



# **EU CHILDHOOD SEXUAL ABUSE EFFECTIVE ACCESS TO JUSTICE ACT**

A policy proposal to reform article 15 of Directive 2011/93/EU to establish a minimum criminal statute of limitations framework for sexual crimes against children across European Union Member States

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### **EXECUTIVE SUMMARY**

This paper establishes the need to provide greater access to justice for childhood sexual abuse victims seeking to prosecute their perpetrators. There is a public health crisis of childhood sexual abuse (CSA) that is unnecessarily costing the EU billions, because victims' voices are silenced by criminal statutes of limitations that are not evidence-based. Due to short statutes of limitations, the authorities and the public are not learning about the many child predators in the EU's midst and countries are not delivering justice to those who destroy children's lives.

CSA victims face multiple barriers before they are able to access the judicial system. The best science says that trauma keeps victims silent for decades, typically to age 50. By failing to open CSA criminal statutes of limitations, the EU is failing to stop child abusers. Even when a victim comes forward later in life, the risk of abuse stays high, because perpetrators operate well into old age. There are previous failed attempts by European institutions to solve these problems, primarily because they were not based on solid scientific evidence. This proposal explains the science that supports giving the victims ample time to press charges. It also provides the rationale for a minimum criminal statute of limitations for CSA crimes across all the European Union members and makes the case for strengthening art 15.2 of the Directive 2011/92/EU. Our policy proposal is consistent with EU law and would strengthen other child protection provisions of the Directive 2011/92/EU.

### **RECOMMENDATIONS**

#### **OPTION 1 (KEY POLITICAL RECOMMENDATION):**

Establish a graduated criminal SOL system where the length of the criminal SOL correlates to the severity of the punishment for the sexual offence:



CSA offences punished by the EU directive with maximum penalty of:	Criminal SOL would not run out before the victim reaches age:
at least 2 or 3 years	40
at least 5 years	45
at least 8 or 10 years	50

This model, where the length of the criminal SOL depends on the severity of the punishment for the offence, is consistent with the one used by most EU countries in their criminal codes. Thus, it may be easier to reach the necessary political consensus among all EU member states to ensure its passage.

**OPTION 2:**

Establish one single minimum criminal SOL for all CSA offences whereby the criminal SOL would not run out before the victim reaches age 50.

Even though this model departs from the historic model of criminal SOL regulation in EU member states it is strongly supported by the scientific evidence. Empirical data does not support the idea that CSA offences that are punished by longer custodial sentences necessarily result in longer delays of disclosure of abuse by victims, undermining the rationale for a graduated criminal SOL system for these crimes. The nature of the abuse is only one among many possible factors that determine the impact of the abuse. Other important factors that can have a significant role on the impact of CSA on the child are the number and severity of other forms of child abuse, and adverse childhood experiences.

**ADDITIONAL RECOMMENDATION**

Introduce a specific provision, modelled on French legislation, that ensures that when a perpetrator who has committed a CSA offence reoffends, sexually abusing a new child, the limitation period for the initial crime is interrupted. This would allow the criminal justice system to prosecute all crimes committed by a serial predator, instead of only being able to prosecute the most recent ones. Currently in many countries older victims of the same perpetrator lose their right to access effective remedial justice, including compensation, as by the time they are ready to press charges for their crimes the criminal SOL has run out.

**COMPLIANCE WITH EU LAW**



This proposal has compliance with existing EU law, and significant positive synergic effects. It is compliant with the principles of subsidiarity and proportionality (article 5(3) and 5(4) TEU and Protocol no 2). It's important to bear in mind that the Directive 2011/92/EU already includes homogenous, very specific standards, regarding the need to criminalise certain harmful sexual behaviours committed by adults against children across EU Member States; as well as the minimum penalty that should be imposed in these offences. It can be logically argued that imposing a minimum limitation period for the crimes included in the Directive is an analogous measure to imposing a minimum custodial sentence or a common definition of a child sexual offence.

By strengthening a generic provision already included in article 15.2 of 2011/92/EU Directive, including a specific binding minimum criminal SOL standard instead of a vague one, EU institutions will substitute a tough on crime approach with a smart on crime one. They will be implementing an evidence-based effective deterrent for criminal behaviour, increasing the likelihood that CSA perpetrators will be apprehended by the criminal justice system in the future.

## CONTEXT

- CSA is a serious public health crisis due to its frequency and the severity of its consequences. According to research by the Council of Europe, one in five European children has suffered some form of CSA. The educational, social and health consequences of CSA often persist well into adulthood. Adult survivors have an increased risk of suffering from mental disorders (i.e. anxiety, depression, alcohol and drug abuse) and physical diseases (obesity, cardiovascular diseases or cancer). There's increased risk of sexual re-victimization during adulthood as well as of having problems in the area of affective and sexual relationships (i.e. divorce, teenage pregnancy, STD's). Their educational and work adjustment runs the risk of being harmed, reaching less academic and professional development, which negatively affects their purchasing power as adults. The risk of developing aggressive and criminal behaviour in adolescence and adulthood is also increased, as well as the probability of incarceration, compared to non-abused minors.
- There's a growing awareness of the long-term economic cost of violence against children. According to the WHO, adverse childhood experiences (which include CSA but also other forms of maltreatment or stressful experiences during childhood, such as parental mental illness) has an annual cost of 581 billion dollars in Europe and 748 billion dollars in the USA.



- Multiple individual scientific studies, systematic reviews and meta-analyses carried out over the last two decades have established that in CSA cases it is common for the victim not to disclose the abuse at all or to do so only years or decades after the crime occurred, when the victim is already an adult. This is the delayed disclosure phenomenon.
- There are multiple barriers that CSA victims must overcome before being able to safely report the crime: feelings of shame and guilt; fears of not being believed, of being abandoned or rejected by their families, of being blamed for the abuse; physical threats by the perpetrator, wanting to protect the abuser who usually is a close family member, social stigma of disclosing CSA as a male due to harmful sexist stereotypes, social isolation, unsupportive family environments, lack of developmental maturity of the child, common neurobiological responses of amnesia of the event or psychological dissociation, and significant power imbalance between the child victim and the perpetrator.
- Long term recidivism into old age is a specific problem in CSA offences. In most crimes the criminal dangerousness of the defendant significantly reduces with the passage of time. However, as highlighted by the American Psychological Association: "*child molesters continue to be a threat to children throughout their lives*". Prosecuting CSA offences decades after they have been committed is justified because child molesters are often repeat offenders, so their incarceration can prevent new children from being abused. People who commit childhood sexual abuse are at risk of reoffending long after they have committed their initial crimes.
- Child molesters routinely commit premeditated and planned crimes. They use a process of emotional and psychological manipulation with their victims, grooming, to reduce their resistance. They tend to abuse minors in their circle of trust with whom they have previously established an emotional bond. By using a modus operandi that does not require violence or intimidation, they do not need to have high physical strength or sexual potency. For this reason, their risk may increase as they age, since they have more practical experience and a more sophisticated modus operandi, their social status in the community is higher, and there is a greater asymmetry of power with their victims.

#### **CURRENT SITUATION ACROSS THE EU**

Previous attempts by European institutions to solve the problem of lack of access to effective remedial justice for CSA victims have failed. Both the EU and the Council of Europe have taken a



similar approach to address this problem, including a generic commitment in relevant child protection legislation (Convention of Lanzarote/ Convention of Istanbul, Directive 2011/93/EU) to give CSA victims enough time to press charges after reaching adulthood. Due to its vague wording European national governments have developed wide interpretations regarding what their commitments are according to these internationally binding legislations.

To assess the efficacy of criminal SOLs to ensure the access of victims of CSA to effective judicial remedies, we have used an objective benchmark based on current scientific evidence of delayed disclosure. Any country where the criminal SOLs for all or most CSA offences run out before the victim reaches age 40 has legislation that is not fit for purpose.

**1. Good practice;** countries that have abolished criminal SOLs for all or most CSA offences: Belgium, Holland, Denmark, Sweden, Croatia, Hungary, Romania, Poland, Austria, Cyprus, Ireland.

**2. Poor practice;** the criminal SOL for all or most CSA runs out before a victim reaches age 40: Luxembourg, Estonia, Greece, Malta, Czech Republic, Portugal, Lithuania, Finland, Slovakia and Bulgaria.

**3. Mediocre practice;** in all or most CSA offences the criminal SOL runs out after the victim reaches age 40: Spain, Italy, France, Germany, Slovenia and Latvia.

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## A) Introduction

This brief policy report aims to argue in favour of a minimum criminal statute of limitations for childhood sexual abuse crimes across all the member states of the European Union and to discuss a simple legal mechanism to achieve that goal, reforming article 15 of the Directive 2011/93/EU. Over the last few decades, the evidence base around the frequency, impact, characteristics and cost of childhood sexual abuse has increased exponentially. Therefore, it has been recognized as a serious public health epidemic and a severe violation of children's human rights. The widespread phenomenon of delayed disclosure, often decades after the commission of the crime, due to the impact of sexual trauma on the developing child, has been widely acknowledged. Historical childhood sexual abuse reports show that by the time childhood sexual abuse victims have processed the traumatic experience and therefore are able to publicly disclose the abuse and press charges, often the criminal statute of limitations had already run out. Thus, archaic and predator friendly laws have prevented child abusers being tried in a court of law and, if convicted, included in the child sexual abuser's registry, which would have stopped them from working/ volunteering with children and therefore reduce the risk of reoffending. In the last fifteen years, multiple attempts have been made at the national and European level (Lanzarote Convention; Istanbul Convention; Directive 2011/93/EU) to reform criminal statute of limitations in sexual crimes against children to ensure victims have **enough** time after the age of majority to press charges against their perpetrators.

Despite the best intentions, these generic policies have resulted in a postal code lottery for survivors across the European Union Member States. There is a wide and illogical regional variation regarding survivor's ability to access criminal justice remedies for a serious violation of their civil rights, depending on the country where they live. Where there is a growing number of countries that have abolished criminal statute of limitations for at least the most serious sex crimes against children (i.e., Belgium, Holland, Denmark, Sweden, Ireland, Cyprus), others have not even established a suspension of the criminal statute of limitations until the child reaches the age of majority (i.e., Portugal). This situation is a clear violation of multiple fundamental rights of childhood sexual abuse victims which are enshrined in the EU charter of Fundamental Rights (art 1 – right to human dignity; 2 right to live; 3 – right to physical integrity; art 4 – prohibition of torture and inhuman and degrading treatment; right to freedom and security; art 20 – equality before the law; art 21 – prohibition of discrimination; art 24 – rights of the child; art – 47, right to an effective remedy). As the European Union is reviewing the efficacy of Directive 2011/93/EU, this is one area that must be strengthened. In this policy proposal, we will present an argument that it can be easily done by amending article 15 of the Directive, establishing a minimum criminal statute of limitations across Europe, which is commensurate with the gravity of the offence. If the European Union refuses to take action, victims of childhood sexual abuse will continue to suffer severe discrimination in their ability to access an effective judicial remedy in comparison with other victims of serious crimes (i.e., assault, kidnapping, robbery); where there's no such well-established delayed disclosure phenomenon.



**B) The problem: The public health crisis of childhood sexual abuse. The multiple barriers that survivors of childhood sexual abuse must overcome before they are able to access the judicial system. The increased risk of recidivism that child abusers present well into old age.**

**B1: Childhood sexual abuse. A European public health crisis. Long term educational, social and health consequences of childhood sexual abuse. Long term economic cost of violence against children.**

A brief review of the scientific evidence available leaves no doubt that childhood sexual abuse is a serious public health epidemic in Europe due to both its high prevalence and impact, as well as the serious short- and long-term consequences. According to the Council of Europe's research, one in five European children has been the victim of some type of sexual violence. This fact is even more concerning if you consider the growing and overwhelming evidence that the damage caused by childhood sexual trauma does not disappear during childhood and adolescence but that its devastating effects persist well into adulthood. Due to its importance, it is necessary to attempt to summarize and contextualize the extensive empirical evidence available in a more detailed way. For decades there has been extensive scientific literature that establishes a strong but complex causal relationship between having experienced childhood sexual abuse and presenting a greater risk of experiencing negative adverse consequences in adulthood. However, many of these studies had important methodological shortcomings (samples with a clinical or convenience population, cross-sectional studies, retrospective studies, failure to consider confounding factors such as genetic inheritance, parental mental illness, or history of family dysfunction) that questioned the validity of their results. In the last two decades, to respond to these methodological criticisms, new studies of higher quality and rigor have been carried out (prospective cohort studies, representative samples at the population level, twin studies to control for possible genetic confounding factors and family members, systematic reviews, and meta-analyses) that have produced more valid and generalizable results. Today it can be stated with certainty that childhood sexual abuse is an independent risk factor for presenting a long list of negative adverse consequences in adulthood. Without wishing to be exhaustive, we reproduce some of the most significant studies:

-Nelson et al (2002). In a sample of 1991 twins of both sexes in Australia, the authors found that having experienced childhood sexual abuse (CSA) was correlated with a higher rate of suicide attempts, mental problems (depression, alcohol abuse, drug abuse, eating disorders, behavioural disorders and personality disorders), history of re-victimization and relationship problems, including divorce. The authors controlled for potential confounders such as a history of family dysfunction or genetic inheritance.

- Kessler et al (2001). In a representative sample of the North American population consisting of 5,877 adults, the authors found that a history of CSA was correlated with most mood, anxiety, and substance abuse disorders. CSA victims had twice the risk, compared to people without a history of CSA, of suffering from one or more mental disorders. Women who were raped as children were four times more likely to have made a suicide attempt

compared to women who had no history of victimization. Men who had been raped as children were 11 times more likely to have attempted suicide compared to men who were not assaulted.

- Kendler et al (2000). In a population-representative sample of 1,411 women, who were twins, the authors found a significantly increased risk of depression, generalized anxiety disorder, alcohol and drug dependence among women who had a history of past childhood sexual abuse, even after controlling for potential confounders (parental mental illness, history of family dysfunction).

- Fergusson et al (2013): In a cohort study of a sample of 900 people in New Zealand who were followed prospectively from birth to their 30th birthday, the authors found that having experienced CSA was correlated with a higher risk of suffering from mental disorders (major depression, anxiety, post-traumatic stress disorder, behavioural disorders, suicidal ideation and attempts, alcohol and other drug dependence); lower levels of psychological well-being (lower self-esteem, lower life satisfaction); risky sexual activities (younger age at the time of initiating sexual relations, greater number of sexual partners); worse levels of health and lower socio-economic level (greater economic dependence on social services).

- Gilbert et al (2008): The authors conducted a systematic review of the available high-quality scientific evidence. They found that sexually abused children as adults had higher rates of serious medical, psychological, social and occupational problems compared to children who had not been abused. There is a significant relationship between childhood sexual abuse and suicide attempts during adulthood. An increased risk of suffering from mental disorders (anxiety disorders, depression, alcohol and drug abuse, eating disorders and behavioural disorders) and physical diseases (obesity, cardiovascular diseases or cancer) has also been identified. Minors who have been victims of childhood sexual abuse have a higher risk of being re-victimized and suffering mistreatment or new sexual assaults during adulthood. Their risk of having problems in the area of affective and sexual relationships is also increased, including divorce, teenage pregnancy, sexually transmitted diseases, or prostitution. Their educational and work adjustment runs the risk of being harmed, reaching less academic and professional development, which negatively affects their purchasing power as adults. The risk of developing aggressive and criminal behaviour in adolescence and adulthood is also increased, as well as the probability of incarceration compared to non-abused minors.

In summary, the trauma of sexual violence in childhood continues to be a major source of suffering in adulthood. The damage caused by the perpetrator does not become attenuated or disappear over time, it remains in full force well into adulthood. The consequences that it leaves on the victim do not belong to the past but continue in the present. For this reason, violence against children is a serious public health problem. If something characterizes public health problems, it is that they have a significant economic cost, both for the patients who suffer from it, and for the taxpayer, who through his taxes must pay for the social and health services necessary to treat or alleviate the aftermath.



Survivors face two types of costs: (1) the emerging damage, on many occasions survivors have to cover themselves the cost of the psychiatric and psychological treatment that they need to overcome the trauma, which can be quite a significant economic cost. It is not uncommon for victims who can afford it to have to receive private therapy on a weekly basis for years, given the impossibility of accessing therapies paid for by the public health system in many European countries; and (2) the loss of income, because the continuous injuries they suffer frequently affect their ability to study, train and exercise a profession. The cost to the taxpayer is significant even if the state decides not to allocate a specific budget item aimed at meeting the health and social needs of adult survivors. Frequently, public administrations, motivated by the fallacy of false savings, decide not to pay for the coverage of psychological treatments for adult survivors of childhood sexual abuse in public health. It is a sterile and self-defeating cost-containment effort. If the victim has developed a problem with alcoholism, drug addiction, suicidal behaviours, depression or anxiety because of the trauma, the state will have no choice but to bear the direct medical costs of their treatment. If the survivor has been unable to complete their studies, has a low-skilled job, needs multiple temporary medical absences or even a permanent one, the state will have to bear the indirect economic costs, in the form of lower tax collection and/or higher expenditure in the form of social benefits.

The costs of childhood trauma place a heavy burden on the treasury and family finances of the survivors. The World Health Organization funded a systematic review and meta-analysis that attempted to measure both the health consequences throughout adult life, as well as the associated economic cost, of having suffered one or multiple adverse childhood experiences (the ACEs include not only childhood sexual or physical abuse, but also other profoundly stressful experiences during childhood such as parental mental illness or substance abuse or a history of gender-based violence in the family). The study estimated that the annual cost attributable to ACEs was \$581 billion in Europe and \$748 billion in the United States. More than 75% of the costs were caused by adults who had suffered two or more ACEs. They calculated that a 10% reduction in the prevalence of ACEs would save \$105 billion and a reduction of \$3 million disability-adjusted life years (DALYs, is a measure to calculate the global burden caused by ill health, expresses the number of years lost due to ill health, disability, or premature death). Fortunately, there are public programs to prevent ACEs and moderate their negative effects. The authors argue that redirecting the public budget to ensure safe and caring childhoods would be financially beneficial and would reduce pressure on health systems. The legislator must consider that extending the statute of limitations in sexual crimes against minors is not only a preventive program, but unlike other socio-health and educational programs, it has a minimal cost.

## **B2: Delayed disclosure in childhood sexual abuse:**

Multiple individual scientific studies, systematic reviews and meta-analyses carried out over the last two decades have established that in cases of childhood sexual abuse it is common for the victim not to disclose the abuse at all or to do so only years or decades after



the crime occurred, when the victim is already an adult (Tener 2015, Hebert 2009, London 2007, Jonson 2004, Paine & Hensen 2002, Smith 2000, Hanson 1999). For example, CHILD USA analysed data on abuse in the Boy Scouts of America and found that over 50% of survivors first disclosed their abuse after age 50. The scientific literature also identifies some of the main barriers that make reporting difficult.

Without wishing to be exhaustive, we can describe, by way of illustration, some of the results of these studies:

- Russell (1986). In a sample with 930 adult women, 44 revealed for the first time that they had suffered childhood sexual abuse. They explained that some of the main barriers to disclosing the abuse were: fear of being punished by the aggressor, wanting to protect the abuser, fear of being abandoned and rejected by their families, fear of being blamed for the abuse.

