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LANZAROTE CONVENTION

Council of Europe Convention on the protection of children
against sexual exploitation and sexual abuse

Replies to the general overview questionnaire

GERMANY

Replies registered by the Secretariat on 31 January 2014

Question 1: Definition of “child”

- a. Does the notion of “child” under your internal law correspond to that set out in **Article 3, letter (a)**, i.e. “any person under the age of 18 years”?

Under German criminal law (relating to young offenders) a distinction is drawn between a “child” (*Kind*), “juvenile” (*Jugendlicher*) and “young adult” (*Heranwachsender*): A “child” is defined as any person under the age of 14 years (sections 19 and 176 (1) of the Criminal Code (*Strafgesetzbuch*, StGB)), a “juvenile” as any person between the age of 14 and 18 years (section 1 (2), first clause, of the Youth Courts Act (*Jugendgerichtsgesetz*, JGG)), and a “young adult” as any person between the age of 18 and 21 years (section 1 (2), second clause, JGG).

Hence, the notion of “child” as defined in the Convention corresponds to the aggregate of “child” and “juvenile” under the German system of criminal law.

- b. What legislative or other measures have been taken to ensure that when the age of a victim is uncertain and there are reasons to believe that the victim is a child, the protection and assistance provided for children are accorded to him or her in accordance with **Article 11, para. 2**?

The German law of criminal procedure provides for various measures to protect vulnerable victims. The points of reference for these protective measures are certain offences as well as the fact that the victims are minors. Protection is not only afforded to victims who are minors at the time the investigations or criminal proceedings are conducted, but in some cases also to the underage victims of sexual offences who only decide to address the matter and initiate criminal proceedings once they are adults. In order to be able to decide whether specific investigations need to be conducted giving due consideration to the victim’s vulnerability, it must first be established that the victim is in fact in need of special protection. If necessary, the police authorities will, therefore, involve staff in the youth welfare office (*Jugendamt*) in their investigations as early as possible.

In accordance with no. 222a para. 2 of the Guidelines for Criminal Proceedings and Proceedings to Impose a Regulatory Fine (*Richtlinien für das Straf- und Bußgeldverfahren*, RiStBV; “the Guidelines”), the victims of sexual offences should be given the opportunity to make a statement, through legal counsel, regarding their specific need for protection.

- c. Please state whether the age for legal sexual activities is below 18 years of age and if so, please specify the age set out in internal law.

Pursuant to section 176 StGB, any sexual activity with a child, i.e. a person under 14 years of age, is a punishable offence. This is even the case where the perpetrator and the victim agreed to engage in that sexual activity.

Where the victim is over the age of 14 years, other conditions need to be met for the sexual activity to constitute a punishable offence.

Question 2: Non-discrimination

Is discrimination, on grounds such as the ones mentioned in the indicative list in **Article 2**, prohibited in the implementation of the Convention, in particular in the enjoyment of the rights guaranteed by it? If so, please specify. If not, please justify.

All state authority in the Federal Republic of Germany is bound by the principle of equality before the law as laid down in Article 3 para. 1 of the Basic Law (*Grundgesetz*, GG). The principle of equality before the law requires that what is essentially the same is treated the same and what is essentially not the same is not treated the same (BVerfGE 129, 49, 68). Any unequal treatment of people thus requires justification. There must be reasonable objective grounds for the unequal treatment. Article 3 para. 3, first sentence, and para. 2, first sentence, GG list characteristics that may on no account be considered as grounds justifying unequal treatment.

In accordance with Article 1 para. 3 GG, not only the executive but also the legislature and the judiciary are bound by basic rights, and thus also by the principle of equality before the law under Article 3 para. 1. This guarantees that not only the administration does not discriminate against anyone in the performance of its tasks. The legislature is also obligated to observe the principle of equality before the law when legislating. All laws and provisions in the field of victim protection as well as the protection of children and juveniles are measured against the yardstick of equality before the law. Binding the judiciary to basic rights at the same time guarantees that all court proceedings are fair and conducted without regard to the person or certain personal characteristics, and that no judgments have a discriminatory effect.

Question 3: Overview of the implementation

Please indicate (without entering into details):

- a. the main legislative or other measures to ensure that children are protected against sexual exploitation and sexual abuse in accordance with the Convention;

In March 2010 the Federal Government set up a Round Table on the Sexual Abuse of Children in Relationships of Dependency and Power in Private and Public Institutions and within the Family ("Round Table") with the objective of further promoting the protection of children in Germany. The goals of the Round Table included putting in place measures "to raise awareness among and train experts in diverse professions to recognise as well as to prevent and intervene in the event of sexualised violence being perpetrated against girls and boys." The Round Table published its recommendations in a final report in December 2011.

The new Federal Child Protection Act (*Bundeskinderschutzgesetz*, BKiSchG) entered into force on 1 January 2012. Its main purpose was to implement the results of the Round Table. Thus, the Federal Child Protection Act provides that those authorised to do so must notify the youth welfare office where there is a suspicion of considerable threats to a child's best interests. Another important element of the Federal Child Protection Act is the obligation those working in child and youth welfare on a full-time or voluntary basis are under to present an enhanced police clearance certificate (the latter by agreement with the respective organisation). The aim behind the new section 72a in Social Code Book (*Sozialgesetzbuch*, SGB) VIII is to stop those with previous convictions for sexual offences working in child and youth welfare. Please refer to the answer to question 9 a for further details.

The Federal Child Protection Act also contains provisions on establishing participatory and complaints procedures as a key professional benchmark in regard to the protection of children and juveniles in institutions and facilities; these participatory and complaints procedures are a minimum requirement for the issuance of an operating licence. In addition, the Federal Child Protection Act creates a very basic right to counselling for children and juveniles in emergency and crisis situations.

As well as establishing the Round Table, the Federal Government on 24 March 2010 appointed Dr Christine Bergmann, a former federal minister, as Independent Commissioner to Investigate the Sexual Abuse of Children. By Cabinet decision of 7 December 2011, Johannes-Wilhelm Rörig was appointed as Independent Commissioner for Child Sex Abuse Issues. The Round Table tasked him with continuing a telephone hotline, developing an online portal, and supporting and assisting implementation of the Round Table's recommendations.

- b. whether your country has adopted a national strategy and/or Action Plan to combat sexual exploitation and sexual abuse of children. If so, please specify the main fields of action and the body/bodies responsible for its/their implementation;

The Federal Government's intention in adopting the Action Plan 2011 to Protect Children and Young People against Sexual Violence and Exploitation is to continuously improve the protection of children and juveniles against sexual violence and exploitation. It is an update of the first Action Plan, which was adopted in 2003, and draws together all available measures to protect children and juveniles against sexual violence and exploitation under one overall strategy.

The main objective is to protect children and juveniles in the real world and in online social networks and to combat sexualised violence and exploitation. In adopting the Action Plan 2011 the Federal Government is implementing measures elaborated following the Third World Congress against Sexual Exploitation of Children and Adolescents held in Rio de Janeiro in November 2008, as well as in the two follow-up conferences held in Germany in March and June 2009. It also takes up the results and recommendations of the Round Table and recommendations made by the Independent Commissioner to Investigate the Sexual Abuse of Children.

Children and juveniles were actively involved in elaborating the Action Plan. It focuses on the priority areas of prevention, intervention, research, international cooperation on sexualised violence and exploitation in the digital media (incl. child pornography), and combating trafficking in children and juveniles for the purposes of sexual exploitation and sexual exploitation of children and juveniles by travelling sex offenders.

- c. whether your country has any guidelines to ensure a child-friendly implementation of the laws, measures and strategies referred to in letters (a) and (b) above. If so, please specify. With regard to judicial proceedings, please specify whether the Council of Europe Guidelines on Child-friendly Justice were taken as inspiration for your guidelines.

Over and above numerous legal provisions that serve the protection of children, the Guidelines also provide for procedural modalities aimed both at protecting children and juveniles (e.g. no. 19) and guaranteeing that, regardless of their age, victims who are already suffering psychological strain are dealt with as sensitively as possible (no. 19a), especially the victims of sexual offences (nos 220 and 222a); they also require that a specific approach be adopted when it is children who are the victims of sexual offences (nos 221 and 222). No. 19a of the Guidelines provides that a victim must be shown particular empathy and

consideration during an examination if it is clear that hearing him/her as a witness, and thus as the injured party, may cause significant psychological stress.

As regards rules on protecting child and juvenile witnesses, the aforementioned Guidelines of the Council of Europe on Child-friendly Justice have not given rise to any legislative initiatives, since the provisions applicable in Germany already meet the requirements set out in those Guidelines.

Question 4: Child participation

- a. Please indicate what steps have been taken to encourage the participation of children, according to their evolving capacity, in the development and the implementation of state policies, programmes or other initiatives concerning the fight against sexual exploitation and sexual abuse of children (**Article 9, para. 1**);

Germany has in recent years taken numerous measures to encourage the participation of children and juveniles in all matters affecting them. The Federal Government's National Action Plan for a Child-Friendly Germany 2005–2010 gave important impulses for making Germany more fit for children and encouraging children's participation; it also initiated a now ongoing social process involving all political levels, non-governmental organisations (NGOs) and associations, representatives from the world of academia, practitioners, as well as children and juveniles.

An example of how the idea behind children's and juveniles' participation has taken on concrete form is the field of assistance rendered in accordance with Social Code Book (SGB) VIII. Section 8 SGB VIII introduces the statutory obligation to involve children and juveniles in all decisions affecting them according to their evolving capacity.

- b. In particular, please indicate whether, and if so, how child victim's views, needs and concerns have been taken into account in determining the legislative or other measures to assist victims (**Article 14, para. 1**).

Germany attaches great importance to children's participation in decisions affecting them. Children have a right to express their views freely and to be heard in all matters affecting them, as well as to have their views given due weight (Article 12 of the UN Convention on the Rights of the Child). In Germany relevant draft laws are, therefore, always coordinated with associations specialising in the particular issue in question.

