

# Chapter 15

## Regulating Online Sexual Solicitation: Towards Evidence-Based Policy and Regulation

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*The challenge is to protect children from rare but harmful occurrences without limiting the opportunities of the majority.*

(Livingstone et al. 2011a, p. 42)

## 15.1 Introduction

Recent research from the EU Kids Online Project shows that Internet use by children is increasingly individualised, privatised and mobile.<sup>1</sup> Some striking figures demonstrate the extensive Internet use by children. Aged 9–16, children spend 88 minutes per day online, on average. Half of the children who go online (49 %) do so in their bedroom, suggesting unsupervised Internet access.<sup>2</sup> In accordance with the rise in children's Internet use, concerns about the risks the Internet poses to children have increased. One major concern regards online sexual solicitation.<sup>3</sup> Often defined as 'requests to engage in sexual activities or sexual talk or to give personal sexual information that were unwanted or, whether wanted or not, were made by an adult'<sup>4</sup> many parents and policy makers also worry about adolescents' online sexual communication in general. Already a prominent concern on the agenda of policy makers, the attention for the phenomenon is further triggered by the increased number of children who own a mobile device for this trend is considered to bear extra risks in respect of online sexual solicitation.<sup>5</sup>

In response to public and policy concern, a number of legislative initiatives have been taken to curtail online sexual solicitation of children and youth. For Europe, the Lanzarote Convention is the first piece of regulation regarding online sexual solicitation.<sup>6</sup> In addition, numerous campaigns have been initiated to educate children about the risks of the Internet.

Even though concerns regarding the risks related to online sexual solicitation appear valid at face value, little is actually known about the consequences of online sexual solicitation or about how many children and youth actually come to harm as a result of online sexual solicitation.<sup>7</sup> This means that important

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<sup>1</sup> Livingstone et al. 2011a.

<sup>2</sup> Livingstone et al. 2011a, p. 12.

<sup>3</sup> Eurobarometer 2008; Kierkegaard 2008.

<sup>4</sup> Mitchell et al. 2001, p. 3012.

<sup>5</sup> Livingstone et al. 2011a, p. 12; CHILDWISE Monitor Trends Report 2012, key trends; Europol Child Sexual Abuse Fact Sheet 2012, p. 5.

<sup>6</sup> Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201). Available from: <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=201&CM=1&DF=&CL=ENG>.

<sup>7</sup> Livingstone 2010; Livingstone and Haddon 2009.

regulatory initiatives are developed without substantiating empirical evidence of the risk and protective factors that bear relevance to the actual conduct of victims and offenders. From a regulatory perspective, this raises several questions regarding the European regulatory strategies adopted to curtail online sexual solicitation.

In this chapter, we first describe the criminalisation of online sexual solicitation in the Lanzarote Convention and Directive 2011/93/EC.<sup>8</sup> Subsequently, a review is presented of recent empirical research on the prevalence and nature of online sexual solicitation and we will analyse what is known about the inter-relationship between online sexual solicitation and psychosocial development. In Sect. 15.4 the relation between the EU legislation and the existing empirical research is discussed. This discussion reveals the underlying assumptions, scope and proposed regulatory mechanisms within the EU legislation and how they can benefit from empirical substantiation. We conclude that the sharing of knowledge between the fields of social science and law is essential to develop promising regulation strategies for protecting youth from harmful consequences of online sexual solicitation, without overly curtailing normal sexual exploration by adolescents.

Before addressing existing regulation strategies to combat online sexual solicitation, it is important to make a note in respect of terminology. In the extant literature, in addition to online sexual solicitation, the term grooming is also used. Even though some scholars differentiate between grooming and online sexual solicitation, in a sense that grooming is a narrower concept reflecting the criminalisation of certain behaviour as described in Article 23 of the Lanzarote Convention,<sup>9</sup> we do not make this distinction. We will not refer to grooming, but use the term ‘online sexual solicitation’ in the broadest sense. We are perfectly aware that just part of what constitutes online sexual solicitation is criminalised in the Lanzarote Convention. However, as will be discussed in the next paragraphs, the scope of criminalisation of online sexual solicitation is one of the regulatory issues in need of empirical substantiation. Moreover, public concern is not limited to grooming but also extends to receiving (and sending) sexual images and messages.