-Hanson et al (1998). In a nationally representative sample of 4,000 American women, only 12% of sexual assaults in childhood were reported at some point to law enforcement; 88% never reported the facts. In half of these cases, the aggressor had made threats to the life of the child or their family (43%) or had perpetrated multiple sexual assaults against the child (42%). In a fifth of the cases, the abuse caused physical injuries (22%). The results of the study suggested that one of the main interpersonal barriers that hindered the disclosure of abuse were the threats made by the aggressor against the victim.

-Smith et al (2000). In a nationally representative sample of 3,222 American women, 28% of women who had been raped as children had never disclosed the assault to anyone before being interviewed (including mothers, husbands, or best friends). 58% took between one and five years to verbalize the abuse for the first time. Only 10% of the aggressors were unknown. Rapes by unknown men were more likely to be disclosed. Children almost always knew their attackers. Among the known aggressors, half were relatives, and the other half were family friends and acquaintances. The results of the study suggested that one of the interpersonal barriers that hindered the disclosure of abuse was that the aggressor was a person from the victim's environment of trust.

- Paine et al (2002). They conducted a systematic review of the scientific literature on the factors that influence the disclosure of childhood sexual abuse by the victim. They identified feelings of shame as one of the main barriers. The fact that on many occasions the child gives in to the sexual demands of a trusted adult leads him to feel responsible for the abuse, which makes it more difficult to disclose it as the abuse increases in frequency and severity. Boys experience additional barriers to disclosing abuse, including macho socialization that teaches them to hide their vulnerabilities and the stigmatization of being abused by other males.

- Jonzon (2004): In a sample with 122 Swedish women, they concluded that less than a third of the victims of childhood sexual abuse reveal the abuse during childhood. Most took an average of 21 years to reveal the secret.

- London et al (2007): A systematic review of existing scientific studies revealed that 60-70% of adult survivors had not disclosed childhood sexual abuse.



- Hebert (2009): Conducted a representative sample telephone survey of 804 Quebec adults. They found a prevalence of childhood sexual abuse of 22.1% for women and 9.7% for men. One in five victims had never disclosed the abuse to anyone. Only 21.2% had disclosed the aggression early (within a month after the abuse), while 57.5% had made a late disclosure (more than five years after the first episode of abuse).

- CHILD USA (2020)<sup>1</sup>: A lack of knowledge about sexual norms or an inability to articulate the experience of abuse may also create barriers to disclosure. These factors often coincide with a lack of developmental maturity needed to process abuse and verbalize its negative effects. Some children may also lack opportunities to disclose abuse if they are socially isolated or in unsupportive families. Finally, there is an inherent power imbalance between children and adult perpetrators, and this imbalance can be exacerbated in institutional settings where the perpetrator may have cultural influence and community trust.

In his report "The limitation period in crimes against minors: analysis of the problem and proposal of legal ferenda<sup>2</sup> (2016)" the Spanish law professor Víctor Gómez Martín carries out a detailed analysis of the three main barriers that make reporting difficult: interpersonal, sociocultural and intrapersonal. As he clearly explains in his work: *"The first two types of limitations, interpersonal and sociocultural, refer to the limitations for reporting derived from the fact that the victim is still under the dependency or within the sphere of influence of the perpetrator of the crime. This relationship may be due to not yet having left the school or academic environment or the family home, or to a material, economic or emotional dependence on the authors, parents, caregivers, teachers, etc. supervening material abandonment of the area of dependency (Hörnle et al., 2014, pp. 66 ss.). Regarding intrapersonal factors, some victims present a lack of awareness about whether they were abused or not. Already as adults, their memory of these episodes is clearly repressed. They question whether what happened constitutes abuse (Crowley et al., 2001; Lab et al., 2005; Hanson et al. 1999, pp. 559 ss.; Paine et al. 2002, pp. 271 ss.) and express concern about the accuracy of their memories and whether they are genuine (Dorahy & Clearwater, 2012; Sorsoli et al., 2008). Other victims are fully aware of the abuses suffered as minors and decide, already as adults and fully aware, to reveal them through the corresponding complaint (Sorsoli, 2010). These victims tend to show repression, confusion, shame, guilt, self-responsibility (Alaggia, 2004; Dorahy et al., 2012; Draucker, 2008; Hanson et al. 1999, pp. 559 ss.) and anxiety as the more frequent impediments for reporting the abuse (Dorahy and Clearwater, 2012; Paine et al. 2002, pp. 271 ss.)"*

It's important to bear in mind that trauma that results from sexual abuse can also directly impact disclosure timing (CHILD USA, 2020)<sup>1</sup>. Exposure to childhood trauma may

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<sup>1</sup> CHILD USA (March 2020) Delayed disclosure: A factsheet based on cutting-edge research on child sex abuse. <https://childusa.org/wp-content/uploads/2020/04/Delayed-Disclosure-Factsheet-2020.pdf>

<sup>2</sup> Lex ferenda is a Latin expression that means "future law" used in the sense of "what the law should be". The derivative expression de lege ferenda means "with a view to the future law".



impact youth brain development, leading to changes in the hippocampus, prefrontal cortex, and amygdala (Cross et al., 2017). Early experiences of trauma may impact functioning in these parts of the brain, potentially diminishing capacity for consciously managing recollections of the events and moderating fear responses (Cross et al., 2017). Furthermore, in the aftermath of abuse, CSA survivors often exhibit signs of dissociation – a type of “freeze” response triggered in the brain, characterized by feeling immobile, paralyzed, or detached from one’s body (Cross et al., 2017). Delayed recall of CSA and trauma has been associated with this kind of dissociation, which may impact the timing of disclosure (Nijenhuis et al., 2008).

### **B3: Long term risk of recidivism of child abusers:**

One key argument used to justify the existence of criminal statute of limitations is that the criminal dangerousness of the defendant may have been eliminated with the simple passage of time. Therefore, imposing a sentence late in life can prevent the re-socialization of the guilty party. It is the so-called legal theory of the inevitable change of personality of the offender by the mere passage of time. It would be unfair to sentence a person to prison who has spontaneously rehabilitated, so the prison sentence has lost its function. This argument forgets that on other occasions the opposite may have happened, the passage of time may have increased the dangerousness of the offender, so that the function of punishment is even more necessary than before. Criminological evidence shows that this last assumption, unlike what happens with most violent crimes, is the one that usually occurs in sexual crimes against minors. One of the basic principles in criminology is the age/crime curve, which has been replicated in multiple Western societies and generational cohorts. The prevalence of violent criminal behaviour increases progressively during adolescence, reaches its peak in the first half of the twenties, and then progressively decreases. Hypotheses based on the evolutionary development of adolescents and young adults have been proposed to explain this constant observation. Neuroscience studies have established that the prefrontal part of the cerebral cortex continues to mature until the young person reaches the age of twenty-five. This part of the brain is responsible for modulating the limbic system, regulating emotions. It is also involved in cognitive processes such as planning/organizing actions and predicting possible consequences. Therefore, during this age range, adolescents and young adults are more impulsive and temperamental, which makes them more vulnerable to reacting aggressively to provocations or attempting to resolve interpersonal conflicts violently, without reflecting on the negative consequences of their actions.

However, this general progressive decrease in dangerousness with age in most violent crimes does not occur in cases of sexual crimes against minors. In 2002, the American Psychological Association (APA) wrote an *amici curiae*<sup>3</sup> brief for the Supreme Court of the United States in which it analysed whether the scientific evidence supported the extension of the statute of limitations. It reached an affirmative conclusion, among other reasons because “*child molesters continue to be a threat to children throughout their lives*”.

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<sup>3</sup> Amicus Curiae literally translated from Latin is "friend of the court." Plural is "amici curiae." Generally, it is referencing a person or group who is not a party to a judicial action but has a strong interest in the matter being decided by the court.



According to the APA, prosecuting CSA offences decades after they have been committed is justified because child molesters are often repeat offenders, so their incarceration can prevent new children from being abused. People who commit child sexual abuse are at risk of reoffending long after they have committed their initial crimes. *“Inducing a child to engage in sexual acts does not require overwhelming physical strength or high sexual potency but the ability to manipulate them verbally, a skill that does not diminish with age (Dickey)”*. Unlike most sex offenders, child molesters do not “retire” from their criminal careers. Criminologist R. Hanson analysed a sample of 4,673 sex offenders and found that *“the recidivism rate of extra-familial child sex abusers showed a relatively small decrease until after 50 years.”*

Recidivism studies with long follow-up periods show that child molesters have a high risk of recidivism in the long term. A fifteen-year follow-up study of 197 convicted child sex abusers established a 42% recidivism rate for subsequent sexual or violent offenses (Hansen). The age of the abusers was not related to the risk of recidivism, so the authors concluded that child molesters have a significant risk of recidivism throughout their lives. Another study with 115 child sex abusers established a recidivism rate of 41% during the 25 years following their release from prison (Prentky). The researchers noted that child sex abusers had smaller declines in recidivism rate with age compared to adult rapists. They also concluded that child sex abusers were at risk of reoffending throughout their lives.

The APA concluded that the available scientific evidence supports that even long-standing child sexual abuse crimes indicate a continuing risk of current reoffending by the offender. Child molesters routinely commit premeditated and planned crimes. They use a process of emotional and psychological manipulation with their victims, grooming, to reduce their resistance. They tend to abuse minors in their circle of trust with whom they have previously established an emotional bond. By using a modus operandi that does not require violence or intimidation, they do not need to have high physical strength or sexual potency. **For this reason, their risk may increase as they age, since they have more practical experience and a more sophisticated modus operandi, their social status in the community is higher, and there is a greater asymmetry of power with their victims.**

Criminological research has shown that multiple repeat offenders are more frequent than previously believed. For example, the John Jay Report, published in 2004, studied the magnitude of the clerical childhood sexual abuse scandal in the United States. He identified four thousand three hundred and ninety-two religious child abusers, who abused ten thousand six hundred and sixty-seven individuals. **Three and a half percent of them had received more than ten complaints. This small number of sexual predators were extremely dangerous, as they were responsible for a disproportionate number of sexual assaults, specifically twenty-eight percent of all reports** (two thousand nine hundred and sixty cases).

**B4: Comparative law. Two case studies illustrating the impact of different criminal statute of limitations on child protection standards.**





The legislation of the United Kingdom and the United States allows us to compare the practical effects for the protection of children, of the existence of different limitation periods for this type of crime depending on the legislation of each country. Historically, in the United Kingdom, sexual crimes against minors have not had a criminal statute of limitations whereas in most of the states of the USA, as well as the federal government, they used to have them. The case of the United Kingdom illustrates the usefulness of not having criminal statute of limitations. In 2013, British police acknowledged in a public report that the recently deceased Jimmy Savile, one of the BBC's star presenters, had probably been the most prolific sex offender in British history. Four hundred and fifty people had accused him of having committed sexual crimes. The British police decided to open a general investigation into historical sexual crimes against minors, crimes that were committed in the 60's, 70's, 80's and 90's. Recently the police published the preliminary results of this investigation. Even though the alleged crimes were committed decades ago, which made their investigation more challenging, 35 percent of all complaints (4,024 cases) had resulted in a court conviction. Hundreds of offenders, including teachers, clerics, social workers, doctors and sports coaches were convicted and thus placed on the sex offender registry, so they will be prevented from working with children in the future. Police warned that in the 1970s and 1980s there had been an epidemic of sexual crimes committed against minors in children's institutions that had gone unpunished for decades.

In contrast, the United States illustrates the grave danger to children of excessively short statute of limitations. In 2019, the Associated Press (AP) news agency carried out an exhaustive journalistic investigation into the 1,700 religious personnel still alive who, according to the Catholic Church itself, had received credible accusations of childhood sexual abuse. Due to the protection provided by the Catholic hierarchy, these child molesters were not criminally tried in a court of law. By the time the complaints were made, their crimes had already run out of the criminal statute of limitations. Therefore, they are not on public sex offender registries. AP found that these abusers have no supervision, neither by the state nor by the Church, since many of them left the institution voluntarily or were expelled from it when their crimes came to light. This is a great danger, as many continue to work or volunteer in contact with children. A significant minority have committed new crimes, including sexual crimes against minors. As the article explained: *"Unsupervised accused priests teach, advise, adopt children. These priests, deacons, monks, and laity now teach high school math. They counsel survivors of sexual assault. They work as nurses and volunteer at non-profit organizations aimed at helping children at risk. They live next to playgrounds and nurseries. They foster and care for children. And in the time since they left the church, dozens have committed crimes, including sexual assault and possession of child pornography. In the United States, accused priests have been found saying Mass, officiating at weddings, playing music, working in church administrative functions, and acting as Eucharistic ministers."* As a result of this concerning situation, most states have amended their limitation periods for childhood sexual abuse offences since 2002. Currently, 44 states and the federal government have no criminal statute of limitations for all or most sexual offences against children.



**C) A not fit for purpose, failed solution. Review of the efficacy of the national and European regional solutions implemented in the last fifteen years to solve the problem of lack of access to effective remedial justice for victims of childhood sexual abuse due to delayed disclosure.**

**C1: The need to establish an objective benchmark to assess the efficacy of the national/ regional policies to extend the criminal statute of limitations. The global gold standard: the Australian Royal Commission on Institutional Responses to Child Sex Abuse 2017 report.**

The overwhelming scientific evidence about delayed disclosure (see section B2) has been one of the main factors that has driven a global trend to reform the statute of limitations laws for sexual crimes against minors in the last two decades, either significantly expanding them or eliminating them outright. If, due to the characteristics of the aggressor, the crime and the victim, in this type of crime there is a high time delay between when the aggression occurs and the time when the survivor is able to file a complaint, it is reasonable to extend the statute of limitations to guarantee the effectiveness of the criminal justice system response. However, it is much more complex, based on empirical evidence, to decide which policy reform model should be promoted. There is a certain degree of variability in the results of scientific studies, such as the average time it takes for victims to be able to verbalize abuse for the first time. This fact is not surprising considering that the investigations differ in important aspects such as the country and the year in which the study was carried out, the size of the sample or the methodology for collecting the information. The following question should be asked: *“Can we use the available scientific evidence not only to recognize that we have a problem, the high degree of impunity in these crimes due to the short limitation period, but also to choose the most appropriate solution, that is, how much do we have to extend these deadlines for the reform to be effective when it comes to significantly reducing the historical impunity of childhood sexual abuse crimes?”*

A systematic review of the available scientific evidence regarding the phenomenon of delayed disclosure in child sex crimes would probably identify the report published in 2017 by the Australian Royal Commission on Institutional Responses to childhood sexual abuse as the gold standard on the issue due to its high legal and criminological quality. Therefore, it could and should be used by national and European legislators to decide how much to extend childhood sexual abuse criminal statute of limitations. In 2012, Australian Prime Minister Julia Gillard announced the creation of this Royal Commission after public outrage due to the epidemic of childhood sexual abuse in multiple Australian institutions. The Commission’s mandate was to investigate any public, private, or non-profit institution currently or in the past involved in the care of children, including state agencies, schools, sports clubs, leisure organizations, orphanages, internment centres or religious organizations. In February 2017, the Royal Commission published its specific report on sexual abuse in the Catholic Church. A total of 4,444 people claimed to have suffered sexual abuse between 1980 and 2015 in 1,000 Catholic institutions throughout the country. The



victims denounced 1880 aggressors (597 religious' brothers, 572 priests, 543 lay people and 96 religious' sisters). Some 7% of all Catholic priests ordained between 1950 and 2010 had sexually abused minors. The percentage rose to 15% in some dioceses. In some religious orders the percentage of religious abusers was 40%. In four of them the percentage was higher than 20%. Two-thirds of the abuses committed in religious institutions had occurred in Catholic institutions. The average age of the girls at being abused was ten and a half years old while for the boys it was eleven and a half years old. **On average, victims took 33 years to report abuse to religious authorities. (Identifying and disclosing childhood sexual abuse. Royal Commission into Institutional Responses to Child Sex Abuse). That means that female victims reported it on average at the age of forty-three and a half, while male victims did so at the age of forty-four and a half.**

Policymakers may ask why the Royal Commission report should be used as the gold standard and not the results of other similar reports or studies carried out in other countries. It has a simple answer. The validity of the results of scientific and criminological investigations depends largely on the strength and rigor of the methodology used. The Royal Commission has used a particularly robust work methodology. To establish the average age at which victims report, it has investigated a very broad historical period of three and a half decades (from 1980 to 2015) and has used a very large sample of four thousand five hundred people. It has not used a nationally representative sample of the country's population, but rather has conducted an active search for all potential victims of sexual abuse in institutions during that historical period, conducting extensive personal, face-to-face interviews with them. In addition, the publication of the results has been carried out recently (December 2017), which allows the use of updated information. This fact differentiates it from most of the previously described scientific studies, which may be a decade or two old. Finally, in common law, the Royal Commission is a judicial type institution. Its results have the value of proven facts. There is no recent scientific, criminological, or judicial report or study that meets the characteristics described above.

For all the aforementioned reasons, **it is reasonable to use an average survivor's reporting age of at least 44 years<sup>4</sup> in childhood sexual abuse crimes as an objective, evidence-based standard to assess the quality of different national attempts to reduce impunity in these type of crimes by expanding or abolishing the criminal statute of**

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<sup>4</sup> The average age of 44 years old is based on the Australian's Royal Commission's findings on survivors of abuse in religious institutions specifically. The average delays in this subpopulation tend to be longer than in the general population of CSA survivors, partly because of the gender breakdown and issues particular to male disclosure, partly because of institutional power dynamics, etc. Disclosure delays are closer to 20 years when looking at the general population, as compared to 30+ years in the religious abuse sub-population. Even though this subpopulation may not represent the average survivor, they do represent the subtype of survivor who would benefit the most from extending criminal statute of limitations. Therefore, this policy report has taken the value-based decision to use religious abuse survivors' experience as the benchmark to design the policy solution to the problem of delayed disclosure.



**limitations. Any policy model (i.e., suspending the criminal statute of limitations until the victim reaches the age of majority) where all or most childhood sexual abuse crimes statute of limitations has run out before the victim reaches the age of forty is not fit for purpose.** Based on this objective benchmark we will now assess the efficacy of different regional and national measures implemented in the last fifteen years.

**C2: European regional solutions. European Council's Convention of Lanzarote and Istanbul. European Union's directive 2011/93/EU.**

Both the European Union and the Council of Europe have taken a similar approach. Instead of making a specific binding recommendation to the states, they have included a vaguely worded, generic admonishment to national governments to ensure victims of childhood sexual abuse crimes have enough time to press charges against their perpetrators after they have reached the age of majority. In chronological order these are the relevant international treaties and EU directive to bear in mind:

- The 2007 Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse: Article 33: Each Party shall take the necessary legislative or other measures to ensure that the statute of limitation for initiating proceedings with regard to the offences established in accordance with Articles 18, 19, paragraph 1.a and b, and 21, paragraph 1.a and b, shall continue for a period of time **sufficient** to allow the efficient starting of proceedings after the victim has reached the age of majority and which is commensurate with the gravity of the crime in question.

