The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and the Budapest Convention on Cybercrime: guidelines for action and assessment of progress

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Council of Europe instruments addressing criminalization of sexual exploitation of children

Convention on Cybercrime (CETS 185)

Article 9 – Offences related to child pornography

❑ Procedural law + International cooperation provisions

Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)

❑ Holistic approach to cope with child sexual exploitation and sexual abuse

Holistic approach of the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201)

Article 1 – Purposes

a **prevent and combat** sexual exploitation and sexual abuse of children

b **protect the rights of child victims**

c **promote national and international co-operation**

d **sets up a specific monitoring mechanism.**

- Preventive measures
- Specialised authorities and co-ordinating bodies
- Protective measures and assistance to victims
- Intervention programmes or measures
- Recipients of intervention programmes and measures for persons
- Information and consent
- Substantive law
- Investigation, prosecution and procedural law
- International cooperation
- Monitoring mechanism

CETS 201: high standards

✓ clear definitions of 'sexual abuse of children' and 'sexual exploitation of children'

✓ groups various forms of sexual crimes under a single umbrella

✓ includes a broad range of offences

✓ holistic approach: prevention, assistance and protective measures and treatment for victims

✓ fills the gaps in existing instruments

Agreed upon

The Rio de Janeiro Declaration
ECPAT
European Union etc

Global study on the measures taken by countries to criminalise conduct related to the sexual exploitation of children

The study is carried out under global Project on cybercrime funded by contributions from Estonia, Monaco, Romania, Microsoft , McAfee and the Council of Europe

First stage: the 47 MS of CoE, the parties, signatories and states invited to accede to the Convention on Cybercrime were requested to reply to a questionnaire

Second stage: extend the study to other countries in which CoE – though the global Project on cybercrime – has provided technical assistance on cybercrime, including protection of children from sexual exploitation and sexual abuse

Purpose of the study

- Contribute to the protection of children against sexual exploitation by encouraging countries to become parties and support the implementation of the Convention on Cybercrime and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

- Promote these instruments as a holistic approach for countries to cope with child sexual exploitation by taking a set of legislative and other measures at the national level

- Give an overview of the substantive law provisions that need to be implemented and share good practice among countries from Europe, Latin America, Asia and Africa

- The document could be used to monitor the legislation on child protection against sexual exploitation including online all over the world

- The conclusions of the study will be included as CoE contribution to the OECD ongoing study on protecting children online

Questionnaire sent in November 2009

43 countries responded: Armenia, Austria, Belgium, Bulgaria, Costa Rica, Croatia, Cyprus, Czech Republic, Dominican Republic, Estonia, Finalnd, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Mexico, Moldova, Monaco, Montenegro, Norway, Philippines, Poland, Portugal, Romania, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Switzerland, "The Former Yugoslav Republic of Macedonia", Turkey, United Kingdom, Ukraine

14 countries targeted in the first stage **have not replied** yet to the questionnaire:
Albania, Andorra, Azerbaijan, Bosnia and Herzegovina, Canada, Chile, Denmark, Russian Federation, Iceland, Malta, Netherlands, South Africa, Sweden, United States of America

Substantive law: benchmarks

Laws regulating offences on sexual exploitation and sexual abuse of children

Recent or ongoing legal reforms on the legislation in the field

Definition of child pornography

Types of offences to be criminalised
- Sexual abuse
- Child pornography
- Participation of a child in pornographic performances
- Child prostitution
- Corruption of children
- Solicitation of children for sexual purposes

Who is a child/minor?

Child pornography (CPC Article 20, CC Article 9)

Countries	producing child porn / producing child porn for the purpose of its distribution through a computer system	offering child porn / offering child porn through a computer system	making available child porn / making available child porn through a computer system	distributing child porn / distributing child porn through a computer system	transmitting child porn / transmitting child porn through a computer system	procuring child porn for oneself or for another person / procuring child porn through a computer system for oneself or for another person	possessing child porn / possessing child porn in a computer system or on a computer-data storage medium	knowingly obtaining access, through information and communication technologies to child porn
Croatia	Yes Yes (s)	P Yes (s)	No No (s)	Yes Yes (s)	P No (s)	No Yes (s)	Yes Yes (s)	No
Czech Republic	Yes Yes (s)	Yes Yes (s)	Yes Yes (s)	Yes Yes (s)	Yes Yes (s)	No No	Yes Yes (s)	No
Dominican Republic	Yes Yes (s)	No ?	Yes Yes (s)	Yes Yes (s)	Yes P (s)	No No	yes Yes (s)	No
Estonia	Yes Yes (g)	Yes Yes (g)	Yes Yes (g)	Yes Yes (g)	Yes Yes (g)	No No	Yes Yes (g)	Draft law
Germany	Yes Yes (s)	Yes Yes (s)	Yes Yes (s)	Yes Yes (s)	Yes Yes (s)	Yes Yes (s)	Yes Yes (s)	?

Child pornography (Article 9) - Explanatory Report:

➢ **offering**' of child pornography through a computer system = soliciting others to obtain child pornography and the person offering the material can actually provide it

➢ '**making available**' = placing of child pornography on line for the use of others (e.g. creating child pornography sites or compilation of hyperlinks to child pornography sites)

➢'**distribution**' = active dissemination of the material

➢ '**transmitting**' = sending child pornography through a computer system to another person

➢'**procuring for oneself or for another**' = actively obtaining child pornography (e.g. by downloading it)

Solicitation of children for sexual purposes/grooming (CPC, Article 23)

The intentional proposal, through information and communication technologies, of an adult to meet a child who has not reached the age below which it is prohibited to engage in sexual activities with a child for the purpose of committing any of the following offences and where this proposal has been followed by material acts leading to such a meeting:

- engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;

- producing child pornography

➢ **this offence can only be committed "through the use of information and communication technologies"**

➢ **other forms of grooming through real contacts or non-electronic communications are outside the scope of the provision**

The study will thus contribute to:

Raising awareness of countries of the existing instruments already available to help them build a strategy to cope with sexual exploitation of children

Promoting global standards for harmonizing legislation and a framework for effective and efficient international cooperation on cybercrime, including offences related to sexual exploitation and sexual abuse of children

Serve as a **database for legislation** and help share good practices

Preparing a future **tool to monitor the legislation** on child protection against sexual abuse and sexual exploitation

THANK YOU FOR YOUR

ATTENTION

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