

Draft questionnaire to enable the Lanzarote Committee to take stock of the Situation in State Parties

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Lanzarote Convention - a legally binding instrument which builds on already existing international instruments in particular:

- The United Nations Convention on the Rights of the Child (art. 34)
- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
- International Labour Organisation Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour
- The European Social Charter (revised)
- The Convention on Cyber crime (art. 9)
- The Council of Europe Convention on Action against Trafficking in Human Beings
- The Council of Europe Convention on the Exercise of Children's Rights
- Recommendation No. R (91) 11 concerning sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults
- Recommendation Rec(2001)16 on the protection of children against sexual exploitation
- Recommendation Rec (2006) 8 on assistance to victims of crimes
- The Council of the European Union Framework Decision on combating the sexual exploitation of children and child pornography
- The Council of the European Union Framework Decision on the standing of victims in criminal procedures
- The Stockholm Declaration and Agenda for Action
- The Yokohama Global Commitment
- The Budapest Commitment and Plan of Action

Purposes of the Documents

- to promote the well being & best interest of any child
- to prevent and combat sexual exploitation and sexual abuse of children;
- to protect the rights of child victims of sexual exploitation and sexual abuse;
- to promote national and international co-operation against sexual exploitation and sexual abuse of children.

Content

- **Substantive criminal law** (offences, sanctions, aggravated circumstances, jurisdiction)
- **Procedural law** (needs of children)
 - **specific investigation and criminal procedure measures** (initiation of proceedings, covert operations, statute of limitations)
 - **child friendly justice** – rights of victims, protective measures, assistance to victims, position before, during & after proceedings
- **Preventive measures** (recruitment, training, awareness, education, participation)
- **Specialised authorities and co-ordinating bodies** (mechanisms for data collection & focal points, co-ordinative body)
- **Intervention programmes or measures** (recipients, consent)
- **Recording and storing of data**
- **International co-operation**

Added Value

■ **New crimes introduced**

- participation of child in pornographic performances,
- corruption of children,
- solicitation of children for sexual purposes

■ **The scope of traditional offences is widened or more precisely defined**

- clients incriminated for prostitution;
- refers to all types of pornography not only computer based
- intentional access to porno. material on Internet/by use of IT is punishable
- simulated presentations of nonexistent children deemed pornography

■ **Aggravating circumstances defined**

- abuse of children within family
- abuse of vulnerable children

■ **Sanctions**

- taking of parental rights

- **Definition of jurisdiction** – no double criminality is required
- **Period of limitation is extended** (leave children enough time after becoming of legal age to sue)
- Number of measures for the **protection of child victims & witnesses** is introduced
- The use of **covert operations** during investigations is possible
- The criminal proceedings must be **officially instigated**
- **Report** of these crimes does not constitute violation of professional secrecy

- **Focal points** for the collection of data & research should be established
- Persons convicted for these crimes could not be admitted to **work place** in which they would have regular contacts with children
- **Intervention programs** for perpetrators & potential perpetrators of these crimes should be introduced (consent/refusal)
- **Database** of perpetrators should be established
- **Training** should be provided to all kinds of professionals coming in contact with children
- Data and info. on potential risks and ways to avoid them should be **disseminated** among children (through sexual **education** preferably)
- **Participation** of children, civil society, private firms

Models

- In drafting questionnaire I used as models:
 - Questionnaire drafted by European Data Protection and Cybercrime Division related to Lanzarote and Budapest Conventions (Cybercrime)
 - Questionnaire drafted by GRETA for the Convention on Action against Trafficking in Human Beings

The objective of the questionnaire

- To use Lanzarote convention as a benchmark for criminal law measures to be taken by State Parties in addressing the sexual exploitation & sexual abuse of children
- To use Lanzarote convention as indicator to determine progress made by countries in living up to commitments made by ratification

State parties committed themselves to:

- Introduce substantive criminal law reform in order to harmonize legislation
- Provide adequate investigative powers to prosecute and adjudicate
- Raise awareness of the need for comprehensive strategies against the sexual violence against children
- Facilitate preventive measures (recruitment, training, awareness, education, participation, intervention programs)
- Facilitate technical assistance
- Empower children to disclose their abuse (assistance to victims, protection of victims)
- Facilitate international cooperation (complaints, extradition, third state assistance, databases)
- Allow for monitoring of progress made by States

