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Committee on Legal Affairs and Human Rights For a Europe-wide sex offenders register

Introductory memorandum

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I. Introduction

1. On 23 November 2007, the Parliamentary Assembly decided to refer to the Committee on Legal Affairs and Human Rights, for report, the motion for a resolution "For a Europe-wide sex offenders register" (Doc. 11400, Reference No 3382). At its meeting in January 2008, the Committee appointed me rapporteur.
2. I would begin by stating that the issue of sex crimes is a sensitive topic giving rise to numerous concerns among the public.
3. The main reason for introducing a Europe-wide sex offenders register would be to afford the public greater protection against sexual assaults; it could be supplemented by an "alert system" so that action could be taken as quickly as possible when children go missing.
4. A 1993 study conducted in the United States showed that out of 621 child abductions ending in homicide, 44% of the children were murdered in the first hour, 74% in the first three hours and 91% in the first 24 hours after being abducted¹. A quick, effective response is clearly essential.
5. Some countries have already introduced this type of register. Such registers containing information on sex offenders have been compiled in the United States, Canada and the United Kingdom. Depending on the country, these registers may be made available solely to the police or to a wider public.

II. Issues

6. The proposed introduction of a Europe-wide sex offenders register may give rise to some controversy. Although the seriousness of this type of crime can scarcely be denied, certain issues may arise, particularly as regards the justification for introducing such a register. Valid reasons would also have to be given for setting up a register confined exclusively to sex offences.

* Document declassified by the Committee on 16 March 2010.

¹ http://www.alerte-enlevement.gouv.fr/art_pix/convention0206.pdf

7. The question also arises as to the effectiveness of this type of register. Some registers are in fact based on the voluntary provision of information by sex offenders. It is unlikely that all sex offenders, especially those most inclined to reoffend, provide this information.

8. In addition, consideration must be given to the reliability of such a register. In order to be reliable, the register would have to be updated regularly to ensure that it contained accurate information.

9. Lastly, the introduction of a Europe-wide sex offenders register must comply with the principle of proportionality. Inclusion in such a register naturally has certain repercussions on sex offenders' privacy and reintegration into society.

10. It must be remembered that victims' survival may depend on the speed and scale of the efforts made to locate them as soon as their abduction is reported to the authorities. Several criteria must be taken into account, however, in introducing this type of register. Furthermore, given the number of states involved, I felt it necessary to gain as comprehensive a picture as possible of the current situation in member states. A questionnaire was therefore sent to national delegations to the Parliamentary Assembly and the representatives of observer states to the Assembly. Analysis of this questionnaire will serve as a basis for more in-depth consideration of the matter.

III. Analysis of replies to the questionnaire

11. The questionnaire² sent to states contained three questions:

1. *Does an offence of "sex offender" exist in your country? If so, please provide the definition in accordance with your legislation.*
2. *Does your country have a sex offenders register?*
 - a) *If so, how does it operate (conditions and procedure of registration and deletion, updating of the information, period of retention of the data, conditions of access to the data in the register, public access to the register granted or denied, etc.)?*
 - b) *If so, can you mention identifiable/concrete benefit that the register has brought to your country?*
 - c) *If not, would the introduction of such a register be in accordance with your national legislation?*
3. *Does your country have a "warning system" in connection with the prosecution of sex offenders and/or in connection with the search for missing children? If so, how does it operate?*

12. The replies received differed from country to country in terms of clarity, consistency and the level of detail provided.

Question 1

13. There was considerable variation between countries in terms of the quality of replies to the first question and the level of detail provided. The replies highlighted two key aspects, however: firstly, not every country's legislation uses the term "sex offender". Secondly, although the states do not all have the same legislation, they do appear to agree on the main characteristics defining sex offenders.

14. Replies may be divided into two broad categories.

² 31 states replied: Austria, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, the Netherlands, Norway, Portugal, Romania, Serbia, Slovakia, Slovenia, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia", the United Kingdom and the United States of America.