The following organisations, for instance, took part in the Round Table established by the Federal Government in 2010 and were involved in producing its results: the German Child Protection League and the German League for the Child. The Round Table elaborated a set of guidelines on involving the law enforcement authorities. Following the publication of the Round Table's interim report, the Federal Ministry of Justice and Consumer Protection (BMJV) prepared a draft law on strengthening the rights of the victims of sexual abuse to be introduced by the Federal Government; the law has now entered into force. It draws together various legislative amendments in order to improve the situation of victims of sexual violence. The Federal Government has explicitly declared the further expansion of children's and juveniles' participation to be an important objective. Consequently, it has developed projects

that involve children and juveniles in political processes too. It, for example, commissioned the NGO National Coalition for the Implementation of the UN Convention on the Rights of the Child in Germany, which is actively involved in the field of children's rights, with compiling a Supplementary Report (on children and juveniles) to the Third and Fourth Report of the Federal Republic of Germany to the United Nations on the Convention on the Rights of the Child.

Question 5: Specialised bodies/mechanisms

- a. Please indicate the independent institution(s) (national or local) in charge of promoting and protecting the rights of the child. Please specify its/their responsibilities and indicate how resources are secured for it/them (**Article 10, para. 2, letter (a)**);

It is the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) that is responsible within the Federal Government for representing the interests of children and young people. In the context of interministerial coordination the BMFSFJ is responsible for safeguarding the interests of children and juveniles in all areas affecting them.

The Commission for Children's Concerns represents the interests of children and juveniles in the German Bundestag. It acts as a watchdog when it comes to children's interests and blazes a trail for child-friendly policies on all topical issues affecting children and young people. The Commission for Children's Concerns can both organise hearings and expert meetings on topical issues and develop and disseminate positions in the interests of children on that basis. In addition, the Commission is responsible for regularly indicating wherever there is a need to take legislative action in the best interests of children and juveniles and thereby to initiate discussions on improving their situation.

Implementation of the UN Convention on the Rights of the Child is coordinated by numerous committees at *Länder* (federal state) and local government level. These include the Standing Conference of Ministers and Senators for Youth and Families of the *Länder* and the Working Group of the Highest *Land* Youth and Family Authorities and what are known as "Children's Focal Points" that work to assert the best interests of the child within the meaning of Article 3 para. 1 of the UN Convention on the Rights of the Child. The youth welfare offices at district and county borough level are also tasked with protecting children and juveniles against threats to their best interests.

- b. Which legislative or other measures have 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, 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, para. 2, letter (b)**);

As regards the collection of statistical data on the sexual exploitation and sexual abuse of children, reference can be made to the comprehensive criminal and criminal justice statistics that are kept in Germany.

The Federal Criminal Police Office is the central body responsible for annually compiling the Police Crime Statistics for the Federal Republic of Germany. These indicate, in anonymised

form, the number of cases of individual categories of offences as well as information regarding perpetrators and victims, including gender, age and the relationship between the victim and the perpetrator. The Police Crime Statistics are published and are thus not only available to the police but also to the general public.

Data on decisions taken by the criminal courts are published annually by the Federal Statistical Office as part of the Criminal Prosecution Statistics.

In addition, the Independent Commissioner for Child Sex Abuse Issues performed monitoring in regard to the issues of prevention of and intervention in the case of sexualised violence as recommended by the Round Table. This monitoring covered a broad spectrum of institutions and facilities in the health, education and social affairs sectors, to whom children and juveniles are entrusted. With support from numerous civil society umbrella organisations a questionnaire has in the past been used to take stock, on the ground, of the state of development and use of protection concepts in facilities and institutions. The results were published.

- c. Which legislative or other measures have been taken to organise 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? What is the national authority in charge of the collection and storage of such data? (**Article 37, para. 1**).

The storage of the genetic profile (DNA) of convicted offenders is regulated by law under section 81g (1) and (4) of the Code of Criminal Procedure (*Strafprozessordnung*, StPO). According to those provisions, cell tissue may be collected from a person convicted of an offence and subjected to molecular and genetic examination for the purposes of establishing the DNA profile if the nature of the offence or the way it was committed provide grounds for assuming that criminal proceedings will be conducted against him/her in future in respect of a criminal offence of substantial significance or the habitual commission of other criminal offences.

Pursuant to section 81g (5) StPO, these data may be stored at the Federal Criminal Police Office.

Question 6: National or local coordination, cooperation and partnerships

- a. Please describe how coordination on a national or local level is ensured between the different agencies in charge of the protection from, the prevention of and the fight against sexual exploitation and sexual abuse of children. In particular, please provide information on existing or planned coordination between the education sector, the health sector, the social services and the law enforcement and judicial authorities (**Article 10, para. 1**);

The protection of children and juveniles from (sexual) violence – which is a task for the whole of society – calls for cross-sectoral, interdisciplinary and both nationally and internationally networked coordination. Academics, practitioners and politicians need to cooperate closely and to learn from one another. Responsibility for protecting children and juveniles falls jointly to the Federation, the *Länder*, local authorities and civil society.

The Federal Government aims to build parents' capacities so as to ensure that children can grow up in a healthy and non-violent environment and thus also to prevent the neglect and abuse of children at the earliest opportunity. This can be done through "early intervention": relevant target groups include parents from the beginning of pregnancy up to a child's third birthday, especially those who are socially disadvantaged and those facing difficult situations in life. The National Centre for Early Intervention, which is based at the Federal Centre for Health Education in Cologne, was set up in 2007 to put in place and develop early interventions and to strengthen active child protection initiatives. The National Centre is funded by the German Youth Institute and by the Federal Centre for Health Education.

Various institutions need to cooperate very closely so as to be able to establish contact with young families before a child is born and to tap into interdisciplinary expertise. They include the child and youth welfare services and the health sector, as well as pregnancy counselling services, women's support and childcare facilities, and all other facilities that come into contact with families when they face difficult situations.

- b. Is cooperation with a view to better preventing and combating sexual exploitation and sexual abuse of children encouraged between the competent state authorities, civil societies and the private sector (**Article 10, para. 3**)? If so, please specify how;

The Federal Government's Action Plan 2011 not only sets out goals and relevant measures, it also establishes a procedure for supporting and monitoring their implementation. The monitoring provided for under the Action Plan serves to give professional support and to control optimal target achievement. The monitoring provides an overall picture of what has already been achieved and in which areas action still needs to be taken. It serves as the

professionally substantiated basis for further developing the fields of action defined in the Action Plan and for planning future measures in a transparent fashion.

A working group comprising the Federal Government, the *Länder* and NGOs has an important role to play in this monitoring. It is tasked with continuously supporting implementation of the Action Plan. Four thematic working groups have been set up in the fields of prevention, intervention, trafficking in children/tourism and international cooperation. In addition, the Independent Commissioner for Child Sex Abuse Issues, in cooperation with 18 civil society umbrella organisations, sought to find tailor-made solutions so that it could be ensured that at federal level, taking account of the respective organisational structures, the Round Table's recommendations could become largely binding and receive effective support during implementation. Umbrella organisations thus sign agreements with the Independent Commissioner in which they undertake to further improve the protection of children in facilities and institutions in their area of responsibility and to (further) develop and apply relevant protection concepts based on the Round Table's recommended guidelines.

- c. Are partnerships or other forms of cooperation between the competent authorities promoted with particular regard to the recipients of intervention programmes and measures for persons subject to criminal proceedings or convicted of any of the offences established in accordance with the Lanzarote Convention (**Article 15, para. 2 and Article 16**)?

Please refer to the answer to question 10 a.

Question 7: International cooperation

Has your country integrated prevention and the fight against sexual exploitation and sexual abuse of children in assistance programmes for development provided for the benefit of third states (**Article 38, para. 4**)? Please give examples.

When it comes to German official development cooperation, the Federal Government generally supports the protection of children against sexual abuse and sexual exploitation and the combating of abuse and exploitation through **integrated measures**.

Examples of projects include the following:

Country: Burkina Faso

Type of project: Programme

Title: Strengthening of Human Rights and Sexual Health

Overall term: 2004–2015

This technical cooperation programme aims to teach women, men, juveniles and children about their rights and opportunities so that they are in a position to confidently assert and exercise them. Areas covered include sexual and reproductive health and HIV/AIDS prevention, protection against discrimination, practices that violate human rights (e.g. female genital mutilation), and the worst forms of child labour, including trafficking in children.

To that end the programme advises and supports ministries and governmental agencies, civil society organisations and victims themselves on key issues such as promoting children's rights, protecting girls and women from all forms of violence, and combating the worst forms of child labour. The advisory services are, on the one hand, supplemented by basic and continuing training in municipalities, private enterprises and ministries, as well as for traditional leaders. On the other hand, the local population is taught about their rights through target group-specific communication measures.

The programme cooperates closely with a financial cooperation project focusing on human rights and combating child trafficking and child labour.

Country: Macedonia, Kosovo, Serbia, Bosnia and Herzegovina

Type of project: Supraregional project

Title: Social Protection and Prevention of Human Trafficking in the Western Balkans

Overall term: 2011–2015

The objective of this regional project is to ensure that the victims of human trafficking and vulnerable risk groups in countries in the Western Balkans make use of needs-based, age-appropriate and gender-specific social services. The majority of victims are women and, increasingly, underage girls. They become the victims of human trafficking for the purposes of sexual exploitation, labour exploitation, or combinations of the two. Men and boys are to a lesser extent affected, usually for the purpose of labour exploitation.

The project partners are primarily receiving support that enables them to develop approaches to combating and preventing human trafficking that not only involve reintegrating victims but also take account of the social needs of vulnerable risk groups. Both governmental and civil society actors are incorporated into the project.

Country: Yemen

Type of project: Latterly a funded individual measure

Title: Transition Assistance for Particularly Vulnerable Women and Children in Aden

Overall term: 2005–30 June 2013

From 2005 to 2013 German development cooperation supported the Social Care House for Women in the province of Aden. The facility provides shelter to especially disadvantaged groups of women. It also provides basic and continuing training in the context of income-generating measures, legal counselling, and medical and psychosocial counselling to thus facilitate the women's reintegration into economic and social life. The measures are in particular directed at women released from prison, female victims of violence, and internally displaced women and their children. The project ended on 30 June 2013, as the Social Care House for Women is now being run by Yemeni partners. Training courses are still being run and are primarily funded by other donors.

