 22 of the Directive,<sup>94</sup> prevention programmes for PAMs who fear that they might offend, and who have offended, remain the least implemented part of the Directive to date.<sup>95</sup> In 2020, the European Commission observed that

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*Foundations of Criminal Law* (OUP 2011) 1; Joshua Long, ‘Targeted Violence in Correctional Facilities: the Complex Motivations of Prisoners Who Kill Child Sexual Abusers’ (2022) 8 *Journal of Criminal Justice* 1.

<sup>88</sup> Robert McGrath and others, ‘Current Practices and Trends in Sexual Abuser Management: The Safer Society 2009 Nationwide Survey’ (2010) 13.

<sup>89</sup> McCartan et al. (n 6) 2549.

<sup>90</sup> Elizabeth Letourneau and others, ‘The Economic Burden of Child Sexual Abuse in the United’ (2018) 79 *Child Abuse & Neglect* 413.

<sup>91</sup> Ronald Donato and Martin Shanahan, ‘The Economics of Child Sex-Offender Rehabilitation Programs: Beyond Prentky and Burgess’ (2001) 71 *Annual Journal of Orthopsychiatry* 134.

<sup>92</sup> Aliya Saied-Tessier, ‘Estimating the Costs of Child Sexual Abuse in the UK’ (2014) <http://hdl.handle.net/11212/1637>.

<sup>93</sup> Lanzarote Committee, ‘State Replies of the 1st Monitoring Round’ (2014) [https://www.coe.int/en/web/children/state-replies-{"12442583":\[O\]}](https://www.coe.int/en/web/children/state-replies-{)

<sup>94</sup> EU (European Parliament), Motion for a European Parliament Resolution on the Implementation of Directive 2011/93/EU of the European Parliament and the Council of 13 December 2011 on Combatting the Sexual Abuse and Sexual Exploitation of Children and Child Pornography (2016) 2015/2129(INI), 22.

<sup>95</sup> EU (Commission), ‘EU Strategy for a More Effective Fight Against Child Sexual Abuse’ (2020) COM(2020) 607 final, 3 and 10.

various types of practitioners in the field do not communicate sufficiently with each other on best practices and the effectiveness of preventive programmes.<sup>96</sup>

In its Security Union Strategy (2020), the Commission announced two measures to speed up the implementation of Article 22 Directive. First, the European Commission promised to continue to make use of its enforcement powers under the Treaties through infringement procedures, as necessary, to ensure swift implementation.<sup>97</sup> Second, the Commission planned to work on setting up a prevention network of relevant and reputed practitioners and researchers to support EU Member States in putting in place usable, rigorously evaluated and effective prevention measures.<sup>98</sup> Although the network would cover all areas related to preventing child sexual abuse, it would have a strong focus on prevention programmes for offenders and for people who fear that they might offend. The aim is to organize the network in working groups that will facilitate the exchange of best practices and the work on concrete initiatives to generate tangible output.<sup>99</sup>

Finally, it would be useful if the EU and the Council of Europe improved their communication in the future. Currently, such communication is not optimal. This can be evidenced by two observations. First, a 2018 EU report on Articles 22 and 24 of the Directive failed to refer to the Lanzarote Convention.<sup>100</sup> Second, data on intervention programmes and measures are not consistent. In 2016, the Commission concluded that seven EU Member States had put in place measures to implement Article 22 of the Directive.<sup>101</sup> These were Austria, Bulgaria, Finland, Germany, the Netherlands, Slovakia and the United Kingdom. The information provided by the other Member States was not conclusive. However, the Lanzarote Committee did not refer to the reported progress in Bulgaria and Slovakia in its second implementation report in 2018.<sup>102</sup>

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<sup>96</sup> *Ibid.*, p 9.

<sup>97</sup> *Ibid.*, key action 1.

<sup>98</sup> *Ibid.*, p 10

<sup>99</sup> *Ibid.*, p 12.

<sup>100</sup> Di Gioia and Beslay (n 25) 7.

<sup>101</sup> EU (Commission), 'Report Assessing the Extent to Which the Member States have Taken the Necessary Measures in Order to Comply with Directive 2011/93/EU of 13 December 2011 on Combatting the Sexual Abuse and Sexual Exploitation of Children and Child Pornography' (2016) COM(2016) 871 final 2.3.3.

<sup>102</sup> Lanzarote Committee (n 26) paras 103-106. In addition to programmes in Austria, Finland, Germany, the Netherlands, and the United Kingdom, the Committee referred to progress in Belgium (Flemish Community), Croatia, Italy, Spain and Turkey.

## Conclusion

Preventive strategies to support people who self-identify as sexually attracted to minors and fear that they might commit a CSO can be useful. While there is currently no evidence of whether pedophilic paraphilia is curable, there is a consensus that PAMs can manage their behaviour. Around 2010, innovative legal obligations were adopted in Europe. Article 22 of Directive 2011/93 EU is almost identical to Article 7 of the Lanzarote Convention. The States Parties to the Lanzarote Convention shall ‘ensure’, while the EU Member States shall take the ‘necessary measures to ensure’, that effective intervention programmes or measures designed to evaluate and prevent the risk of such offences being committed are accessible, where appropriate, for *persons* who fear that they might commit sexual offences against children. Such provisions have the potential to prevent considerable trauma and other issues of children, to help persons attracted to minors to lead more productive and fulfilling lives and save substantial resources to society. They need to be supplemented by other preventive strategies that focus on potential victims, survivors, situations, communities and PAMs, as well as effective prosecution and therapy for offenders.

However, to date, the implementation of Article 7 and Article 22 has been less than optimal in most Council of Europe and EU Member States. The European Commission noted in 2020 that out of all of the state action that needs to be undertaken to implement Directive 2011/93, the least progress has to date been made in relation to prevention programmes for PAMs who fear that they might offend or have offended. There is a need for healthcare professionals who can handle the unique therapist–patient relationship with PAMs. Specific groups of PAMs, such as women or people with disabilities, are most often forgotten in the analysed regimes. Professionals are considerably challenged when there is an imminent risk to children, or when the person seeking help discloses presumed child sexual abuse or exploitation that has not been reported to the authorities. Therefore, tools need to be developed to help professionals when presumed offences become known, especially when there is an acute danger to children. There is also room for improvement in the cooperation between the Council of Europe and the EU. The stigma around ‘pedophilia’ impedes progress at all levels. The European Commission took a major step in the right direction in 2020 by announcing that it will make use of its enforcement powers and work to set up a prevention network of relevant and reputed practitioners and researchers to support EU Member States in putting in place usable, rigorously evaluated and effective prevention.



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