15. Firstly, Croatia, Germany, the Netherlands, Portugal, Romania, Serbia, Slovakia, Switzerland, "the former Yugoslav Republic of Macedonia" and the United States give specific definitions of the term "sex offender".

16. In **Croatia**, a sex offender is a person who has committed a criminal act contrary to all sexual morals and the sexual freedom of others, by his or her own deed or omission or via another person.

17. In **Romania**, the term "sex offender" covers several types of crime: rape, sexual relationship with a minor, seduction, sexual perversion, sexual corruption, incest and sexual harassment.

18. **Serbia's** Criminal Code defines a sex offence as a serious offence "against human integrity and dignity".

19. In **Slovenia**, a sex offender is the perpetrator of a rape, sexual violence, sexual abuse against a defenceless individual, sexual assault on a person under the age of 15, sexual assault involving misuse of authority, incitement to prostitution or the presentation, production, possession or distribution of any kind of pornographic material to a person under the age of 15.

20. In **Slovakia**, the concept of sex offenders does exist, and includes any person who uses violence or the threat of violence to force another person into any type of sexual relationship.

21. In its reply, the "**former Yugoslav Republic of Macedonia**" also defined the crimes committed by "sex offenders" as offences "against citizens' sexual freedom and morality".

22. In the **United States**, a sex offence is defined as an "offence involving a sexual act or any kind of sexual contact with the victim".

23. As regards the other states, the term "sex offence" does not exist as such, but most criminal codes define sex offenders on the basis of common criteria.

24. For instance, all the states define a sex offender as any individual having committed a sexual act on a non-consenting person, where the act was imposed by violence, force or trickery, or made possible by the victim's physical or mental infirmity or vulnerability. The states emphasise that sexual assault entails a violation of individual freedom.

25. Most countries have a specific section on offences involving sexual assault on minors, even where such acts are committed without violence or threats. However, the legal age of sexual consent differs from country to country.

Question 2

26. As regards the existence of a sex offenders register, the replies also varied considerably. Nevertheless, they may be divided into three categories. The first comprises those countries having introduced a sex offenders register. The **United States**, the **United Kingdom**, **France** and, to a lesser extent, **Germany** have already set up registers containing information, in varying levels of detail, on persons convicted of "sex offences" in their countries. The situation in these countries will be discussed more thoroughly in the next section.

27. The other states indicated that they did not have sex offenders registers, although some of them do have registers which are not specific to sex offences. **Norway**, for example, has a national criminal register, and DNA files are created for the most serious cases. Only the police, the courts and the competent authorities have access to the register. The introduction of a sex offenders register would be compatible with Norwegian legislation, but public access to such a register would run counter to the law on protection of privacy.

28. As regards part c) of this question, most countries replied that the introduction of such a register would have to be considered at national level to establish whether it was compatible with the legislation in force, particularly in relation to personal data protection.

29. In **Austria**, **Croatia**, **Slovenia** and to some extent **Sweden**, the debate on the introduction of a sex offenders register is already well under way. In **Croatia**, the competent authorities have been discussing the introduction of this type of register since 2006. Opinions appear to differ, however, and reservations have been expressed about public access to such a register.

30. In **Austria**, a bill amending the law on the criminal register has been tabled, and is still under discussion. The bill seeks to set up a sex offenders register with a view to optimising the flow of information by making data available to both the courts and security authorities ("Sicherheitsbehörden"). Debate on the bill is still in progress. It has been pointed out, however, that specific searches on sex offenders can already be conducted in the existing criminal register.

31. **Slovenia** also indicated that it intends to introduce a sex offenders register, although the law is still at the drafting stage.

32. In **Sweden**, the government has drafted a bill on data protection for the crime prevention authorities. The bill does not specifically address the issue of sex offenders, but in spring 2008 MPs debated the possibility of introducing a sex offenders register.