Country: Thailand

Type of project: Development partnership

Title: Protection of Children against Sexual Exploitation in Tourism

Overall term: 2012–2015

A development partnership involving companies in the tourism industry (incl. Kuoni, TUI and Accor) was established to support the Code of Conduct for the Protection of Children Against Sexual Exploitation in Tourism (“Code of Conduct”). The Code of Conduct is a multi-stakeholder initiative that aims to do educational work and to support the tourism industry, with instruments, in combating the sexual exploitation of children in the context of tourism. The pilot project serves to test and optimise the new online instruments linked to the Code of Conduct. They aim to promote implementation of the Code of Conduct in Thailand and to ensure adequate implementation of and reporting on the Code of Conduct by the Thai signatories. Further, a new e-learning system aims to support businesses offering staff training and advanced training and to raise their awareness for the topic.

Question 8: Education, awareness raising and training

a. Which legislative or other measures have been taken to:

- ensure that children, during primary and secondary education receive information on the risks of sexual exploitation and sexual abuse, as well as on the means to protect themselves, adapted to their evolving capacities? (**Article 6, Explanatory Report, paras.59-62**). Please also specify whether this information includes the risks of the use of new information and communication technologies (**Article 6, Explanatory Report, para. 63**);
- 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, para. 1**);
- ensure that persons, referred to while replying to the bullet point above, 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, para. 2**).

The aim of the nationwide initiative on the prevention of sexual abuse ("**Be bold!**") is to raise awareness among children and juveniles and to educate and strengthen them in an age-appropriate manner. The initiative is being carried out by the Federal Centre for Health Education in cooperation with the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ).

Parents and professionals are also to be given information and their skills strengthened; contacts and help and advisory services are to be networked. The key objective is to teach children between the ages of 8 and 12 years about their rights, to boost their self-confidence and to tell them who they can turn to for help if they need it.

Other preventative measures, such as a guide for parents entitled "Ask openly – Act carefully", aim to raise awareness and inform people about child sexual abuse.

For many years now the Federal Government has been supporting an organisation called *Nummer gegen Kummer* ("Number against Sorrows"). Children and juveniles can call this hotline free of charge from anywhere in Germany and receive anonymous counselling.

In 2010 the BMFSFJ launched a national training initiative on building specialist capacities in regard to the issue of sexual violence. This four-year project is run by the German Society for Prevention and Intervention following Child Abuse and Neglect. It aims to strengthen the capacities of those active in the field of child and youth welfare (educational experts, volunteers, managerial staff) in regard to preventing sexual violence. Facilities for children

with mental or physical disabilities, who are especially vulnerable to sexual violence, are also incorporated.

In addition, promoting the National Working Group of Child Protection Centres through training courses, conferences and congresses serves to improve knowledge transfer in professional practice.

At the start of the current academic year the BMFSFJ published a package of materials aimed at improving children's safety on the Internet. It included a webcam sticker ("Stop! Private!"), a poster ("Chat. Share. Protect!") and a flyer for parents. Together they help keep children safe in online chat rooms and social networks. The poster gives valuable tips on how children can protect their privacy and what to do if they encounter cyber-bullying or signs of sexual harassment (cyber-grooming). They can use the sticker to cover up their webcam.

The materials are also available to order for use in classroom discussions on staying safe in online chat rooms and social networks. The webcam stickers and (A3) posters can be handed out to every child in a class. The poster can be used as a brief introduction to the topic. Together with the flyer it forms a package that can be used at parents' evenings.

The Federal Ministry for Education and Research (BMBF) has made some 32 million euros available for research into sexual violence against children and juveniles. Two funding priorities have been defined: The funding line "Abuse, Neglect and Violence against Children and Juveniles" aims in the field of health research, among other things, to conduct research into the biological, psychological and psycho-social causes and the consequences of violence and abuse; research is also being carried out in the context of the funding line "Sexual Abuse in Educational Contexts" into conditions in educational facilities that encourage or prevent abuse of children and juveniles, as well as protection concepts. These concepts are to become firmly established as building blocks in the basic and continuing training of educational and supervisory staff and psychologists. Also, the need for qualifications for educational staff is to be put on a scientifically sound foundation. In the field of educational research, individual and collaborative projects and five junior professors are receiving support on increasing visibility of the topic of sexualised violence in higher education institutions and on sustainably embedding the topic in the context of research and teaching. Investigating individual resilience factors of children and juveniles has an important role to play in both lines of funding, among other things.

On account of Germany's federal structure, it is the *Länder* that are responsible for framing their school curricula. Sex education is included in the curricula of all the *Länder*. It must be taught in an age- and development-appropriate manner. Sexual abuse and (self-)protection against sexual abuse may be addressed in class in this connection.

The campaign “No room for abuse” run by the Independent Commissioner for Child Sex Abuse Issues specifically targets professionals in day-care nurseries, schools, sports clubs, church parishes, homes, children’s clinics etc. The campaign aims to raise awareness in these institutions for the topic of sexual abuse. Experts are to be encouraged to ask for training courses to be held on the topic in their institution and for protection concepts to be introduced. The campaign has led to the formation of an alliance that spans the whole of society. The Independent Commissioner has come up with a bold symbol against sexual abuse, namely a prominent white “X”. Those who wear the symbol thus indicate that they reject sexual abuse of children and also face up to their responsibility to protect children. The campaign website (www.kein-raum-fuer-missbrauch.de) provides numerous practical examples for parents and professionals. A variety of materials are also available to download. These are all free of charge and can be used without a license in prevention work. They include leaflets with information for parents and professionals, flyers, campaign ads, posters and online banners. Those interested can order other products such as posters, folded flyers, badges and door hangers at cost from an online shop.

- b. Which policies or strategies have been implemented to promote or conduct awareness-raising campaigns targeted at the general public where the focus is directed especially towards the risks and realities of sexual exploitation and sexual abuse of children? Please describe the material used for the campaign/programme and its dissemination. If possible, please provide an assessment of the impact of the campaign/programme. If there are currently plans for launching a (new) campaign or programme, please provide details(**Article 8, para. 1**);

The Independent Commissioner for Child Sex Abuse Issues’ campaign “No room for abuse” aims to further sensitise a broad public for the topic of sexual abuse of children and, in particular, to inform parents about the issue. Mothers, fathers and other people to whom children relate closely are to be encouraged to ask for prevention and intervention strategies to be implemented in their children’s institutions. The campaign was launched in early 2013 with a nationwide poster and advertising campaign; TV ads were also broadcast to draw attention to the issue. Parents can find diverse materials, including flyers, postcards etc, as well as detailed leaflets containing basic information about sexual abuse and help on how to address the topic with children and juveniles on the campaign website (www.kein-raum-fuer-missbrauch.de).

- c. Which legislative or other measures have been taken to prevent or prohibit the dissemination of materials advertising the offences established in accordance with this Convention? If so, please provide details (**Article 8, para. 2, Explanatory Report, para. 66**).

Sections 184b (1) no. 3 and 184c (1) no. 3 StGB establish the dissemination of child and juvenile pornography as a criminal offence. In accordance with section 111 (1) StGB, whoever publicly, in a meeting or through the dissemination of written materials incites the commission of an unlawful act, will be held liable. Anyone who advertises the offences established in accordance with the Convention will – in the event that this represents the decision to commit the offence – be considered to be liable for incitement, at the very least to accessoryship to the main offence.

Question9: Recruitment and screening

- a. Which legislative or other measures have been taken to ensure that the conditions for accessing those professions whose exercise implies regular contact with children, ensure that the candidates to these professions have not been convicted of acts of sexual exploitation or sexual abuse of children (**Article 5, para. 3**)? Please specify to which professions such measures apply. Please also indicate for how long the criminal record of a person who was convicted for such crimes is kept in your country;

Section 30a of the Fifth Act Amending the Federal Central Criminal Register Act (*Fünftes Gesetz zur Änderung des Bundeszentralregistergesetzes*, BZRG) of 16 July 2009 (Federal Law Gazette Part I, p. 1952) entered into force on 1 May 2010 and introduced an enhanced police clearance certificate (*erweitertes Führungszeugnis*). The aim in requiring presentation of an enhanced police clearance certificate is to guarantee that no-one who has been convicted by final court judgment of offences against sexual self-determination, personal liberty, a violation of the duty of care or education against a person under the age of 16 years or the abuse of persons in their charge gets to work in or is placed by a public youth welfare facility. The new Federal Child Protection Act, which entered into force on 1 January 2012, recast section 72a SGB VIII to include the obligation that anyone working or volunteering in a child and youth welfare facility must present an enhanced police clearance certificate for inspection (in the latter case by agreement with the respective organisation). The aim is thereby to rule out such offenders taking on such work. Addressees are the public or private organisations running youth welfare facilities and sports clubs for those under 18 years of age.

In the interests of facilitating the social rehabilitation of those with a criminal record, an ordinary police clearance certificate (*einfaches Führungszeugnis*) only lists more serious convictions. To close gaps in child and youth protection, the enhanced police clearance certificate also lists all lesser convictions for the aforementioned offences. Further, in the interests of protecting minors, public youth welfare facilities or other authorities can ask to see an enhanced police clearance certificate known as a “public authority clearance certificate” (*Behördenführungszeugnis*, sections 30 (5), 31 BZRG) if this is required in the fulfilment of a person’s tasks.

The time-limits for inclusion of entries are set out in section 34 BZRG and are calculated from the first day of issuance of the first judgment (section 36 BZRG). This means that it is irrelevant when the judgment becomes final. The time-limits for non-inclusion of entries are staggered (as indicated merely in overview below) in accordance with the nature and amount of the penalty imposed:

- Three years in the case of sentences to a) a fine of no more than 90 daily rates or imprisonment of no more than three months; b) imprisonment for between three months and one year if the penalty is wholly or partially suspended on probation and no further term of imprisonment has been entered; c) a youth custody sentence of no more than one year; d) a youth custody sentence of no more than two years if a remainder of a sentence was suspended on probation or dropped;

- Ten years in the case of sentences a) to imprisonment or a youth custody sentence of more than one year; b) on account of offences against sexual self-determination; c) on account of other offences relating to the protection of children and juveniles if they have to be included in an enhanced police clearance certificate;

- Five years in all other cases.

Where a term of imprisonment or period of youth custody of more than one year has been imposed, the time-limit for inclusion increases by the amount of the penalty imposed (section 34 (3) BZRG). Also, the time-limits do not expire until the term of imprisonment has been executed or if the penalty suspended on probation is not dropped (section 37 (2) BZRG).

b. Does the screening of candidates apply to voluntary activities (**Explanatory Report, para. 57**)?

Yes, please refer to the answer to question 9 a.