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<sup>8</sup> Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ 2011 L 335 of 2011-12-17, pp. 1–17. Corrigendum to Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ 2012 L 18 of 2012-01-21, p. 7. This corrigendum states that the Directive is numbered Directive 2011/93/EU instead of 2011/92/EU. Directive available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:335:0001:01:EN:HTML>.

<sup>9</sup> Kool 2011, pp. 48–49.

## 15.2 Present Regulation Strategies Targeting Online Sexual Solicitation

Since the adoption of the Joint action to combat trafficking in human beings and sexual exploitation of children in 1997, both the Council of Europe and the European Union have launched several initiatives to strengthen judicial cooperation,<sup>10</sup> as well as to harmonise substantive law, in the field of child protection against sexual abuse and sexual exploitation. In 2001 the Cybercrime Convention was adopted,<sup>11</sup> and in 2003 the EU Council Framework Decision on ‘combating the sexual exploitation of children and child pornography’.<sup>12</sup> Even though both fall outside the scope of this chapter, as online sexual solicitation is not specifically addressed, these documents are important from the perspective of procedural law. The first EU legal document to explicitly criminalise online sexual solicitation of children is the 2007 Lanzarote Convention.<sup>13</sup> Article 23 of the Lanzarote Convention states: ‘The intentional proposal, through information and communication technologies, of an adult to meet a child for the purpose of engaging in sexual activities or producing child pornography, where this proposal has been followed by material acts leading to such a meeting.’ As the Council of Europe Convention is only binding upon those Members that ratify it, and the rate of ratification remained low, the EU in 2011 decided to adopt Directive 2011/93/EU.<sup>14</sup> In general, the Directive is in line with the Lanzarote Convention. However, some minor differences are interesting in view of the issues we want to raise in this chapter. We will focus our discussion of these documents to the way in which regulatory strategies are addressed and, of course, the provisions relevant to online sexual solicitation.

Directive 2011/93/EU will replace the earlier mentioned Framework Decision of 2003. Article 6 of the Directive criminalises online sexual solicitation:

1. Member States shall take the necessary measures to ensure that the following intentional conduct is punishable: the proposal, by means of information and communication technology, by an adult to meet a child who has not reached the age of sexual

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<sup>10</sup> E.g. Joint Action 2008/976/JHA and the Council Decision of 29 May 2000 to combat child pornography on the Internet. Available from: [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/fight\\_against\\_trafficking\\_in\\_human\\_beings/133138\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/fight_against_trafficking_in_human_beings/133138_en.htm).

<sup>11</sup> Convention on Cybercrime, CETS No. 185. Available from: <http://conventions.coe.int/Treaty/en/Treaties/Html/185.htm>.

<sup>12</sup> Council framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography, OJ L013, 20/01/2004, pp. 0044–0048.

<sup>13</sup> Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201). Available from: <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=201&CM=1&DF=&CL=ENG>.

<sup>14</sup> The Directive must be implemented ultimately December 2013.

- consent, for the purpose of committing any of the offences referred to in Article 3(4) and Article 5(6), where that proposal was followed by material acts leading to such a meeting, shall be punishable by a maximum term of imprisonment of at least 1 year.
2. Member States shall take the necessary measures to ensure that an attempt, by means of information and communication technology, to commit the offences provided for in Article 5(2) and (3) by an adult soliciting a child who has not reached the age of sexual consent to provide child pornography depicting that child is punishable.

Both the Lanzarote Convention and the Directive define a child as anyone younger than 18 years of age. However, by referring to the ‘age of sexual consent’, the Directive leaves the actual scope of application to the discretion of the Member States, as the age of sexual consent is defined as: “(...) the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child”. This relates to the fact that depending on culture, but also over time, perceptions of decency, but also perceptions in respect of when and how minors are deemed to be able to consent to sexual activity, change.<sup>15</sup>

From the preamble of the Lanzarote Convention, it becomes clear that the Convention is based on the assumption that children and youth are harmed by online sexual solicitation. This assumption also lies at the basis of EU Directive 2011/93/EU. Even though eminent in relation to actual child sexual abuse and exploitation, with regard to the field of online sexual solicitation several questions can be raised regarding this assumption, as well as to the scope of criminalisation of online sexual solicitation, in both the Lanzarote Convention and the Directive. The scope is limited to the act of online sexual solicitation by adults, but how many children actually receive sexual messages from adults? Furthermore, the premise underlying criminalisation is that receiving sexual messages online is detrimental to children in general, but what do children actually say about the harm that online sexual solicitation causes them? And what do we really know about the consequences for children’s psychosocial development? Finally, the general nature of the criminalisation carries the presumption that all children are at risk, but which children are really at risk of receiving (aggressive) online sexual solicitation?