Question 3

33. Only **France**, the **United States**, the **United Kingdom** and **Greece** stated that they had an abduction alert system.

34. **France** introduced an abduction alert system in 2006³. It already co-operates with several neighbouring countries, including Belgium, Luxembourg and the Netherlands⁴. In addition, during its presidency of the European Union from July to December 2008, France intends to propose to the other member states that this system be extended throughout the Union⁵.

35. The abduction alert plan may be activated only if all the following criteria are met:⁶

- there has been a confirmed abduction, and not simply a disappearance;
- the victim's life or physical integrity is in danger;
- information is available which, if disseminated, might enable the child or suspect to be located;
- the victim is a minor.

36. In some cases, however, these criteria are not sufficient in themselves to put the abduction alert plan into operation, for instance where this would further endanger the child's safety.

37. The public prosecutor is responsible for activating the plan, although the parents' consent is obtained whenever possible and in all cases the members of an *ad hoc* crisis unit formed on each occasion must be consulted before a decision is taken. This unit comprises the officer heading the investigation/operations and a representative of the *Préfecture* (to deal with the alert's impact on public order). The alert is disseminated nationwide (and possibly more intensively around the location of the abduction). The alert is terminated three hours after the agencies responsible for dissemination receive notification that it has been issued.

³ <http://www.alerte-enlèvement.gouv.fr/index.php?rubrique=10445>

⁴ As demonstrated by the exercise organised on 12.06.2008, <http://www.alerte-enlèvement.gouv.fr/>

⁵ http://www.ue2008.fr/webdav/site/PFUE/shared/ProgrammePFUE/Programme_EN.pdf, p. 22.

⁶ http://www.alerte-enlèvement.gouv.fr/art_pix/convention0206.pdf

38. **Greece** indicated that it has an alert system known as “*Smile of Child*”, administered by the Greek Centre for Missing and Sexually Exploited Children. The centre works with families, the police, the courts, the media and the public to find missing children. In close co-operation with the police, the centre also set up the Amber Hellas alert system in May 2007. Once the police have declared that a child’s disappearance is suspicious and that the public should be informed, the centre issues an alert, allowing information to be disseminated to the media and the public⁷.

39. The **United Kingdom** has a Child Alert Rescue system for disappearances of children, which was introduced in stages from 2002. Four criteria must be met in order to issue an alert⁸:

- the child must be under the age of 16;
- abduction must be confirmed, or at least strongly suspected;
- there must be reason to believe that the child is in danger of serious harm or death;
- sufficient information must be available to enable the public to assist in locating the child.

40. In the **United States**, an abduction alert system known as Amber Alert⁹ was introduced in 1996. The criteria for issuing an abduction alert are as follows:

- an abduction must be confirmed;
- the child must be at risk of bodily harm or death;
- there must be sufficient information about the child, the abductor or the abductor’s vehicle;
- the child must be aged 17 or younger.

Once an alert is issued to the media, the aim is to obtain any information from the public that might facilitate the child’s rapid release. Thanks to the alert message, anyone who can see the child, the suspect or his or her vehicle, or is in possession of information that might help locate the child, can inform the authorities immediately via a special telephone number.

IV. Description of existing registers

41. The **United States, Canada, France** and the **United Kingdom** have had sex offenders registers for several years. A detailed examination of these schemes and the German model should make for more informed discussion of this question.

United Kingdom

42. The Sexual Offenders Act 1997 served as the basis for setting up a register of persons having committed offences of a sexual nature. 24,572 people were registered in 2003/2004. In 2003, the Sexual Offences Act 2003 supplemented the previous Act and clarified certain aspects, particularly in relation to juvenile offenders.

43. Sex offenders have to report to the police station nearest their home once a year, and notify the police if they change their name or address or leave the country for more than seven days.