Question 10: Preventive intervention programmes or measures

- a. Which legislative or other measures have been taken to ensure that persons who fear that they may commit any of the offences established in accordance with the Convention, have access to effective intervention programmes or measures designed to evaluate and prevent the risk of offences being committed? Please specify under which conditions, if required (**Article 7, Explanatory Report, para. 64**);

Since 2008 the Federal Ministry of Justice and Consumer Protection (BMJV) has provided financial support to the “Prevention Project Undetected Cases”, a therapy and research project launched in 2005 at the Institute of Sexology and Sexual Medicine at the Charité University Clinic in Berlin.

The aim of the project is to provide therapeutic measures to those who feel sexually attracted to children and/or juveniles in order to prevent initial or repeated sexual abuse of minors. The objective is to establish contact to potential perpetrators before they actually commit sexual offences. Even though it is impossible to change a person’s sexual inclinations, patients can, over the course of treatment, learn to control their impulses and behaviour.

The “Prevention Project Child Pornography” was subsequently launched in 2009. It addresses those who consume or intend to consume child pornography.

Both projects were taken forward in the context of the University Outpatient Clinic Sexual Medicine established at the Charité in 2010. The project has since been expanded into a nationwide prevention network (“Don’t be a perpetrator”) that now offers therapeutic measures based on common quality standards at a total of eight sites. There are plans to introduce the measure at sites across the whole of Germany. By March 2013 some 2,800 potential patients had already contacted one of the network’s focal points. The project has already met with great interest abroad.

Applications have been made for project funding from the BMJV for the period 2014–16.

- b. Which legislative or other measures have been taken to ensure that persons subject to criminal proceedings or convicted for any of the offences established in accordance with the Convention, may have access to effective intervention programmes or measures? Please specify under which conditions, if required (**Articles 15 to 17**). Please indicate in particular:
- who has access to these programmes and measures (convicts, persons subject to criminal proceedings, recidivists, young offenders, persons who have not committed a crime yet?);
 - how the appropriate programme or measure is determined for each person;
 - whether there are specific programmes for young offenders;

- whether persons have a right to refuse the proposed programme/measures?

Until an accused person has been convicted, he/she is presumed innocent. Consequently, no governmental programmes are available for the treatment of (alleged) sexual offenders while they are in pre-trial detention. The time spent in pre-trial detention is generally too short to be able to complete a meaningful programme of therapy.

Accused persons who are not in pre-trial detention are free to seek and avail themselves of therapeutic support of their own accord.

The judiciary itself is responsible only for measures provided in a prison context. Based on the division of responsibilities between the Federation and the *Länder*, the latter have legislative and organisational powers in this regard. Since uniform rules apply to this issue, the statutory bases and approach adopted in North Rhine-Westphalia will be described in the following. They provide an example of what applies generally to underage and adult convicted persons:

When it comes to the execution of youth custody sentences, all measures and programmes that aim to build and strengthen prisoners' skills and capacities in regard to achieving the objective of enforcement form the basis for framing the enforcement system. In accordance with statutory provisions, diverse offers should be available that take various evolving capacities and different needs into account when it comes to promotion and education. In contrast to adults, juveniles and young prisoners are obligated to cooperate in the measures offered to them, although their cooperation must also be fostered and promoted by ensuring they are offered suitable measures. The youth custody services cooperate closely with authorities, facilities and organisations outside of the penal system when it comes to fulfilling their task of social rehabilitation. Following an initial meeting the need for promotion and education in a particular case is established in the context of a thorough first examination. A binding prison treatment plan is drawn up based on the outcome of that examination; the treatment plan is regularly reviewed and adjusted following important events. Those convicted of sexual offences have a right to social therapy treatment in a social therapy facility providing special therapeutic measures and social assistance. The young convict must agree to be placed in a social therapy facility.

Competence for prison legislation lies with the 16 *Länder*. Please refer to the Annex for details on how the rules under Articles 15 para. 1 and 31 para. 1 letter (b) of the Convention have been implemented by the *Länder*.

One important prerequisite for ensuring the success of treatment available in youth custody is the commitment of employees, who must be particularly suited to dealing with young offenders and must have appropriate pedagogical skills.

Where the youth welfare office or health administration offers relevant measures, youth courts may – especially in the case of serious sexual offences – order that a juvenile perpetrator undergo special rehabilitative treatment outside of a prison context as well, for example in the form of a therapy to deal with a criminal behavioural disorder (section 10 (2) and section 23 JGG).

In the case of those who have already been issued with a warning or who have been convicted, in addition to those social rehabilitation measures available in prison the court may also issue a warning with reserved penalty, it may suspend a penalty on probation or impose supervision of conduct, or, alternatively, other (esp. out-patient) measures to reduce the risk of recidivism. This can include the instruction to undergo therapy (cf. section 56c (1), first sentence, subsection (3) no. 1, section 59a (2) no. 4, section 68b (2), second sentence, StGB). The same applies where the proceedings have been temporarily suspended in accordance with section 153a StPO.

The principles of German law meet the requirements set out in Article 17 as regards instructions issued in the context of a warning with a reserved penalty, suspension of a penalty on probation or supervision of conduct. The same applies to dispensing with court action in accordance with section 153a StPO. Thus, section 56c (3) StGB also in conjunction with section 59c (2), third sentence, and section 68b (2), fourth sentence, StGB explicitly requires that placement in an inpatient facility and curative treatment linked to physical interference necessitate the consent of the convicted person. Dispensing with court action in accordance with section 153a StPO is also only permissible with the consent of the person concerned. Moreover, the person concerned's refusal to undergo another therapeutic measure that is not associated with such interference can mean that the suspension on probation of a term of imprisonment or measure of reform and correction that would otherwise be possible cannot be undertaken on account of the lack of a positive legal prognosis and that this must be revoked. It is, however, not permissible to apply direct coercion to get someone to undergo therapy.

The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) is promoting a pilot project aimed at further improving the diagnostic and therapeutic offers available to juveniles with sexually deviant behaviours and fantasies that are associated with children. Affected juveniles must be offered support in dealing with and controlling their sexual impulses as early as possible in their development. The focus here is on using insights and experience gained in special facilities who deal with potential target groups,

including the youth welfare offices, socio-paediatric centres, private child, youth and social welfare organisations, and residential units for juveniles with (sexual) behavioural problems.

Question 11: Participation of the private sector, the media and civil society

What steps have been taken to encourage:

- a. the private sector (in particular the information and communication technology sector, the tourism and travel industry, the banking and finance sectors) to participate in the elaboration and implementation of policies, programmes or other initiatives to prevent sexual exploitation and sexual abuse of children? Please indicate which private sectors are concerned and explain how participation takes place. Please also provide information concerning any relevant code of conduct or enterprise charter aimed at protecting children from sexual exploitation and sexual abuse (**Article 9, para. 2, Explanatory Report, paras. 68-73**);

In autumn 2010 Germany, Switzerland and Austria together launched a trilateral educational campaign against child sex tourism. The campaign incorporated the three countries' governments, as well as associations and businesses in the tourism sector. The key element of the campaign is an advert entitled "Witness". The advert conveys the message that the sexual abuse of children can be prevented if tourists do not look away. The address of a police department to which tourists can turn is displayed at the end of the advert. An international conference on this campaign was held in Berlin in January 2013. Representatives from the three governments, police authorities, the tourist industry and NGOs shared their experiences at the conference. It was agreed that the campaign should be expanded to include other European partner countries.

The tourism industry is an important partner when it comes to combating the sexual exploitation of children and juveniles. The Federal Government supports the implementation of the Code of Conduct for the Protection of Children Against Sexual Exploitation in Tourism ("Code of Conduct") that was agreed between the German Association of the Travel Industry and the ECPAT (a global network of organisations working to protect children against commercial sexual exploitation). Key elements of the Code of Conduct include training those employed in the tourist industry in the countries of origin and countries of destination, and raising awareness among tourists. The Federal Association of the German Tourism Industry and the International Tourism Fair in Berlin have also signed the Code of Conduct.

The Federal Government also supports courses for prospective employees in the tourism industry on how to protect minors against sexual exploitation in tourism.

- b. the media to provide appropriate information concerning all aspects of sexual exploitation and sexual abuse of children (**Article 9, para. 3, Explanatory Report, para. 74**);

The Federal Ministry for Family Affairs, Senior Citizens, Family and Youth (BMFSFJ) set up I-Kiz (Centre for Child Protection on the Internet) to create a place in which experts from industry (incl. representatives of Internet service providers and broadcasting companies), politics and the youth protection services can be invited to work together in three specialised commissions charged with developing and implementing concrete and up-to-date solutions to youth media protection issues. The work of the specialist commission on “Measures, Networking, International Cooperation” focuses on better combating representations of the abuse of minors on the Internet and representations of minors in sexually explicit poses. The aim is to effectively combat the sexual exploitation of children on the Internet through better international cooperation and research.

- c. the financing, including, where appropriate by the creation of funds, of the projects and programmes carried out by civil society aimed at preventing and protecting children from sexual exploitation and sexual abuse (**Article 9, para. 4, Explanatory Report, para. 75**).

The funding available at federal level to step up protection against sexual violence and exploitation has continuously risen since the Action Plan 2011 was taken forward and the Round Table and the post of the Independent Commissioner for Child Sex Abuse Issues were established. In the context of implementing recommendations and measures to improve protection against sexual violence the Federal Government has in particular launched national projects in the field of prevention and training, as well as to create priority areas in health and educational research.

May the proceeds of crime be used to finance the above mentioned projects and programmes? Please provide details (**Article 27, para. 5, Explanatory Report, para. 193**).

No. The proceeds or assets of crime that are declared forfeit by court judgment accrue to the treasury without being appropriated.

Question 12: Effectiveness of preventive measures and programmes

- a. Please specify whether an assessment of the effectiveness and impact of the preventive measures and programmes described in replies to questions 4, 10 and 11 is regularly carried out;

The national initiative on the prevention of sexual abuse ("**Be Bold!**") is already showing positive results. Schleswig-Holstein and Saxony, for instance, funded training courses for school teachers that were organised by local specialist advice centres and focal points for the victims of sexual violence. Local actors (advice centres, police, schools etc.) network in the course of the preparatory and follow-up phase to a play that adopts a preventative approach. This is an important and long-lasting element of the initiative that is geared to prevention.

