

Criminalizing child pornography and sexual abuse on the Internet

European countries



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International instruments on child protection

- ▶ *Convention for the Protection of Human Rights and Fundamental Freedoms (1950)*
- ▶ *United Nations Convention on the Rights of the Child (1989)*
- ▶ *Revised European Social Charter (1996)*
- ▶ *European Convention on the Exercise of Children's Rights (1996)*
- ▶ *International Labour Organization's: Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999)*
- ▶ *United Nations' Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography (2000)*
- ▶ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (2000)*
- ▶ *Council of the European Union Framework Decision on the standing of victims in criminal proceedings (2001/220/JHA)*
- ▶ ***Council of Europe Convention on Cybercrime (2001)***
- ▶ *Council of the European Union Framework Decision on combating trafficking in human beings (2002/629/JHA)*
- ▶ *Council of the European Union Framework Decision on combating the sexual exploitation of children and child pornography (2004/68/JHA)*
- ▶ *Council of Europe Convention on Action against trafficking in Human Beings (2005)*
- ▶ ***Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007)***

Council of Europe instruments

▶ **Provisions addressing sexual exploitation of children on Internet:**

- **Convention on Cybercrime, Budapest, 23.11.2001**
 - ▶ **Article 9 – Offences related to child pornography**

- **Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Lanzarote, 25.10.2007**
 - ▶ **Article 23 – Solicitation of children for sexual purposes**
 - ▶ **Article 18 a) – Sexual abuse**
 - ▶ **Article 20 a) f) – Offences concerning child pornography**

Convention on Cybercrime (2001)

Article 9 of the Convention: child pornography

- 1 Establish as criminal offences when committed intentionally and without right, the following conduct:
 - a. *producing child pornography for the purpose of its distribution through a computer system;*
 - b. *offering or making available child pornography through a computer system*
 - c. *distributing or transmitting child pornography through a computer system;*
 - d. *procuring child pornography through a computer system for oneself or for another person;*
 - e. *possessing child pornography in a computer system or on a computer-data storage medium.*

EXPLANATORY REPORT

- **'production of child porn for the purpose of distribution'** through a computer system
- **'offering'** of child porn through a computer → soliciting others to obtain child porn
- **'making available'** → placing of child porn on line for the use of others (e.g. creating child porn sites, creation/compilation of hyperlinks to child porn sites)
- **'distribution'** of child porn through a computer system → the active dissemination of the material
- **'transmitting'** child porn → sending child porn through a computer system to another person
- **'procuring for oneself or for another'** → actively obtaining child porn (e.g. downloading)
- **'possession'** of child porn in a computer system or on a data carrier (diskette, CD-Rom etc)



Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007)

Article 23 – Solicitation of children for sexual purposes

Each Party shall take the necessary legislative or other measures to criminalise the **intentional proposal, through information and communication technologies**, of an adult to **meet a child who has not reached the age** set in application of Article 18, paragraph 2, for the **purpose of committing any of the offences established in accordance with Article 18, paragraph 1.a, or Article 20, paragraph 1.a**, against him or her, where this proposal has been followed by material acts leading to such a meeting.

Article 18 – Sexual abuse

1 Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised:

- a **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;**

Article 20 – Offences concerning child pornography

1 Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct, when committed without right, is criminalised:

- a **producing child pornography;**
- f **knowingly obtaining access, through information and communication technologies, to child pornography.**

Article 18 (2):

For the purpose of paragraph 1 above, each Party shall decide the age below which it is **prohibited to engage in sexual activities with a child.**



Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse

EXPLANATORY REPORT

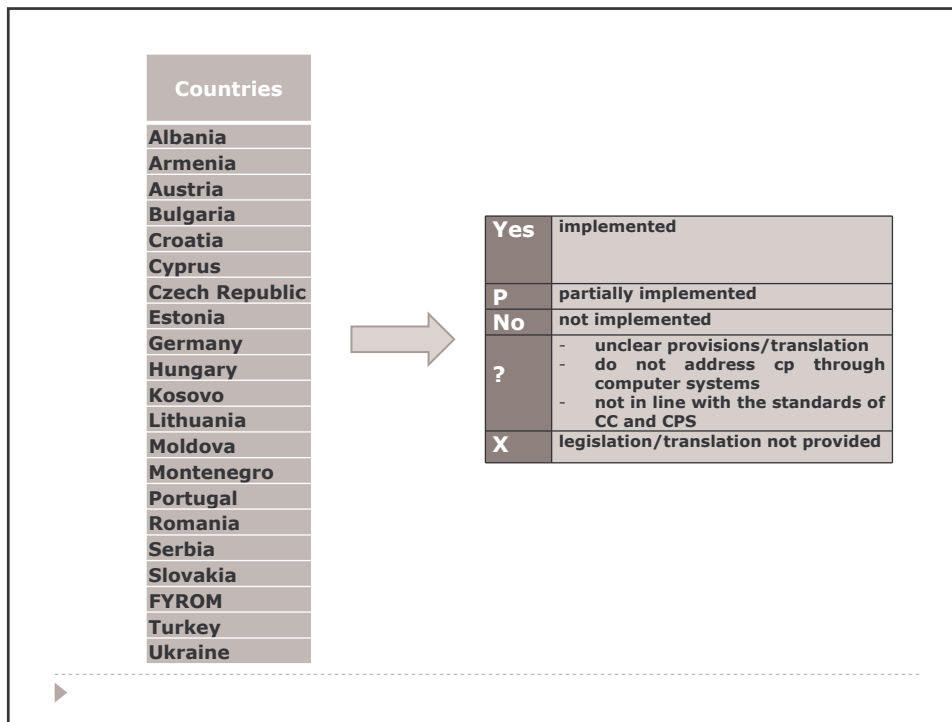
Article 20 - Offences concerning child pornography →	<ul style="list-style-type: none"> - inspired by the Article 9 of CC - not restricted to child pornography committed by the use of a computer system - a new element is introduced by paragraph 1 f:
Article 20 (1) : f. knowingly obtaining access, through information and communication technologies, to child pornography →	<ul style="list-style-type: none"> - criminalization of the access to child pornography sites without downloading (cannot be identified under the offence of procuring or possession in some jurisdictions); - required the intent to enter a site where child pornography is available and knowing that such images can be found there
Article 23 - Solicitation of children for sexual purposes →	<ul style="list-style-type: none"> - introduces a new offence regarding the solicitation of children for sexual purposes ("grooming") criminalising the intentional "proposal of an adult to meet a child who has not reached a certain age for the purpose of committing the offences established in accordance with Article 18 paragraph 1 a (engaging in sexual activities) or Article 20 paragraph 1 (producing child pornography)



what offences have been addressed by the different countries:

Individual types of offences addressed								
Convention on Cybercrime					Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse			
Countries	Producing child porn for the purpose of its distribution through a computer system	Offering or making available child porn through a computer system	Distributing or transmitting child porn through a computer system	Procuring child porn through a computer system for oneself or for another person	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	Intentional proposal, through information and communication technologies, of an adult to meet a child for the purpose of 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	Intentional proposal, through information and communication technologies, of an adult to meet a child for the purpose of producing child porn





Countries	<i>Individual types of offences addressed (committed through computer system information and communication technologies)</i>							
	Convention on Cybercrime					Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse		
	Producing cp for the purpose of its distribution	Offering or making available cp	Distributing or transmitting cp	Procuring cp for oneself or for another person	Possessing cp in a computer system or on a computer-data storage medium	Knowingly obtaining access to cp	Intentional proposal of an adult to meet a child for the purpose of 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	Intentional proposal of an adult to meet a child for the purpose of producing cp
Albania	Yes	No	?	No	No	No	No	No
Armenia	?	No	P	No	No	No	No	No
Austria	x	x	x	x	x	x	x	x
Bulgaria	Yes	Yes	Yes	Yes	Yes	No	Yes	No
Croatia	No	No	No	No	No	No	No	No
Cyprus	Yes	Yes	Yes	Yes	Yes	No	No	No
Czech Republic	x	x	x	x	x	x	x	x
Estonia	Yes	P	P	No	Yes	No	No	No
Germany	Yes	Yes	Yes	Yes	Yes	No	No	No
Hungary	x	x	x	x	x	x	x	x
Kosovo	Yes	Yes	Yes	Yes	Yes	No	No	No
Lithuania	Yes	No	P	P	Yes	No	No	No
Moldova	x	x	x	x	x	x	x	x
Montenegro	?	P	P	No	No	No	No	No
Portugal	Yes	P	Yes	No	Yes	No	P	P
Romania	Yes	Yes	Yes	Yes	Yes	No	Yes (CC draft)	Yes (CC draft)
Serbia	?	Yes	P	No	No	No	No	No
Slovakia	?	Yes	P	P	Yes	No	No	No
FYROM	?	No	No	No	No	No	No	No
Turkey	?	P	P	No	Yes	No	No	No
Ukraine	?	P	P	reservation	reservation	No	No	No