44. Sex offenders sentenced to more than 30 months in prison appear in the register for an indefinite period. Those sentenced to between six and 30 months in prison are registered for 10 years (or five years if they are under the age of 18). Those sentenced to up to six months in prison appear in the register for seven years (or three years if they are under the age of 18)¹⁰.

⁷ http://gr.missingkids.com/missingkids/servlet/PageServlet?LanguageCountry=en_GR&PageId=2865

⁸ <http://www.npia.police.uk/en/10239.htm>

⁹ <http://www.amberalert.gov/guidelines.htm>

¹⁰ <http://www.guardian.co.uk/society/2006/jan/18/childrensservices.politics1>

France

45. A computerised sex offenders register (FIJAIS) was set up on 30 June 2005.

46. The register was introduced for two main purposes:

- so that it can be consulted at any time by investigators having received a complaint of sexual assault (access to the register is available to senior law-enforcement officers and judges).
- to prevent sex offenders reoffending: if an offender leaves his or home without informing the police within the statutory timeframe, the nearest police station or gendarmerie is immediately notified.

47. Lastly, anyone applying for approval from the *Préfecture* to engage in an activity or exercise an occupation involving contact with minors is subject to preliminary checks by the *Préfecture*, which systematically consults the register to check that the person in question is not listed.

48. As far as the register's administration is concerned, two points may be made. Firstly, the names of persons against whom charges have been dismissed or who have been acquitted at final judgment are deleted from the register. Secondly, only the FIJAIS administrators can delete entries from the register¹¹. The register is intended for the exclusive use of professionals responsible for the prevention and punishment of sex offences.

49. Safeguards have been put in place to protect privacy: the register can be consulted only by the judicial authorities, senior law-enforcement officers and *Préfets*. In addition, records of all consultations and searches remain in the register for three years. Persons listed in the register are also entitled to be informed of all the data concerning them. Lastly, they may apply to the judicial authorities to have their entries deleted from the register. The courts, as the guardians of individual freedoms, then take the appropriate decision¹².

Germany

50. There is no national sex offenders register, although some *Länder*, such as Bavaria, Brandenburg, Hesse, Lower Saxony and Hamburg, have introduced reoffending monitoring programmes (known as HEADS) for sex offenders having served their sentences.

51. However, these registers vary between the different *Länder*.

52. In Bavaria, for example, the register lists all those sentenced to at least one year in prison for sex offences or at least two years in prison for murder with a sexual component or at least two years in prison for murder where the motive has not been clearly established (but where there is therefore a risk that the person's motive may have been sexual, even though this is not confirmed).

53. In addition, persons having received a suspended sentence but who subsequently engage in behaviour that indicates a strong risk of reoffending (such as hanging around in front of girls' schools or surfing child pornography sites) are entered into the register.

54. The register contains information on the offender, the offence committed, the ensuing proceedings and the investigation conducted.

55. Information remains in the register for five years following the offender's release in the case of adolescents, and ten years in the case of adults, provided that supervisory measures have been terminated by that point.

¹¹ except where judicial supervision is terminated.

¹² http://www.alerte-enlevement.gouv.fr/art_pix/convention0206.pdf

56. Data are updated on an ongoing basis, and local police stations keep the Munich police headquarters informed.

57. Only specially trained police officers have access to the register (on a read-only basis).

58. However, neither the other *Länder* nor the German federal government have access to the register.

United States

59. The so-called "Megan's Law" of 1996 introduced a sex offenders register and a system for informing the public of sex offenders' whereabouts.

60. The register was modified in 2006 under the Adam Walsh Act, which instituted a system for classifying offenders into three levels according to the seriousness of the offence committed:

Level I sex offenders must be registered for 15 years.

Level II sex offenders must be registered for 25 years.

Level III sex offenders must be registered for life.