Another preventative project – the national training offensive in child and youth welfare facilities – serves to establish permanent networking structures. The project funds the local specialist advice centres so that they can train the child and youth welfare facilities in their area. The contacts established are maintained so that, in the event of a suspected or actual case of abuse occurring in a facility, the cooperation that has already been tried and tested can be used to elaborate plans of action.

Both measures are evaluated on an ongoing basis.

The "Prevention Project Undetected Cases" is subject to external evaluation.

The "No room for abuse" campaign run by the Independent Commissioner for Child Sex Abuse Issues has established an alliance that incorporates representatives from across the whole of society. Numerous facilities, organisations and people have backed the idea, set an example by launching campaigns and have committed to preventing sexual abuse. These campaigns and initiatives are listed on the campaign's website (www.kein-raum-fuer-missbrauch.de).

- b. Please provide examples of the good practices in preventing sexual exploitation and sexual abuse of children.

Please refer to the examples listed in the answers to questions 4, 8, 10 and 11.

Question 13: Reporting suspicion of sexual exploitation or sexual abuse

- a. Are professionals working in contact with children bound by confidentiality rules? Do these rules constitute an obstacle for reporting to the services responsible for child protection any situation where they have reasonable ground for believing that a child is a victim of sexual exploitation or sexual abuse? Please indicate the criteria or guidelines which allow for the waiving of confidentiality rules (**Article 12, para. 1, Explanatory report, para. 89**);

The guidelines on involving the law enforcement authorities that were elaborated by the Round Table represent recommendations for action for institutions and organisations (e.g. schools, sports clubs) and should be implemented in the form of self-regulatory rules. Hence, the law enforcement authorities should always be involved where there are factual indications of sexual abuse having occurred in an institution. Limited exceptions to this basic principle are possible; the conditions therefor are described in the guidelines. The institutions are thus given a precise framework within which all those concerned have certainty regarding their actions. The Federal Ministry of Justice and Consumer Protection (BMJV) has published a brochure that describes the guidelines in more detail. Examples provided are intended to make it easier to apply the guidelines in practice. Thus, the law enforcement authorities should always be informed about factual indications of sexual abuse, unless in certain circumstances due consideration of the victim's situation or his/her wish to the contrary speak against it.

The criminal provision on the breach of private secrets (section 203 StGB) must be complied with. Certain groups, for example doctors, psychologists, lawyers and youth counsellors, are under the statutory obligation to maintain secrecy on account of their profession; they may not disclose a secret entrusted to them – not even to the head of a facility or to the police – without authorisation to do so or without the consent of the victim. Nevertheless, it may, in exceptional cases, be permissible to reveal private secrets: For preventative reasons and under certain circumstances, i.e. to prevent further abuse, those under the obligation to maintain professional secrecy may directly inform the head of the facility or the police (known as “necessity as a justification”, section 34 StGB).

- b. Are there any rules encouraging any person who knows about or suspects, in good faith, sexual exploitation and sexual abuse of children to report the facts to the competent authorities? If so, please specify under which conditions and to which authorities (**Article 12, para. 2, Explanatory Report, para. 91**). Please provide examples of good practice.

Encouraging victims to turn to the law enforcement authorities is one of the examples of good practice listed in the answers to questions 4, 8, 10 and 11. This naturally also applies to witnesses and those to whom the victims of criminal offences turn and who authorise them to do so.

There is no obligation under criminal law to report criminal offences that have been committed. The person obligated to report a criminal offence would thus have to have credibly learned of the offence at a time when its commission or success could still have been averted (section 138 StGB).

Question14: Helplines

Which legislative or other measures have 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**).

The Federal Government has over many years supported the registered society *Nummer gegen Kummer* that coordinates all child/juvenile and parental helplines. The society makes a key contribution to maintaining and further developing these free and anonymous helplines, which have become established across the whole of Germany over the years and are available to children, juveniles and parents. The number of callers is constantly rising. Violence, including sexual violence, is a very important topic – for both young people and their parents. Around one in ten callers addresses this topic. Those working for the child/juvenile helplines receive special training on the issue of sexual violence in the context of the preventative initiative “Be Bold!”.

The child/juvenile helpline has proved its worth as an easily accessible and open counselling service, which is why the Federal Government continues to fund it.

The Independent Commissioner for Child Sex Abuse Issues set up an online portal on the recommendation of the Round Table. The portal provides information on counselling, help and legal issues, as well as prevention. It is backed by a database that can be used to make a nationwide search for specialist counselling services and help available locally. The portal thus has the function of a navigator, guiding users to assistance available across the whole of Germany. Target groups include juveniles and adults who experienced sexualised violence as children, relatives and professionals, and anyone interested in the topic.

In addition, in May 2010 the Independent Commissioner set up a free, anonymous helpline for victims, their relatives, professionals and anyone interested in the topic (within Germany: 0800 – 22 55 530). A team comprising psychologists, teachers and medical professionals are on hand to take calls five days per week. They discuss possible support and help with callers and also take down messages to be passed on to politics and society.

Question 15: Assistance to victims

a. Please indicate which types of assistance described in **Article 14** are provided to victims of sexual exploitation and sexual abuse of children (**Explanatory Report paras. 93-100**).

Please specify:

- How the assistance is adapted to the victims' age and maturity;
- how due account is taken of the child's views, needs and concerns;
- if the assistance (in particular emergency psychological care) is also provided to the victims' close relatives and persons responsible for their care.

Child victims of sexual abuse can turn to the child and youth welfare services for support. Services available there include educational guidance for parents, out-patient socio-educational support provided by parental counsellors or social case workers, educational support and counselling for families, and social group work. Children can also be placed with a foster family or in a home or another form of assisted living.

The child or juvenile can, possibly together with his/her parents, receive counselling from youth welfare officers when it comes to choosing the type of help to be provided. The child's or parents' choice and wishes must be complied with, unless this would give rise to disproportionate additional costs. In addition, they are also involved in drawing up an assistance plan. The child's age and evolving capacities, as well as other specific circumstances of the individual case are taken into account when drawing up the plan.

Further, in the event of imminent danger to the child's or juvenile's best interests that cannot be averted by those having custody of the child or juvenile, the youth welfare office is authorised and obligated to take the child into care (without the consent of those having custody of the child) if it is not possible to obtain a decision from a family court in good time, i.e. it cannot be presumed that the court would be able to take an immediate decision (section 42 (1), first sentence, no. 2, letter (b) SGB VIII). Taking a child into care is therefore a temporary crisis intervention measure in cases of urgency or emergency. It must immediately be superseded by the person having custody of the child taking responsibility or a decision regarding custody being taken by the family court.

b. Please specify if and to what extent internal law provides for the possibility of removing (**Article 14, para. 3, Explanatory Report, para. 99**):

- the alleged perpetrator, when the parent or persons caring for the child are involved in his or her sexual exploitation or sexual abuse;
- the victim from his or her family environment when parents or persons caring for the child are involved in his or her sexual exploitation or sexual abuse.

In accordance with section 1666 of the German Civil Code (*Bürgerliches Gesetzbuch*, BGB), the family court must, *ex officio*, take the measures necessary to avert a danger where the physical, mental or psychological best interests of the child or his/her property are endangered and the parents do not wish or are not able to avert the danger. In accordance with section 1666 (4) BGB, in matters of care for the person of the child the court may also undertake measures with effect against a third party. If necessary, the family court may thus also, in accordance with section 1666 (4) BGB, issue third parties with the exclusion orders or communication bans that are typical for protection against violence measures. If the measures imposed on the third party are not sufficient to eliminate the threat to the child's best interests, additional interference in custody rights may be necessary.

If the threat to the child's best interests comes from the parents having custody of the child and the parents are not willing or able to avert the threat, the family must, *ex officio*, take the measures necessary under section 1666 BGB against the parents. In individual cases, the family court may be justified and obligated to wholly or partially divest the parents of their parental custody (e.g. the right to determine the child's place of residence) and to transfer this to a guardian (*Vormund*) or curator (*Pfleger*).

Further, pursuant to section 42 (1) SGB VIII, the youth welfare office is obligated to take a child or juvenile into care if a) the child asks to be taken into care, or b) imminent danger to the child's or juvenile's best interests necessitate that he/she be taken into care and the person having custody does not oppose this or a family court decision cannot be obtained in good time.

c. If internal law does provide for this:

- are the conditions and duration of such removal to be determined in accordance with the best interests of the child?

As explained in the answer to question 15 b, the measures referred to in section 1666 BGB presuppose that the physical, mental or psychological best interests of the child or his/her property are endangered. When it comes to the question of whether the family court may or must take measures affecting the care and custody of the child, the focus is on what is in the child's best interests.

- 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, paras. 87-88**).

The state's constitutionally enshrined watchdog function (Article 6 para. 2 GG) means it is duty bound to protect children against threats to their best interests.

Although in accordance with Social Code Book (SGB) VIII it is the task of the youth welfare offices to give parents help and assistance in order to avert a threat to the child's best interests, the legislature has assigned the family courts the right to interfere with custody rights (sections 1666 and 1666a BGB). Choosing the approach that is best suited in a specific case requires that a professionally sound assessment first be made of the threat posed and how it is unfolding, as well as what resources the child's parents have. To that end the legislature has introduced a special threat assessment procedure and tasked the youth welfare office with carrying out that procedure (section 8a SGB VIII). Accordingly, the youth welfare office is obligated, *ex officio*, to follow up on indications that a child's or juvenile's best interests are endangered when it learns thereof. Based on the threat assessment made in an individual case, which the parents are generally involved in, the youth welfare office can then decide which measures are suitable and necessary to avert the threat. The youth welfare office must call on the family court if the parents are not willing or able to cooperate or accept the help necessary to avert the threat.

- d. Which legislative or other measures have been taken to ensure that victims of an offence established in accordance with the Convention in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their state of residence? (**Article 38, para. 2, Explanatory Report, paras. 258-259.**)

In accordance with section 158 StPO, criminal offences may be reported in writing or orally with the public prosecution office, authorities, the police and with the local courts. Oral information must be recorded in writing. Anyone may report a criminal offence; there are no restrictions as to the nature of the act that may be reported. Criminal offences committed abroad may be reported in the same manner as those committed in Germany.

Question 16: Criminal law offences

- a. Please indicate whether the intentional conducts in the box below are considered criminal offences in internal law;

The acts described in Articles 18 to 23 are covered by Chapter Thirteen of the Criminal Code (StGB), with the exception of Article 21 para. 1 letter (c).