Gaps Identified In the legislation analyzed:

- Do not cover all acts required to be criminalized (Albania, Armenia, Estonia, Lithuania, Montenegro, Serbia, FYROM)
- Do not specifically address computer systems as a mean to commit the offence (Albania, Estonia, Germany, Kosovo, Lithuania, Portugal, Slovakia, FYROM, Turkey)
- Criminalize only children exposure to pornographic materials/shows/representations (Croatia), which is distinct from the production, dissemination and possession of child pornographic materials
- A general wording is used in order to cover some acts (Bulgaria: “*in any other way circulates*”, Estonia: “*makes available in any other manner*”, Serbia: “*otherwise makes available*”)
- It is not criminalized the act of producing child pornography, but the act of using a child to produce such material (Montenegro, Serbia, Slovakia, FYROM, Turkey)
- Possession of such material is not covered (Albania, Armenia, Croatia, Montenegro, Serbia, FYROM)
- A limiting or unclear constituent element provided (Armenia: “*forcing minors*”; Albania: “*in minors’ premises*”; FYROM: “*abuses a juvenile*”; Ukraine: “*compelling minors to participate*”)
- Relevant provisions not attached or translation is not available (Austria, Czech Republic, Hungary, Moldova)

The process to implement the new acts introduced by CPC (25/10/2007) has just started



Definition of “child pornography”

- ▶ **Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography-Article 2(c):**
 - ▶ **Child pornography** means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes
- ▶ **The Council of EU Framework Decision 2004/68 of 22 December 2003 on combating the sexual exploitation of children and child pornography:**
 - ▶ **Child pornography** shall mean pornographic material that visually depicts or represents:
 - (i) a real child involved or engaged in sexually explicit conduct, including lascivious exhibition of the genitals or the pubic area of a child; or
 - ii) a real person appearing to be a child involved or engaged in the conduct mentioned in (i); or
 - (iii) realistic images of a non-existent child involved or engaged in the conduct mentioned in (i)



Definitions

Council of Europe
Convention on
Cybercrime (2001)



Article 9 – Offences related to child pornography

For the purpose of paragraph 1 above, the term "child pornography" shall include pornographic material that visually depicts:

- a a minor engaged in sexually explicit conduct;
- b a person appearing to be a minor engaged in sexually explicit conduct;
- c realistic images representing a minor engaged in sexually explicit conduct.

Council of Europe
Convention on the
Protection of Children
against Sexual
Exploitation and Sexual
Abuse (2007)



Article 20 – Offences concerning child pornography

2. For the purpose of the present article, the term "child pornography" shall mean any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child's sexual organs for primarily sexual purposes.



country's definition of "child pornography", vis-à-vis the framework provided by CC and CPC:

Countries	Countries' legal provisions determine that "child pornography" comprises pornographic material that visually depicts:			
	Convention on Cybercrime		Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse	
	A minor engaged in sexually explicit conduct:	A person appearing to be a minor engaged in sexually explicit conduct:	Realistic images representing a minor engaged in sexually explicit conduct:	Any depiction of a child's sexual organs for primarily sexual purposes.



Countries	
Albania	
Armenia	
Austria	
Bulgaria	
Croatia	
Cyprus	
Czech Republic	
Estonia	
Germany	
Hungary	
Kosovo	
Lithuania	
Moldova	
Montenegro	
Portugal	
Romania	
Serbia	
Slovakia	
FYROM	
Turkey	
Ukraine	

Yes	implemented
No	not implemented
?	definition is not provided
x	legislation/translation not provided

