



# HELSINKI COMMISSION REPORT

December 22, 2017

## IN BRIEF

### New OSCE Ministerial Decision Builds on OSCE PA Best Practices to Fight Child Trafficking and Other Sexual Exploitation of Children

On December 8, 2017, the OSCE Ministerial Council concluded its annual meeting of the Foreign Ministers of 57 OSCE participating States by adopting a decision to protect children from traveling sex offenders, from easy access to online pornography, and from misuse of the internet for child trafficking and other forms of sexual exploitation.

Modeled on Helsinki Commission Co-Chair Rep. Chris Smith's supplementary items adopted by the OSCE Parliamentary Assembly (PA) in 2016 and 2017, the decision on "Strengthening Efforts to Combat All Forms of Child Trafficking, Including for Sexual Exploitation, as well as Other Forms of Sexual Exploitation of Children," calls on participating States to take new, practical steps to protect children.

The decision was sponsored by the United States, Italy (the next incoming Chair of the OSCE), and Belarus.

#### **International Law Enforcement Cooperation on Traveling Sex Offenders**

In a year when little more than a quarter of the decisions proposed made it past the finish line, participating States found consensus on the often controversial issue of registries to protect children from traveling sex offenders. Only a handful of participating States currently have registries for sex offenders with convictions for

crimes against children—and such registries are critical tools for warning destination countries when dangerous sex offenders are traveling.

Similar to Co-Chairman Smith's resolutions adopted by the OSCE PA in Tbilisi in 2016 and Minsk in 2017,<sup>1</sup> the decision calls on all 57 participating States to adopt "additional administrative measures in relation to perpetrators, such as the registration in sex offender registers of person convicted of child sexual exploitation or abuse, as appropriate." In addition, it also calls on participating States to consider "a means to exchange and/or receive information on such registries transnationally among law enforcement agencies and/or judicial authorities on persons convicted of child sexual exploitation or abuse."

Co-Chairman Smith, who also serves as Special Representative to the OSCE PA for Human Trafficking Issues, explained, "Traveling sex offenders rely on secrecy and anonymity to commit crimes against children; the new decision will deter the sexual exploitation of children at home and abroad, and aid in the prosecution of child sex traffickers."

Sex offender registries of individuals convicted of sex crimes against children and transnational law enforcement cooperation are the basis of the Angel Watch Program in the United States,

as codified by Co-Chairman Smith's International Megan's Law (P.L. 114-119),<sup>2</sup> which requires the U.S. Department of Homeland Security to notify the intended destination countries in advance when someone on the registry is intending to travel. Since the implementation of International Megan's Law in 2016, the U.S. has warned more than 100 destination countries of more than 3,500 sex offenders seeking entry.

Since the implementation of International Megan's Law in the United States, countries with registers like the one called for in the Ministerial Decision have reciprocated by warning the U.S. of incoming of sex offenders with offenses against children, empowering U.S. law enforcement to deny entry where appropriate and protect U.S. children.

OSCE-wide implementation of the new decision will result in protection of children both inside and outside the region. Co-Chairman Smith has previously published a manual for implementation.<sup>3</sup>

### **Extraterritorial Jurisdiction for Sex Crimes against Children**

Some sex tourists travel abroad to purchase sex with a child or otherwise sexually abuse a child because the age of consent is low or non-existent in the destination country, or because that country's laws on child sex trafficking and exploitation are weak or unenforced.

Echoing the 2016 PA declaration, the new decision calls for "OSCE participating States which have not already done so to consider legal measures that would allow them to prosecute their citizens for serious sexual crimes against children, even if these crimes are committed in another country"—in other words, extraterritorial jurisdiction.

Co-Chairman Smith explains, "Some believe the laws of a destination country allow sexual exploitation of a child, or rely on the fact that the

judicial system in the destination country is weak."

"The Ministerial decision underscores the universal human rights of the child to be protected from sexual exploitation and calls for participating States to put all abusers on notice—they will be prosecuted when they return home," he says.

As the U.S. State Department's 2016 Trafficking in Persons Report showed, more than a dozen OSCE participating States were origins for sex tourists looking to exploit children in nearly 50 destination countries, mostly outside the region, the effective implementation of the new commitment on extra-territorial jurisdiction could greatly reduce the number of sex tourists driving demand for child sex trafficking in foreign markets around the world.

### **Age Verification to Prevent Children's Access to Internet Pornography and Exploitation**

Responding to an emerging problem in the OSCE region, which was addressed in the 2017 PA declaration,<sup>4</sup> the new decision expresses "concern that children who access pornography on the Internet may become desensitized to it and more likely to become a victim of or perpetrate sexual exploitation," and "calls on participating States which have not already done so to promote the implementation of age verification technologies with a view to limit the access of children to pornographic websites."