Preliminary questiones

- Related to persons and organizations filling in the questionnaire (standard questiones)

Overview of the current situation and trends in the area of sexual exploitation and sexual abuse of children (Q4)

- Official **police data** on sexual abuse of children & sexual assault
- **Court data** on sexual abuse of children & sexual assault
- European Sourcebook of Crime & Criminal Justice Statistics
- Comparable definition of crimes (include, exclude)
- Recommend for special questionnaire or as an annex to present questionnaire

Sexual exploitation of children

If proposal for collecting statistical data is accepted tables should be developed for the following offences:

- Child prostitution (19 CSESAC)
- Child pornography (20 CSESAC, 9 CCC)
- Child pornography performances (21 CSESAC)
- Corruption of children (22 CSESAC)
- Solicitation of children for sexual purposes (23 CSESAC)
- Trafficking in children (18 CAaTHB)
- Sexual slavery
- Sexual tourism (double criminality rule not required)

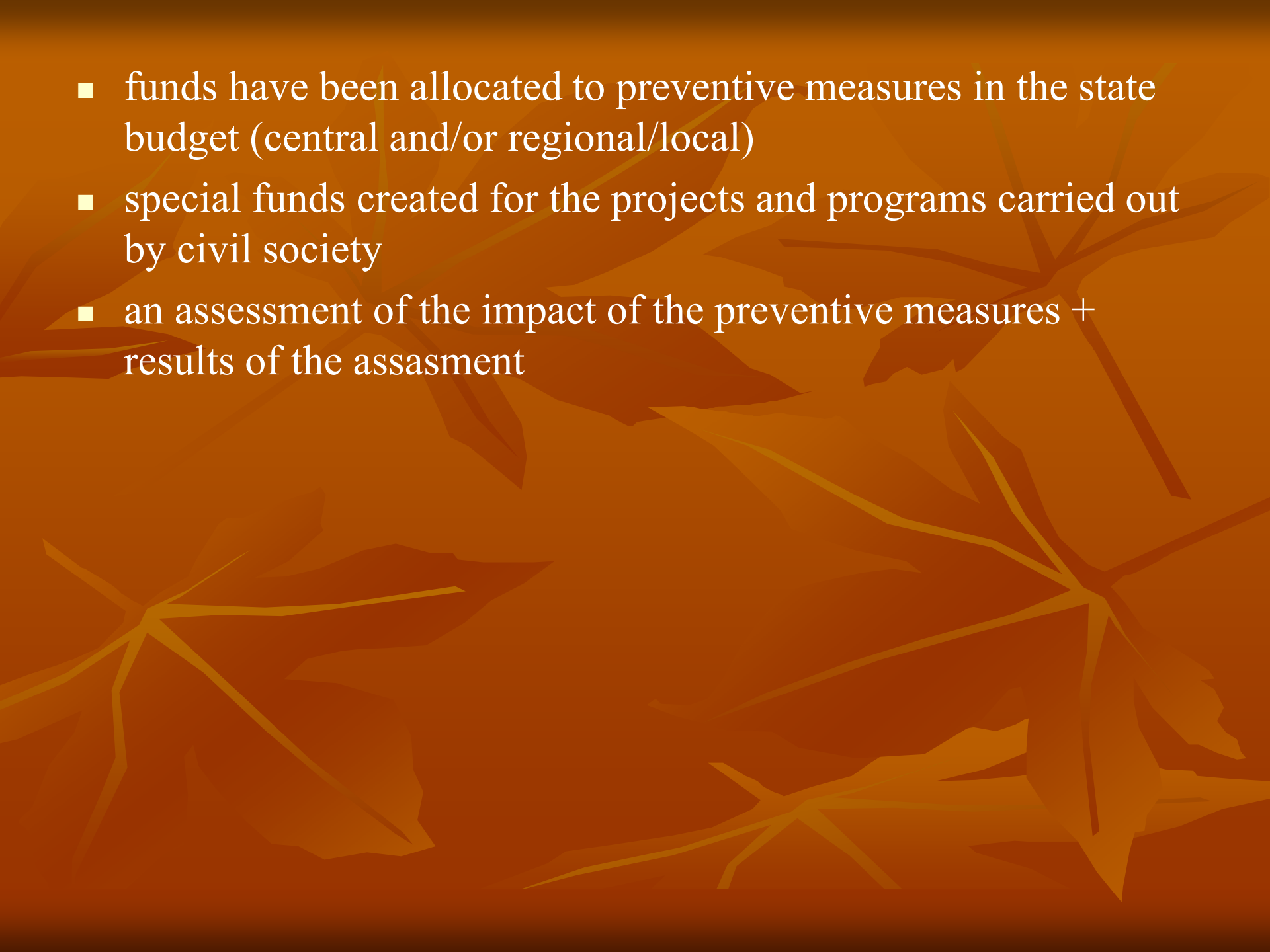
Overview of the legal and policy framework in the field of action against sexual abuse and sexual exploitation of children

