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Strasbourg, 29 March 2019

**Comments**

**submitted by the Children’s Rights Division of the Council of Europe**

**on the** [**DRAFT Guidelines**](https://www.ohchr.org/EN/HRBodies/CRC/Pages/DraftGuidelinesOPs.aspx) **on the implementation of the
Optional Protocol to the Convention on the Rights of the Child
on the Sale of Children, Child Prostitution and Child Pornography**

The Council of Europe extends its gratitude to the Office of the High Commissioner on Human Rights for the opportunity to submit comments on the draft Guidelines on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OPSC).

These comments reflect the views of the Secretariat of the Council of Europe, as prepared by the Children’s Rights Division, and do not necessarily reflect the official position of its member States.

From the outset, it is important to note that the Council of Europe work on the elimination of violence against children is strongly grounded in the UN Convention on the Rights of the Child and its Optional Protocols. The standards developed by the Council of Europe provide further guidance to its member states thus complementing the efforts at global level. The Convention on the protection of children against sexual exploitation and sexual abuse (also known as “the Lanzarote Convention”) has already brought 44 states in Europe to a comprehensive level of commitment in the fight against this scourge. The findings and the interpretative opinions of its monitoring body, the Lanzarote Committee, are helping states to review and achieve further progress. Moreover, it must be noted that the Lanzarote Convention is also open to accession by non-European states and its provisions are already inspiring changes in legislation and policies in countries around the world. It would therefore be relevant and useful to reference its standards as part of the guidance for the effective prevention and response to sexual abuse and exploitation worldwide.

**Section II. – Objectives of the Guidelines**

The title of the document, “Guidelines on the implementation of the Optional Protocol…”, suggests that it will contain practical illustrations of the implications of the provisions of the OPSC to support State Parties in effectively implementing them. However, the objectives emerging from **§§11-13** are multiple:

* “foster a deeper understanding of the substantive provisions of the OPSC … to enable a better implementation”
* “support and strengthen initiatives and efforts undertaken by Parties to better fulfill their obligations… including in respect of reporting to the Committee”;
* “provide a dynamic interpretation of the OPSC provisions”.

Clearly, it is not for the Children’s Rights Division of the Council of Europe to say how and by which means the interpretation of the OPSC should be developed. It is however legitimate to wonder whether “guidelines” meant to support State Parties in the implementation of the OPSC are a suitable tool in this regard.

**Section I – Introduction**

**§§1-2**: These paragraphs could include an explicit acknowledgement of the fact that an increasing number of Parties to the OPSC is also a Party to the Lanzarote Convention. Thus, to ensure a coherent implementation of all obligations, these paragraphs should highlight the importance for Parties to build on the work undertaken within the context of regional human rights bodies as this contributes to their effective implementation of global commitments. In addition, it should be acknowledged that the Lanzarote Convention is the only regional treaty to address in detail how Parties should prevent sexual offences against children, prosecute the perpetrators and protect the child victims. The [Interpretative Opinion on the applicability of the Lanzarote Convention to sexual offences against children facilitated through the use of information and communication technologies (ICTs)](http://rm.coe.int/t-es-2017-03-en-final-interpretative-opinion/168071cb4f) (adopted in May 2017) seems particularly relevant in the context of §2.

**§5:** The term “grooming” was not recently coined as this paragraph seems to suggest. The term is referred to explicitly in the Explanatory Report to the Lanzarote Convention (see §§155-159) in relation to the criminal offence of “Solicitation of children for sexual purposes” provided for by Article 23 of the Convention. It would be appropriate to reference this.

**§ 8:** In light of Resolution 73/15 adopted by the United Nations General Assembly on 26 November 2018 on cooperation between the United Nations and the Council of Europe, this paragraph should highlight that efforts undertaken by State Parties to protect children against sexual exploitation and sexual abuse in the context of regional instruments contribute to the effective implementation of corresponding OPSC obligations.

**§10:** This paragraph should list all the stakeholders that participated in the Interagency Working Group that contributed to the drafting of the guidelines and not only the UN specialised agencies and bodies involved.

**Sections III-X**

In general, it is recommended that all the sections and subsections of the guidelines contain an explicit reference to the provisions of the OPSC they are attached to. It would also be useful to know which general comment(s), UN CRC concluding observations or other UN bodies’ findings, they are based on. References to relevant provisions of regional treaties and findings of regional human rights bodies addressing the same topics (including recommendations of the Lanzarote Committee) would also be useful supplementary guidance for Parties on how to effectively implement the OPSC provisions. The Children’s Rights Division of the Council of Europe stands ready to provide such information to the UN CRC.