- The 2011 Directive 2011/92/EU of the European parliament and of the council: Article 13.2: Member States shall take the necessary measures to enable the prosecution of any of the offences referred to in Article 3, Article 4(2), (3), (5), (6) and (7) and of any serious offences referred to in Article 5(6) when child pornography as referred to in Article 2(c)(i) and (ii) has been used, for a **sufficient** period of time after the victim has reached the age of majority and which is commensurate with the gravity of the offence concerned.

- The 2011 Council of Europe Convention on preventing and combating violence against women and domestic violence. Article 58: Parties shall take the necessary legislative and other measures to ensure that the statute of limitation for initiating any legal proceedings with regard to the offences established in accordance with Articles 36, 37, 38 and 39 of this Convention, shall continue for a period of time that is **sufficient** and commensurate with the gravity of the offence in question, to allow for the efficient initiation of proceedings after the victim has reached the age of majority.

Due to its vague wording it's not surprising that national governments have developed wide interpretations regarding what are their commitments according to these internationally binding legislations. We will therefore review, and grade two different groups of European Union countries based on the objective, evidence-based benchmark previously mentioned, whether most victims of childhood sexual abuse have at least until they are 40 years old to press charges against their perpetrators. The acid test of effective access to

justice legislation for child victims of sex crimes. On the one hand, we have a category comprised of eleven countries (Belgium, Holland, Denmark, Sweden, Croatia, Austria, Hungary, Romania, Poland, Ireland and Cyprus), which have passed this test with flying colours as they have either abolished criminal statute of limitations for all sex crimes against children or at least for the most serious of them. They should receive a Grade of A or B (from A the best to E the worst). On the other hand, we have another group of ten countries which have failed this basic test (Greece, Malta, Estonia, Luxemburg, Czech Republic, Portugal, Lithuania, Finland, Slovakia and Bulgaria). In most cases they have merely suspended the criminal statute of limitations until the age of majority and in the case of Portugal or Bulgaria not even that. They should receive a Grade of D or E. However, both sets of countries proudly affirm that they are compliant with the aforementioned international legislation and that they are fulfilling their obligations towards their national childhood sexual abuse victims. **Considering how these laws are worded they are probably right.**

**C3: National solutions. Examples of good practice: Belgium, Holland, Denmark, Sweden, Croatia, Hungary, Romania, Ireland, Cyprus, Austria, Poland. Examples of poor practice: Portugal, Greece, Malta, Finland, Estonia, Lithuania.**

In the last ten years nine European state members have abolished criminal statute of limitations for at least the most severe sex crimes against children. They join two other states, Ireland and Cyprus, two common law countries that historically have not had them. They should receive the highest rating (A or B) in this important measure of effective access to justice for childhood sexual abuse victims.

Examples of good practice (GRADE A OR B):

- *Countries that have no statute of limitations for all/ most sex crimes against children (GRADE A):*

- *Ireland:* Article 7 of the Criminal Justice Act of 1951 (based on the modification of section 177 of the Criminal Justice Act of 2006) establishes that what are known as “indictable offences” (which are judged in front of a judge and a jury, unlike the “summary offenses” that only do it in front of a judge) have no criminal statute of limitations. However, if the delay in prosecuting a crime is excessively long, the judge has the power to decide not to hear the case. In making the decision, the judge considers whether the delay has reduced the accused's chances of a fair trial, for example, if the delay means that key witnesses are no longer available to testify or if the delay may have affected the defendant's memory. Among the “indictable offences” are sexual crimes against minors.

- *Cyprus:* This state is governed by common law. The criminal and judicial process is based on the English system that the British gradually introduced when they colonized Cyprus. In this state, there are no statute of limitations to initiate criminal proceedings or execute sentences for serious crimes (felonies), including sexual crimes against minors. However, the possibility that the rights of the defendant are affected due to a long period of time that has elapsed will be considered in the final judgment and may even terminate the judicial procedure.

- *Denmark (2018)*: In February 2018, the Danish Parliament approved amending article 93.b of the Danish Criminal Code to abolish the limitation period in most childhood sexual abuse offences: incest (art 210 Dan.Crim.Cod.); sexual abuse and assault (art 216-224, 225 Dan.Crim.Cod); production of childhood sexual abuse material (art 226 and 227.1 Dan.Pen.Cod.). Some child sexual abuse offences such as: being the client of live child sexual abuse event (art 227.2 Dan.Crim.Cod); sexual crime against a child by neglect (art 228 Dan.Crim.Cod.); child sexual exhibitionism (art 232 Dan.Crim.Cod.); selling pornography to a child (art 234 Dan.Crim.Cod.); and distribution or possession of childhood sexual abuse material (art 235 Dan.Crim.Cod.) still have a limitation period. In other violent crimes committed against minors, the statute of limitations is suspended until the victim reaches the age of 21 (art 94.4 Dan.Crim.Cod.).

- *Belgium (2019)*: In a law approved on November 14, 2019, the Belgian parliament approved the modification of article 21 bis of the Preliminary Title of the Belgian Code of Criminal Procedure. Previously, only crimes against humanity had no limitation period under Belgian law. After the entry into force of this legislative amendment, consummated or attempted crimes of voyeurism also had no limitation period (art 371 Bel.Pen.Cod.) as well as other crimes such as: indecent assault (art 372 to 374 Bel.Pen.Cod.); rape (art 375 Bel.Pen.Cod.); indecent assault and aggravated rape (art 376 Bel.Pen.Cod.); use of the internet by an adult to meet a minor with the intention of committing a crime provided for in Chapters V, VI, VII of the Penal Code (art 377 quater Bel.Pen.Cod.); corruption and child commercial sexual exploitation (art 379 and 380 Bel.Pen.Cod.); Distribution of pornographic material (art 383 bis Bel.Pen.Cod.); mutilation of genital organs (art 409 Bel.Pen.Cod.); and trafficking in persons for the purpose of prostitution or sexual exploitation (art 433 quinquies, art 1, paragraph 1.1 Bel.Pen.Cod.) when the victim is a minor.

- *Countries that have no statute of limitations for the most serious sex crimes against children (GRADE B)*:

- *Austria (2001)*: Section 57 (1) of the Austrian Criminal Code establishes that criminal offences that are punishable by imprisonment for a period of ten to twenty years up to life imprisonment, as well as offences included in Section twenty-fifth (genocide, crimes against humanity, war crimes) do not have a criminal statute of limitations. The Criminal Law Amendment Act 2001 (Federal Law Gazette no 130/2001), introduced an aggravated form of offence in cases of rape and severe sexual abuse of minors which was punishable by life imprisonment or a custodial sentence of 10-20 years. This aggravated form is applicable if the offence leads to severe bodily injury (section 84(1) Aus.Crim.Cod); pregnancy; if the victim is particularly humiliated by the act; he/she must endure a state of torment for a long period of time or if the abuse causes the victim's death. However, after a period of twenty years, the threatened life imprisonment is replaced by a prison sentence of ten to twenty years. Section 57 (3) Aus.Crim.Cod. establishes that for other crimes the statute of limitations depends on the duration of the custodial sentence. The minimum limitation period is one year, whereas the maximum one is twenty years. The criminal Law amendment act of 2009 amended section 58 (3) Aus.Crim. Cod. to establish that if a child under the age of

eighteen is the victim of a criminal offence against life and limb (First Section Aus.Crim. Cod); against freedom (Third Section Aus.Crim. Code) or against sexual integrity and self-determination (Section Ten Aus.Crim.Code), the criminal statute of limitations is suspended until the victim reaches the age of 28 years. Therefore, whereas the most serious sex crimes against children do not have a criminal statute of limitations, for the other crimes the statute runs out between the victims age 31 (less severe crimes) until age 48 (more severe type of crimes).

- *The Netherlands (2013)*: On April 1, 2013, a modification of article 70.2 of the Dutch Penal Code entered into force. All violent crimes against children punished by imprisonment of twelve years or more have no limitations period. Moreover, childhood sexual abuse offences punishable by a maximum penalty of up to eight years imprisonment do not have a criminal statute of limitations either. These crimes are the production of aggravated childhood sexual abuse material (art 240.b second section Neth.Pen.Cod.); rape (art 243 Neth.Pen.Cod.), statutory rape with an adolescent under the age of 16 (art 245 Neth.Pen.Cod.) and indecent crimes (art 246 Neth.Pen.Cod.). A limitation to this general rule is established when the aggressor is between 12 and 16 years old. In these cases, a statute of limitations of 20 years is established. If the aggressor is 16 or 17 years old, these crimes still do not have a criminal statute of limitations. According to art 71.3 of the Dutch penal code the limitation period for many crimes against children is suspended until the victim reaches age of majority. They have a maximum limitation period of twelve years. Therefore, for these sexual offences against children the criminal statute of limitations runs out by the time the victim reaches age 30.

- *Hungary (2014)*: In November 2014, the Hungarian Parliament approved the modification of Article 26, third section of the Hungarian Criminal Code. In addition to crimes against humanity and crimes punishable by a life sentence, sexual crimes against minors punishable by imprisonment for more than five years became imprescriptible. Article 28 (1a) establishes that for other childhood sexual abuse crimes as well as other violent crimes committed against children the statute of limitation is suspended until the victim reaches age 21. The limitation period for sex crimes against children punishable by less than five years imprisonment is five years. Therefore, the criminal statute of limitations runs out by the time the victim reaches age 26.

- *Romania (2021)*: In June 2021, the Romanian Parliament approved amending article 153.2 of the Romanian Penal Code (Rom.Crim.Cod.). This new law has abolished the criminal statute of limitations for crimes of trafficking and sexual exploitation of vulnerable persons (Chapter VII, art 209-211 and 213 Rom.Crim.Cod.) and crimes against sexual freedom and integrity (Chapter VIII art 218 to 220 Rom.Crim.Cod.) when the victim is a minor. Previously, only crimes against humanity, the crimes of intentional homicide and those of torture had no limitation period. According to article 154.4 of the Rom.Crim.Cod. in the crimes of trafficking and exploitation of vulnerable persons (Chapter VII Rom.Crim.Cod.) and crimes against sexual freedom and integrity (Chapter VIII Rom.Crim.Cod.) other than those provided for in art. 153.2 Rom. Crim.Cod., as well as for the crime of child pornography (art

374.Rom.Crim.Cod.), the statute of limitations begins to run from the date on which the child reaches the age of majority. If the minor dies before the age of majority, the statute of limitations will begin to run from the date of death.

- *Croatia (2021)*: On July 23, 2021, the sixth reform of the Croatian Penal Code (Cro.Pen.Cod) entered into force, modifying the statute of limitations regulated in article 81 second paragraph Cro.Pen.Cod. In this way, in addition to crimes against humanity, terrorism crimes had no statute of limitation (art 97 fourth paragraph Cro.Pen.Cod) as well as other criminal offences such as aggravated murder (art 111 Cro.Pen.Cod) and aggravated crimes of sexual abuse and child sexual exploitation (art 166 second and third paragraph Cro.Pen.Cod). This last offence consists of childhood sexual offence that causes severe bodily injury to the victim; or compromises his or her physical or emotional development, or produces a pregnancy, or is committed by multiple perpetrators or by a family member or person who lives with the child in a joint household; or is committed in an especially cruel or degrading manner or against an especially vulnerable child. According to art 82.3 Cro.Pen.Cod, for the rest of the sexual crimes against minors, the limitation period is suspended until the victim reaches the age of majority.

- *Sweden (2021)*: In 2021 the Swedish social democratic government promoted a law that modified Chapter 35, second section of the Swedish Penal Code. Previously, only the crimes of homicide and reckless homicide or crimes against humanity had no limitation period. From the entry into force of the law, the completed crimes of rape, aggravated rape (Chapter 6, first section, first and third paragraph and fourth section of the Swedish Penal Code) and female sexual mutilation (Second section, first and third paragraph of the Law against female sexual mutilation) committed against minors do not have a criminal statute of limitations either. For other childhood sexual offences, the limitation period is suspended until the victim reaches the age of majority. There is a maximum limitation period of fifteen years. Therefore, no childhood sexual abuse case can be prosecuted after victim reaches the age of 33.

- *Poland (2023)*. In July 2021, the Polish State Commission for the Investigation of Sexual Abuse in Catholic Institutions published its first report. It made twenty-two recommendations among which was abolishing the criminal statute of limitations in childhood sexual abuse offences. As the emeritus judge and member of the Commission Agnieszka Rekas said: "victims of childhood sexual abuse usually report after 30 or 40 years and for this reason the perpetrators are no longer criminally responsible." The Polish government decided to implement this recommendation. On the 14<sup>th</sup> of March 2023 a reform of the Polish Penal Code (Pol.CP) came into force that modified the statute of limitations for sexual crimes against minors. The new wording of art 101.4 Pol.CP establishes that when a victim under 18 years of age experiences a crime against life and health punishable by more than 5 years in prison, a crime specified in Chapter XXV (crimes against sexual freedom and decency) committed to the detriment of the child or when the pornographic content includes the participation of the minor, the criminal statute of limitations cannot run out before the victim reaches 40 years of age. Art 105 Pol.CP establishes a series of crimes which do not have a criminal statute of limitations, including: war crimes and crimes against humanity; certain





serious crimes committed by an official in the exercise of his functions; the crimes punished by art 197.4 Pol.CP (aggravated rape) and 197.5 Pol.CP (hyper-aggravated rape that causes the death of the victim) when the victim is less than 15 years old or if they are older than that age when the perpetrator acts with special cruelty; the crimes punished in art. 148.2.2 Pol.CP (homicide in connection with rape) and 148.3 (multiple homicide, recidivist homicide, homicide of a public official) when the victim is under 15 years of age or older when the aggressor acts with special cruelty; the crime of aggravated injuries (art 156.1 Pol.CP) in conjunction with the crime of aggravated rape (197.4 Pol.CP).

On the other end of the spectrum, there's another group comprised by EU state members that have made minor changes in their criminal statute of limitations laws for childhood sexual abuse or not made any change at all. However, these new watered-down laws are not fit for purpose as most victims still can't press charges against their perpetrator after age forty. These countries are Portugal, Greece, Malta, Finland, Lithuania, Estonia, Czech Republic, Luxembourg, Bulgaria, Slovakia. They would get a grade D, E or F.

Examples of poor practice (GRADE D, E or F):

- *Countries that have suspended the statute of limitations in sex crimes against children at least until the victim reaches the age of majority (GRADE D):*

*Luxembourg:* According to Article 637 (2) of the Luxembourg Criminal Procedure Code the limitation period for public action for the crimes referred in art 348, 372 to 377, 382-1, 409bis, paragraphs 3 to 5 and 442-bis, of the Luxembourg Criminal Code committed against minors only begin to run from the age of majority of the victim or from their death if it is prior to their age of majority. According to Article 637(1) of the Luxembourg Criminal Procedure Code public action resulting from a crime shall become time-barred after ten years from the day on which the crime was committed, if during this interval no act of investigation or prosecution has been carried out. The maximum limitation period for a sex crime against children is therefore 10 years which starts running when the victim reaches the age of majority. This criminal rule means that it's not possible to prosecute childhood sexual abuse cases after a victim has turned 28 years. In 2022 the government approved draft bill 7949 which would abolish the criminal statute of limitations for the most severe crimes against children.

*Estonia:* In 2017 Estonia modified article 81.7.3 of the Estonian Criminal Code. It established that in the crimes of forced marriage, female genital mutilation, illegal termination of pregnancy and crimes against sexual self-determination when the victim is a person younger than eighteen years of age, the criminal statute of limitations is suspended until the victim turns eighteen years old if criminal proceedings had not been initiated before that date. Article 81.1 of the Estonian Criminal Code establishes that the criminal statute of limitations for a crime in the first degree is ten years and five years in the case of a crime in the second degree. The maximum limitation period for a sex crime against children is therefore 10 years which starts running when the victim reaches the age of majority. This criminal rule means

that it's not possible to prosecute childhood sexual abuse cases after a victim has turned 28 years.

*Greece:* In 2019 the new Greek Criminal Code entered into force (Law 4619/2019). In article 113.4 it establishes that the statute of limitations for crimes committed against minors starts from the time the victim reaches the age of majority. Regarding the crimes established by articles 323A, 324 and Chapter 19 of the Special Part of the Greek Criminal Code, when they are committed against a minor, the statute of limitations begins one year after the victim reaches the age of majority, if it's a misdemeanour, and three years after reaching the age of majority if it's a felony. Article 111 of the Greek Criminal Code establishes a limitation period that depends on the maximum penalty of the custodial sentence, with a maximum of twenty years for felonies punished by life imprisonment and fifteen years for other felonies. The maximum limitation period for sexual crimes against children is therefore 15 years which starts running when the victim attains age 21 years. This criminal rule means it's not possible to prosecute childhood sexual abuse cases after a victim has turned 36 years.

*Malta:* In 2021 Malta amended Article 208-B (6) of Malta's Criminal Code establishing that regarding offences established by art 198, 203 to 204D, art 208A(1)(1A)(1B), 208AA and 208AB the statute of limitations shall run from the day on which the victim attains the age of 23 years. Article 688 of Malta's Criminal Code establishes a limitation period depending on the maximum penalty of the custodial sentence, with a minimum limitation period of two years and a maximum of twenty years. The maximum limitation period for sexual crimes against children is therefore 15 years which starts running when the victim attains age 23 years. That means it's not possible to prosecute childhood sexual abuse cases after a victim has turned 38 years.

*Czech Republic:* According to Section 34 (3) of the Czech's Criminal Code if a person under eighteen years suffers any of the criminal offences referred to in Chapter III of the Special Part of the Criminal Code (criminal offences against human dignity in the sexual sphere) or the crimes of grievous bodily harm consisting of female genital mutilation or sterilization (section 145 Czh.Crim.Cod); illegal termination of a pregnancy without the consent of the pregnant woman (section 159 Czh.Crim.Cod); human trafficking (section 168 Czh.crim.Cod); abduction (section 172 Czh.crim.Cod), extortion (section 175 Czh.crim.Cod) or oppression (section 177 Czh.crim.Cod) completed with the intent to force another person to marry or to undergo an intervention consisting in mutilation of the genitals, the criminal statute of limitations is suspended until the victim reaches the age of majority. Section 34 (1) of the Czech Criminal Code establishes a limitation period that depends on the severity of the offence. The minimum limitation period is three years and the maximum is twenty years. However, the longest limitation period for a child sex crime is fifteen years which is suspended until the victim reaches the age of majority. Therefore, no childhood sexual abuse case can be prosecuted after the victim turns thirty-three years.

- *Countries that have not suspended the statute of limitations in sexual crimes against children at least until the victim reaches the age of majority but have established a*



*minimum age before which the limitation period cannot run out (GRADE E):*

*Portugal:* In September 2007 Portugal approved Law no 59/2007 (23<sup>rd</sup> modification to the criminal Code). It amended article 118 of the Portuguese Criminal code adding paragraph five. It established that in crimes against sexual freedom and self-determination of minors when the victim is a minor, the criminal procedure cannot end, due to the criminal statute of limitations having run out, at least until the offended party reaches the age of 23. Portugal is one of the few EU countries that has not suspended the criminal statute of limitations in childhood sexual abuse cases until the victim reaches the age of majority. This criminal rule means most sex crimes against children can't be prosecuted after victim has reached age 30.