Article 24 para. 1 obligates the Parties to establish as criminal offences, when committed intentionally, aiding or abetting the commission of any of the offences established in accordance with the Convention. Applicable German law (sections 26 and 27 StGB) meets this requirement.

Article 24 para. 2 obligates Parties to establish as criminal offences, when committed intentionally, attempts to commit the offences established in accordance with the Convention. Pursuant to applicable German law (section 23 StGB), the attempt to commit a criminal offence entails criminal liability only if expressly provided so by law. This essentially applies in the cases referred to in sections 174 et seqq., 232, 233a StGB, which are relevant as regards implementation of the Convention.

- b. Wherever the intentional conduct which is criminalised differs from the Lanzarote Convention benchmark, please justify;

Please refer to the answer to question 16 a. There are currently no plans to make adjustments in line with the requirements under the Convention.

- c. Please highlight whether there are any other offences not included in the box below incriminating sexual exploitation and sexual abuse of children in your country? Please provide their definitions and specify in which act these are included;

Incriminating content in child or juvenile pornography may also include presentations where the sexual abuse of children is described using only words (sections 184b (1), 184c (1) StGB). The Federal Republic of Germany has consciously not restricted the definition of "child and juvenile pornography" to pictorial representations as is the case in, for example, the legislative acts of the European Union (Article 1b of Council Framework Decision 2004/68/JHA on combating the sexual exploitation of children and child pornography of 22 December 2003; recitals 3 and 46 of Directive 2011/93/EU of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA of 13 December 2011) (cf. Bundestag Printed Paper 16/9646, p. 10 et seq.).

- d. Please also specify whether the age of a child plays a role in determining the gravity of the offence.

The age of the victim is sometimes an element of an offence. In addition, where the victim is very young his/her age may be taken into account when determining the penalty.

Question 17: **Corporate liability**

Does your system provide that a legal person may be held liable for an offence established in accordance with **Article 26**? Please specify under which conditions.

German law has established a range of instruments that meet the requirements set out in Article 26. Administrative sanctions may be imposed on legal persons in accordance with the law on regulatory offences. Section 30 of the Regulatory Offences Act (*Gesetz über Ordnungswidrigkeiten*, OWiG) allows a fine to be imposed against legal persons or associations of individuals on condition that their representatives (organs, boards, agents, other management personnel) have committed a criminal or regulatory offence that either breaches an obligation the association is under or that has caused or was intended to cause its enrichment.

Question 18: Sanctions and measures

- a. Please indicate which sanctions internal law provides for the criminal offences established in accordance with the Convention with regard to both natural and legal persons. Please specify whether the sanctions are criminal, civil and/or administrative sanctions (**Article 27, Explanatory Report, paras. 182-193**);

It is possible, in accordance with the relevant statutory categories of offences, to impose fines or prison sentences against natural persons; depending on the criminal provision concerned, a prison sentence of up to 15 years may be imposed. Other sanctions are also possible, for example – depending on the circumstances of the individual case – disqualifying someone from exercising a profession (cf. sections 70 et seqq. StGB).

Section 30 (2) OWiG enables fines of up to 10 million euros to be imposed against legal persons in the event of the commission of a criminal offence as a connecting act. Where necessary to confiscate the economic advantage gained on account of the act, this amount may and should be exceeded (section 30 (3) in conjunction with section 17 (4) OWiG). These administrative sanctions (fines) are supplemented by possibilities available under commercial and company law of restricting or prohibiting the business's activities or dissolving its legal entity.

- b. Which legislative or other measures have been taken to provide for the possibility of taking into account final sentences passed by another Party in relation to the offences established in accordance with the Convention? Please provide details and describe any good practice resulting from the taking of these measures (**Article 29, Explanatory Report, paras. 203-208**).

Germany has implemented Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States (OJ L 93 of 7.4.2009, p. 23) and Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA (OJ L 93 of 7.4.2009, p. 33). The ECRIS is a decentral, confidential information technology system that does not change the content of individual Member States' existing criminal record databases; the Framework Directive merely regulates data exchange between the central authorities; the ECRIS does not permit direct electronic (online) access by a foreign central authority to the criminal record data of another Member State (Article 3 paras 2 and 3). After receiving the encrypted foreign data, these are – as was previously the case – processed in accordance with applicable law. When Germany receives new criminal

information or requests for information from the criminal records, these are processed individually by the Federal Office of Justice in accordance with German law.

Criminal convictions by foreign courts are also entered into the Federal Central Criminal Register under the conditions set out in section 54 (1), first sentence, BZRG. Entering a foreign judgment presupposes that a) the convicted person is a German national or was born or is resident in Germany; b) the facts on which the conviction is based or the analogously converted facts are also punishable under German law, regardless of any procedural obstacles; and c) the decision is final.

Where relevant foreign convictions are submitted and they concern German nationals, they are entered into the Federal Central Criminal Register and included in the (enhanced) police clearance certificate. Pursuant to section 46 (2), second sentence, StGB, consideration must be given to these convictions as a circumstance in the offender's prior history when German courts determine the relevant penalty (cf. decision of the Federal Court of Justice of 1 August 2007, 5 StR 282/07 = StV 2007, 632; BayObLGSt, judgment of 17 March 1978, RReg 2 St 429/77 = JZ 78, 449; Schönke/Schröder-Stree, *StGB*, 28th ed., section 46 margin no. 32; LK-Theune, *StGB*, 12th ed., section 46 margin no. 174; as regards giving consideration to previous convictions issued in other EU states, cf. Bundestag Printed Paper 16/13673, p. 3 et seqq. on the Act Implementing Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition of confiscation orders and Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings).

Question 19: Jurisdiction

With regard to the offences referred to in question 16, please indicate which jurisdiction rules apply. Please specify under which conditions, if required (**Article 25, Explanatory Report, paras. 165-176**).

German law fulfils the requirements set out in Article 25 para. 1 letters (a) to (c) on account of sections 3 and 4 StGB. According to these provisions, German criminal law applies to acts committed in Germany and to acts committed on ships and aircraft entitled to fly the federal flag or the national insignia of the Federal Republic of Germany.

Article 25 para. 1 letter (d) would, taken in isolation, already be implemented on account of section 7 (2) no. 1 StGB. According to the latter provision, German criminal law applies to acts committed abroad by a German national on condition that the act is a criminal offence at the place of its commission or if that place is not subject to any criminal law jurisdiction. However, Article 25 para. 4 requires that for the prosecution of offences established in accordance with Articles 18, 19, 20 para. 1 letter (a) and Article 21 para. 1 letters (a) and (b) of the Convention, each Party must ensure that its jurisdiction is not subordinated to the condition that the acts are criminalised at the place where they were performed. Regardless of the law applicable at the place of commission of the act, German criminal law applies to the categories of offence to which reference is here made, but only for German offenders in the case of sexual offences referred to in section 5 no. 8 letter (b) StGB (sections 176 to 176b and section 182 StGB) and, as regards all offenders, for all acts referred to in section 6 nos 4 and 6 StGB (universal jurisdiction) (esp. human trafficking for the purpose of sexual exploitation in accordance with section 232 StGB and the dissemination of pornography in accordance with sections 184b and 184c StGB), and thus in regard to offences within the meaning of Article 18 para. 1 letter (a), Article 19, Article 20 para. 1 letter (a), Article 21 para. 1 letters (a) and (b).

Article 18 para. 1 letter (b), first indent, has been implemented by means of section 177 StGB (rape). The provision is not referred to in section 5 no. 8 letter (b) StGB. This is based on the legislature's assumption that grave sexual offences (such as rape) will also be punishable at the place of commission of the act, so that section 7 (2) no. 1 StGB already applies and there is therefore no need for the provision to be included in section 5 no. 8 letter (b) StGB. In the interests of legal clarity, a separate legislative project is to be used to explicitly include grave sexual offences (such as section 177 StGB) in section 5 no. 8 StGB. This will at the same time meet the requirements under Article 17 para. 1 letter (b), para. 4 of Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.

At least a part of the acts referred to in Article 18 para. 1 letter (b), second and (with restrictions) third indents, are not covered. The second indent has primarily been implemented through section 174 (1) nos 2 and 3 StGB (sexual abuse of those entrusted to a person's care). Section 174 StGB is in fact referred to in section 5 no. 8 letter (a) StGB, but under a condition that is not provided for under Article 25, namely that the victim must also be a German national and have his/her main livelihood in Germany. The act referred to in the third indent has been implemented by means of section 179 StGB, in particular subsection (1), and again by means of section 174 (1) nos 2 and 3 StGB (sexual abuse of persons unable to defend themselves, sexual abuse of those entrusted to a person's care). To date, section 179 StGB is not referred to in section 5 no. 8 StGB, section 174 StGB only with the aforementioned restriction.

As regards Article 18 para. 1 letter (b), second and third indents, Article 25 para. 5 does open up the possibility of the proviso that the waiving of double criminal liability is made dependent on the (German) offender having his/her livelihood (habitual residence) in Germany. However, it is presumed that the aforementioned special legislative project will also implement the obligations under Article 25 para. 1 letter (d) and para. 4 of the Convention, so that use would not have to be made of the proviso under Article 25 para. 5, which is limited anyway.

German criminal law does not contain any rules that fully implement Article 25 para. 1 letter (e), i.e. provisions according to which German criminal law always (also) applies to foreign acts committed by foreigners or stateless persons having their habitual residence in Germany. The key circumstances of cases such as these are in practice covered by section 7 (2) no. 2 StGB, according to which German criminal law is applicable to a foreign act committed by a foreigner (including a stateless person, cf. e.g. Fischer, *StGB*, 59th ed., section 7 margin no. 5) who is discovered in Germany if the offender, although the law on extradition would permit his/her extradition depending on the nature of the act, is not extradited (either because a request for extradition was not filed within the appropriate time-limit or it was rejected or because extradition is not feasible). This applies all the more since the sexual offences referred to in the Convention are, firstly (at least in regard to extraditions not bound by treaty), in principle always acts permitting extradition, since their threatened penalties under German law reach up to the minimum maximum penalty of one year imprisonment referred to in section 3 (2) of the Act on Mutual Assistance in Criminal Matters (*Internationales Rechtshilfegesetz*, IRG), nor are they political offences within the meaning of section 6 (1), first sentence, IRG. Secondly, it is also of no consequence that section 7 (2) no. 2 StGB contains the requirement of punishability at the place of commission of the act, since Article 25 para. 4 of the Convention does not also apply to Article 25 para. 1 letter (e). Where, by way of exception, section 7 (2) no. 2 StGB is nevertheless not applied because

the offender, although he/she has his/her habitual residence in Germany, is still not “affected” or is affected and extradited, the question of whether Article 25 para. 1 letter (e) can also claim to be applicable to such rare constellations of facts although the state then (no longer) has direct access to the offender can ultimately be ignored. Should, nevertheless, Article 25 para. 1 letter (e) go too far, use will be made of the possibility of entering a proviso under Article 25 para. 3.