Before assessing underlying presumptions, scope and regulatory strategies within the Lanzarote Convention and Directive 2011/93/EU in view of online sexual solicitation further, we will first discuss the empirical evidence relating to three aspects of existing regulation strategies: (1) the focus on adults and strangers, (2) the assumption that all children are at risk and (3) the assumption that children are harmed by online sexual solicitation. With regard to the latter assumption, a distinction will be made between short-term and long-term consequences of receiving sexual messages online.

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<sup>15</sup> Koops 2009, p. 67.

## 15.3 Youth and Online Sexual Solicitation

### *15.3.1 Prevalence and Nature of Online Sexual Solicitation*

A number of studies have reported on the prevalence of online sexual solicitation. For instance, in a nationally representative telephone survey among 1,500 10 to 17-year-old U.S. Internet users conducted in 2005, 13 % of youth reported unwanted sexual solicitation in the previous year.<sup>16</sup> A study among British 9 to 17-year-old youth reports that 23 % of them ever received unwanted sexual comments over the Internet<sup>17</sup> and in a recent study among Dutch adolescents aged 12–17 years, Baumgartner, Valkenburg and Peter reported six-month prevalence rates of unwanted online sexual solicitation of 5.6 % for male adolescents and 19.1 % for female adolescents.<sup>18</sup> Similar results were reported by Helweg-Larsen, Schütt and Larsen in their study among Danish adolescents (aged 14–17 years): 5.4 % of boys and 16.2 % of girls reported having received online sexual propositions from an unknown person, albeit in the previous year.<sup>19</sup> A recent Swedish survey, conducted in 2010, found that 26 % of 12 to 16-year-old adolescents had ever talked about sex with someone on the Internet.<sup>20</sup> A third of these conversations were with total strangers (8 % of the total sample). The most recent figures on the prevalence of online sexual solicitation that we are aware of have been reported by Kerstens and De Graaf.<sup>21</sup> Collected between January and April 2011, these figures come from a sample of 6,299 Dutch youth (aged 8–18 years) who completed an online questionnaire on a range of aspects of their online behaviour. One in five children (19.2 %) had ever received online requests to engage in sexual activities or sexual talk or to give personal sexual information. The majority of these online requests to engage in sexual talk or sexual activities were done by peers (70.8 %) and a small subset of 7.3 % was sent by someone who was at least five years older than the respondent. A quarter of the adolescents who ever received such a request, reported that this request was sent by someone they did not know in person but only communicated with on the Internet (25.4 %). This percentage is higher among younger adolescents and drops with age: Older adolescents (aged 15 years and older) more often receive an online request about sex or sexuality from someone they also know offline. These are mainly friends, dating partners or peers they know from school.

As a result of differences in definitions, sampling strategies and the exact wording of questions, it is difficult to compare the results from individual studies.

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<sup>16</sup> Wolak et al. 2006.

<sup>17</sup> Livingstone 2006.

<sup>18</sup> Baumgartner et al. 2010.

<sup>19</sup> Helweg-Larsen et al. 2012.

<sup>20</sup> Medierådet 2010.

<sup>21</sup> Kerstens and De Graaf 2012.

Large-scale research in 25 European countries,<sup>22</sup> however, reported prevalence rates that were fairly similar to those reported in the separate studies discussed in the previous paragraph. Livingstone and her colleagues found that 15 % of European children aged 11–16 years old have seen or received sexual messages on the Internet in the 12 months preceding their study.<sup>23</sup> Prevalence rates ranged from 4 % for Italian youth to 22 % for Romanian youth, but between-country differences were relatively minor with about two-thirds of the countries' prevalence rates ranging between 14 and 20 %. Most common among these experiences is being sent a sexual message, while only 2 % of all European adolescents aged 11–16 report that they have been asked to talk about sexual acts with someone on the Internet. An equal percentage reported to have received a request to show a photo or video of their genitals in the previous 12 months.