*Lithuania:* Article 95.3 of the Lithuanian Criminal Code establishes that if a minor is the victim of the criminal acts described in Chapters XVIII (crimes against human health), XX (crimes against human liberty), XXI (crimes and misdemeanours against a person's sexual self-determination and inviolability), XXIII (crimes and misdemeanours against the child and the family) and XLIV (crimes and misdemeanours against morality) of the Criminal Code, the statute of limitations can't run out before the person reaches the age of twenty five years old. Article 95.1 of the Lithuanian Criminal Code establishes that the limitation period depends on the severity of the crime. Regarding crimes against children there's a minimum limitation period of three years and a maximum limitation period of twenty-five years. There's no rule suspending the criminal statute of limitations until the victim reaches the age of majority. This criminal rule means that it's not possible to prosecute childhood sexual abuse cases after a victim has turned 43 years (if at the time the crime was committed the victim was seventeen years old and the crime that he/she suffered had a limitation period of twenty-five years). However, in the majority of crimes the limitation period has run out before the victim reaches age 40.

*Finland:* In 2011 Finland approved act 540/2011, which was later amended by act 486/2019 and 723/2022. It amended chapter 8 section one (5) of the Finnish Criminal Code establishing that the right to bring charges for child rape, aggravated child rape, sexual abuse of a child and aggravated sexual abuse of a child becomes time-barred at the earliest when the complainant reaches the age of twenty-eight years. The same rule applies to rape, aggravated rape, coercion into sexual intercourse, coercion into a sexual act, sexual abuse, pandering, aggravated pandering, trafficking in persons and aggravated trafficking person, directed at a person below the age of eighteen years. In the case of enticement of a child for sexual purposes referred to in Chapter 20, section 8(b) Fin.Crim.Cod., the right to bring charges becomes time-barred when the person who was the object of the offence reaches the age of twenty-three years. According to chapter 8 section one (2) the limitation period depends on the severity of the crime, with a minimum of two years and a maximum of 20 years. There's no provision to suspend the statute of limitations in sex crimes against children until they reach the age of majority. This criminal rule means it's not possible to prosecute any childhood sexual abuse cases after a victim has turned 38 years. (If at the

time the crime was committed the victim was seventeen and the crime that he/she suffered had a limitation period of twenty years).

*Slovakia:* Section 87 (5) establishes that criminal prosecution when a child is a victim of the criminal offense of unauthorized removal of organs, tissues and cells an illegal sterilization (Section 159 Slo.Crim.Cod); of human trafficking (section 179 Slo.Crim.Cod.); rape (section 199 Slo.Crim.Cod.); sexual violence (section 200 Slo.Crim.Cod.); sexual abuse (sections 201 to 202 Slo.Crim.Cod.); abuse by a close and trusted person (section 208 Slo.Crim.Cod.); or production of childhood sexual abuse material (section 368 Slo.Crim.Cod.), shall be time-barred no earlier than fifteen years after the victim has reached the age of majority. Thus, for these crimes the statute of limitations will not run out at least until the victim reaches age 33. According to section 87(1) Slo.Crim.Cod. the limitation period depends on the severity of the crime, with a minimum of 3 years and a maximum of 30 years. However, the maximum limitation period for a sex crime against children is 20 years. There's no provision to suspend the statute of limitations in sex crimes against children until they reach the age of majority. This criminal rule means that it's not possible to prosecute childhood sexual abuse cases after a victim has turned 38 years (if at the time the crimes was committed the victim was seventeen years old and the crime that he/she suffered had a limitation period of 20 years).

- *Countries that have neither suspended the statute of limitations in sex crimes against children at least until the victim reaches the age of majority nor have established a minimum age before which the limitation period cannot run out (GRADE F):*

*Bulgaria:* Bulgaria is the only country in the European Union that has not made any attempt whatsoever to comply with article 15.2 of the EU Directive 2011/92/EU. It has not suspended the criminal statute of limitations until a victim reaches the age of majority in sex crimes against children. It has not established a minimum age before which claims of childhood sexual abuse cannot become time barred either. According to article 80 (1) of the Bulgarian Criminal Code the limitation period or a crime depends on its severity, with a minimum of 3 years and a maximum of 30 years. However, the maximum limitation period for a sex crime against a child is 15 years. Article 80 (3) Bgr.Crim.Cod. establishes that the statute of limitations for prosecution starts from the completion of the crime, in the case of attempt and preparation, from the day the last act was committed, and for crimes that last continuously, from their termination. This criminal rule means that it's not possible to prosecute childhood sexual abuse cases after a victim has turned 33 years (if at the time the crimes was committed the victim was seventeen years old and the crime that he/she suffered had a limitation period of 15 years).

On the middle of the spectrum, there's a third group comprised by EU state members that have introduced legal reforms that significantly expand their criminal statute of limitations laws for childhood sexual abuse crimes but that fall short on complete abolition. In these countries many victims of childhood sexual abuse have at least until they reach age 40 to press charges. These countries are Spain, France, Germany, Italy, Latvia and Slovenia.

Examples of mediocre practice (GRADE C):

- *Countries that have significantly expanded their criminal statute of limitations in sex crimes against children but fall short of complete abolition. Many victims have at least until they reach age 40 to press charges (GRADE C):*
- **Spain:** In June 2021, Spain approved Organic Law 8/2021, for the comprehensive protection of children and adolescents against violence. Its sixth final provision, amendment ten, modified Organic Law 10/1995, of 23<sup>rd</sup> of November, the Spanish Criminal Code. This amendment modified article 132 paragraph 1 Esp.Crim.Cod. establishing that in the crimes of attempted homicide, of injuries of articles 149 and 150 Esp.Crim.Cod., in the crime of habitual mistreatment provided for in article 173.2 Esp.Crim.Cod., in crimes against freedom and sexual indemnity (Title VIII, Book II Esp.Crim.Cod.) and in crimes of trafficking in human beings (Title VII.bis, Book II Esp.Crim.Cod.), when the victim is a person under 18 years of age, the limitation period is suspended until the victim is 35 years of age, and if they die before reaching that age, from the date of death. According to art 131.1 Esp.Crim.Cod. the limitation period to initiate criminal proceedings depends on the severity of the crime, with a minimum of 5 years and a maximum of 20 years. This criminal norm means that the limitation period in sex crimes against children shall not run out at least until the victim reaches age 40 but that even in the most serious cases it's not possible to initiate criminal proceedings after a victim reaches age 55.
- **Germany:** Section 78b of the German Criminal Code establishes that the limitation period is suspended until the victim of an offence under sections 174 to 174c, 176 to 178, section 180(3), sections 182, 225, 226(a) and 237 has reached the age of 30. According to section 78 (3) where prosecution is subject to the statute of limitations, the limitation period to initiate criminal proceedings depends on the severity of the crime, with a minimum of 3 years and a maximum of 30 years. This criminal norm means that the limitation period in sex crimes against children shall not become time barred at least until the victim reaches age 35 but that even in the most serious cases (i.e., section 176.b sexual abuse of children resulting in death) it's not possible to initiate criminal proceedings after a victim reaches age 60. However, in most sex crimes the actual limitation period has run out by the time the victim has reached age 50.
- **France:** The criminal statute of limitations in sex crimes against children has been modified multiple times in the last few years by Laws no 2021-478, no 2018-703 and no 2017-242. Article 7.III of the French Procedural Code establishes that the limitation period to initiate criminal proceedings regarding the crimes specified in art 706-47 of that same code (Book IV, Title XIX, special procedure applicable to offences of a sexual nature and the protection victims who are minors) when they are committed against minors is of 30 years from the age of majority of the victim. Art 8.II of the French Procedural Code establishes that for offences mentioned in Art 706-47 of the same code, when they are committed against minors, apart from those mentioned in art 222-29-1 and 227-26 of the French penal Code, the limitation period is ten years from the age of majority of the victim. Art 8.III of the French Procedural Code establishes that for the offences mentioned

in articles 222-12, 222-29-1 and 227-26 of the French criminal code, when they are committed against minors, the limitation period is 20 years from the age of majority of the child. This criminal norm means that the limitation period in sex crimes against children shall not become time barred at least until the victim reaches age 28, although most victims have at least until they reach age 38 to press charges. However, even in the most serious cases, it's not possible to initiate criminal proceedings after a victim reaches age 48. Article 7.III (in fine) and 8.IV establishes that when a child sex abuser commits a new sexual crime against a child, when the limitation period for the older offence has still not run out, the initial crime limitation period is interrupted. Therefore, the statute of limitations for the first offence will not become time barred until the end of the limitation period of the second crime. The goal is to ensure that when a perpetrator abuses multiple children over a long period of time, he can be prosecuted for all his crimes and not only for the most recent ones where the statute of limitations has not expired as has happened historically.

- *Italy*: Article 157.I of the Italian Criminal Code establishes that the limitation period for a criminal offense equals the maximum penalty established by the law for that offence. There's a minimum limitation period of six years for felonies and four years for a misdemeanour. In October 2012 Italy amended art 157.VI of the Italian Criminal Code establishing that for criminal offences included in Book II (specific crimes), Title XII (crimes against Person) Chapter III (crimes against individual freedom), section Ia (crimes against individual personality which include slavery/servitude (art 600 Ita.Crim.Cod), child prostitution (art 600-bis Ita.Crim.Cod), child pornography (art 600-ter Ita.Crim.Cod.), sexual tourism (art 600-quinquies Ita.Crim.Cod.), human trafficking (art 601 Ita.Crim.Cod.), harvesting of organs (art 601-bis Ita.Crim.Cod.), commerce of slaves (art 602 Ita.Crim.Cod.); as well as the offences described in art 572 (mistreatment of family and cohabitants), 609-bis (sexual violence), 609-quarter (statutory child abuse), 609-quinquies (corruption of minors) and 609-octies (group sexual violence) Ita.Crim.Cod. the limitation period is doubled.

In August 2017, Italy amended art 158 of the Italian Criminal Code adding paragraph III. The amended article established that in certain violent crimes committed against children and described in art 392, paragraph 1-bis of the Italian Criminal Procedural Code (which applies to articles 572, 600, 600-bis, 600-ter, 600-quarter, 600-quinquies, 601, 602, 609-bis, 609-quarter, 609-quinquies, 609-octies, 609-undecies and 612 bis of the Italian Criminal Code), the statute of limitations is suspended until the victim reaches the age of majority. This criminal norm means that in sexual crimes against children there's a minimum limitation period of 10 years and a maximum limitation of 28 years. Therefore the criminal statute of limitations shall not run out at least until the victim reaches age 28. However even in the most serious childhood sexual abuse offences it's not possible to initiate criminal proceedings after a victim reaches age 46.

- *Latvia*: In January 2018, Latvia amended its criminal statute of limitations for sex crimes against children adding paragraph (1<sup>1</sup>) and modifying paragraph (2) of article 56 of the Latvian Criminal Code. The limitation period in criminal offences directed against the morality and sexual integrity of the victim (chapter XVI Lva.Crim.Cod.), serious bodily injury caused by mutilation of genitals or loss of reproductive capacity (art 125



Lva.Crim.Cod.), human trafficking (art 154 Lva.Crim.Cod.) or coercion to commit abortion (art 136 Lva.Crim.Cod) when the victim is a child under eighteen, is suspended until the victim reaches the age of majority. It establishes a specific maximum limitation period for these crimes of 20 years unless they are punished by a sentence of life imprisonment. According to article 56 (4) Lva.Crim.Cod. when prosecuting this very serious crime the question of whether to apply the limitation period shall be decided by the court if from the date when the victim of a crime against the morality and sexual integrity of a minor has reached the age of majority, 30 years have passed. This criminal norm means that the limitation period for most sex crimes against children shall not run out at least until the victim reaches age 38 but that even in the most serious cases it's quite challenging to initiate criminal proceedings after a victim reaches age 48 as it depends on the discretion of the court. According to art 56 (3) the limitation period is interrupted if the person who committed a criminal offense commits a new criminal offense before the limitation period of the original one has run out. In this case the limitation period, which is intended for the most serious of the committed criminal offenses, starts counting from the moment of committing the new criminal offense. This provision facilitates prosecuting serial child abusers who abuse multiple victims during a prolonged period.

- *Slovenia:* According to article 90(3) of the Slovenian Criminal Code, the limitation period in criminal offences against sexual inviolability (Chapter XIX – art 170 to 176 Slo.crim.Cod.) and criminal offences against marriage, family or youth (Chapter XXI – art 188 to art 195 Slo.Crim.Cod.) committed against a minor shall be suspended until the injured party reaches the age of majority. According to article 90(1) of the Slovenian Criminal Code, the limitation period to initiate criminal proceedings depends on the severity of the crime, with a minimum of 6 years and a maximum of 50 years. However, in sex crimes against children, based on the severity of the sentences imposed for these offences, the minimum limitation period is 10 years and the maximum one is 30 years. This criminal norm means that the limitation period in sex crimes against children shall not run out at least until the victim reaches age 28 but that even in the most serious cases it's not possible to initiate criminal proceedings after a victim reaches age 48.

#### **C4: Twenty-seven European Union Member States report card:**

To visualise the current situation across the EU we are including a 27 EU State Members report card based on their current childhood sexual abuse criminal statute of limitations law:

##### **27 EU MEMBER STATES REPORT CARD:**

GRADE A: NO CRIMINAL SOL FOR ALL/ MOST CHILD SEX OFFENCES. FOUR EU MEMBER STATES: IRELAND, CYPRUS, DENMARK, BELGIUM.

COUNTRY	CURRENT CRIMINAL STATUTE OF LIMITATIONS LAW
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Ireland	No criminal SOL for indictable offences including all sex crimes against children
Cyprus	No criminal SOL for indictable offences including all sex crimes against children
Denmark	No criminal SOL for most child sex abuse offences. some offences like distribution, possession of childhood sexual abuse material; selling pornography to a child; sexual exhibitionism in front of a child have a limitation period.
Belgium	No criminal SOL for most child sexual abuse offences, female genital mutilation and child trafficking with the intent to commit commercial sexual exploitation. Some offences, like possession of child sexual abuse material or exhibitionism in front of a child, have a limitation period.

GRADE B: NO CRIMINAL SOL FOR SOME CRIMES. SEVEN EU MEMBER STATES: NETHERLANDS, SWEDEN, CROATIA, HUNGARY, AUSTRIA, ROMANIA, POLAND.

	Child sex offences crimes without SOL	CHILD SEX ABUSE OFFENCES WITH SOL			
		Criminal SOL Suspension	Minimum SOL	Intermediate SOL	Maximum SOL
Netherlands	All crimes against children punished by imprisonment of twelve years or more.  Childhood sexual abuse offences punishable by a term of imprisonment not exceeding 8 years.	Until victim reaches age 18.	6 years. Until victim reaches age 24.	No intermediate SOL.	12 years. Until victim reaches age 30.
Sweden	Rape or aggravated rape of a child over fifteen using violence/ intimidation or	Until victim reaches age 18.	5 years. Until victim reaches age 23.	10 years. Until victim reaches age 28.	15 years. Until victim reaches age 33.



	exploiting dependent relationship. Rape or aggravated statutory rape of child under fifteen.					
Croatia	Serious criminal offences of sexual abuse and exploitation of a child (i.e., sexual abuse that causes serious bodily injury; causes pregnancy, committed against very vulnerable victim; committed by multiple perpetrators or family member)	Until victim reaches age 18.	10 years. Until victim reaches age 28.	15 years. Until victim reaches age 33.	20 years. Until victim reaches age 38.	25 years. Until victim reaches age 43.
Austria	Child sexual abuse offences punishable by life imprisonment. Aggravated child sexual abuse offences (i.e., causing death of child, grievous bodily harm, pregnancy).	Until victim reaches age 28	5 years. Until victim reaches age 33.	10 years. Until victim reaches age 38.	20 years. Until victim reaches age 48.	

Hungary	Chapter XIX (sexual freedom and sexual offences) against a child punishable by more than 5 years imprisonment)	Until victim reaches age 21.	5 years. Until victim reaches age 26.		
Romania	Many child trafficking and sexual exploitation of vulnerable persons and crimes against freedom and integrity when the victim is a minor.	Until victim reaches age 18	3 years. Until victim reaches age 21.	5 years. Until victim reaches age 23.	8 years. Until victim reaches age 26.
Poland	Many child sexual abuse offences such as aggravated rape or rape of a child under 15 years old.	No suspension until victim reaches age 18	SOL cannot run out before victim reaches age 40 in childhood sexual abuse and production of childhood sexual abuse material offences and in serious crimes against life and limb.		

GRADE C: CRIMINAL SOL FOR ALL/MOST/MANY CRIMES AT LEAST UNTIL VICTIM REACHES AGE 40. SIX COUNTRIES: SPAIN, GERMANY, ITALY, FRANCE, LATVIA AND SLOVENIA.

	<b>Criminal SOL Suspension</b>	<b>Minimum Criminal SOL</b>	<b>Intermediate Criminal SOL</b>			<b>Maximum Criminal SOL</b>
Spain	Until victim reaches age 35.	5 years. Until victim reaches age 40.	10 years. Until victim reaches age 45.	15 years. Until victim reaches age 50.		20 years. Until victim reaches age 55.
Germany		3 years. Until	5 years. Until	10 years. Until victim	20 years. Until	30 years. Until victim reaches

	Until victim reaches age 30.	victim reaches age 33.	victim reaches age 35.	reaches age 40		victim reaches age 50.	age 60. Crimes punished by life in prison (i.e., causing death of child).
Italy	Until victim reaches age 18.	6 years. Until victim reaches 24.	8 years. Until victim reaches 26	10 years. Until victim reaches 28	12 years. Until victim reaches 30	24 years. Until victim reaches 42.	28 years. Until victim reaches age 46.
France	Until victim reaches age 18.	10 years. Until victim reaches age 28.	20 years. Until victim reaches age 38.				30 years. Until victim reaches age 48.
Latvia	Until victim reaches age 18.	20 years. Until victim reaches age 38.	30 years. Until victim reaches age 48. Crimes punished by life in prison.				More than 30 years. Crimes punished by life in prison. Depends on judicial discretion.
Slovenia	Until victim reaches age 18.	10 years. Until victim reaches age 28.	20 years. Until victim reaches age 38.				30 years. Until victim reaches age 48.

GRADE D: CRIMINAL SOL SUSPENDED UNTIL VICTIM REACHES AGE OF MAJORITY ( IN SOME CASES UP TO AGE 21 OR 23). CRIMINAL SOL FOR ALL OR MOST CRIMES RUNS OUT BEFORE VICTIM REACHES AGE 40. FIVE EU MEMBER STATES: GREECE, MALTA, ESTONIA, CZECH REPUBLIC AND LUXEMBOURG.

