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## **COMMITTEE OF THE PARTIES**

Council of Europe Convention on the protection of children  
against sexual exploitation and sexual abuse (T-ES)

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**Draft questionnaire :**

**“Sexual abuse of children in the circle of trust”**

**For the first thematic monitoring round**

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3<sup>rd</sup> meeting

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Justice and Human Dignity Directorate

[www.coe.int/children](http://www.coe.int/children); [www.coe.int/lanzarote](http://www.coe.int/lanzarote)

## Preliminary Remarks

Parties are requested to answer the questions with regard to central, regional and local levels to the extent possible. Federal States may, in respect of their sovereign entities, answer the questions in a summarized way.

Whenever questions/answers refer to the legislation or other regulations, please provide the relevant text (or a summary) in English or French.

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## Preliminary Questions

**Question 1:** Please specify which State body/agency was responsible for collecting the replies to this questionnaire. Please specify the name and professional title of the person heading this body/agency.

**Question 2:** Which State bodies/agencies collectively contributed to responding to this questionnaire? Please indicate the main responsibilities and fields of competence of each of these bodies/agencies.

**Question 3:** Did any non-governmental organizations (NGOs) or other entities of civil society contribute to responding to this questionnaire? If so, please indicate the main activities of each of the NGOs and/or other entities of civil society, which contributed.

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### A. Non-discrimination principle (Article 2)

According to Article 2 of the Convention the implementation of its provisions, in particular the enjoyment of measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, sexual orientation, state of health, disability or other status. In particular, Article 2 prohibits a victim being discriminated against in the enjoyment of measures, as provided for in Chapter IV of the Convention, to protect their rights. The question in this chapter is thus directed to analysing whether internal legislation or other measures, including policies or strategies, for the protection of children against sexual abuse or sexual exploitation, make a distinction based on grounds that are related to the child's sexual orientation or its status within the family or other associations.

**Question 4:** Does internal legislation or other measures, including policies or strategies, that deal with child sexual abuse or sexual exploitation, make a distinction based on grounds related to a

child's sexual orientation or its status related to birth, family relations or other status and associations, including its parent's sexual orientation, state of health, disability or other status? (*Article 2, Explanatory Report, paras. 41-44.*)

## **B. Preventive measures (Articles 5-8)**

Questions in this chapter take account of the provisions on recruitment, training and awareness of persons in contact with children, the education of children and preventive intervention programmes or measures in Articles 5-7 of the Convention. The questions have their aim to collect information on policies and strategies related to sector-specific awareness of persons working in contact with children, and thus forming a part of their circle of trust, and of the extent of their training and knowledge about sexual exploitation and sexual abuse of children. Furthermore, the questions are directed towards analysing the form and content of internal law regarding the conditions for professional accession for persons having close contact with children in their work. Also, information on policies in educating children about these issues is requested. In answering these questions, Parties should strive to provide all relevant information on the legislative or other measures that have been taken in this regard and also describe possible proposals or projects that have yet to be implemented.

**Question 5:** Have legislative or other measures been taken to encourage awareness of the protection and rights of children among persons who have regular contacts with children in the education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities? (*Article 5 (1), Explanatory Report, paras. 54-55.*)

**Question 6:** Have legislative or other measures been taken to ensure that persons, referred to in *question 5*, have an adequate knowledge of sexual exploitation and sexual abuse of children, of the means to identify them and of the possibility of reporting suspicions of a child being the victim of such acts? (*Article 5 (2), Explanatory Report, para. 56.*)

**Question 7:** Have legislative or other measures been taken to ensure that the conditions for the accession to those professions, whose exercise implies regular contacts with children, ensure that the candidates to these professions have not been convicted of acts of sexual exploitation or sexual abuse of children? If so, does the screening of candidates to the relevant professions apply to voluntary activities? (*Article 5 (3), Explanatory Report, para. 57.*)

**Question 8:** Have legislative or other measures been taken to ensure that children, during primary and secondary education, including at home or in non-formal educational contexts, receive information on the risks of sexual exploitation and sexual abuse, as well as on the means to protect themselves, adapted to their age and maturity? (*Article 6, Explanatory Report, paras. 58-63.*)