- **International treaties (Q5)**
 - Party to (UN, CoE, EU)
 - Status of international treaties in national legal system (direct implementation – part of national law, transposed, precedence in case of inconsistency, interpretative role)
- **National framework (when, why, what enacted)**
 - **Legal acts (Q6)**
 - Preventive measures
 - Substantive criminal law
 - Procedural law
 - Assistance & protection of victims
 - **National Policy &/or Action Plan (Q7)**
 - main fields of action
 - the body/bodies responsible for its implementation

Measures to prevent sexual exploitation and sexual abuse of children

- **Training, awareness raising** of relevant professionals (regular contact with children) (Q8; Art. 5/1,2; ER 54-56)
 - rights of children & their protection
 - adequate knowledge of sexual exploitation and sexual abuse of children
- **Recruitment** of professionals (no criminal record, for how long criminal records are kept, different rules for different crimes) (Q9; Art. 5/3; ER 57)
- **Q10 remove and append to Q 62**
- **Education of children** (Q11; Art.6; ER 58-63)
 - Risks & means to protect themselves (information technologies)
 - Way of instruction

- National/regional/local **campaign or programme to alert** the potential victims (general public) of the phenomenon of sexual exploitation and sexual abuse of children & on the preventive measures (during the last 2 years) (Q12/Art. 8/1; ER 65)
- Measures to **prevent or prohibit the dissemination of materials advertising** the offences established (Q13/Art. 8/2/ER 66)
- Steps to encourage the **participation of children** in the development and the implementation of state policies, programmes or other initiatives concerning the fight against sexual exploitation and sexual abuse of children (Q14/Art.9/1; ER 67)
- Steps to encourage the **participation of private sector** (the information & communication technology sector, the tourism & travel industry, the banking & finance sectors) & **civil society** in the elaboration and implementation of policies to prevent sexual exploitation & sexual abuse of children (ways, **self-regulation or co-regulation**) (Q15/Art. 9/2; ER 68-73)
- Encourage the **media to provide appropriate information** concerning all aspects of sexual exploitation and sexual abuse of children (Q16/Art. 9/3:

- 
- funds have been allocated to preventive measures in the state budget (central and/or regional/local)
 - special funds created for the projects and programs carried out by civil society
 - an assessment of the impact of the preventive measures + results of the assessment

Implementation of measures to protect & promote the rights of victims of sexual exploitation & sexual abuse

- **Uncertain age** of the victim (Q19; Art. 11/2; ER 88)
- Confidentiality rules & **reporting**, mandatory or left to discretion, measures to encourage reporting, to which services (Q20; Art.12; ER 89-91)
- **Information services** (helplines) – confidentiality, anonymity, main characteristics (Q21; Art.13; ER 92)
- **Victim assistance services** (adapted to victims age, who provides, how, what, multidisciplinary structures, relatives, children views) (Q22; Art.14/1; ER 94-97)
- **Intervention procedures** when caretakers are involved (removal) (Q23; Art.14/3; ER 99)
- Allocation of **specific funding** for assistance and protection measures (Q24)