Despite societal concern about the risk that online sexual solicitation might lead to sexual abuse in real life, research describes a rather different reality. With regard to receiving an invitation to meet in person with someone a youngster met online, Kerstens and De Graaf report that 15.4 % of their respondents had received such a request in the previous year.<sup>24</sup> One in ten of these invitations was sexually motivated (for ethical reasons, this response option was not provided to primary school aged children). Instead, many invitations were intended to engage in shared leisure activities, such as gaming, shopping or seeing a movie (44.1 %). Other, perhaps more ambiguously phrased, response options that were frequently ticked included 'because the other person likes me' (39.8 %) and 'because the other person wants to date me' (14.3 %). Although not all respondents who received an invitation to meet in person knew the age or gender of the person inviting them, the majority of invitations was sent by a peer (75 %). Of the respondents who received an invitation to meet in person with someone a youngster met online, Kerstens and De Graaf reported that two in five agreed to meet the other person (40.6 %). Most respondents who agreed to a meeting did so on the basis of mutual consent. A small group, however, felt forced to comply or was threatened by the other person (2.3 % of all youth who agreed to a meeting). Approximately 1 in 20 youngsters who agreed to a meeting reported that this meeting was a negative experience (5.6 %). This negative experience was caused by the other person wanting to have sex for 5 of the 22 respondents who reported such a negative experience. Each of these five respondents were boys and two of them reported to have been forced to have sex. Although these two represent two victimised adolescents who should not have been victimised, they also constitute an extremely small proportion of the entire group of respondents (0.03 %).

Taking a different approach to this issue, Wolak, Finkelhor and Mitchell studied the characteristics of Internet-initiated sex crimes against minors.<sup>25</sup> They

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<sup>22</sup> Livingstone et al. 2011b.

<sup>23</sup> Livingstone et al. 2011b.

<sup>24</sup> Kerstens and De Graaf 2012.

<sup>25</sup> Wolak et al. 2004, 2008.

concluded that the majority of these crimes involved offenders who were considerably older than their victims but who could not be characterised as true paedophiles, as their victims were mainly adolescents. Furthermore, most offenders did not deceive their victims about their age or sexual intentions. This is in accordance with results reported by Noll, Shenk, Barnes and Putnam who found that adolescents who were more likely to agree to offline meetings had also experienced relatively high rates of online sexual advances.<sup>26</sup> According to these authors, this would suggest that “such adolescents may have some inkling as to the potential sexual agenda of offline encounters”.<sup>27</sup> As a matter of fact, in synthesising their results, Wolak et al. concluded that offenders who use the Internet to meet and groom a victim could not be labelled as strangers, because these offenders typically spend a lot of time building a relationship with their victim.<sup>28</sup>

### ***15.3.2 Risk Factors for Receiving Online Sexual Solicitation***

As is clear from the previous paragraph, a substantial group of children and adolescents never receive requests to engage in sexual activities or sexual talk or to give personal sexual information on the Internet. From a regulatory point of view, the question should then be which children are at risk of receiving online sexual solicitation. There is a growing body of literature on the relation between online solicitation and adolescent risk-taking behaviour.<sup>29</sup> This research indicates that posting personal information, by itself, does not make youth particularly vulnerable, nor do social networking sites appear to have increased the risk of victimisation. Rather, patterns of risky behaviour make youth vulnerable, including talking online with unknown people about sex, sending personal information (e.g. name, telephone number, pictures) to unknown people and visiting chat rooms.<sup>30</sup> Wolak and her colleagues warn, however, that youth who engage in these types of online interactions are not typical adolescent Internet users. Most young people do not interact online in such ways,<sup>31</sup> while young people who are most at risk of receiving online sexual solicitations appear to engage in a wide range of risky behaviour, both online and offline.<sup>32</sup>

Along similar lines, research has also shown that children who have been victimised offline are significantly more likely to experience online sexual solicitation. For instance, Noll, Shenk, Barnes and Putnam found that adolescent girls

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<sup>26</sup> Noll et al. 2009.