**Question 9:** Have legislative or other measures been taken to ensure that persons, especially those forming a part of a child's circle of trust, who fear that they may commit offences of sexual abuse or sexual exploitation established in accordance with the Convention, have access, where appropriate, to effective intervention programmes or measures designed to evaluate and prevent the risk of offences being committed? (*Article 7, Explanatory Report, para. 64.*)

**Question 10:** Have policies or strategies been implemented for the promotion or institution of awareness campaigns for the general public where the focus is directed especially towards the risks and realities of sexual abuse of children in the circle of trust? (*Article 8, Explanatory Report, paras 65-66.*)

### **C. Setting up of mechanisms for data collection or focal points (Article 10 (2) (b))**

Article 10 (2) (b) of the Convention provides that each party shall take the necessary legislative or other measures to set up or designate mechanisms for data collection or focal points at the national or local levels and in collaboration with civil society for the purpose of observing and evaluating the phenomenon of sexual exploitation and sexual abuse of children, with due respect for the requirements of data protection. This provision must be considered in light of the provisions of Chapter VIII on recording and storing of data, see question 36 in Chapter H. Bearing in mind, that available data shows that the majority of sexual abuse against children in Council of Europe countries is committed within the family framework, by persons close to the child or by those in the child's social environment, cf. paras. 3 and 123-124 of the Explanatory Report, it is important to compile information on whether Parties have taken measures for data collection or focal points that are specially designated to observing and evaluating child sexual abuse in the circle of trust.

**Question 11:** Have legislative or other measures been taken to set up or designate mechanisms for data collection or focal points, at the national or local levels and in collaboration with civil society, especially with regard to statistical data on victims and offenders within the circle of trust, for the purpose of observing and evaluating the phenomenon of sexual exploitation and sexual abuse of children, with due respect for the requirements of personal data protection? (*Article 10 (2) (b), Explanatory Report, paras. 83 and 84.*)

### **D. Reporting suspicion of sexual exploitation or sexual abuse (Article 12)**

The questions in this chapter take account of the provisions on reporting suspicions of sexual exploitation or sexual abuse in Article 12 of the Convention. They are formulated for the purpose of analysing legislative or other measures taken within the Parties that deal with general and professional obligations to report suspicions of sexual exploitations and sexual abuse. A detailed description on the relevant internal rules, their conditions and, where appropriate, their interpretation, is therefore necessary when Parties answer the following questions.

**Question 12:** Have legislative or other measures been taken to ensure that the rules of confidentiality, imposed by internal law on certain professionals called upon to work in regular or occasional contact with children, do not constitute an obstacle to the possibility for those professionals of their reporting to the services responsible for child protection any situation where they have reasonable grounds for believing that a child is the victim of sexual exploitation or sexual abuse? (*Article 12 (1), Explanatory Report, paras. 89-90.*)

**Question 13:** Have legislative or other measures been taken to encourage any person who knows about or suspects, in good faith, sexual exploitation or sexual abuse of children to report these facts to the competent services? (*Article 12 (2), Explanatory Report, para. 91.*)

## **E. Helplines and assistance to victims (Articles 11, 13 and 14)**

The questions in this chapter take account of the provisions on help lines and assistance to victims in Articles 13 and 14 of the Convention. Their aim is to analyse to what extent legislative or other measures, adopted by the Parties, with regard to helplines and assistance to victims are formulated with situations of child sexual exploitation and sexual abuse within the circle of trust in mind.

**Question 14:** Have legislative or other measures been taken to encourage and support the setting up of information services, such as telephone or internet helplines, to provide advice to callers, even confidentially or with due regard for their anonymity? (*Article 13, Explanatory Report, para. 92.*)

**Question 15:** Have legislative or other measures, that take due account of the child's views, needs and concerns, been taken to assist victims of sexual exploitation or sexual abuse, in the short and long term, in their physical and psycho-social recovery, including emergency or other medical treatment and treatment for trauma? If so, do these measures make a distinction between whether the victim of child sexual abuse or exploitation was provided assistance when still a child or whether the victim was first provided assistance in adulthood? (*Article 14 (1), Explanatory Report, paras. 93-97.*)

**Question 16:** If and to what extent does internal law provide for the possibility of removing the alleged perpetrator when parents or persons who have care of the child are involved in his or her sexual exploitation or sexual abuse? (*Article 14 (3), Explanatory Report para. 99.*)