Preventive intervention programs or measures

- **Intervention programs** or measures designed to evaluate and prevent risk of committing offences of sexual exploitation and sexual abuse of children (**Q25, 7; Art. 15-17; ER 101-111**)
 - Who has access (convicts, persons on conditional release, persons subject to criminal proceedings, recidivists, young offenders, persons who have not committed a crime yet)
 - Use of assessment of dangerousness to identify appropriate programmes or measures for each person
 - Implementation of Informed consent procedures
- Young offenders programs (**Q26; Art. 16/3; ER 109**)
- Assessment of the effectiveness and impact of the preventive programs and measures (**Q27**)

Specialized authorities and coordinating bodies

- **Co-ordinating body** (name, administrative status, annual budget (in euros), human resources, composition and competences; plans to establish) (Q28; Art.10/1; ER 76-78)
- Body responsible for **observing and evaluating** the phenomenon of sexual exploitation and sexual abuse of children and the co-ordination of the **collection of administrative data or population survey** data on sexual exploitation and sexual abuse of children – data collection service, focal point (Q29; Art.10/2; ER 79-84)
- List **agencies/NGOs** in charge of the protection from, prevention of and fight against sexual exploitation and sexual abuse of children (Q30; Art.10/3; ER 85)

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Criminal law respons to sexual exploatation and sexual abuse of children:

- a) substantive criminal law**
- b) prosecution of perpetrators**

■ **Global Project on Cybercrime**

- Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia & Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy,, Latvia, Liechtenstein, Lithuania, Luxembourg,, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Switzerland, “The Former Yugoslav Republic of Macedonia”, United Kingdom, Ukraine (42/47)

Implementation of measures concerning substantive criminal law

- Forms of sexual exploitation and sexual abuse of children recognised under national laws (Q31; Art. 18-24, 27; ER 112-164, 182-193) :
 - Completely/partaly
 - Sanctions (criminal, civil & administrative)
 - Incrimination of attempt
 - Reservations (not to incriminate attempt)
 - Provide original & translated provisions
- Any other offences incriminating sexual abuse & sexual exploitation of children (Q32)
- The change of definitions under the influence of Lanzarote Convention (Q33) – how the added value in substantive law has been implemented

- Introduction of **special sanctions or measures** (Q34; Art. 27; ER 182-193):

- withdrawal of parental rights,
- monitoring or supervision of convicted persons,
- denying the perpetrator, temporarily or permanently, the exercise of the professional or voluntary activity involving contact with children in the course of which the offence was committed,
- enabling the temporary or permanent closure of any establishment used to carry out any of the offences established in accordance with this Convention,
- others

- **Reservations** not to incriminate attempt (Q35; Art.24; ER 161-164) - this question should be included in the table in Q 31

- Indicate the **age** as defined in domestic law below which it is prohibited to engage in sexual activities with child (Q36; Art.18/1a, 2; ER 119, 128)

- **Consensual sexual activities between minors** (Q37; Art.18/3; ER 129)

- **Definition of child pornography (Q38; Art.21; ER 133-145)**
 - simulated representations or realistic images of a non-existent child (reservation)
 - images involving children who have reached the age for sexual activities according to your internal law, where these images are produced and possessed by them with their consent and solely for their own private use (reservation)
- **39 & 40** – already included in table under Q 31

- **Jurisdiction** - specific rules related (Q41; Art. 25/1e, 2, 4, 7; ER 169-171, 174):
 - establishing jurisdiction when such offences are **committed by a person** who has his or her **habitual residence in its territory**
 - establishing jurisdiction where such offences are committed **against a person** who has his or **her habitual residence in its territory**,
 - **double criminality rule** - jurisdiction is not subordinated to the condition that the acts are criminalised at the place where they were performed,
 - the jurisdiction is not subordinated to the condition that the prosecution can only be initiated following a report from the victim or a denunciation from the state of the place

- A **special fund** (confiscated proceeds) for financing prevention and assistance programmes for victims of any of the offences established in accordance with this Convention (functioning of such fund, amount of resources in it and for which purposes these resources may be used) (Q42; Art.27/5; ER 193)
- List **aggravating circumstances** with open close (Q43; Art.28; ER 194-202) – indicate influence of aggravating circumstances on punishment
- Taking into account **previous convictions** in another party when determining the penalty in relation to offences established in accordance with the Convention in the case of recidivism (Q44; Art. 29; ER 203-208)