<sup>27</sup> Noll et al. 2009, p. 1082.

<sup>28</sup> Wolak et al. 2004.

<sup>29</sup> Baumgartner et al. 2010; Mitchell et al. 2008; Wolak et al. 2008.

<sup>30</sup> Wolak et al. 2008.

<sup>31</sup> Ybarra et al. 2007.

<sup>32</sup> Wolak et al. 2008.



who have experienced childhood abuse were significantly more likely than non-abused girls to have experienced online sexual advances.<sup>33</sup> Moreover, they were also more likely to have met someone offline whom they previously only knew online. Research by Livingstone and her colleagues showed that children who experience more psychological problems are more vulnerable to receive sexual messages on the Internet.<sup>34</sup>

### *15.3.3 Youngsters' Assessment of and Coping with Online Sexual Solicitation*

Several studies that asked whether receiving online sexual requests affected youth have reported that, in fact, a (significant) minority of children say that they were upset or bothered. Livingstone and her colleagues report that 25 % of children who saw or received sexual messages were bothered by this.<sup>35</sup> They found that girls were more likely to be bothered than boys, and that younger children were more often bothered than older adolescents. In addition, children from lower socio-economic families were more likely to be bothered than children from medium or higher socio-economic families. However, being bothered is not synonymous to being upset: Nearly half of all children who were bothered by seeing or receiving sexual messages reported that they were very or fairly upset. The other half was either a bit upset (47 %) or not upset at all (7 %).

Research by Mitchell et al. showed that 25 % of solicited youth reported high levels of distress after solicitation incidents with distress being more common among younger (10–13 years) youth and those experiencing an aggressive solicitation.<sup>36</sup> Similarly, De Graaf and Vanwesenbeeck report that youth are not easily upset by unwanted sexual solicitation on the Internet: Even youth who indicate they experienced an incident of sexual solicitation that they did not like, are not necessarily upset by these experiences.<sup>37</sup> According to De Graaf and Vanwesenbeeck, whether or not youth are upset by unwanted online sexual solicitation depends on their reactions to the incident: When youth feel they adequately dealt with the solicitation, for instance by ignoring a sexual request, they less often report being upset. Furthermore, even upsetting incidents are rarely discussed with others because youth do not regard their experiences as anything worth talking about to other people.<sup>38</sup>

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<sup>33</sup> Noll et al. 2009.

<sup>34</sup> Livingstone et al. 2011a.

<sup>35</sup> Livingstone et al. 2011b.

<sup>36</sup> Mitchell et al. 2001.

<sup>37</sup> De Graaf and Vanwesenbeeck 2006.

<sup>38</sup> Livingstone 2010.

In the study by Kerstens and De Graaf, the majority of adolescents who ever received an online sexual request, rated these requests as 'normal' or 'fun'.<sup>39</sup> Slightly less than one third of the respondents who ever received such a request, reported that they experienced this as something negative or unpleasant (31.8 %). However, almost half of the girls negatively evaluated the experiences (47.9 %) and only a small minority of girls rate their experiences as 'fun' (9.2 %). Boys were more likely to positively evaluate receiving online sexual requests (26.2 %) and the majority of boys considered receiving those requests as normal (57.0 %). Younger respondents more often than older respondents said that receiving such a request was a negative experience and a similar relation existed with educational level: Respondents in higher level education less often reported receiving the requests as negative. In addition, Kerstens and De Graaf found that youth's behaviour online was significantly associated with negative assessments of online experiences: More frequent use of instant messaging, compulsive Internet behaviour and feeling less inhibited while being online were all related to more negative experiences. Finally, adolescents with lower self-control and decreased psychosocial well-being more often reported being upset by receiving online requests of a sexual nature. These findings are in line with the results reported by Livingstone and her colleagues who also found that children with little self-efficacy or psychological problems felt more intensively upset.<sup>40</sup>

When asked by Kerstens and De Graaf how they responded to online sexual solicitation, almost half of the children who ever received such a request replied that they only commented on the things they wanted to talk about (45.9 %).<sup>41</sup> There is a strong effect for age in this regard: With increasing age, the percentage of respondents who only discuss what they want to increases. Younger children more often 'de-friend' someone who sends them online sexual requests, while older respondents rarely do so. Almost a quarter of the adolescents who had received an online sexual request, answered all questions they were asked, with a clear effect for gender: Boys more often than girls were willing to reply to every question or request. According to Kerstens and De Graaf, this gender difference is probably related to the gender difference in the evaluation of the requests (with boys more often positively labelling their experience).