**Question 17:** If and to what extent does internal law provide for the possibility of removing the victim from his or her family environment when parents or persons who have care of the child are involved in his or her sexual exploitation or sexual abuse? If internal law does so provide, are the conditions and duration of such removal to be determined in accordance with the best interests of the child? (*Article 14 (3), Explanatory Report para. 99.*)

**Question 18:** If internal law does provide for such measure as referred to in *questions 16 and 17*, are social programmes and multidisciplinary structures in place to provide the necessary support for victims, their close relatives and for any person responsible for their care? (*Article 11, Explanatory Report para. 87-88.*)

**Question 19:** With reference to *question 18*, have legislative or other measures been taken to ensure that the persons who are close to the victim may benefit, where appropriate, from therapeutic assistance, notably emergency psychological care? (*Article 14 (4), Explanatory Report para. 100.*)

## **F. The criminalisation of sexual abuse in the circle of trust and the relevance of the circle of trust in the determination of sanctions for offences (Articles 18 (1) (b), 24, 25 (5), 26, 27 (3) (b) and 28 (c and d))**

Articles 18-29 in Chapter VI of the Convention deal with substantive criminal law. An examination of the general situation within the Parties is not envisaged in this questionnaire, as it is theme-specific dealing with child abuse in the circle of trust. The questions in this chapter therefore focus on those provisions of Articles 18 (1) (b), 24, 25 (5), 26, 27 (3) (b) and 28 (c and d) that deal, directly or indirectly, with criminalising and sanctioning conduct within the child's circle of trust and thus falls under the scope of the questionnaire.

**Question 20:** Does internal law criminalise engaging in sexual activities with a child where abuse is made of a recognised position of trust, authority or influence over the child, including in the family, and/or abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or situation of dependence? (*Article 18 (1) (b) (second and third indent), Explanatory Report, paras. 120-121 and 123-126.*)

**Question 21:** Does internal law criminalise attempts to commit acts referred to in *question 20*? (*Article 24, Explanatory Report, paras. 161-164.*)

**Question 22:** Does internal law criminalise aiding or abetting the commission of acts referred to in *question 20*? (*Article 24, Explanatory Report, paras. 161-164.*)

**Question 23:** Has the Party declared, or is preparing to declare, that it reserves its right to limit the application of Article 25 (4), on the abolition of the requirement of dual jurisdictional criminality, with regard to acts referred to in *question 20*, to cases where its national has his or her habitual residence in its territory? (*Article 25 (5), Explanatory Report, para. 172.*)

**Question 24:** Does internal law provide that a legal person can be held liable for the commission of acts referred to in *question 20*, especially where the lack of supervision or control by a natural

person, who has a leading position within the legal person, has made possible the commission of an offence referred to in *question 20* for the benefit of that legal person by a natural person acting under its authority? (*Article 26, Explanatory Report, paras. 177-181.*)

**Question 25:** Does internal law provide that sanctions for offences of child sexual exploitation or sexual abuse within the circle of trust include 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? (*Article 27 (3) (b), Explanatory Report, para. 187.*)

**Question 26:** Does internal law provide that sanctions, as a result of offences committed by a person considered to be in the relevant victim's circle of trust, include withdrawal of parental rights or monitoring or supervision of convicted persons? (*Article 27 (4), Explanatory Report, para. 191.*)

**Question 27:** Does internal law ensure that if an offence of sexual exploitation or sexual abuse, established in accordance with the Convention, is committed by a member of the family, a person cohabiting with the child or a person having abused his or her authority, or against a particularly vulnerable victim, that such circumstances will be considered an aggravating factor in the determination of sanctions, in so far as they do not form a part of the constituent elements of the offence? If so, does internal law provide different sanctions depending on whether the relationship of the perpetrator to the child is within the context of family relations or of a professional or voluntary activity (e.g. care providers in institutions, teachers, doctors, etc.)? (*Article 28 (c and d), Explanatory Report, paras. 198-199.*)

## **G. Investigation, prosecution and procedural law (Articles 31, 32 and 34-36)**

The questions in this chapter take account of the provisions dealing with general measures of protection, initiation of proceedings, investigations and interviews with the child and criminal court proceedings according to Articles 31, 32 and 34-36 of the Convention. These provisions form a part of Chapter VII dealing with investigations, prosecution and procedural law. In this theme-specific questionnaire questions will not be directed towards collecting general information on whether and to what extent Parties have introduced necessary legislative or other measures to implement the general principles of a protective approach towards victim provided by Article 30 or other provisions of the chapter that are general in nature and deal with the processing of cases of sexual exploitation and sexual abuse irrespective of whether they constitute a part of the victim's circle of trust. The formulation of the following questions is therefore directed towards analysing some theme-specific issues pertaining to whether the investigative, prosecutorial and court stages of proceedings take adequate account of the special nature of cases that have a circle of trust component.