As regards Article 25 para. 2, it should be noted that in accordance with section 7 (1) StGB, German criminal law is always applicable where the foreign act is directed against a German national and is threatened with punishment at the place of commission or the place of commission is, by way of exception, not subject to any criminal jurisdiction. The rule ought thus to cover at least the majority of conceivable cases.

The other requirement set out in Article 25 para. 6 regarding the cases referred to in Article 25 para. 1 letter (d), namely that jurisdiction may not be subordinated to the condition that the prosecution can only be initiated following a report from the victim, does not have a role to play under German law, since no such substantive restriction currently applies.

German law meets the requirements set out in Article 25 para. 7. Conceivable cases in that regard are already largely covered on account of the requirements under Article 25 para. 1 letter (d), para. 4 having been implemented (see above). Only the acts referred to in Article 25 para. 4 were not covered by this implementation; under German law (including the extensions planned in the context of the aforementioned special legislative project), neither section 5 no. 8 StGB nor section 6 no. 4 or 6 StGB would apply. However, Article 20 para. 1 letter (b) and (c) is covered by the “dissemination” of child pornography in accordance with section 6 no. 6 StGB read in conjunction with sections 184b and 184c StGB. Articles 22 and 23 have been implemented on account of section 176 StGB being referred to in section 5 no. 8 letter (b) StGB. Thus, essentially only the procuring or possessing of child pornography under Article 20 para. 1 letter (d) to (f) and knowingly attending pornographic performances involving the participation of children (Article 21 para. 1 letter (c)) remain. However, section 7 (2) no. 1 StGB at any rate applies to the remaining categories of offences, according to which German criminal law is always applicable where the offender is a German national and the act is a criminal offence at the place of commission or, by way of exception, is not subject to any criminal jurisdiction.

Question 20: Aggravating Circumstances

Please indicate which of the circumstances referred to in **Article 28**, in so far as they do not already form part of the constituent elements of the offence, may, in conformity with the relevant provisions of internal law, be taken into consideration in your legal system as aggravating circumstances in the determination of the sanctions in relation to the offences established in accordance with this Convention (**Explanatory Report, paras. 194-202**).

German law meets the requirements set out in Article 28. Some of the aggravating circumstances listed in Article 28 already constitute qualifying elements, for example joint commission of the offence by several people acting together (section 176a (2), no. 2 StGB), serious physical abuse (section 176a (5) StGB) and commission by a repeat offender (section 176a (1) StGB). A particularly vulnerable victim is already covered, among others, in section 179 (1) StGB, the commission of the offence by a family member or a person having abused their authority in section 174 (1) nos 2 and 3 StGB, among other provisions. Commission within the context of a criminal organisation is also covered (sections 184b (3) and 184c (3) StGB).

Other aggravating circumstances may, moreover, also be taken into consideration on account of section 46 (2) StGB when it comes to determining the penalty, depending on the concrete circumstances of the individual case.

Question 21: Measures of protection for the child victim

- a. Please describe the measures taken to inform child victims of their rights, the services at their disposal, 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 (**Article 31, para. 1, letter (a) and para. 2**). Please also indicate what is done to provide all relevant information in a manner adapted to the child's age and maturity and in a language that he/she may understand;

The online portal www.trau-dich.de is directed at children and provides information in child-appropriate language. An online database lists advice centres and assistance available locally. Two brochures entitled "You're strong" motivate children using child-appropriate tests and exercises to trust their own instincts and turn to someone they trust if need be.

Where a victim decides to report a criminal offence, the case will be handled by criminal police officers specially trained in dealing with sexual offences. The staff in these special departments must, as soon as possible, inform the victim of his/her rights and powers under section 406h StPO, as a rule in writing and as far as possible in language he/she can understand.

The duties of information were considerably expanded in 2009 and are to be updated once more when the Victims Directive 2012/29/EU is implemented. Victims must be informed about the following: private accessory proceedings; the possibility of asserting the right to compensation in the adhesive procedure; their entitlement to claim benefits in accordance with the Crime Victims Compensation Act (*Opferentschädigungsgesetz*, OEG); the fact that they can apply for the issue of orders against the accused person to protect them against violent acts; and that they may obtain support and help from victim support centres. This may also comprise psychosocial support during the proceedings. Victims are informed about the course of investigations and criminal proceedings in this context.

In accordance with section 172 StPO, an aggrieved person who has instituted criminal proceedings may compel public charges. In accordance with section 171 StPO, they must be notified of this possibility.

Section 406a (1) StPO provides that the aggrieved person must, upon application, be notified of the termination of the proceedings and of the outcome of the court proceedings to the extent that they relate to him/her. According to subsection (2) of that provision, the aggrieved person must be notified about whether custodial measures have been ordered or terminated against the accused. The Act to Strengthen the Rights of Victims of Sexual Abuse (*Gesetz zur Stärkung der Rechte von Opfern sexuellen Missbrauchs*, StORMG), which was adopted in 2013 and has now entered into force, further improved these rights to information. The Act obligates the authorities not only to notify the aggrieved person when conditions of detention

are relaxed or leave has been granted for the first time, but also each subsequent time this is done.

No. 222a of the Guidelines provides that the victims of criminal offences against sexual self-determination, especially sexual abuse of children under sections 176 et seq. StGB, should be heard before measures are taken to terminate proceedings. They are to be given the opportunity to make a statement regarding the intention to conclude the proceedings. Victims must also be given the opportunity to make a statement through legal counsel if the stage of the proceedings is discussed with the public prosecution office.

No. 220 of the Guidelines provides that the victims of sexual offences must be informed of their rights during any physical examinations that may be required; for details regarding these rights please refer to the answer to question 23 a, third indent.

- b. Please also indicate which measures have been taken to enable the child victim 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, and considered (**Article 31, para. 1, letter (c)**);

All victims of a criminal offence may avail themselves of the assistance of a lawyer (attorney) or may be represented by a lawyer (section 406f (1) StPO). They may – generally through a lawyer – inspect the files (section 406e StPO).

The lawyer must be permitted to be present at the examination of the victim by the court or public prosecution office (section 406f (2) StPO). If the victim is heard as a witness, upon application, a trusted third party must be permitted to be present during that examination (section 406f (2) StPO).

Witnesses whose interests warranting protection cannot be safeguarded in another manner have the right to have a lawyer appointed to be present during their examination (section 68b StPO).

Where the public prosecution office has preferred public charges before the court, victims of certain offences, including the sexual abuse of children, may join the proceedings as a private accessory prosecutor (*Nebenkläger*). This confers independent status in the criminal proceedings, which, among other things, permits the private accessory prosecutor to submit own questions and requests to hear evidence and to lodge an appeal (sections 395 and 397 StPO).

- c. What kind of support services are provided to child victims and their families so that their rights and interests are duly presented and taken into account? (**Article 31, para. 1, letter (d)**);

Victims may turn both to specialised victim advice centres and to a lawyer who represents victims and who will help them to assert their rights. Where there is a possibility that the child's best interests are endangered because one parent is suspected of committing abuse, the police will at an early stage involve the competent public prosecution office and inform the family courts and youth welfare offices. These will then decide whether the family courts must be notified so that further measures or orders to protect the child's best interests can be taken or issued.

- d. Please describe the measures taken to protect the privacy, the identity and the image of child victims (**Article 31, para. 1, letter (e)**);

No. 220 para. 2 of the Guidelines provides that photographs of aggrieved persons depicting them naked or only partially clothed must be kept in a sealed envelope or attached separately to the files; when others (i.e. not the aggrieved person himself/herself) are permitted to inspect the files they must be temporarily removed from the files. Defence counsel must thus be permitted to inspect the files at the registry of the court. That is why the police must put any representations of a child victim added to the investigation files in sealed special files and label them accordingly; only the competent public prosecution office may decide who is permitted to inspect these files.

- e. Please describe the measures taken to provide the safety of the child victims and witnesses and their families from intimidation, retaliation and repeat victimisation (**Article 31, para. 1, letter(f)**);

Where there is a risk of serious detriment to the well-being of the witness, his/her examination by the judge in the context of the investigation proceedings may be conducted by the judge carrying out the examination in a room that is separate from that in which the other persons entitled to be present are sitting and simultaneously transmitting the examination by audio-visual means (section 168e StPO). The examination may be recorded on an audio-visual medium and used in the main hearing (section 255a StPO).

From the start of the investigations child victims and the person having parental authority over them are requested to immediately inform the investigating authorities in the event of the accused making any attempts to influence them, as this may constitute grounds for the accused to be taken into custody. In addition, the police may expel the accused from the home he/she shares with the child and the child's immediate environment.

- f. Please specify whether the victim and his/her family are informed when the person prosecuted or convicted is released temporarily or definitely from detention or custody. Please indicate who delivers this information and how (**Article 31, para. 1, letter (b)**);

Competence for prison legislation lies with the 16 *Länder*. Please refer to the Annex for details on how the rules under Articles 15 para. 1 and 31 para. 1 letter (b) of the Convention have been implemented by the *Länder*.

- g. Please also indicate what measures have been taken to ensure that contact between victims and perpetrators, within court and law enforcement agency premises, is avoided. Please specify under which conditions the competent authorities may authorise such contact in the best interests of the child or when the investigations or proceedings require such contact(**Article 31, para. 1, letter (g)**);

Many courts in Germany already ensure that separate waiting areas are available in large-scale criminal proceedings so that vulnerable witnesses do not come into contact with the accused. Responsibility for setting up such waiting areas falls to the *Länder*. In the context of implementing Directive 2012/29/EU it was also agreed that the competent construction management departments in the *Länder* should frame the structural requirements of new court buildings in good time before the Directive enters into force so that separate waiting areas can be created for witnesses in line with Article 19 para. 2 of the Directive.