Kerstens and De Graaf also asked respondents who replied to online sexual requests they received about their reasons to reply. One third of these youth responded to the requests because they liked the person who sent the request (33.6 %) and an equal share of respondents indicated that they thought it was fun or exciting to reply to the request they received (33.7 %). Respondents were allowed to give more than one reason so there is no way to distinguish unique groups. About a quarter replied because they were bored and one in ten did not want to appear a bore. Only a small minority of youth replied because they felt

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<sup>39</sup> Kerstens and De Graaf 2012.

<sup>40</sup> Livingstone et al. 2011a.

<sup>41</sup> Kerstens and De Graaf 2012.

forced or threatened by the one who sent the request (2.1 %). What is worrying, though, is that negative reasons for replying, specifically not wanting to appear a bore and feeling forced or threatened, were quite prevalent among young children (8–10 years old): 36.4 and 18.2 %, respectively, of young children who ever responded to sexual requests did so because of these reasons. These figures, however, are based on a very small number of respondents and should therefore be interpreted with great caution. Moreover, we should keep in mind that young children often refused to reply to a sexual message and that many of them went on to block or de-friend the sender.

Specifically focusing on children's coping responses when they feel upset after exposure to online risks, Livingstone and her colleagues distinguish between fatalistic, communicative and proactive coping strategies.<sup>42</sup> They conclude that younger children were more likely to use fatalistic coping strategies such as hoping the problem would go away or not using the Internet for a while. Older adolescents were more likely to talk to someone if they were upset about sexual images (communicative strategy) or to block the sender (proactive strategy). Boys were more likely than girls to hope upsetting sexual messages will go away, while girls more often talked to somebody about online harms and were more likely to adopt proactive strategies to deal with unwanted online experiences. Not surprisingly, children higher in self-efficacy more often adopted a proactive approach and tried to fix the problem themselves, while children lower in self-efficacy preferred fatalistic responses. This was also true for children with more psychological difficulties.

### ***15.3.4 Consequences for Children's Psychosocial Development***

Despite the existing research on prevalence and adolescent online risk-taking behaviours, to date there is little empirical research available on the effects of online sexual solicitation on youth.<sup>43</sup> There is some correlational evidence that online sexual solicitation is associated with depressive symptomatology,<sup>44</sup> substance abuse<sup>45</sup> and post-traumatic stress<sup>46</sup> but there are no studies that prospectively link online victimisation of sexual solicitation to psychosocial well-being.<sup>47</sup> As a result, it remains unclear whether victimisation is causally related to

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<sup>42</sup> Livingstone et al. 2011a.

<sup>43</sup> Livingstone 2010.

<sup>44</sup> Mitchell et al. 2007.

<sup>45</sup> Mitchell et al. 2007.

<sup>46</sup> Wells and Mitchell 2007.

<sup>47</sup> Sumter et al. 2012.

psychosocial problems in youth or whether, for example, pre-existing mental health problems add to the risk of online victimisation.

## 15.4 Filling the Gaps in Empirical Knowledge

While it is difficult to compare separate studies because of differences in the exact formulation of questions as well as differences in samples, the available research on the prevalence and nature of online sexual solicitation clearly shows that online sexual solicitation of youth may be less wide-spread than public anxiety may lead people to believe. Moreover, although receiving sexual messages and requests certainly is a part of everyday life for a substantial minority of youth, most requests are sent by peers and in the majority of cases the sender is also known to youth in the offline context. A large proportion of youth who receive such messages feel free to choose whether or not to respond to online sexual solicitation and if they do, most of them do so because they liked the other person or thought it was fun or exciting to do so. In addition, youth who most often receive requests of a sexual nature are most likely to rate these experiences as positive. A minority of children are upset by receiving online sexual requests and an even smaller group of children feels forced to respond to online sexual solicitation. This, of course, is a group policy makers should be especially worried about, but more knowledge about who constitutes this group is necessary. There is a clear relation with gender, age and educational level, but as yet we do not know enough to ensure that regulatory policies sufficiently target the most vulnerable groups.