The public can consult the register on the internet: <http://www.nsopr.gov/>

61. The nature of the register varies from state to state, however; in Louisiana, for example, it is up to former offenders themselves to inform their landlords and neighbours and the principals or managers of local schools and parks. Failure to do so can lead to a penalty of one year in prison and a \$1000 fine. They are also required to inform the community via the local press.

62. In some states, such as Texas and California, individuals and bodies wishing to gain direct access to this information can purchase a CD-ROM containing the full register of sex offenders living in their state.

63. The system has significant negative repercussions, however: former sex offenders are harassed and insulted, and sometimes forced to move, not to mention the fact that many lose their jobs and homes. A new phenomenon known as "Megan's Flight" is emerging: on the one hand, former sex offenders are fleeing residents' hostility, and on the other, those who despair of escaping public vengeance are going underground¹³.

64. Sex offenders registers may contain mistakes or be misleading; for example, the Megan's Law CD-ROM does not state the date of the offences or the fact that many of them have long since ceased to be punishable by law. It is absurd to note that, until last year, homosexual relations between consenting adults (which were decriminalised in California in 1976) were nevertheless registered under the same code as child sexual abuse. As a result, until last year thousands of Californian homosexuals had to report to their local police station on a regular basis.

65. It can be seen, therefore, that insufficient effort is made to assess the risk to an individual's privacy before requiring his or her registration. There is no way for former offenders to have themselves removed from the register by submitting evidence of their rehabilitation or after years of good behaviour. The United States values public safety over any attempt to reintegrate offenders into society, very few options are available to offenders during or after their time in prison, and few states appear to provide psychological support enabling them to readjust to community life.

¹³ <http://www.monde-diplomatique.fr/1999/12/WACQUANT/12761.html>

Canada

66. Act No. C-23 (the Sex Offender Information Registration Act (SOIRA)) was promulgated on 15 December 2004.

67. It introduced a national registration system for convicted sex offenders who have to report annually to the police. Only accredited Canadian law enforcement agencies have access to the database.

68. The following information is entered into the register: name, date of birth, current address, a recent photograph, identifying marks and the offence(s) of which the offender was convicted. Police officers can search for registered sex offenders living in a particular area.

69. Depending on the location, police departments can access the national sex offenders register database either directly or through the provincial and territorial Sex Offender Registry Centres. The national database contains information such as sex offenders' addresses and telephone numbers, offences, aliases, identifying marks and tattoos. The public does not have access to the National Sex Offender Registry.

70. Sex offenders are required to remain registered for one of three periods, depending on the maximum penalty specified for the offence of which they were convicted:

- 10 years for summary conviction offences and offences with two- and five-year maximums;
- 20 years for offences carrying a 10- or 14-year maximum sentence;
- lifetime for offences with a maximum life sentence or when there is a prior conviction for a sex offence.

71. After 20 years and (if necessary) every five years thereafter, offenders registered for life will be able to apply for a judicial review to determine whether they can be released from the requirement to register for the remainder of the registration period.

72. Offenders registered for 10 or 20 years will be able to apply for a judicial review at the five- or 10-year mark respectively to determine if their registration requirement should be removed based on the same test as for lifetime registrants¹⁴.

V. Outstanding issues

a. *If a sex offenders register is to be introduced, its nature must be clearly specified.*

73. What types of offence should the register cover? Should all sex offences automatically be registered, or should there be a "minimum sentence"? The Bavarian model appears to offer an acceptable compromise, involving the registration of those sentenced to at least one year in prison for sex offences or at least two years in prison for murder with a sexual component or at least two years in prison for murder where the motive has not been clearly established (but where there is therefore a risk that the person's motive may have been sexual, even though this is not confirmed).

74. What would the register contain? In addition to information about the offender's identity and whereabouts, the register ought to include details about the nature of his or her offence(s) and the ensuing court proceedings. The issue of respect for victims' privacy may be raised in relation to the inclusion of their identity. However, the availability of such information may help keep victims safer in the event of their attacker's release or escape from prison.