Country	Criminal SOL Suspension	Minimum Criminal SOL	Intermediate Criminal SOL	Maximum Criminal SOL
Malta		2 years		

	Until victim reaches age 23.	Victim age 25.	5 years. Victim age 28.	10 years. Victim age 33.	15 years. Victim age 38.
Greece	Felony: Until victim reaches age 21.  Misdemeanour: Until victim reaches age 19.	5 years (misdemeanour) Victim age 24.	No intermediate criminal SOL.		15 years (felony). Victim age 36.
Estonia	Until victim reaches age 18.	5 years. Victim age 23.	No intermediate criminal SOL.		10 years. Victim age 28.
Luxembourg	Until victim reaches age 18.	10 years. Minimum and maximum criminal SOL is the same. Victim age 28.			
Czech republic	Until victim reaches age 18	3 years. Victim age 21.	5 years. Victim age 23.	10 years. Victim age 28.	15 years. Victim age 33.

GRADE F: CRIMINAL SOL SINCE SEXUAL OFFENCE AGAINST CHILD WAS PERPETRATED. MINIMUM AGE BEFORE WHICH CRIMINAL SOL FOR SEX CRIMES CANNOT RUN OUT. 4 EU STATE MEMBERS: PORTUGAL, LITHUANIA, FINLAND, SLOVAKIA.

Country	Criminal SOL Suspension	Minimum age before criminal SOL in childhood sexual abuse offences can run out	Intermediate SOL	Maximum SOL
Portugal	SOL not suspended until age of majority for childhood sexual	Victim age 23	10 years from commission of crime.  Maximum possible criminal SOL of age 28 (if victim is 17	15 years from commission of crime.  Maximum possible criminal

	abuse offences.		years when the crime is committed)		SOL age 33 (if victim is 17 years when crime is committed)
Lithuania	SOL not suspended until age of majority for childhood sexual abuse offences.	Victim age 25	12 years from commission of crime  Maximum possible criminal SOL age 30 (if victim is 17 years when crime is committed)	15 years from commission of crime  Maximum possible criminal SOL age 33 (if victim is 17 years when crime is committed)	25 years from commission of crime.  Maximum possible criminal SOL age 43 (if victim is 17 years when crime is committed)
Finland	SOL not suspended until age of majority for childhood sexual abuse offences.	Victim age 23. For some less misdemeanor sex abuse offences.  Victim age 28. For most childhood sexual abuse felony offences.	2 years from commission of crime (some misdemeanor).  Maximum possible criminal SOL age 20 (if victim is 17 years when crime is committed)	5 years from commission of crime (some lesser felonies).  Maximum possible criminal SOL age 23 (if victim is 17 years when crime is committed)	20 years from commission of crime.  Maximum possible criminal SOL age 38 (if victim is 17 years when crime is committed)
Slovakia	SOL not suspended until age for majority for childhood sexual abuse offences.	Victim age 33.	No intermediate criminal SOL.		20 years from commission of crime.  Maximum possible criminal

				SOL age 38 (if victim is 17 years when crime is committed)
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GRADE F: CRIMINAL SOL SINCE SEXUAL OFFENCE AGAINST CHILD WAS PERPETRATED. 1 EU MEMBER STATE: BULGARIA.

	Minimum Criminal SOL	Intermediate Criminal SOL		Maximum Criminal SOL
Bulgaria	3 years from commission of crime (some misdemeanour)  Maximum possible criminal SOL age 21 (if victim is 17 years when crime is committed)	5 years from commission of crime (some lesser felonies)  Maximum possible criminal SOL age 23 (if victim is 17 years when crime is committed)	10 years from commission of crime  Maximum possible criminal SOL of age 28 (if victim is 17 years when the crime is committed)	15 years from commission of crime  Maximum possible criminal SOL age 33 (if victim is 17 years when crime is committed)

**D) The need for an evidence-based effective policy solution. The rationale for a minimum range of criminal statute of limitations for sexual crimes against children across all the European Union members. The case for strengthening art 15.2 of the Directive 2011/92/EU.**

**D1: Description of the policy:**

The unsatisfactory outcomes achieved during the last 15 years highlight the importance of strengthening the Directive 2011/92/EU regarding the right of victims of childhood sexual abuse to access effective remedial action by the criminal justice system. There is the need to establish a bare minimum range of criminal statute of limitations for sex crimes against children depending on the severity of the crime across the European Union. This minimum criminal standard should be supported by objective scientific evidence, not left to the discretion of the individual state members as happens with the current Directive. As previously explained (see section C1) the results obtained by the Royal Australian Commission constitute the gold standard in this policy area. **Considering that there's on**



**average a delay of 33 years between the commission of the crime until victims feel able to disclose the abuse to official authorities, and that victims are on average 44 years old when they do so, it's reasonable to conclude that European Union legislation should guarantee that all victims of childhood sexual abuse should have at least until age 40 to press charges against their perpetrators in all Member States.** To ensure the statute of limitations is proportional to the severity of the offence, there should not be a unique criminal statute of limitations for all crimes, but instead European legislation should establish a range of minimum limitation periods for different crimes depending on the gravity of the offence concerned. Based on scientific evidence, it's reasonable to establish a range of 10 years, with a minimum limitation period until victims turn 40 years for less severe crimes and a maximum limitation period of 50 years for the more severe type of crimes.

To better understand how to implement this new standard, it is important to have a good knowledge of how Directive 2011/92/EU is structured. In 2011, the EU decided that there were certain types of sexually harmful behaviours of adults towards children that should not only be criminalised in all member states (i.e., producing child pornography) but also have a common legal definition (i.e., what type of material should legally be considered as child pornography). These criminal offences were established in article 3 (offences concerning sexual abuse); article 4 (offences concerning sexual exploitation), article 5 (offences concerning child pornography) and article 6 (solicitation of children for sexual purposes). The European Union also firmly established the principle that serious forms of sexual abuse and sexual exploitation of children should be subject to effective, proportionate, and dissuasive penalties. To achieve this goal, it mandated that the most serious forms of the criminal offences included in the Directive should have a minimum penalty across all EU Member States. The same criminal offence would have a different minimum penalty depending on whether the victim was above or below the age of consent when the crime was committed. This criminal standard was a sentencing floor that had to be respected by all Member States. However, they were free to establish more severe punishment for these criminal offences if they considered it appropriate. In summary, the Directive obliges Member States to provide for criminal penalties in their national legislation in respect of the provisions of Union law on combating sexual abuse, sexual exploitation of children and child pornography. As previously mentioned, to facilitate the investigation and prosecution of these crimes, article 15.2 also mandated that: *"Member States shall take the necessary measures to enable the prosecution of any of the offences referred to in Article 3, Article 4(2), (3), (5), (6) and (7) and of any serious offences referred to in Article 5(6) when child pornography as referred to in Article 2(c)(i) and (ii) has been used, for a sufficient period of time after the victim has reached the age of majority and which is commensurate with the gravity of the offence concerned"*.

Using this existing legal framework, a specific evidence-based mandatory minimum criminal statute of limitations system could easily be introduced across all EU Member states by amending article 15.2. Our proposed amendment would be: *"Therefore when the aforementioned crimes are punished by a maximum term of imprisonment of at least 2 or 3 years, the limitation period should run at least until the victim has attained the age of 40. When they are punished by a maximum term of imprisonment of at least 5 years, the limitation period should run at least until the victim has attained the age of 45. When they are*

*punished by a maximum term of imprisonment of 8 or 10 years, the limitation period should run at least until the victim has attained the age of 50”.*

For illustrative purposes we include a summary table clarifying how this new system would work in practice. We have also included an addendum summarizing the current age of consent in the different EU Member States as some offences are only criminalised across all EU Member States if committed against a child below the age of consent and in others the severity of the penalty depends on whether the child is below or above the age of consent. Even though it’s not the goal of this policy report we would also strongly encourage Member States to agree for a minimum age of consent of 15 years of age across the EU Member States (which can include an exception when there’s a close age difference between the child and the other person or when they are similar in terms of psychosexual and cognitive maturity – popularly known as Rome and Juliet clause).

**SUMMARY INFORMATION TABLE – PROPOSED MINIMUM CRIMINAL SOL EU REGIME**

		Minimum criminal statute of limitations (SOL): Criminal offences cannot become time barred before victim reaches age 40		Minimum criminal SOL: Criminal offences cannot become time barred before victim reaches age 45	Minimum criminal statute of limitations. Criminal offences cannot become time barred before victim reaches age 50	
CRIME	ARTICLE	Maximum penalty of at least 2 years custodial sentence	Maximum penalty of at least 3 years custodial sentence	Maximum penalty of at least 5 years custodial sentence	Maximum penalty of at least 8 years custodial sentence	Maximum penalty of at least 10 years custodial sentence
WITNESSING SEXUAL ABUSE	Art 3.3	When victim is below the age of consent				



SIMPLE SEXUAL ABUSE	Art. 3.4			When victim is below the age of consent <sup>5</sup>		
AGGRAVATED SEXUAL ABUSE (WHEN THERE IS ABUSE OF TRUST)	Art 3.5.i		When victim is above the age of consent		When victim is below the age of consent	
AGGRAVATED SEXUAL ABUSE (WHEN THERE IS VICTIM'S VULNERABILITY)	Art 3.5.ii		When victim is above the age of consent		When victim is below the age of consent	
HYPERAGGRAVATED SEXUAL ABUSE (IF VIOLENCE IS PRESENT)	Art 3.5.iii y art 3.6			Victim Above age of consent		When victim is below the age of consent
SEXUAL EXPLOITATION. EXPLOITING CHILD IN PORNOGRAPHIC PERFORMANCES	Art 4.2	When victim is above the age of consent		When victim is below the age of consent		
SEXUAL EXPLOITATION EXPLOITING CHILD IN PORNOGRAPHIC PERFORMANCES. AGGRAVATED TYPE (IF VIOLENCE IS PRESENT)	Art 4.3			When victim is above the age of consent	When victim is below the age of consent	

<sup>5</sup> Age of consent in the different European Union Member States:  
 Age 14 (7 Member States): Italy, Austria, Estonia, Germany, Hungary, Bulgaria, Portugal  
 Age 15 (11 Member States): France, Greece, Poland, Sweden, Croatia, Denmark, Island, Rumania, Slovenia, Czech Republic, Slovakia,  
 Age 16 (7 Member States): Spain, Latvia, Belgium, Finland, Lithuania, Luxemburg, Netherlands  
 Age 17 (2 Member States): Cyprus, Ireland,  
 Age 18 (1 Member State): Malta

SEXUAL EXPLOITATION CHILD PROSTITUTION	Art 4.5			When victim is above the age of consent	When victim is below the age of consent	
SEXUAL EXPLOITATION AGGRAVATED CHILD PROSTITUTION (IF VIOLENCE IS PRESENT)	Art. 4.6			When victim is above the age of consent		When victim is below the age of consent
SEXUAL EXPLOITATION CLIENT OF CHILD PROSTITUTION <sup>6</sup>	Art. 4.7	When victim is above the age of consent		When victim is below the age of consent		
PRODUCTION CHILD PORNOGRAPHY	Art 5.6	When victim is below 18 years of age.				

As has been previously highlighted, it's not uncommon for child abusers to be repeat offenders. Empirical data shows that a minority of very prolific offenders commit a disproportionate amount of childhood sexual abuse offenses. For example, the John Jay Report, published in 2004, studied the magnitude of the clerical clergy sex abuse scandal in the United States. It identified 4,392 religious child abusers, who abused 10,667 individuals. Three and a half percent of them had received more than ten complaints. This small number of sexual predators were extremely dangerous, as they were responsible for a disproportionate number of sexual assaults, specifically 28 percent of all reports (2,960 cases). It has been observed in multiple countries that inadequate criminal statute of limitations laws often leads to the unsatisfactory situation that a serial child abuser can only be prosecuted for a tiny minority of his/her crimes. Only the younger victims, whose limitation period has not become time barred can get access to the criminal justice system, whereas older ones see their cases dismissed. Doing a comparative law study, it's easy to identify

<sup>6</sup> There's a growing international consensus in the human rights community that using terms such as child pornography or child prostitution is unhelpful as words like pornography or prostitution imply the ability of the person to give consent. Thus, the recommended terminology would be childhood sexual abuse material – CSAM (instead of child pornography) and commercial child sexual exploitation - CCSE (instead of child prostitution). In this report we have tried to consistently use this recently developed child rights-based terminology except when directly mentioning national or European legislation that still uses old-fashioned and outdated forms.



some possible solutions to this problem. Some Member State countries like Latvia, Austria or Lithuania have a generic provision that if a criminal commits a new crime, the limitation period for the initial crime is interrupted. In 2021 France approved a specific provision that in sex crimes against children, if the perpetrator commits a new offence, the statute of limitations for the initial offence is interrupted. Both types of criminal norm would allow the prosecution of a serial child abuser for all his crimes, as the limitation period for the older offences would start counting from the moment they commit another sexual offence against a new victim.

Therefore, we would recommend including a specific provision, modelled on the French legislation, that ensures that when a perpetrator who has committed a childhood sexual abuse offence reoffends, sexually abusing a new child, the limitation period for the initial crime is interrupted. Our proposed amendment would be: **“Art. 15.3. Member States shall take the necessary measures to ensure that, in the crimes against the sexual integrity of a child described in article 15 paragraph 2, the statute of limitations is interrupted if the person who committed the initial criminal offence commits a new sexual offence against a child under the age of 18 years. They should guarantee that in this case, the statute of limitations, which is intended for the most serious of the committed criminal childhood sexual abuse offences, starts counting from the moment of committing the new criminal offence”.**

## **D2: Alternative fast track policy available to EU member states when they implement the EU directive to increase its the level of ambition**

The graduated criminal SOL system included in this proposal for the EU directive, where the length of the limitation period correlates to the severity of the punishment for the sexual offence, is consistent with the model used by most EU countries in their criminal codes. However, scientific data does not support the idea that childhood sexual abuse (CSA) offences that are punished by longer custodial sentences (i.e., penetrative versus non-penetrative offences, use of violence or force, multiple perpetrators, duration of abuse) necessarily result in longer delays of disclosure of the abuse by victims.

Although the relationship between CSA and psychopathology is well established, the scientific understanding of the mechanisms by which abuse exerts its effects is complex. There is, therefore, a lack of complete consensus on how each characteristic of abuse affects every survivor's later functioning. Over the years, numerous scientific studies have tried to identify multiple factors that may influence and moderate the frequency and severity of the psychopathology commonly observed after childhood sexual abuse:

- *The number and severity of other forms of child abuse and adverse childhood experiences can play a significant role on the impact of CSA on the child. A significant proportion of children who are sexually abused also experience physical abuse or*

emotional deprivation (Ruggiero et al 2000, Fergusson et al 2008). Childhood sexual abuse is interrelated with other types of childhood maltreatment (Clark et al., 2010; Kessler et al. 2010; Turner et al., 2010). In longitudinal studies of maltreated children, it has been observed that exposure to a higher number of adverse childhood events precipitates a more severe long-term PTSD trajectory (Miller-Graff and Howell 2015, Nungent 2009). Numerous large-scale studies have reported a dose-response relationship between the number of adversities experienced during childhood and the severity of a wide range of symptoms and disorders later in life (Anda et al., 2006, Chapman et al., 2004, Clark, Caldwell, Power 2010; Cloitre et al., 2009; Koskenvuo, Hublin, Partinen, Paunio 2010; Schilling, Aseltine 2008; Turner, Finkelhor 2010; Walker, Gelfand 1999).

- *The nature of sexual abuse.* Researchers have hypothesized that the nature of childhood sexual abuse may play a primary role in the severity of psychopathology in adult life (Ruggiero et al., 2000). Numerous scientific studies have examined the possible role of multiple childhood sexual abuse characteristics on the frequency and severity of psychopathology after abuse. However, existing evidence on the association between nature of abuse and subsequent psychopathology is rather contradictory and inconclusive. The use of force and threats has been linked to a more severe form of PTSD in some studies (Wolfe et al., 1994; Steine et al., 2017). Some longitudinal studies have found an association of penetrative abuse with PTSD severity (Fergusson et al., 2013) whereas others surprisingly have not (Steine et al., 2017). There is evidence to suggest that multiple perpetrators are associated with increased levels of dissociation (Gold et al., 2004) and psychological distress (Steel et al, 2004). In some studies, longer duration of abuse was associated with higher levels of PTSD (Rodriguez et al., 1996) and psychological distress (Steel et al 2004) whereas others have not found any correlation between frequency of abuse and the intensity of depression and eating disturbances (Ruggiero et al., 2000). Some studies have not found any association between perpetrator type (familial vs non-familial) and severity of psychopathology (Lee et al 2008). Earlier age of onset of abuse has been positively correlated in some studies with higher levels of depression (Johnson et al 2001; Lee et al 2008) and dissociation (Johnson et al 2001; Gold et al 2004). For example, the relative risk of having severe depressive symptoms was higher for those abused before the age of 12 than those abused after that age (Schoedl et al 2010). However, in others no significant association has been found between age of onset and severity of depression and eating disturbances (Anderson et al 2000). Some studies have not found any relationship between sexual abuse characteristics and psychopathology severity altogether suggesting that for severely disordered, treatment seeking CSA survivors' other factors not related to the nature of the sexual abuse (i.e., poor family relationships) might have contributed to the development of post-abuse symptomatology.

- *Resilience factors such as biological, psychological and social factors that act to ameliorate or enhance the effects of trauma (Luthar 2000).* Family environment can play an important contribution to the development of post-abuse psychopathology. Aspects of family environment such as level of parental support, the presence of parental conflict, parental substance abuse and mother's psychological health have all been found to be linked to adjustment following CSA (Adams & Bukowski 2007). Psychological factors, coping strategies or attributional style can also buffer or intensify the relationship between CSA and post-abuse mental health effects (Feiring et al 2002). Lower perceived levels of social support have been associated with more severe PTSD in survivors of CSA (Burgess & Holmstrom, 1978; Hyman, Gold 2003; Lueger-Schuster et al., 2015; Runtz & Schallow 1997). Better quality of social relationships has been linked in survivors of CSA to more positive mental and physical health outcomes (Broadhead et al., 1983; Cohen, 2004; Umberson & Montez, 2010).
  