Countries	Convention on Cybercrime			Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse
	Countries' legal provisions determine that "child pornography" comprises pornographic material that visually depicts:			
	A minor engaged sexually explicit conduct	A person appearing to be a minor engaged in sexually explicit conduct	Realistic images representing a minor engaged in sexually explicit conduct	Any depiction of a child's sexual organs for primarily sexual purposes
Albania	?	?	?	?
Armenia	?	?	?	?
Austria	x	x	x	X
Bulgaria	?	Yes	No	?
Croatia	No	No	No	No
Cyprus	Yes	Yes	Yes	?
Czech Republic	x	x	x	X
Estonia	?	No	No	?
Germany	?	?	No	?
Hungary	x	reservation	x	X
Kosovo	Yes	Yes	Yes	?
Lithuania	?	?	?	?
Moldova	x	x	x	X
Montenegro	?	No	No	No
Portugal	Yes	?	Yes	?
Romania	Yes	Yes	Yes	?
Serbia	?	No	No	?
Slovakia	?	No	No	?
FYROM	?	No	No	?
Turkey	?	No	No	?
Ukraine	?	No	No	?

General remarks:

•The definitions for the terms “child pornography” and/or “minor” not provided (Albania, Armenia, Bulgaria, Croatia, Estonia, Germany, Lithuania, Slovakia, Turkey, Ukraine)

•Provisions refer to:

- *pornographic materials in minors’ premises* (Albania)
- *items of pornographic nature* (Armenia)
- *pornographic situation* (Estonia)
- *objects of pornographic character* (Montenegro)
- *other pornographic records* (Portugal)
- *obscene written or audio-visual materials* (Turkey)

• Germany: “*pornographic writings involving children that reproduce an actual or true to life event*”

• Lithuania: “*advertises objects of a pornographic nature which represent a child or simulate a child*”. A person appearing to be a minor? Realistic images representing a minor ?

• Relevant provisions are not attached or translation is not available (Austria, Czech Republic, Hungary, Moldova)



“minor”, “child”

Council of Europe
Convention on
Cybercrime (2001)



Article 9 – Offences related to child pornography

For the purpose of paragraph 2 above, the term “minor” shall include all persons under 18 years of age. A Party may, however, require a lower age-limit, which shall be not less than 16 years.

Council of Europe
Convention on the
Protection of Children
against Sexual
Exploitation and Sexual
Abuse (2007)



Article 3 – Definitions

For the purposes of this Convention:
a “child” shall mean any person under the age of 18 years;



Countries	„minor“	„child“	„juvenile“
Albania	X	X	
Armenia	X	X	
Austria	X	X	
Bulgaria	X	X	
Croatia		14 years	18 years
Cyprus	X	X	
Czech Republic	X	X	
Estonia	X	X	
Germany	X	X	
Hungary	X	X	
Kosovo	X	18 years	
Lithuania	X	X	
Moldova	X	X	
Montenegro	14-18 years	under 18 years	
Portugal	under 18 years	X	
Romania	under 18 years	under 18 years	
Serbia		under 14 years	
Slovakia	X	X	
The former Yugoslav Republic of Macedonia	X	X	
Turkey	X	X	
Ukraine	X	X	



- lack of information/provisions regarding a clearly defined minimum age for the implementation of cp offences
- under CPC each Party shall also decide the age below which it is prohibited to engage in sexual activities with a child

RESERVATIONS

CC: Article 9 of the Convention: child pornography

4. Each Party may reserve the right not to apply, in whole or in part, paragraphs 1, sub-paragraphs d. and e, and 2, sub-paragraphs b. and c.

CPC: Article 20 – Offences concerning child pornography

3. Each Party may reserve the right not to apply, in whole or in part, paragraph 1.a and e to the production and possession of pornographic material:

- consisting exclusively of simulated representations or realistic images of a non-existent child;
- involving children who have reached the age set in application of Article 18, paragraph 2, where these images are produced and possessed by them with their consent and solely for their own private use.

4. Each Party may reserve the right not to apply, in whole or in part, paragraph 1.f.

CONCLUSIONS

Establish a comprehensive legislation to contribute effectively to the common goal of protecting children against sexual exploitation and sexual abuse and of providing assistance to victims

Implementing the international legal framework

→ Council of Europe conventions – tools for harmonization

Child pornography legislation must specifically apply to child pornography and not to pornography in general

The legislation should include a definition of child pornography (where a child is a person under the age of 18 irrespective of the age of consent to sexual relations)

Effective child pornography legislation should also expressly address the offences when committed through computer systems

THANK YOU FOR YOUR

ATTENTION

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