¹⁴ <http://laws.justice.gc.ca/en>ShowDoc/cs/S-8.7//en?page=1>

75. Who can register offenders? Those responsible for inputting data to the register ought to be specified. In France, for example, only public prosecutors and investigating judges are allowed to input data to the register.

76. Who can consult the register? Who is responsible for the register? Access to the register ought to be restricted, so as to avoid any unwarranted invasion of victims' or offenders' privacy. With reference to the United States model, public access to the register has been highly controversial; it is alleged to have sown fear among the public and impeded former offenders' rehabilitation. The Bavarian model is worth looking at: only specialised police officers have access to the register. This limits the risk that such information may be misused, while allowing it to be utilised to help solve new crimes that may have been committed by those listed in the register.

77. In addition, responsibility for administering the register could be entrusted either to those allowed to consult it and/or those responsible for inputting data.

78. How long should information be retained for? This might depend on the seriousness of the offence. Most countries with such registers have introduced a system in which data are retained for a period ranging from 5-10 years to the offender's lifetime in the case of the most serious offences.

b. The introduction of such a register appears to raise a number of issues, which need to be addressed.

79. Firstly, the introduction of a Europe-wide register requires the agreement of all states, and raises the issue of harmonisation. All the information to be contained in the register would have to be specified in detail.

80. Furthermore, transitional arrangements would have to be made in respect of the United Kingdom, France and *Länder* such as Bavaria, which already have registers of this type.

81. Other issues may arise, such as the point at which offenders should be registered. Should unlimited access be allowed to other countries' data? Would it be appropriate to introduce a system for requesting access to information relating to other countries?

c. The introduction of such a register may have negative repercussions.

82. The inclusion of former offenders in this type of register has significant repercussions. Certain malpractices must be avoided, and the agency responsible for the register would have to be clearly specified. For instance, respect for sex offenders' privacy and the public interest in their rehabilitation and reintegration into society as law-abiding citizens require that:

- information be gathered only to allow police services to investigate crimes in which there are reasonable grounds to suspect that they are of a sexual nature;
- access to and communication and use of such information be restricted.

d. Making such a register as effective as possible

83. At this stage, none of the delegations has pointed to tangible results following the introduction of a sex offenders register. The setting-up of an alert system for disappearances of children – which was also proposed in the motion on which this report is based – and the co-ordinated use of a sex offenders register might prove effective.

VI. Final remarks

84. The situation in the member states is far from being harmonised at present. Only a small minority have already introduced sex offenders registers. Another small minority are debating the idea, but not without controversy. Aside from the American model, the aberrations of which have been highlighted, no state has opted to allow public access to the data contained in such a register. In principle, the rapporteur believes that making such information public would raise serious issues of compliance with the provisions of the European Convention on Human Rights.

85. The rapporteur wonders about the added value of a register confined exclusively to sex offenders, given that several states have mentioned the possibility of searching for sex offenders in their general criminal registers. None of the states already possessing a sex offenders register referred to tangible results in its reply.

86. Lastly, the issue of "harmonisation" clearly arises in relation to a Europe-wide register. "Harmonisation" does not mean a single European system or identical national rules, but rather "compatibility" for the purposes of practical co-operation between authorities in the countries concerned, to be defined carefully and with due regard to the principle of subsidiarity.

87. In order to take this analysis a stage further, I suggest that the Committee invite experts to come and address one of its forthcoming meetings as appropriate. In my view, it would be worth inviting an American or Canadian expert and a British expert to explain how their respective registers operate in practice and, above all, to identify concrete examples of their effectiveness, if this has been confirmed. It would also be helpful to invite a criminologist to explain whether there are any criminological research findings showing, for example, that former sex offenders are at greater risk of reoffending (and thus whether it is worth registering them with the specific goal of solving future crimes). Interpol, and the European Union if necessary, could also be involved in the Committee's discussions on this topic.