- *Multiple factors influence the length of time a CSA survivor waits before disclosing the abuse.* It is also important to consider research on how abuse characteristics influence later disclosure when determining appropriate SOL benchmarks. As with research on abuse severity and later functioning, there is no single answer as to how a given type of abuse leads to delayed disclosure. Several studies have found that low quality of family relationships and lack of parental support can have a direct influence on disclosure timing, especially in household environments where domestic violence is present or there is instability in the family structure (Alaggia & Kirshenbaum, 2005; Tashjian et al., 2016; Alaggia, 2010; Priebe & Svedin, 2008). Many children and adult survivors fear various repercussions when considering disclosure, including not being believed, receiving a negative reaction from the disclosure recipient, being stigmatized, or experiencing a disruption in relationships (Alaggia, 2010; Alaggia, 2005; Goodman-Brown et al., 2003; Crisma et al., 2004; Jensen et al., 2005). Intrafamilial abuse and/or having a close prior relationship with the perpetrator have been found to be associated with longer delays in disclosure (Schonbucher et al., 2012; Hershkowitz et al., 2005; Collings et al., 2005; Schaeffer et al., 2011; Kogan, 2004; Goodman-Brown et al., 2003). Victim gender is also a moderating factor in delayed disclosure – men typically take longer than women to tell anyone about their abuse (O'Leary & Barber, 2008; Priebe & Svedin, 2008). Socio-cultural norms surrounding men's ability to experience or acknowledge abuse can have a direct impact on their ability to come forward (Sorsoli et al., 2008; Alaggia, 2005). Individual psychological responses to abuse including experiencing shame, guilt, and self-blame are commonly reported barriers to disclosure (Hunter, 2011; Goodman-Brown et al., 2003; Crisma et al., 2004). The impact of the trauma itself is also important, as decreased capacity for developing intimacy and trust may result from CSA, leading to an inability to identify an appropriate confidant or outlet for disclosure (Jonzon & Lindblad, 2004). A child's developmental ability to understand the experience as abusive is another crucial factor in determining disclosure timing (Sorsoli et al., 2008; Alaggia, 2010). Although evidence is mixed on how age at time of abuse relates to delayed disclosure, a lack of understanding of norms of sexual



behaviour often inhibits disclosure for younger children. In sum, disclosure of CSA is a complex process involving psychological and socio-cultural barriers that affect each survivor uniquely. Acknowledging this complexity argues in favour of establishing a single benchmark for criminal SOLs at age 50 to allow survivors to come forward when they are ready. Severity of the crime is not a sufficient indicator of how long a survivor will need to come to grips with their abuse and seek legal remedies. CHILD USA's analysis of a dataset of CSA victims formerly in the Boy Scouts of America found that over 50% of the individuals disclosed their abuse after age 50. This data provides strong evidence that those who would most benefit from longer criminal SOLs are commonly older than 50, especially by the time they are ready to engage in legal action.

Therefore, the nature of sexual abuse is only one of the multiple possible factors which could influence the development of post-abuse symptomatology in a particular victim. That means that a child who suffers a CSA offence classified by the criminal law as severe (penetrative sex, long duration, multiple perpetrators, use of force and/or intimidation) and therefore punished by a long custodial sentence, but who has other protective factors which increase their resilience to trauma (strong family support, no previous history of abuse and/or adverse childhood experiences, supportive response after disclosure, access to high quality therapy after the offence) may develop low levels of post-abuse psychopathology and present with high levels of educational, social and family adjustment. On the other hand a child who suffers a childhood sexual abuse offence classified by the criminal law as "mild" (non-penetrative sex, isolated incident, one perpetrator, no use of force and/or intimidation) and therefore punished by a short custodial sentence, but who has multiple risk factors which decrease their resilience to trauma (family dysfunction, multiple types of abuse and/or adverse childhood experience, hostile or neglectful response after disclosure, no social support, lack of access to early and high quality therapy) may develop high levels of post-abuse psychopathology and present with low levels of educational, social and family adjustment.

**A policy establishing the same limitation period for all CSA offences, like an EU standard that no CSA offence's limitation expires before a victim turns 50 years-old, is more consistent with current scientific knowledge.** This criminal statute of limitations "floor" would reflect the understanding that disclosure rates of abuse are not necessarily tied to the severity of the crime. However, this approach would mean a significant departure from the current national criminal law in most EU countries, which may reduce the level of political support and consensus needed for its approval. Thus, the criteria to select our proposed policy not only includes the current scientific evidence in this field, but also practical political considerations.

EU directives are a minimum standard agreed by all 27 EU countries that reflect political consensus, but there is no legal impediment that prevents member states from increasing their level of ambition of the basic regulation which has been approved by EU institutions.

**We would strongly encourage most EU member states to exceed a minimum EU directive and establish that no CSA offence limitation period should terminate before**



**a victim turns 50 years old.** However, member states who are reluctant to take this approach, can still implement the basic child protection standard included in the EU Directive, of a graded limitation period system based on the severity of the custodial sentence for each type of CSA offence.

**In summary, our policy proposal provides EU member states the flexibility to adjust their response on this issue, giving them a fast track and slow track option, in order to prevent a lack of political consensus from derailing any progress being made at all.**

### **D3: Analysis of the policy in the context of EU legislation. Compliance with the principles of subsidiarity/ proportionality:**

This limitation period system would be respectful with the principles of subsidiarity and proportionality according to article 5(3) and 5(4) of the Treaty of the European Union as well as the Protocol no 2 on the application of the principles of subsidiarity and proportionality. According to the principle of subsidiarity in areas which do not fall within its exclusive competence, the Union shall only act if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States but can rather, by reason of the scale or the effects of the proposed action be better achieved at the union level. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the treaties. When analysing this proposal from the perspective of whether it complies with the subsidiarity/ proportionality principles there are four important issues to bear in mind:

1) Existence of homogenous, specific standards in the 2011/92/EU directive regarding the need to criminalise certain harmful sexual behaviours of adults against children across EU Member States as well as the minimum penalty that should be imposed in these offences.

It can be logically argued that imposing a minimum limitation period for the crimes included in the Directive is an analogous measure to imposing a minimum custodial sentence. If European institutions and Member States have agreed during the last decade that the later policy is compliant with the principles of proportionality/ subsidiarity it would not be consistent to now argue that the former one undermines these very same principles. In democratic systems, lawmakers and policymakers frequently tweak these two measures (i.e., severity of the penalty, probability of being imposed the penalty in practice) when attempting to design sophisticated criminal legislation that acts as a deterrent for criminal behaviour. That approach is supported by a strong and growing body of empirical evidence. In criminology, when designing public policies to prevent crime, it is common to use the rational choice theory of crime (Cornish and Clarke). Its main postulate affirms that a potential criminal adopts an individualistic agenda, focused on guaranteeing his own interest and maximizing his personal objectives (i.e., money, sex, power, status, revenge, emotional satisfaction). Therefore, the crime is an intentional decision of the offender, the result of a rational calculation, in which they have assessed the risks and benefits of committing a



certain crime in specific circumstances (situational theory of crime). The citizen who is tempted to transgress the law carries out an analysis of profitability, of the risks and benefits of his conduct. In his mental calculations, he moves between the pleasure he can get if he is successful, versus the pain if he is punished. Therefore, the State—which is responsible for preserving social order and the common good through the legal system—has the authority and the obligation to design an effective dissuasive incentive system. For this reason, the general prevention effect is one of the main functions of penal systems in democratic countries.

It is an uncontroversial principle in criminology, ever since it was enunciated in the 18th century by the jurist Cesare Beccaria, that there are three elements that the state can try to modify to influence to control the behaviour of citizens, creating this effective deterrence system: speed, severity, and the likelihood of punishment for certain criminal behaviours. The often-maligned punitive populism school of thought focuses solely on the severity of the penalty, ignoring the other two factors, when criminological evidence suggests that draconian penalties are not necessary to achieve high levels of public safety. By way of illustration, the Cambridge University Institute of Criminology was commissioned by the British Home Office to carry out a review of the main existing scientific research on the most effective criminal deterrence mechanisms. Their report concluded that: *“the studies reviewed do not provide a solid basis to infer that increasing the severity of sentences in general is capable of enhancing the deterrent effects of sentences”*. In addition, reviewing major macro-studies examining crime rates for a specific population, they found that a higher probability (certainty) of apprehension and punishment was associated with decreased crime rates.

By having a specific standard regarding the severity of the penalty but a vague generic one regarding the likelihood that, in practice, an offender will serve that penalty the 2011/92/EU directive has been trying to design a homogeneous European criminal justice system which has an effective deterrent effect in sex crimes against children with one hand tied behind its back. **EU institutions and Member States can even be accused of practising punitive populism as they seem to believe that strengthening penalties for crimes is always going to be a more effective measure than increasing the efficacy of these criminal norms.** Toughening up criminal penalties is not a helpful way to fight crime if there's a low likelihood that, in practice, offenders are going to be prosecuted by national criminal justice systems and therefore be imposed these “tough” sentences because by the time their crimes have been detected the statute of limitations has already run out. **It can even be argued that by strengthening a generic provision already included in article 15.2 of 2011/92/EU Directive, including a specific binding minimum standard instead of a vague one, EU institutions and Member States are trying to substitute a tough on crime approach for a smart on crime one.**

II) Failure of the current policy to introduce a minimum standard across all EU Member States. Development during the last 15 years of a three-track system, with low, mediocre and high performing Member States. Existence of a postcode lottery system for childhood





sexual abuse victims regarding their ability to have effective access to remedial judicial action.

According to article 5(4) of the Treaty of the European Union, in order to fulfil the principle of proportionality, the content and form of a Union policy shall not exceed what is necessary to achieve the objectives of the treaties. Therefore, disproportionately excessive policies should be avoided. However, EU legislation should not fall short either, implementing weak measures that are not effective in achieving the objectives of the treaties. **The vague, generic current wording of article 15.2 of 2011/92/EU Directive is a case study of a disproportionately lenient and weak policy that has utterly failed at achieving its main goal.** In the last 15 years, instead of developing across EU Member States a homogeneous, effective criminal justice system that is capable to investigate sexual offences against children overcoming the common phenomenon of delayed disclosure present in these crimes, the European Union has helped to establish a three-track system, with a low, mediocre and high performing group of states (see section C3). Unfortunately, at the moment there's a postcode lottery where the right of victims of childhood sexual abuse to access effective remedial judicial action, as described by article 47 European Union Charter of Fundamental Rights, depends on which Member State they live in.

III) Failure of the current policy to comply with the basic principles of the European Union as an area of freedom, security and justice. The unaddressed high risk that serial child abusers can easily exploit freedom of movement laws to move freely across Member States.

Article 3 of the Treaty of the EU sets the objective that the EU offers its citizens an area of freedom, security and justice without internal frontiers. This generic goal is developed by Title V of the Treaty on the Functioning of the European Union (Articles 67–89). The area was created to ensure the absence of border control at internal borders while offering at the same time a high level of protection to citizens. One of the key rights of European citizenship is that EU citizens have the right to move and reside freely within the EU (Article 21 TFEU; Directive 2004/38/EC). Every citizen of the EU has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State (art 15 Charter of Fundamental Rights EU). There's automatic recognition of some professional qualifications such as doctors or nurses (2005/36/EC). It has been acknowledged by EU institutions as well as Member States that even though these rights are highly beneficial for the majority of law-abiding citizens, there's a significant risk that they can be exploited by individual criminals or organized criminal groups (including terrorist or drug organizations). For this reason, there's also significant EU legislation and policies to guarantee police cooperation as well as cooperation in criminal matters to prevent and combat transnational crime (Title V TFEU Chapters I, IV and V). Different European agencies have been developed such as Eurojust, Europol and the European Judicial Network. Cooperation between the judiciary mainly operates through a mechanism called mutual recognition of judgments and judicial decisions (art 82 TFEU).

Since 2012, through the European Criminal Records Information System (Council Decision 2009/316/JHA), which helps connect national criminal databases to facilitate



information exchange, judges and prosecutors can access comprehensive information on the criminal history of European citizens, including previous convictions in other EU Countries. Each Member State also has the responsibility to inform the central authority of any other State of all criminal convictions handed down within its territory in respect of nationals of the latter State. In summary the joint goals of achieving a common area of freedom as well as security are intertwined and complement each other. To guarantee that EU citizens continue to enjoy fundamental rights it is important to establish safeguards to ensure that criminals don't exploit or abuse these rights to facilitate the commission of further offences.

However, the efficacy of these EU wide sharing of criminal information mechanisms depends in the first place on the accuracy of the national criminal databases of the different Member States. **If there are countries with weak childhood sexual abuse criminal statute of limitations laws, their criminal justice systems will be unable to successfully prosecute most sex crimes against children, due to the well-established phenomena of delayed disclosure, as by the time survivors are ready to press charges as adults, the limitation period has expired. This seriously concerning situation becomes a systemic loophole which undermines the quality of the data contained in their national criminal database.** Obviously, this problem has first and foremost national implications. This Member States are less likely to be able to effectively implement other policy measures included in the 2011/92/EU Directive. According to article 10.1 and 2 of this Directive, in order to avoid the risk of repetition of offences, Member States shall take the necessary measures to ensure that a natural person who has been convicted of childhood sexual abuse offences is temporarily or permanently prevented from exercising at least professional activities involving direct and regular contact with children. They shall also take the necessary measures to ensure that employers, when recruiting a person for professional or organised voluntary activities involving direct and regular contacts with children, are entitled to request information in accordance with national law by way of any appropriate means, such as access upon request or via the person concerned, of the existence of criminal convictions for any of the offences. **If most child abusers can't be prosecuted because, by the time victims break their silence, the limitation period has run out, they cannot be convicted. Therefore, they will not be included in the national sex offender's registry. When employers make a request to hidden/ unidentified predators that they provide the certificate of previous criminal convictions when they apply for a professional or voluntary position in direct and regular with children they will not be flagged up as a serious risk, becoming a false negative. This will allow them to continue to be in contact with children, significantly and unnecessarily increasing their risk of recidivism.**

However, this alarming situation also has European wide implications undermining the measures that other Member States, with higher quality statute of limitations legislation, are implementing to fulfil their obligations under EU law to ensure previous child abuse offences are considered a disqualification to exercise professional/ voluntary activities in regular and direct contact with children. According to article 10.3 of the 2011/92/EU, Directive Member States shall take the necessary measures to ensure that, for the application of the criminal background checks previously described, information concerning

the existence of criminal convictions for any of the child sexual offences included in the Directive, or of any disqualification from exercising activities involving direct and regular contacts with children arising from those criminal convictions, is transmitted in accordance with the procedures set out in Council Framework Decision 2009/315/JHA of 26 February 2009 (“*On the organisation and content of the exchange of information extracted from the criminal record between Member States*”) when requested under Article 6 (request for information on convictions) of that Framework Decision with the consent of the person concerned. As an illustrative example, if a Bulgarian doctor or teacher (this country has the lowest mark, an F, on this effective access to justice indicator) who is a hidden predator wants to work in Ireland, Cyprus, Sweden or Belgium (countries who have highest marks of A and B on this indicator) he will be able to take advantage of freedom of work and movement legislation. If he wants to work or volunteer in direct and regular contact with children in his new country, he will be asked to provide a criminal certificate of previous convictions by his home country which has been validated by the Hague apostille. However, as Bulgaria’s childhood sexual abuse criminal statute of limitations laws only make it possible to prosecute a tiny minority of sexual offences against children, he will be able to comply with this requirement. **Bulgaria’s poor childhood sexual abuse limitation law not only endangers national children but also children in other countries of the EU. The national systemic loophole caused by a weak criminal statute of limitations law has become, thanks to freedom of movement legislation, a European wide systemic loophole. That can be easily fixed by strengthening art 15.2 2011/92/EU Directive and including a minimum specific standard regarding limitation periods for sexual offences against children across all EU Member States.**

IV) Failure of the current policy to fulfil the goal enshrined in art 3.5 of the Treaty of the European Union that in its relation to the wider world, the Union shall contribute to peace, security, solidarity and mutual respect among peoples and the protection of human rights, in particular the rights of the child.

One of the key goals of the European Union is to adopt a foreign policy that promotes the protection of human rights, in particular the rights of the child. Therefore, it’s not surprising that article 17.1(b) of the 2011/92/EU Directive established an obligation for Member States to ensure their national legislations allow them to have extra-territorial jurisdiction to prosecute sexual offences committed against children outside their borders by their nationals. Article 17.2(a) and (c) also allow the option that National States may decide to establish extra-territorial jurisdiction for sexual crimes against children committed outside their borders against one of their nationals (or a person who is a habitual resident in their territories) or crimes in which the offender is a habitual resident in their territories. This criminal rule is an important step toward addressing the worrying criminal phenomenon of child sex tourism. It is a well-established fact that most of the perpetrators of these crimes come from the most developed countries of the world, including Europe. Usually, those who travel for the purpose of sex tourism target countries where law enforcement is weak and the chances of prosecution are minimal in Latin America, Africa, South East Asia or the Caribbean. Child sex tourism is often closely linked to issues surrounding poverty, armed conflicts, rapid industrialisation and exploding population growth. If, in developed countries, childhood sexual abuse victims often face multiple barriers that delay disclosure, (see

section B2) the difficulties that more vulnerable victims face in developing countries may be even greater. Thus, it's not unreasonable to establish the hypothesis that they may, on average, disclose the abuse even later in life, especially if there's a huge asymmetry of power, as usually happens in the context of sexual tourism exploitation.

It's also important to highlight a closely related phenomenon. Certain multinational institutions like the Catholic Church have developed, over decades, a pattern of sending serial child abusers from developed to developing countries. The goal is to take advantage of their weaker justice systems, a more deferential attitude by the media and civil society towards the church and more vulnerable child populations. It's a strategy to try to avoid intense legal and media scrutiny in developed countries. European Union Member States have been a traditional country of origin of this transnational criminal network (i.e., Spanish bishops and religious order superiors sending Spanish clergy sex abusers to Spanish speaking Latin-America). Later in this report, we will detail an example, the paradigmatic case of Father Nicola Corradi and the longstanding clergy sex abuse scandal over six decades in the deaf and mute Provolo institutes of Verona (Italy), La Plata and Mendoza (Argentina).

However, extra-territorial jurisdiction becomes window dressing if it's not possible to effectively prosecute most sex crimes against children due to the delayed disclosure phenomenon coupled with inadequately short childhood sexual abuse criminal statute of limitations in some countries. Moreover, the current Directive 2011/92/EU ignores the risk of a potentially serious unintended consequence of increasing child protection standards across EU Member States if they are not accompanied by measures to increase child protection standards in other parts of the world: the possibility that, in sexual crimes against children, we may observe what criminologists describe as a "displacement of crime effect." When a jurisdiction implements measures to prevent the commission of a crime, the offender is encouraged to modify his behaviour to avoid such preventive actions. One of the possible strategies is geographic displacement, when an intervention reduces or eliminates the opportunities to commit crimes in a geographic area, the potential offender moves to another geographic area where these impediments do not exist. If child protection standards are increased in the EU, potential European child abusers may decide to move abroad, to states with less strict legislation, weaker judicial systems, or significant numbers of especially vulnerable minors, in order to continue to commit sexual crimes against minors with impunity.

In summary, to develop a successful foreign policy, all Member States should work together and fulfil the agreed commitments. Having a group of Member States who are unable to successfully implement the extra-territorial jurisdiction norm enshrined in art 17 of 2011/92/EU Directive seriously undermines this important policy, as the EU will be judged abroad by its weakest link. By strengthening art 15.2 of the Directive 2011/92/EU, including a minimum specific standard regarding limitation periods for sexual offences against children across all the EU, these problems can be easily addressed.