Evidence for the need of age verification, or "age walls," is found in recent studies conducted across the OSCE region showing a high correlation between viewing online pornography and committing sexual coercion and abuse, as well as increased susceptibility to sexual coercion.<sup>5</sup> Recent statistics from the UK also show that reported sexual offences by minors against other minors have escalated 71 percent since 2013.<sup>6</sup>

While Germany, Finland, and Iceland have long had some form of age verification in place for

access to pornography websites, the United Kingdom this year put the issue at the forefront with the Digital Economy Act, which requires all pornography websites viewed from the UK to have in place age verification walls—or face fines and potential shut-down in the UK. The exact details of the technology that will be used for age verification are still being finalized, but there are several options that protect the identity of the viewer while still verifying age. The largest pornography websites are reportedly supportive of the idea and are working with the UK on details.<sup>7</sup>

The new OSCE decision will help prioritize and coordinate the development of age-verification technologies across the region.

#### **Accountability for Recruiting or Advertising Children for Exploitation Online**

Addressing an emerging area of anti-trafficking law, the new decision also underscores that “information and communications technologies (ICTs) can...be misused to facilitate access to children for exploitation or for advertisement of children for sexual exploitation.” This issue was addressed in the 2017 PA Minsk Declaration<sup>8</sup> and has been the focus of increased interest in the United States in 2016 and 2017 following revelations that certain websites had knowingly and/or recklessly accepted money from traffickers, as well as provided guidance for traffickers on how to avoid language that would draw police attention.

Current U.S. law protecting third-party websites makes it almost impossible for the website to be sued for its knowing or reckless role in the trafficking. However, two bills to enhance the ability of state and federal prosecutors to prosecute such websites and to allow survivors to sue for damages are currently working their way through the U.S. Congress.<sup>9</sup>

The new decision also highlights the fact that “social media platforms can be misused to groom children who may be subjected to sexual

exploitation as well as all forms of child trafficking,” calling on “ICT and social media companies to...protect children by combating grooming by human traffickers online for all forms of child trafficking as well as other sexual exploitation of children, including through the development of new tools and technologies.”

Importantly, the new decision designates as “traffickers” those who recruit children or facilitate access to children for the purpose of subjecting them to trafficking and urges participating States to prosecute such traffickers—imposing “penalties that are effective, dissuasive, and proportionate to the crime.”

#### **Training of the Travel Industry to Spot and Report Child Trafficking**

Building on the PA 2013 Istanbul Declaration<sup>10</sup> and the subsequent 2013 Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings,<sup>11</sup> the new decision recognized the important role hotels, airlines, other modes of transportation, the broader hospitality industry, civil society, and relevant international organizations have to play in identifying and properly reporting potential trafficking victims.

The new decision calls on participating States “to prevent all forms of child trafficking and sexual exploitation of children, including in tourist destinations, through education and awareness raising, and to work with the private sector and civil society to raise awareness among the tourism industry, as well as business travelers and tourists, to help eliminate demand that fuels child trafficking and sexual exploitation of children.”

Since 2013, at least a dozen participating States have conducted training for airline personnel. In addition, airlines, hotel chains, and travel agencies across the region have committed to The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism<sup>12</sup> or created their own zero-tolerance policies and trainings. The new decision contin-

ues and builds momentum toward a new industry standard in travel and tourism.

Creating an incentive for more hotels and airlines to adopt anti-trafficking training and reporting procedures, Co-Chairman Smith has introduced legislation in the U.S. Congress that would prefer in government travel contracts the airlines and hotels that have such policies in place for their employees.<sup>13</sup> The legislation has passed the House of Representatives and is pending in the Senate.

### **Conclusion**

This year was the second year that the U.S. put forward the new decision, building on the mo-

mentum of two previous OSCE PA resolutions and a year of discussion with participating States over harmonizing the decision with differing state legal frameworks. Along with the Chairmanship's decision on Combatting Trafficking in Human Beings, the cross-dimensional trafficking decisions were among the few to reach consensus.

“With this binding decision, the foreign ministries of the 57 OSCE participating States stand united with the OSCE Parliamentary Assembly to protect children from trafficking and other sexual exploitation across the OSCE region,” says Co-Chairman Smith.

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## **About the Helsinki Commission**

The Commission on Security and Cooperation in Europe, also known as the U.S. Helsinki Commission, is an independent agency of the Federal Government charged with monitoring compliance with the Helsinki Accords and advancing comprehensive security through promotion of human rights, democracy, and economic, environmental and military cooperation in 57 countries. The Commission consists of nine members from the U.S. Senate, nine from the House of Representatives, and one member each from the Departments of State, Defense, and Commerce.