Implementation of measures concerning investigation, prosecution and procedural law

- Measures to ensure that investigations and criminal proceedings (Q 45, 46; Art. 30/1,2,3,4; ER 211-218)
 - are carried out in the **best interests** and respecting the **rights of the child**
 - the investigations and criminal proceedings **do not aggravate the trauma experienced by the child**
 - treated as **priority** and carried out without any unjustified delay
 - that the measures applicable under the current chapter are not prejudicial to the **rights of the defence** and the requirements of a **fair and impartial trial**,

- Describe circumstances under which the use of **covert operations** is allowed in relation to the investigation of the offences established in accordance with this Convention (Q 47; Art. 30/3; ER 216)
- Describe **techniques** developed for examining material containing **pornographic images** of children (Q48; Art. 30/5; ER 217-218)
- Describe measures taken to **inform** child victims of their rights and the services at their disposal, relevant judicial and administrative proceedings, the follow-up given to their complaint, the charges, the general progress of the investigation or proceedings, and their role as well as the outcome of their cases, release of the perpetrator from the prison. Describe measures taken to provide such information in a manner adapted to child's age and maturity and in a language that they can understand (Q49,50; Art. 31/1,2; ER

- Measures for protection of child victims & witnesses (Q51-57, Art. 31/2-6, ER 224-229):
 - right to be heard, to supply evidence and to choose the means of having his/her views, needs and concerns presented, directly or through an intermediary
 - provision of support services to child victims and their families
 - to protect the identity and safety of child victims before, during and after investigations and criminal proceedings
 - to avoid contact between victims and perpetrators within court and law enforcement agency premises
 - to provide access to legal aid free of charge
 - to appoint a special representative for the victim where the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the victim

- Participation of groups, foundations, associations or governmental or non-governmental organisations in assisting or supporting victims in legal proceedings (the conditions for this participation as well as their legal status during these proceedings)
- Initiation of legal proceedings by the victim and/or *ex officio*; investigations or prosecution of offences shall not be dependent upon the report or accusation made by a victim; the proceedings may continue even if the victim has withdrawn his or her statements; uncertainty as to the actual age of the victim should not prevent the initiation of criminal investigations (Q 58; Art. 32, 34/2; ER 230)
- Extension of the statute of limitation - for which offences & in which way (Q 59; Art.33; ER 231,232)
- Persons, units or services in charge of investigations specialised in the field of combating sexual exploitation and sexual abuse of children (organization, functioning, training, financial means) (Q 60; Art. 34/1; ER 233, 235)

- Interviews with children being victims or witnesses (**Q61; Art.35; ER 236-239**)
- Type, periodicity, funding of training provided for judges, prosecutors, lawyers and other persons or entities specialised in the fight against sexual exploitation and sexual abuse of children and in the protection of victims (**Q62; Art.36/1; ER 241**)
- Exclusion of public from the hearing & interviewing victim outside of courtroom - use of appropriate communication technologies (**Q63; Art. 36/2; ER 242**)

Recording and Storing of Data

- Organization of the collection and storage of data relating to the identity and to the genetic profile (DNA) of persons convicted of the offences established in accordance with this Convention (the name and address of a national authority in charge of collection and storage of data)
- Transmission of data to the competent authority of another Party to the Convention
- **(Q64; Art 37; ER 243-250)**

International co-operation

- Legal basis for international co-operation in the fight against sexual exploitation and sexual abuse of children and in protecting and providing assistance to victims (national legislation & international instruments/agreements) (**Q65; Art. 38/1; ER 255-257**)
- Possibility to make a complaint before the competent authorities of their state of residence (**Q66; Art.38/2; ER 258, 259**)
- If no mutual legal assistance treaty has been signed Lanzarote Convention should be used as bases for extradition and legal assistance (**Q67; Art.38/3; ER 260**)
- Providing assistance to third countries (**Q68; Art.38/4; ER 261**)



Thank you for your attention