## **E) Common arguments frequently used against laws that extend/ abolish criminal statute of limitations. Evidence-based counterarguments.**

In the last two decades, multiple arguments have been used to oppose national laws that aim to adjust the limitation period in childhood sexual abuse crimes to the average age of disclosure of victims. There are strong, evidence-based counterarguments to address the concerns that have been raised. The common legal criticisms to this criminal law policy proposal can be classified as possible material or procedural violations of fundamental rights: Without wishing to be exhaustive, we are going to mention the most mentioned:

### **E1: Considerations regarding procedural justice**

- *Violation of the right to a defence (art 48 EU Charter of Fundamental Rights):* It is argued that the passage of time significantly weakens the means to exercise such right. However, the modification of the statute of limitations should not alter the normal operation of the criminal process. This policy will not change the burden of proof, which will continue to fall on the prosecution. The accused would continue to be innocent until proven guilty, respecting the presumption of innocence. A high standard of evidence will also continue to be maintained for sentencing, maintaining the principle of “in dubio pro reo”<sup>7</sup>. It is not for the defence to prove innocence, but for the prosecution to prove guilt. If there is insufficient evidence, the accused will be acquitted, as is currently the case.

- *Lack of evidence due to the passage of time:* There are legal experts who argue that over time it becomes progressively more difficult to prove whether an alleged crime has happened, which increases the risk of judicial errors. It is the so-called legal theory of the disappearance/obsolescence of evidence due to the mere passage of time. As the Catholic hierarchy in other countries likes to argue, when it opposes reforming the statute of limitations: “*witnesses die, memories fade, evidence disappears.*” (*Archdiocese of Baltimore policy statement opposing Senate Bill 575*). However, the difficulty to find robust evidence does not necessarily depend on the time elapsed since the alleged crimes occurred. It may be present in crimes that occurred shortly before their prosecution. Or conversely, there are crimes committed decades ago, in which there may be abundant evidence, reducing the possibility of error to a minimum. In sexual crimes against minors there are at least five situations where the passage of time does not entail excessive difficulties to probe a crime has indeed occurred:

1) Confession of the perpetrator: It is not unheard of that sometimes child abusers do confess the crimes they have committed. For example, in 2016, in Barcelona (Spain) one teacher who had worked for decades at a religious school, Joaquín Benítez, publicly confessed to having committed sex crimes against his pupils. He ratified his confession during the subsequent criminal trial. Benítez was accused by 17 victims, but he could only

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<sup>7</sup> The principle of in dubio pro reo means that a defendant may not be convicted by the court when doubts about their guilt remain.



be convicted in four cases. The rest were time-barred since they were committed in the 1980s and 1990s.

2) Existence of biological evidence: Thanks to the progress of forensic science, it is possible to obtain biological evidence, such as DNA, in many cases of sexual assault and murder. However, the police do not always immediately have a suspect with whom they can compare the genetic information obtained at the crime scene. For this reason, solving cases committed decades ago is becoming more and more frequent. For example, in 2018 police arrested Joseph de Angelo in California, accused of being the Golden State Killer, who committed 12 murders and 45 sexual assaults between 1976 and 1986. DNA collected more than three decades ago had never matched any of the samples stored in police databases. The police decided to use a private DNA profiling service used by its members to establish their family tree. With this approach, the police found a distant relative of the murderer. After a rigorous investigation in which a direct DNA sample of the suspect was obtained, the murderer was arrested.

3) Existence of graphic material: It is not uncommon for sex offenders to record or take photographs of the crimes they commit. They consider them “trophies” from their “hunts.” Later they visualize this material to remember the aggression, which produces sexual stimulation. This is what happened in the San Viator case in Spain. José Ángel Arregui Eraña, a Spanish religious member of the Congregation of Clerics of San Viator, was arrested in Chile in 2010 for possessing thousands of images of childhood sexual abuse material. Among them were recordings made with a hidden camera of the sexual abuse he committed against at least 15 children between the ages of 12 and 14 in religious schools in Madrid and the Basque Country. When the religious order learned of the abuses, they did not report him to the criminal justice system, but transferred him to a new school, first within Spain and later abroad. He was sentenced to eight months in prison, only for the crime of possession of childhood sexual abuse material. The sexual abuse that he had committed and recorded, which the court considered proven, was not criminally punished due to the statute of limitations.

4) Multiple complaints of sexual abuse against the same perpetrator: It is not uncommon for multiple victims, acting independently (often without knowing each other personally), to report similar abusive acts committed by the same perpetrator, who has used the same modus operandi. In Spain, there have been several high-profile cases. A paradigmatic case has been that of the religious Jesús Linares who sexually abused over decades dozens of his students with total impunity (among them the renowned Spanish award-winning writer Alejandro Palomas who was the first to denounce the case in the media) in Catalan schools belonging to the La Salle religious order. He benefited from the protection and cooperation provided by his superiors, who, after multiple complaints, instead of fulfilling their legal obligation by reporting the facts to the courts, decided instead to transfer the serial child abuser from school to school so that he could continue committing his crimes. Another example is what happened at Montserrat Abbey in Catalonia, the shrine that holds the Virgin of Montserrat, patron saint of Catalonia and one of the most well-known and visited tourist

destinations in Catalonia. After a first isolated complaint it was discovered that brother Andreu, head of the Catholic scout group for 40 years, had been a sexual predator and paedophile who abused at least 12 victims over several decades. Other similar cases of serial paedophiles recently uncovered by the media have been that of the BBC presenter Jimmy Savile or the Spanish athletic coach Miguel Ángel Millán (who abused, among others, the Spanish former Olympic silver athletics champion Antonio Peñalver).

5) Documentary evidence: When sexual abuse occurs in institutions that care for minors, there may be documentary evidence (i.e., previous complaints from other victims, witness statements, medical and work history) that will help clarify the case. For example, in Anglo-Saxon countries, it has been common for lawyers of victims of clerical sex abuse in civil litigation to request access to the canonical archives of the religious institution during the judicial investigation. The canonical documents obtained have made it possible to demonstrate on countless occasions that the Catholic hierarchy knew of the sexual crimes committed by their religious members but decided not to report them to the civil justice, allowing the child molester to continue abusing children with impunity. This cruel and negligent attitude, documented in their archives, has forced them to pay four billion dollars in compensation in the United States alone. Canonical files have also been useful in the context of criminal investigations. For example, in Chile the prosecutor's office carried out multiple judicial searches at the headquarters of several dioceses, which allowed the discovery of 90 canonical investigations carried out against child offending priests since 2007, of which the Church had not informed the civil justice system. The evidence obtained led the prosecutor to charge the Cardinal of Santiago, Ricardo Ezzati, with covering up sexual abuse against children committed by one of his close collaborators, the priest Óscar Muñoz.

## **E2: Considerations regarding material justice:**

- *It violates the principle of legal certainty:* This argument is not convincing if we use a strict and rigorous definition of this legal concept. In criminal law, legal certainty is guaranteed if potential offenders can know in advance what the criminal consequences of their behaviour are going to be, thus preserving their individual autonomy to make rational decisions about their behaviour. To guarantee this right, democratic constitutions frequently establish the non-retroactivity of criminal sanctions that are not favourable to the accused. None of the national or European policy proposals that have been made to extend/ abolish the criminal statute of limitations in sexual crimes against children include a non-retroactivity clause. Therefore, if in the future, national legislation is modified by the new European Directive, citizens will continue to know in advance what the consequences of future criminal behaviour will be. In addition, if we use this peculiar conception of legal certainty, the logical conclusion of the fact that most European countries have certain crimes, such as genocide or crimes against humanity that do not have a criminal statute of limitations, is that these norms also constitute a violation of the principle of legal certainty. It is not correct from a technical point of view to equate any increase in the severity of the criminal system with a loss of legal certainty.

- *Violation of the accused's fundamental right to a criminal process without undue delay (art 47 EU charter of fundamental rights):* It is argued that citizens have the right to have their case processed by the courts in a timely manner. Therefore, the criminal statute of limitations "*is the legal instrument that implements the fundamental right to the finalization of criminal proceedings within a reasonable period.*" **Accepting this legal argument implies recognizing this right as absolute, even in cases where the behaviour of the accused or his accomplices has been precisely what has prevented criminal proceedings from being initiated or advanced. In this way, legally undesirable attitudes such as being in contempt of court or engaging in a cover-up would be encouraged.** If we talk about sexual crimes against minors, in the last two decades it has been proved beyond a reasonable doubt that multiple institutions (Catholic Church, Jehovah's Witnesses, boy scouts, sports federations) have covered up these crimes in a generalised and systematic way. They have obstructed justice, destroyed evidence and intimidated witnesses. A paradigmatic case of structural and systemic cover-up is that of the Holy See (Tapsell). The Vatican went so far as to establish in its Code of Canon Law that canonical investigations into cases of clerical childhood sexual abuse were protected by the Pontifical Secret. Thus investigators, witnesses and even victims were prohibited from reporting the crime to civil justice, under penalty of excommunication. In practice, this meant that in most countries the Catholic Church operated a parallel and secret justice system established for decades, in which sexual abuse committed by priests was considered a sin that had to be atoned for with sentences of prayer and penance, instead of as crimes punished with custodial sentences (Robertson).

It's unreasonable and unfair to describe the common delay in investigating these CSA offences by the criminal justice system as undue delays, attributing the responsibility of the delay to an abnormal functioning of the administration of justice or to the irresponsible attitude of the victims. Above all, when they are mainly due to the obstruction of justice by the institutions where the crimes took place or to the threats and pressure of the perpetrators to silence some victims who are particularly vulnerable due to their age. In addition, it is important to bear in mind that in childhood sexual abuse crimes, since the initiation of the criminal action depends on the activity of the victim, the risk of state manipulation is avoided, even when there are no limitation periods, since the State is unable to strategically instrumentalize the exercise of criminal action, since its initiation depends on the psychological process of recovery by the abused child, not on the will of the state powers.

- *It violates the fundamental principle of criminal law that custodial sentences must be aimed at achieving the re-education, rehabilitation and social reintegration of the criminal.* There are legal experts who argue that the suffering experienced by the guilty criminal over time, due to the uncertainty about whether he will finally be punished, is equivalent to the function of punishment by a custodial sentence. This assertion is not supported by scientific or empirical evidence. There are culprits who, for various reasons (i.e., people with a high social and economic position, great asymmetry of power between the perpetrator and their victims), have a high feeling of impunity. They are firmly convinced that they will never be criminally punished for the crimes they have committed. Other legal experts sustain that





imposing a delayed custodial sentence can prevent the re-socialisation of the guilty. The criminal dangerousness of the defendant may have been diminished/ eliminated with the simple passage of time. It's the so-called legal theory of the inevitable change of the offender's personality by the mere passage of time. As it has been argued previously (see section B.3) current empirical evidence prove the falsehood of this theory. Unlike other types of criminal offenders, the recidivism risk of child sex abusers does not significantly decrease merely by the passage of time. Therefore, scientific evidence supports the assertion that even child sexual abuse crimes committed long ago indicate a continuing risk of current reoffending by the offender. Child molesters routinely commit premeditated and planned crimes. They use a process of emotional and psychological manipulation with their victims, grooming, to reduce their resistance. They tend to abuse minors in their circle of trust with whom they have previously established an emotional bond. By using a modus operandi that does not require violence or intimidation, they do not need to have high physical strength or sexual potency. Thus, their risk may increase as they age, since they have more practical experience and a more sophisticated modus operandi, their social status in the community is higher, and there is a greater asymmetry of power with their victims.

An example of this worrying phenomenon would be long criminal career of Father Nicola Corradi, a sexual predator who abused dozens of children over 60 years at the Provolo deaf and mute institutes of Verona, La Plata and Mendoza. In 2009, 15 pupils of the deaf and mute institute in Verona sent a sworn document to the weekly news magazine L'Espresso breaking the silence about the serious incidents of childhood sexual abuse committed by multiple priests and religious brothers against disabled children during a period of at least 30 years up to 1984. The statement named 24 priests and other faculty members, including Father Corradi. They described harrowing abusive acts including sodomization, forced masturbation and other forms of serious sexual exploitation. They explained that dozens of their peers had experienced similar experiences but that they did not want to come forward publicly. They had been very vulnerable children who came from poor backgrounds, had boarded at the school while away from their families and due to their disability and social isolation were unable to communicate with trusted adults about the abuse. Unfortunately, despite the overwhelming evidence they could not press criminal charges against their perpetrators due to Italy's predator friendly, archaic and restrictive criminal statute of limitations.

Failed by the criminal justice system, survivors tried to warn the local church, the Vatican, as well as Pope Francis about the danger of free sexual predators who remained in contact with children. In 2014, they mailed the Pope a list of 14 credibly accused priests who had committed systematic abuse and were still alive. They delivered that same letter by hand to him in 2015, an incident which was documented by a Vatican photographer. Mentioned in the list were the names of four priests who had been sent to Argentina, including Father Nicola Corradi a notorious abuser who had been transferred by the Church to the Provolo institute of La Plata in 1970, where he stayed until 1994, before moving to the Provolo institute of Mendoza where he became the director of the school. The local canonical investigation launched by the local bishop was a whitewash. Only one priest was ordered to lead a life of prayer and penance away from minors and three others were given admonitions. Regarding Corradi, no action was taken by Pope Francis or the Vatican to

launch a canonical investigation, warn Argentinian civil authorities about the allegations or to suspend him of his teaching responsibilities.

In 2016, the Argentinian police broke into the premises of the school, detaining 14 people accused of cooperating or participating in very serious sex crimes, including multiple instances of aggravated rape, against children at the school. Nicola Corradi, who was 80 at the time, was the ringleader. The worst cases of abuse had happened between 2004 and 2009, when Corradi was in his seventies. However there had been more recent incidents: in 2013 he distributed pornography to children, and he touched students inappropriately in 2015 and 2016. Prosecutors in La Plata launched another investigation identifying another paedophile ring composed of at least five perpetrators, among them Corradi. He was accused by two survivors of abuse while he was teaching in La Plata. Another adult survivor had died by suicide. Argentine prosecutors accused the church of not cooperating with the criminal investigations refusing to turn over relevant documentation. Corradi was convicted in 2019 to 42 years of jail. He died three years later. He remained a danger to children throughout his life, constituting a powerful case study that unlike other criminals, the risk of recidivism of child abusers does not usually significantly diminish over time. **A clear example of why the main function of expanding/abolishing criminal statute of limitations is not necessarily prosecuting the crimes of the past but preventing the crimes of the future. If, due to restrictive statute of limitations, the criminal justice system can't prosecute historical cases, child abusers are not convicted, they don't enter the sex offender's registry and therefore can easily access professional or voluntary positions in close contact with children.**

*- It violates the basic principle of criminal law that establishes that the state must renounce the ius puniendi<sup>8</sup> due to the passage of time.*

It is argued that, in a liberal state, unlike in an authoritarian one, criminal law should not hang like a sword of Damocles over the head of the accused indefinitely, keeping him in a state of eternal uncertainty. There must come a time when the culprit knows that the crimes he committed no longer carry the risk of criminal prosecution. The culprit has the right not to suffer and indeterminate delay in the situation that involves the virtual threat of a criminal sanction. With the passage of time, the need for punishment to maintain social order diminishes, until it disappears completely. The criminal conflict loses intensity over time and society no longer feels the same need to punish the conduct, however the punitive claim remains intact in terms of its intensity (that is, the penalty to be imposed is always the same, despite of the passage of time), which can generate a problem of proportionality in the application of the sentence, since while the entity of the criminal reaction remains constant,

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<sup>8</sup> Ius puniendi: Latin legal expression used to refer to the sanctioning power of the State. It literally translates as the right to punish or the right to sanction. The expression is always used in reference to the State, in relation to its citizens. This punitive power belongs exclusively to the state. It has the monopoly to decide whether a certain behaviour constitutes a crime and its appropriate punishment.

the entity of the criminal conflict—in terms of its intensity—would decrease with the passage of time. Therefore, the renunciation of the *ius puniendi* in these cases is not a power that the State can exercise freely and arbitrarily, but an obligation, to solve the disproportion that the passage of time causes between the intensity of the punishment and the decreasing entity of the criminal conflict between the perpetrator, the victim and society. It is illegitimate for the state not to dispense with the sanction when it is not necessary to preserve the fundamental interests of society. It is the so-called legal theory of the crime already forgotten. However, the other side of the coin of this statement is that the state cannot arbitrarily waive the *ius puniendi*, if the criminal sanction is still necessary to maintain the order and the fundamental values of society, since neither the memory nor the consequences of the crime have disappeared. This principle is what justifies the international norm that there should be no statute of limitations in crimes of genocide and crimes against humanity, since it is considered that, even if they happened decades ago, the social memory is still valid, so they do not constitute the past, but the present.

Therefore, the debate when deciding how to regulate the statute of limitations in sexual crimes against children should not focus on whether the state should waive the *ius puniendi*, as if it could dispose of such power arbitrarily and discretionally, but when it has the legitimation/ obligation to do so, because it is reasonable to say that the consequences of the crime have been completely mitigated. As will be explained below, there is abundant scientific and criminological evidence that shows that even sexual crimes against minors committed decades ago continue to have an important impact in today's society, so based on empirical data, an early renunciation of the *ius puniendi* of the state in these crimes is not justified. Summarizing, the argument that the criminal conflict loses intensity over time is highly questionable in this type of crime, in which the victim, in an initial stage, blocks the episode or is not aware that they have been victim of an attack due to their age and incomplete developmental processes (and immaturity). Thus, the conflict will produce its impacts only years later when—with greater maturity and capacity for discernment—the victims understand that what they experienced was a crime, so the conflict would not lose intensity over time, but just the opposite (Jackson & Valenzuela). **Consequently, the seriousness of these crimes and the intensity of the consequences they leave on the victims, make the argument that over time there will be a reduction of the criminal conflict in these cases doubtful. Even in the cases in which this is the case, and the conflict loses intensity, the punitive claim would remain intact and the possible problems of proportionality that this could generate would justify, at most, a reduction in the sentence, but not the renunciation of the application of a penalty.**

- *Sexual crimes against minors committed in the past do not endanger the current social order. Over time, its harmful content has been attenuated until it has completely disappeared. Currently they lack a harmful impact that justifies their sanction.*

Some legal experts have argued that there are two fundamental reasons that justify the existence of criminal statute of limitations in democratic societies: (1) the disappearance of the harmful content of the crime over time, and (2) the need to implement procedural economy. To understand the rationale behind criminal statute of limitations it is essential to



understand the function of criminal law, the reasons that explain the creation and maintenance over time of the system of state penalties and punishments. Its main mission is to contribute to a certain model of society. Legal scholars have used various names such as “maintenance of a social order” or “confirmation of the configuration of society”. In European societies, the foundations of this social/political order are usually based on the dignity of the person, the inviolable rights that are inherent to them, the free development of the personality, respect for the law, and the rights of others. The commission of a crime generates a conflict that disturbs the social order. For this reason, punishment is always a reaction to an event which has disturbed the social order that needs to be preserved. With the passage of time, this disturbing content progressively attenuates until it disappears completely. The community no longer sees it as a dangerous phenomenon for the current social model. It belongs to the past not to the present. Consequently, the state’s punitive response to an event that has lost its ability to negatively affect the present social model ceases to make sense. Imposing a sentence in these circumstances would violate the principle that only the sentence necessary to maintain the current social order is legitimate.