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### **Report Contributors**

- Allison Hollabaugh, Counsel, Helsinki Commission

### **Editor**

- Stacy Hope, Communications Director, U.S. Helsinki Commission

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<sup>1</sup> OSCE Parliamentary Assembly, 25th Annual Session, Tbilisi Declaration and Resolutions, Resolution on Law Enforcement Coordination to Prevent Child Sexual Exploitation and Trafficking by Known Sex Offenders (July 2016) <https://www.oscepa.org/documents/all-documents/annual-sessions/2016-tbilisi/declaration-24/3371-tbilisi-declaration-eng/file>. OSCE Parliamentary Assembly, 26th Annual Session, Minsk Declaration, Resolution on Preventing Child Sexual Exploitation Online through Advances in Technology (July 2017) <http://www.oscepa.org/documents/all-documents/annual-sessions/2017-minsk/declaration-25/3555-declaration-minsk-eng/file>.

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<sup>2</sup> International Megan’s Law to Prevent Child Exploitation and Other Sexual Crimes through Advance Notification of Traveling Sex Offenders, P.L. 114-119 (February 8, 2016) <https://www.congress.gov/114/bills/hr515/BILLS-114hr515enr.pdf>.

<sup>3</sup> Rep. Chris Smith, *A Guide to Megan’s Laws: Prevention of Domestic and International Exploitation of Children*, Expert Paper, Global Study: Exploitation of Children in Travel and Tourism (May 2016) <http://globalstudysect.org/wp-content/uploads/2016/05/Expert-Paper-The-Honorable-Chris-Smith.pdf>.

<sup>4</sup> Resolution on Preventing Child Sexual Exploitation Online through Advances in Technology (July 2017) <http://www.oscepa.org/documents/all-documents/annual-sessions/2017-minsk/declaration-25/3555-declaration-minsk-eng/file>.

<sup>5</sup> Nicki Stanley, Christine Barter, Marsha Wood, Nadia Aghtaie, Cath Larkins, Alba Lanau, and Carolina Overlien, “Pornography, Sexual Coercion and Abuse and Sexting in Young People’s Intimate Relationships: A European Study,” *Journal of Interpersonal Violence* (2016) 1-26; Silvia Bonino, Silvia Ciairano, Emanuela Rabaglietti,, and Elena Cattelino, “Use of Pornography and Self-reported Engagement in Sexual Violence Among Adolescents,” *European Journal of Developmental Psychology* (2006), 3 (3) 265-288.

<sup>6</sup> “The number of reported sexual offences by under-18s against other under-18s in England and Wales rose by 71% from 4,603 from 2013-14 to 7,866 from 2016-17, according to figures from a Freedom of Information request.” *Child-on-child sex offence reports ‘tip of the iceberg’*, October 9, 2017, British Broadcasting Corporation (<http://www.bbc.com/news/uk-41504571>).

<sup>7</sup> Commission on Security and Cooperation in Europe, “Using Technology to Protect Children from Online Exploitation,” June 29, 2017, <https://www.csce.gov/international-impact/using-technology-protect-children-online-exploitation>.

<sup>8</sup> Resolution on Preventing Child Sexual Exploitation Online through Advances in Technology (July 2017) <http://www.oscepa.org/documents/all-documents/annual-sessions/2017-minsk/declaration-25/3555-declaration-minsk-eng/file>.

<sup>9</sup> Rep. Ann Wagner and Rep. Joyce Beatty, H.R. 1865 : “Allow States and Victims to Fight Online Trafficking Act of 2017,” <https://judiciary.house.gov/wp-content/uploads/2017/12/BILLS-115hr1865ih.pdf> and background <https://wagner.house.gov/media-center/press-releases/wagner-introduces-bipartisan-allow-states-and-victims-to-fight-online>; and Sen. Richard Blumenthal and Sen. Robert Portman, S. 1693: Stop Enabling Sex Traffickers Act, <https://www.congress.gov/115/bills/s1693/BILLS-115s1693is.pdf> and background <https://www.blumenthal.senate.gov/newsroom/press/release/blumenthal-and-portman-lead-bipartisan-legislation-to-hold-backpage-accountable-ensure-justice-for-victims-of-sex-trafficking> (August 1, 2017).

<sup>10</sup> OSCE Parliamentary Assembly, 22nd Annual Session, Istanbul Declaration and Resolutions, “Trafficking Victim Watchfulness: Planes, Trains, Buses, and Hotels,” (June 29 July 3, 2013)

<sup>11</sup> Decision No. 1107, Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings (December 6, 2013) <http://www.osce.org/addendum?download=true>.

<sup>12</sup> The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism, Top Members <http://www.thecode.org/who-have-signed/top-members/>.

<sup>13</sup> Rep. Christopher Smith and Rep. Karen Bass, H.R. 2200: “The Frederick Douglass Trafficking Victims Prevention and Protection Act of 2017,” <https://www.congress.gov/115/bills/hr2200/BILLS-115hr2200rfs.pdf>.