**Question 28:** Have legislative or other measures been taken that have their aim to protect the rights and interests of victims of child sexual exploitation or sexual abuse, including their special

needs as witnesses, at all stages of investigations and criminal proceedings, especially in situations where the alleged perpetrator is a member of the victim's immediate family or has otherwise been in a recognised position of trust or authority towards him or her? (*Article 30 (1), Explanatory Report, paras. 211-215.*)

**Question 29:** Has a protective approach towards victims been adopted that ensures that the investigations and criminal proceedings do not aggravate the trauma experienced by the child and that the criminal justice response is followed by assistance, where appropriate, especially in situations where the alleged perpetrator is a member of the victim's immediate family or has otherwise been in a recognised position of trust or authority towards him or her? (*Article 30 (2), Explanatory Report, paras. 211-215.*)

**Question 30:** With reference to *question 28*, does internal law provide for the possibility for the judicial authorities to appoint a special representative for the victim when, by internal law, he or she may have the status of a party to the criminal proceedings and where the holders of parental responsibility are precluded from representing the child in such proceedings as a result of a conflict of interest between them and the victim? If so, what situations would be considered a "conflict of interest" in this regard? (*Article 31 (4), Explanatory Report, para. 227.*)

**Question 31:** Have legislative or other measures been taken to ensure that investigations or prosecutions of offences established in accordance with the Convention shall not be dependent upon the report or accusation made by a victim and that the proceedings may continue even if the victim has withdrawn his or her statement, especially in cases where the alleged perpetrator is a member of the victim's immediate family or has otherwise been in a recognised position of trust or authority towards him or her? (*Article 32, Explanatory Report, para. 230.*)

**Question 32:** Have legislative or other measures been taken to ensure that persons, units or services in charge of investigations are specialised in the field of combating sexual exploitation and sexual abuse of children or that persons are trained for this purpose, especially in dealing with cases where the alleged perpetrator is a member of the victim's immediate family or has otherwise been in a recognised position of trust or authority towards him or her? (*Article 34 (1), Explanatory Report, paras. 233-235.*)

**Question 33:** Have legislative or other measures been taken to ensure that his or her legal representative may accompany the child or, where appropriate, an adult of his or her choice, unless a reasoned decision has been made to the contrary in respect of that person? (*Article 35 (1) (f), Explanatory Report, paras. 236-237 and 239.*)

**Question 34:** Have legislative or other measures been taken to ensure that training on children's rights and sexual exploitation and sexual abuse of children is available for the benefit of all persons involved in criminal proceedings, in particular judges, prosecutors and lawyers, especially in dealing with cases where the alleged perpetrator is a member of the victim's immediate family or



has otherwise been in a recognised position of trust or authority towards him or her? (*Article 36 (1), Explanatory Report, para. 241.*)

**Question 35:** Have legislative or other measures been taken to ensure that a judge, in a criminal trial regarding an offence which can be considered to involve sexual exploitation or sexual abuse of a child within the circle of trust, may order the hearing to take place without the presence of the public or that the victim may be heard in the courtroom without being present? (*Article 36 (2), Explanatory Report, para. 242.*)

## **H. Recording and storing of data (Article 37)**

The question in this chapter take account of Article 37 of the Convention, which deals with recording or storing of national data on convicted sexual offenders. As before, the question is however theme-specific in conformity with the purpose of this questionnaire.

**Question 36:** Have measures been taken to set up or designate mechanisms for data collection for the purpose of observing and evaluating the phenomenon of sexual abuse of children in the circle of trust. If so, indicate whether and then how the relevant statistics are classified based on the position of the alleged perpetrator (e.g. parent, teacher etc.) (*Article 37 (1), Explanatory Report, paras. 243-250.*)