Consequently, what matters are not the events, but the social perception of them. The community considers that criminal acts no longer belong to the present but to collective history. In some cases, they have already been forgotten. What is already history, is not part of the judge’s competence. This conception allows us to understand why in most European criminal codes the duration of the statute of limitations depends on the seriousness of the crime. The greater the infraction, the more time must pass before the community perceives it as “a matter of the past.” Not necessarily that they have forgotten the facts, but that their perception has changed to such an extent that they are perceived as history. Certainly, some famous crimes can continue to be part of the collective memory, but from a certain moment even these crimes will only be observed as past events against which it makes no sense to react with punishment. This perception also explains why there is an international consensus that considers that crimes of genocide and crimes against humanity should have no statute of limitations. There are events of such gravity, which disturb the current social order in such a way, that they cannot be perceived as part of the past, until those guilty are judged and sentenced.

Statute of limitations systems whose basic pillars are the passage of time and the severity of the sentence can only be explained by taking into account the idea that the function of criminal law is to contribute to the preservation of a certain model of society. Starting from this idea and from the affirmation that an act should only be sanctioned when its punishment is essential, the presence of statute of limitations in positive law is mandatory, since the sanction of events that are already perceived as a part of the past is not necessary for the maintenance of the present social order. When we talk about sexual crimes against minors, the available scientific and criminological evidence shows without any doubt that the harmfulness of sexual crimes committed against children decades ago does not diminish until it disappears with the passage of time. They produce damage that remains unchanged over time. They constitute a danger to the current social order, to which the state has the obligation to react. For this reason, the science justifies an ambitious extension or elimination of the statute of limitations in these crimes. We will now analyse the three main arguments that justify this position.



- The devastating consequences of childhood sexual abuse usually persist well into adulthood. The damage does not disappear over time. The economic cost to the state and to adult survivors of childhood sexual trauma is immense.

Prosecuting child sex crimes decades after they occur is scientifically justified because the damage caused by childhood sexual trauma does not disappear during childhood and adolescence. As explained above, the devastating effects persist well into adulthood, as well as the economic cost for survivors, their families and society (see section B1). In summary, the trauma of sexual violence in childhood continues to be a major source of suffering in adulthood. The damage caused by the aggressor has not been attenuated or disappeared over time, it is still in force today. The consequences that it leaves on the victim do not belong to the past but continue in the present.

- Persistence of the risk of secondary re-trauma for the victim. The exploitation of libel/defamation laws by the perpetrator as a mechanism of control and intimidation.

The current statute of limitations system leaves survivors of childhood sexual abuse seriously unprotected. One of the main reasons why victims dare to report the abuse they suffered is to prevent their perpetrator from reoffending, since he often continues to exercise a professional role that allows him to have continuous access to children. However, the victims are faced with a perverse, even diabolical, dilemma. **If they publicly denounce the crime, as the statute of limitations has run out, they expose themselves to being sued by their perpetrator for slander. But if they don't report it, they risk having their perpetrator reoffend, which generates a significant sense of guilt.** Either of the two situations supposes a serious secondary re-traumatisation of the survivor. This problem is not exclusive to sexual crimes committed against children. It also occurs when the victim of the aggression has been an adult woman. As a result of the #MeToo movement, there have been frequent cases in which sexual predators have sued their victims for slander to try to silence them. For example, the actor Bill Cosby, after being accused of rape by more than 60 women, decided to file a countersuit against seven of them. Although almost all the crimes had run out of the statute of limitations, he was able to be convicted in April 2018 for the only case that had not (the case was later overturned on appeal). After the court conviction, Bill Cosby had no choice but to drop his lawsuit, reaching an agreement in 2019 with the women he had falsely accused of defamation. The feminist movement has correctly identified power and not sex as the primary motivation driving sex offenders. In a sexual assault there is always a marked asymmetry of power. As the #MeToo movement has shown, powerful sex offenders have used their money, prestige, and influence to silence their victims for decades. The crooked use of libel and slander claims by the perpetrators is a cynical attempt to recreate that asymmetry of power in the courts of justice. Unlike criminal proceedings, in which the rights of victims of violent crimes are guaranteed by the prosecution, in civil proceedings it is the victim who must pay for their lawyer. This situation supposes an inequality of arms between both sides of the litigation, which generates an

important chilling effect when it comes to publicly denouncing these crimes. A problem that could be solved with an ambitious reform of the statute of limitations, especially when the victim of the sexual crime has been a child or adolescent.

- Persistence of a high risk of perpetrator's recidivism. The criminal statute of limitations for these crimes is a real "loophole" that drastically reduces the effectiveness of the national sex offender's registry.

The high levels of impunity enjoyed by sexual aggressors due to inadequate statutes of limitations poses a high risk of recidivism in the present, since it undermines the implementation of child protection mechanisms existing in current legislation, such as the national sex offender's registry. Previously, we have provided a brief summary of the abundant criminological evidence that proves the premise that sexual crimes against children committed decades ago imply a continued risk of recidivism nowadays by the perpetrator (see section B.3). Unlike other criminals, the risk of recidivism of child abusers does not decrease significantly over time. For this reason, it cannot be affirmed that in these crimes the social relevance of the crime has been attenuated over time until it disappears.

**Today's society will not consider the existence of many hidden and unrehabilitated sexual predators working in children's institutions as a forgotten event of the past, but as an unacceptable risk to European children today. Civil society in the different Member States will demand to know who they are, where they are and what crimes they have committed, since it is information of public interest. Civil society will also demand that national legislative bodies adopt the appropriate legislative measures to prevent these dangerous criminals from being in contact with minors.** This is impossible unless there is an ambitious reform of the statute of limitations. If a perpetrator cannot be convicted because the statute of limitations has run out, he does not enter a Member's State sex offenders registry. Therefore they can easily pass criminal background checks, becoming a false negative, which allows the undetected perpetrator to easily work with minors.

This is not a theoretical risk. As an illustration, according to data from the Ministry of Justice, approximately 570 sex offenders try to work with children each year in Spain but are detected thanks to the national sex offender's registry. In just three years, 1,730 people with a criminal record for crimes against sexual freedom have been prevented from working as teachers, coaches, or volunteers. However, the Registry is incomplete. For example, it did not include José Miguel San Martín, known as Don Chemi, who received 23 complaints from his former students for committing serious child sex crimes when he worked as a religious teacher at the Salesian school in Deusto in the 1980s. The management of the centre learned of the events in 1989, but did not report them to the justice system, instead they fired him from the school and expelled him from the congregation. The motivation of the victims to break their silence was when they discovered that he was still working with children, in a summer camp. A court dismissed all complaints due to the statute of limitations.



This case is not an anomaly but representative of a serious structural and systemic problem. Criminological research has shown that multiple repeat offenders are more frequent than previously believed. For example, the John Jay Report, published in 2004, studied the magnitude of the clerical clergy sexual abuse scandal in the United States. It identified 4,392 religious child abusers, who abused 10,667 individuals. Three and a half percent of them had received more than ten complaints. This small number of sexual predators were extremely dangerous, as they were responsible for a disproportionate number of sexual assaults, specifically 28 percent of all reports (2,960 cases). For this reason, the main utility of ambitiously reforming the statute of limitations is not to be able to punish crimes committed in the past, but to prevent possible crimes in the future. The legislator must not only weigh the rights of the accused, as opposed to those of their adult victims. They must also value the rights of children to grow up in a safe environment. According to the Convention on the Rights of the Child, in this type of situation, the best interests of the minor must always prevail (art 3 CRC). High levels of impunity due to statute of limitations ensure that the national sex offender's registries are ineffective, a veritable loophole that does not include many of the most dangerous sexual predators in the different European countries.

- *It is not justified based on the criteria of procedural economy.* Although it is not often an argument that is used openly by the defenders of maintaining the status quo on this issue, surely due to its unpopularity, the criteria of procedural economy is one of the pillars that justify the legal figure of the criminal statute of limitations. The criminal justice system has limited and insufficient resources that prevent it from effectively prosecuting all the offences committed. By using the criteria of procedural economy, the state tries to opt out of an unconditional duty of persecution, which it is not capable of implementing. The objective is to lighten the burdens of the administration of justice. To avoid a perception of arbitrariness and discretion, it is necessary for the legislator to establish by law a series of objective selection criteria, which justify the decision of the courts not to prosecute certain crimes. One of the key measures is the statute of limitations. It is considered an ideal measure because it is an element that is easily quantifiable in a precise and objective manner, so that by using it the public's trust in the impartiality of the criminal justice system is not jeopardised. Various authors in the doctrine have justified this position. For example, Klug, JZ considers that *"the prescription is a legal institution of an economic-procedural nature, with which the undesired effects of an unlimited application of the principle of procedural legality must be prevented."* In Spain, the legal expert Gómez Orbaneja argues: *"the statute of limitations is a necessary measure because, if the courts did not exist, they would be drowned in an accumulation of criminal actions."*

It has been argued that the failure to comply with the duty to punish is often not due to an erroneous functioning of the administration of justice but to the absence of evidence of criminality, the impossibility of identifying or locating a guilty party or the lack of human resources to investigate all the crimes committed. The statute of limitations fulfils the function of establishing: *"an objective limit on the part of the state to determine how much time should be invested in the prosecution of alleged infractions in the certainty that, despite the fact that*



*not all of them end up being punished, the function of criminal law will not be appreciably affected” (RAGUES).* It is argued that due to the limitation of human and economic resources in criminal prosecution, the statute of limitations forces the police and judicial bodies to concentrate on what is essential. Therefore, the time limit for the initiation of criminal proceedings is the consequence of a judgment call by the legislator, based on the idea that maintaining the confidence of citizens in the validity of the norm does not require the punishment of all infractions. If not all crimes can be prosecuted effectively, it is reasonable to exclude those whose clarification has been revealed as especially complex and whose moment of commission is distant in time, the need for punishment having been weakened for this reason. It is better to concentrate the scarce resources of the administration of justice on the most recent cases, whose prosecution and punishment are easier. The criminal procedure law of many State Members (i.e., Spain) allows the statute of limitations to be declared at any time during the process, with the aim of avoiding the possibility that the court ends up handing down a guilty verdict despite the acquittal by statute of limitations, since this assumption would not be consistent with the logic of procedural economy.

Therefore, in many Member States the specific statute of limitations that is established for each crime is different depending on which of the two foundations of this legal norm is used (conversion of the crime into the past or procedural economy). The first of them establishes the maximum term that the legislator cannot legitimately exceed the moment in which a sanction becomes unnecessary due to the passage of time. However, below this maximum limit, the legislator has a certain margin of freedom to exempt certain acts from punishment when a certain time has elapsed since their commission, guided by the criterion of procedural economy. The legislator attributes different weight to each of these two criteria depending on the seriousness of the infraction. In lesser crimes, such as theft, the economic criterion has greater weight; while in the most serious cases, such as murder, the criterion of conversion into the past has greater weight. In other words, the state can stop punishing many crimes of theft without the social order being affected in a relevant way; however, it can only give up prosecuting murder cases when so much time has passed since its commission that it is considered a historical act not relevant to the present.

There are two main reasons that undermine the argument that extending the statute of limitations in sexual crimes against children is not consistent with the principle of procedural economy:

o It is wrong to automatically equate the period of time that has elapsed since the commission of the crime with evidentiary difficulties. As has been argued above, there are five situations where it can be clearly proven that a childhood sexual abuse crime has taken place, even if it was committed decades ago: when there is a confession by the guilty party; biological evidence (i.e, DNA); recordings or photographs of the sexual assault; the perpetrator is a serial child abuser or is there documentary evidence. If the criterion of procedural economy justifies devoting the scarce judicial resources to clarify the simplest cases to solve, where there is more evidence, the parameters described above constitute a series of more valid and effective objective criteria when deciding which cases to investigate than an arbitrary, archaic and predator friendly temporary limitation period. If there is little





evidence in an alleged case of child abuse committed decades ago, the judge can order a provisional dismissal in the initial phases of the investigation, without having to dedicate a disproportionate number of resources. If new evidence subsequently emerges (i.e., allegation by other victims of the same perpetrator), the judge can always reopen the case and devote more resources to the investigation. The limitation period for these crimes after an arbitrary period of time, therefore, does not constitute an objective and reasonable criterion when deciding whether scarce judicial resources should be allocated to their investigation. It is more reasonable that this important decision depends primarily on the available evidence.

o Applying the criterion of procedural economy in crimes of childhood sexual abuse constitutes a false economy. The high economic costs, both for the victim and for society, of sexual violence against children have already been described above. Significantly increasing the statute of limitations for childhood sexual abuse crimes allows the five functions of a criminal sentence in a democratic state to take effect. Its proven effectiveness record over centuries will reduce both the number of childhood sexual abuse crimes committed and the negative consequences for society and the state, representing significant savings for public funds. Regarding the function of general prevention, the imposition of a sanction after a long period of time can serve to demonstrate to potential criminals that their crimes will not remain unpunished forever, thus reinforcing the generic deterrence effect attributed to the punishment. At the level of specific prevention, the judicial conviction allows the sexual perpetrator to enter the national sex offender registry. If we look into the rehabilitation function of the penalty, taking into account the previously described criminological evidence on the scarce reduction in the risk of recidivism of child abusers over time, a judicial conviction allows the perpetrator in many countries to have access to evidence-based rehabilitation programs in prison. These three functions of punishment can serve to reduce the number of sexual crimes committed against minors and therefore the total number of victims. In some countries like Spain, where it's possible to achieve civil compensation through the criminal justice process, the penalty's function of guaranteeing the fundamental rights of the victims is achieved when the criminal sentence forces the perpetrators and the institutions which have a subsidiary civil liability duty to have to financially compensate the survivors. Having sufficient financial funds will allow them to access quality therapy of their free choice, regardless of the resources available in the public health system, which will reduce the sequelae of trauma and therefore the direct (health-related) and indirect (socio-labour) costs for the state. Part of the economic cost of sexual violence will be transferred from the victims, their families and the taxpayer to the perpetrators and the institutions that protected them. The retributive function of a functioning criminal justice system decreases the probability that the victims or their relatives will be tempted to use private justice, which decreases the subsequent costs of prosecuting the new crime committed against the perpetrator.

In summary, the main legal arguments that have traditionally been used to oppose extending or eliminating the criminal statute of limitations in childhood sexual abuse cases are not sufficiently robust. In some cases, because from a legal-technical point of view they are erroneous and/or illogical. On other occasions because they are not supported by the most up-to-date empirical, criminological, scientific, journalistic or judicial evidence available.



We can affirm that the main obstacle that prevents the adoption of this common-sense measure at the national and regional level is not the existence of unsurmountable legal-technical barriers but rather the lack of political will in some national legislatures and European regional institutions (Council of Europe, European Union). The legislator has chosen to buy time and delay the debate. However, since it has become a pressing issue strongly advocated by survivors' groups, child protection organisations and civil society, there is no doubt that sooner or later all Member States will have to act to solve the problem by reforming their laws.

## F) SUMMARY

Empirical evidence shows that CSA is a serious public health emergency in the European Union both due to its frequency, the severe long-term consequences for victims, and its huge financial cost. The EU Directive 2011/93/EU has tried to implement a comprehensive policy to tackle the issue based on prevention, healing and access to justice measures. The Directive, following the steps of the Lanzarote and Istanbul Convention approved by the Council of Europe, acknowledged the phenomenon of delayed disclosure, as victims often take decades to be able to process the trauma and contact civil authorities about the crime they suffered. Due to inappropriately short SOL's, often it's not possible to investigate the crimes, as sexual offences have become time barred. This situation not only denies a group of vulnerable EU citizens access to effective remedial judicial action, contravening the EU charter of Human Rights (art 47), but also unnecessarily puts children at risk. Unlike other criminals, the risk of reoffending for child abusers does not significantly decrease over time. If a historical sex crime allegation cannot be investigated by the criminal justice system, no matter the actual evidence, the perpetrator will not be convicted and therefore will not be included in the national sex offender registry. If he attempts to work or volunteer in regular and direct contact with children, a criminal background check will give a false negative.

Despite this glaring child protection loophole, the current policy norm included in the directive to address this problem, article 15.2, is not fit for purpose. It gives a generic mandate to Member States to ensure victims have **"sufficient"** time after reaching the age of majority to report the crimes. A postcode lottery has developed, with three groups of countries, with constitute examples of poor, mediocre and good practice on this issue. Fifteen years have passed since the initial attempts to fix the problem at the European level (Lanzarote Convention – 2007). It is time to strengthen the Directive, including a specific mandatory minimum statute of limitations framework for CSA offences across all EU Member States. **The most up to date empirical evidence (Australian Royal Commission) proves that in developed countries, on average, victims do not report the abuse to official authorities until they are 44 years old, 33 years on average after the crime was committed.** Our key policy recommendation is that there's the need to reform article 15.2 of the Directive 2011/93/EU to ensure in all Member States limitation periods for childhood sexual offences do not become time barred. We recommend the introduction of a graded criminal statute of limitations system, so the duration of the limitation period depends on the severity of the crime. Therefore, victims would have, until age 40 for



the less serious crimes and until age 50 for the most serious ones. It would also be appropriate to add a specific criminal norm that interrupts the statute of limitations when a child sex abuser reoffends committing a new CSA offense.

This legislative approach would be consistent and respectful with the principles of subsidiarity and proportionality. **It's important to acknowledge a very concerning fact. Due to inadequate criminal SOL's laws in many countries, national crimes databases do not include a significant number of hidden child predators who are able to continue to work and volunteer directly and regularly with children, undetected by institutions and parents alike. Therefore, when an EU member state has inadequately short criminal SOL's it's not only a national problem but an international systemic loophole. Due to freedom of work and movement EU legislation it endangers the EU as an area of freedom and security. It significantly weakens EU legislation to guarantee the exchange of criminal justice information among Member States.** It has become a European wide systemic loophole that needs to be urgently addressed, implementing a European wide solution. This issue is also a foreign policy black mark. It undermines the EU assertion that one of the key principles of EU foreign policy is to promote human and children's rights abroad. EU Member States are overrepresented as country of origin in international sex tourism global networks. To combat this situation the Directive 2011/93/EU has enshrined the legal principle of extra-territorial jurisdiction in sex crimes committed by EU nationals. Inadequate criminal SOL laws make a mockery of this criminal norm.

Some legal experts have raised concerns about the possible deleterious effects of abolishing or expanding criminal statute of limitations for sex crimes against children. Frequent civil liberty objections are that over time evidence disappears; the offender may spontaneously rehabilitate himself; it's a poor use of scarce resources to prosecute crimes decades after they happened due to the low likelihood of success; or that the state has a duty to renounce the use of its "*ius puniendi*" when a crime has long been forgotten by the community. The most up-to-date empirical, criminological, scientific, journalistic or judicial evidence available undermine these arguments. Even if they were valid, they might justify taking a conservative approach and not completely abolishing limitation periods for all or some CSA offences. However, the policy proposal included in this report is very modest in its scope. It would only entail expanding on average limitation periods in some Member States by between one and two decades. **Due to the urgency of the crisis, the strength of the empirical evidence already available and the incremental approach we advocate, the only reason why Member States and European institutions may decide not to implement this measure is due to a lack of political will address the problem. After 15 years of disappointing promises, European children and survivors of child abuse deserve better.**

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