Even though the EU Kids Online project, as well as the Online Grooming project, have clarified several aspects of the phenomenon of online sexual solicitation and communication, important gaps in the existing knowledge still remain.<sup>48</sup> To fill in these gaps is especially important as youth development is increasingly influenced by interactions and experiences in online environments. In this respect, research that contributes to the understanding of how to create a safer online environment for youth is beneficial to society as a whole. Brown and Bobkowski rightfully state that: '[...] to fully understand the process of media effects on adolescents, longer-term longitudinal studies that include accurate measures of media use as well as other contextual and individual difference variables are necessary'.<sup>49</sup> Longitudinal studies can fill an important gap in social-scientific knowledge on the effects of online sexual solicitation of minors by offering insight into negative consequences and risk and protective factors for experiencing negative effects of online sexual solicitation.

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<sup>48</sup> See [www2.lse.ac.uk/media@lse/research/EUKidsOnline/Home.aspx](http://www2.lse.ac.uk/media@lse/research/EUKidsOnline/Home.aspx) and [www.european-online-grooming-project.com/](http://www.european-online-grooming-project.com/).

<sup>49</sup> Brown and Bobkowski 2011, p. 107.

### ***15.4.1 Linking Regulation and Empirical Knowledge***

Longitudinal research into the developmental consequences of online sexual solicitation will not only enrich psychological research, but will also be beneficial in view of the assessment and development of regulation strategies. There is a strong correlation between behaviour and regulation. Regulation tries to curb certain behaviour, while at the same time the way in which people behave, and how they respond to regulation, is important information in the development of regulation strategies. In order for such strategies to be effective in practice, they should be based upon factual evidence of risks and protective factors within the realm of the behaviour to be regulated, in our case being online sexual solicitation. In order to prevent harm related to online sexual solicitation, it is necessary to gain insight into the forms of online sexual solicitation that actually constitute a risk of harm, what type(s) of harm may be caused and the characteristics of youth who are at risk of suffering harm.

Even without an in-depth analysis, three aspects of the current EU legislation can already be mentioned for which a stronger connection to existing and future empirical evidence will be valuable: (1) overregulation, (2) underregulation (3) and the type of regulation to be deployed.

In principle, Article 23 of the Lanzarote Convention applies to all solicitations by adults of minors. This implies that a 20-year-old who contacts a 17-year-old could be committing an offence (depending on the national implementation—the Convention leaves room for exceptions), whereas this behaviour could simply be part of normative sexual development. Similarly, authors like Ost<sup>50</sup> and Gooren<sup>51</sup> warn against the danger of overprotection and overregulation, as adolescents can engage in autonomous sexual expression, and too far-reaching criminalisation of such behaviour can be counterproductive for child protection. Koops remarks that there is a very delicate line between what constitutes healthy sexual exploration and what constitutes a crime because a boundary of age, consent or abuse of power has been crossed. As mentioned before, perceptions of decency can differ over time and depending on culture. The same holds true for perceptions regarding when and how minors are deemed to be able to consent to sexual activity.<sup>52</sup> In these respects, the regulatory strategy adopted in the Lanzarote Convention carries the impression of overregulation—constraining normative sexual development—based on an unsubstantiated and one-sided view of the detrimental effects that online sexual solicitation is presumed to have upon all minors alike. Even though the Directive leaves some room to the Member States to decide where to draw the boundaries of age of sexual consent—an important aspect to take into account when discussing possible overregulation—empirical knowledge on the conditions

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<sup>50</sup> Ost 2009.

<sup>51</sup> Gooren 2011.

<sup>52</sup> Koops 2009, p. 67.

for actual harm to occur and on the group of youth who are vulnerable to harm would substantially increase the relevance of existing regulatory initiatives.

While these regulatory initiatives require empirical research with respect to possible overregulation, at the same time, research should consider the question whether the regulatory strategy might be too restrictive given the requirements to be fulfilled in order for behaviour to qualify as criminalised online sexual solicitation. First, criminalisation is restricted to those situations where a physical meeting is intended and prepared. This may be deficient, if the act of solicitation itself has negative consequences for victims: Empirical research will have to shed light on the forms of online sexual solicitation that constitute actual harm. Second, criminalisation will only be effective if it is enforced in practice, and this is particularly difficult in that it requires intervention after a meeting has been planned but before the meeting actually takes place.<sup>53</sup> In these respects, the regulatory strategy carries the impression of underregulation.

In relation to the third aspect, the type of regulation strategy, it is important to note that regulatory theory suggests that rule setting is only one of the available modalities to curb (harmful) behaviour. Besides legal rules, Lessig distinguishes between social norms, markets and architecture as modalities of regulation.<sup>54</sup> A suitable framework for discussing regulatory strategies, which can involve any of these regulatory modalities, to address online sexual solicitation is the 'situational crime prevention framework' developed by Clarke.<sup>55</sup> The object of situational crime prevention is to reduce crime by removing the opportunity to carry it out.<sup>56</sup> Within Clarke's framework, four major strategies are defined to minimise the occurrence of crime: increasing the effort; increasing the risk; removing excuses; and reducing the rewards. Within these four broad strategies, several options can be specified; for example, reducing rewards can be done through target removal, identifying property, removing inducements and rule setting.<sup>57</sup> This framework of four broad strategies to minimise crime provides a useful heuristic to discuss regulation strategies for online sexual solicitation, to put into perspective the potential overregulation and underregulation of the Lanzarote Convention. For instance, empirical knowledge regarding the characteristics of youth who are at risk of experiencing harm may inform secondary prevention strategies such as Internet safety education programmes and as such facilitate a form of target removal. Along similar lines, such knowledge may also be used to sensitise practitioners who work with vulnerable youth to recognise potential risks in their clients' online behaviour. As a way of increasing the risk, one could consider

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<sup>53</sup> Koops 2009.

<sup>54</sup> Lessig 1999.

<sup>55</sup> Clarke 1995, 1997.

<sup>56</sup> Felson and Boba 2010, p. 177.

<sup>57</sup> Clarke 1997; see also Felson and Boba 2010.

removing from the legislation the legal requirement that actual contact needs to have taken place between the ‘solicitor’ and the victim—provided that social scientific findings substantiate our concern of underregulation and reveals that a meeting is no necessary condition for harm to arise.

In line with the Lanzarote Convention, Directive 2011/93/EU suggests a whole array of measures to be taken by the Member States such as preventive measures, specialised authorities and co-ordinating bodies, protective measures and assistance to victims. However, there is no direction on prioritising the measures, the mutual relation between the measures or positive and negative factors of the measures in relation to actual prevention of child sexual abuse. Also, no guidance is given in view of what measures best to explore in relation to specific crimes. Empirical research can provide such guidance by providing answers to the question which youth are at risk of experiencing what forms of harm from which types of online sexual solicitation.

## **15.5 Conclusion: The Need for Future Research**

Given the reasons to question the general assumption underlying current legislation that online sexual solicitation should be generically governed because it harms children and adolescents, research on the effects of online sexual solicitation on adolescents is called for. Furthermore, considering the possible overregulation as well as underregulation offered by the Lanzarote Convention and Directive 2011/93/EU, a discussion is needed regarding possible regulation strategies that might lead to a more effective way of protecting youth from negative consequences of online sexual solicitation. In order to achieve insights into risk and protective factors, research should be carried out regarding the interrelationship between online sexual solicitation and psychosocial development. Such studies should identify what youth experience as distressing incidents of online sexual solicitation. Where do they deem the boundary to be between normal sexual exploration and criminal behaviour? Is there a general understanding or do differences exist in view of the type of youth (culture, age, sex etc.)? In other words, more insight is needed regarding which youth experience harm as a result of online sexual solicitation and what the negative consequences are for them as a result of online sexual solicitation. In this respect it is necessary to identify the risk and protective factors that are associated with the chance of youth experiencing harm from online sexual solicitation.

Subsequently, the results of the research proposed above should form the basis for analysing possible regulation strategies that might lead to a more effective way of protecting youth from negative consequences of online sexual solicitation, while at the same time avoiding curtailing the normal development of youth’s sexuality.

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