- h. Please specify under which conditions child victims of the offences established according to the Convention have access to legal aid provided free of charge (**Article 31, para. 3**).

Private accessory prosecutors are entitled to have a lawyer appointed as legal counsel in court proceedings at the state's expense if they have been the victim of certain serious criminal offences (section 397a (1) StPO). This above all concerns victims of serious offences against highly personal legal interests, including the victims of sexual offences who were below the age of 18 years when the act was committed or victims who are unable to sufficiently assert their interests themselves.

Question 22: Investigations and criminal measures to protect the child victim

- a. What protective approach towards victims has been adopted to ensure 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? **(Article 30, para. 2, Explanatory Report, paras. 211-215);**

Reference has already been made to the possibility of excluding the public and the accused, providing information in particular in regard to measures available under the Protection Against Violence Act (*Gewaltschutzgesetz*, GewSchG), support provided by victim advice centres and psycho-social support available throughout the course of the proceedings. The Guidelines also contain various child-friendly measures aimed at preventing trauma. Please refer to the answer to question 23 b as regards the possibility of making a video recording of the examination of a child or juvenile.

Reference should also be made in this context to the possibility of preferring charges directly with the regional court so as to protect vulnerable victims. In contrast to local courts, no appeals can be lodged against judgments handed down by the regional court, as a result of which vulnerable victims are spared a further court instance as well as a second examination if charges are preferred directly with the regional court.

The provision set out in section 26 of the Courts Constitution Act (*Gerichtsverfassungsgesetz*, GVG) is of great practical relevance when it comes to protecting children and juveniles against the stress associated with criminal proceedings; according to that provision, the regional court has jurisdiction in matters involving the protection of juveniles. Consequently, a special chamber for youth matters at the regional court has jurisdiction in regard to criminal offences committed by adults that injure or directly endanger a child or juvenile. Charges should in particular be preferred before these courts when children or juveniles are needed as witnesses in the proceedings. The aim is to be able to focus competences with these courts so as to protect child and juvenile witnesses – for example by making use of video technology to record their examination.

- b. Which legislative or other measures have 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? **(Article 32, Explanatory Report, para. 230);**

In accordance with section 160 StPO, the public prosecution office must investigate the facts as soon as it obtains knowledge of a suspected criminal offence, either through criminal information or by other means. Sexual offences such as sexual abuse of children are not offences that can only be prosecuted upon application by the aggrieved party (*Antragsdelikte*). Thus, prosecution of these offences is not dependent on such an application.

When it comes to securing evidence of an act – if need be without the victim having to make a statement – where there is a suspicion of sexual abuse, sexual exploitation or child pornography, undercover investigation measures may also be considered, depending on the circumstances of the individual case (telephone surveillance in accordance with section 100a (1), (2) no. 1 (f), (g) and (i) StPO; audio surveillance of residential premises in accordance with section 100c (1), (2) no. 1 (d), (e) and (g) StPO; audio surveillance of words spoken in a non-public context outside private premises in accordance with section 100f StPO; obtaining telecommunications traffic in accordance with section 100g StPO; taking photographs in accordance with section 100h StPO; locating a mobile end terminal in accordance with section 100i StPO; and longer-term observation in accordance with section 163f StPO).

Further, a DNA test may be ordered where the perpetrator has left traces at the scene of the crime; mass DNA examinations are also possible (sections 81a, e and h StPO).

- c. Which legislative or other measures have been taken to ensure that the statute of limitation for initiating proceedings with regard to the offences established in accordance with **Articles 18, 19, paragraph 1.a and b, and 21, paragraph 1.a and b**, shall continue for a period of time sufficient to allow the efficient starting of proceedings after the victim has reached the age of majority and which is commensurate with the gravity of the crime in question? (**Article 33, Explanatory Report, paras. 231-232**);

Section 78b (1) no. 1 StGB stipulates that in the case of, among others, criminal offences referred to in sections 174 to 174c and 176 to 179 StGB the limitation period is stayed until the victim has reached the age of 21 years. These provisions implement the key criminalisation obligations under Article 18 (namely in section 174 (1) nos 2 and 3, section 176, section 177 (1) and section 179 StGB – especially subsection (1)), under Article 19 para. 1 letter (b) (in section 177, additionally in section 176 (2) StGB), and those under Article 21 para. 1 letter (b) (in section 177, additionally section 176 (2) and section 176 (4) no. 2 StGB). As regards Article 19 para. 1 letter (a) and Article 21 para. 1 letter (a), in the case of children below the age of 14 years the relevant acts will fulfil other categories of offences, such as section 232 (1), second sentence, StGB and at least the elements of the offence set out in section 176 StGB. “Recruiting” someone to engage in prostitution or to take part in pornography is, for example, generally also classified as “inducing” someone to take

part in sexual acts within the meaning of section 176 (2) or (4) no. 2 StGB. “Recruiting a child into participating in pornographic performances” as in Article 21 para. 1 letter (a) is likewise covered by these provisions. According to the consistent past decisions of the Federal Court of Justice, “posing in a sexually explicit manner” already represents a sexual act. Thus, where the victim is below 14 years of age, it is presumed that in the case of the criminal offences referred to in Article 33 the limitation period is stayed until the victim turns 21 years of age.

Where the victim is over 14 but under 18 years of age, which means the provision under section 176 StGB does not apply, the limitation periods under section 78 StGB meet the requirements set out in Article 33, especially since these also stand in appropriate relation to the gravity of the criminal offence in question. Section 78 StGB ensures that, particularly in the case of grave sexual offences, the limitation period is 10 or 20 years (cf. section 78 (3), first sentence, nos 2 and 3 StGB in the event of a criminal sanction of no less than five and no more than 10 years or more than 10 years; in the case of section 232 (1), second sentence, StGB a limitation period of 10 years also applies, in the case of section 177 (2) StGB the limitation period is 20 years). Therefore, where section 176 StGB no longer applies, the limitation period will begin at the earliest when the victim turns 24 years of age if he/she had just turned 14 years of age when the act was committed.

- d. Please clarify whether your judicial authorities may appoint a special representative for the victim who may be party, where the holders of parental responsibility are precluded from representing the child in proceedings related to sexual exploitation or sexual abuse of children as a result of a conflict of interest between them and the victim. Please specify who may be appointed as a representative and what are his/her tasks (**Article 31, para. 4**). Please also describe under which conditions it is possible;

In family matters, the sexual exploitation or sexual abuse of children can have a role to play in proceedings concerning access or custody rights. These proceedings form part of parent and child matters pursuant to section 151 of the Act on Procedure in Family Matters and Non-Contentious Matters (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*, FamFG).

Pursuant to section 158 (1) FamFG, in proceedings affecting the person of the child the family court must appoint a suitable legal advisor for an underage child if this is necessary to defend the child’s interests.

The legal advisor represents the interests of the child in the court proceedings, but is not the child’s legal representative (section 158 (4), sixth sentence, FamFG). The FamFG stipulates in which cases it is generally necessary to appoint a legal advisor. These include

proceedings concerning custody rights on account of a threat to the child's best interests (section 158 (2) no. 2 FamFG) and proceedings in which excluding or significantly restricting access rights is to be considered (section 158 (2) no. 5 FamFG), i.e. whenever sexual abuse of a child is the subject-matter of the proceedings. Pursuant to section 158 (4) FamFG, the legal advisor must determine what is in the child's best interests and must assert that in the court proceedings; he/she must also inform the child, in an appropriate manner, about the subject, the course and the possible outcome of the proceedings.

In addition, pursuant to section 159 FamFG the child must be heard in person by the court. In accordance with section 159 (4), third sentence, FamFG, the personal hearing of the child must be carried out in the presence of the legal advisor.

The law does not stipulate any specific professional qualifications that legal advisors need to have. The choice of a legal advisor who is suitable in personal and professional terms is at the proper discretion of the court. The court can thus choose someone who is most suitable taking account of the specific features of the individual case, for example a social worker, a social education worker, a psychologist or a lawyer.

Where parents are prevented from seeing to the child's concerns (e.g. because they have been divested of part of their parental custody), the family court will appoint a curator (section 1909 BGB). In accordance with section 1915 BGB, the provisions applicable to guardianship (sections 1773 et seqq. BGB) apply to curators *mutatis mutandis*. The curator thus has the right and the duty, in the context of the matters assigned to him/her, to care for the person and property of the child entrusted to him/her, in particular to represent the child (section 1793 BGB). The court must choose a suitable person as curator (section 1779 (2) BGB).

The initial situation is the same in criminal proceedings. In accordance with section 52 (2), second sentence, StPO, a witness's statutory representatives who are themselves accused may not decide on the exercise of the right to refuse to testify, including if one of the parents is accused and both parents are statutory representatives. Where the statutory representative is excluded, in accordance with section 1909 (1), first sentence, BGB a supplementary curator (*Ergänzungspfleger*) must be appointed. In such cases, the public prosecution office is required to ensure that the competent family court takes a decision on the matter as soon as possible (section 152 FamFG) (no. 19 para. 3 Guidelines).

In accordance with no. 221 para. 2 of the Guidelines, the youth welfare office must immediately be notified if a person accused of committing a sexual offence who is living with the victim or has direct access to the victim is released in order that it may take the measures necessary to protect the victim.

- e. Please describe how your internal law allows for groups, foundations, associations or governmental or non-governmental organisations assisting and/or supporting victims to

participate in legal proceedings (for example, as third parties) (**Article 31, para. 5**). Please specify under which conditions, if so required;

Victim support centres and psycho-social helpers (*Prozessbegleiter*) may advise victims and in particular support them throughout the course of legal proceedings. No rules apply to such matters. However, staff in these facilities or psycho-social helpers have no right to refuse to testify in the same way as clergy, defence counsel or physicians do, although they may themselves be heard as witnesses concerning the content of the advice they provide.

- f. Please describe under which circumstances the use of covert operations is allowed in relation to the investigation of the offences established in accordance with the Convention (**Article 30, para. 5**);

Where there is a suspicion of sexual abuse, sexual exploitation or child pornography, depending on the circumstances of the individual case consideration can be given to taking the following undercover investigation measures:

a. Telephone surveillance may be undertaken in accordance with section 100a (1), (2) no. 1 (f), (g) and (i) StPO in serious cases of sexual abuse of children, child pornography and offences against liberty. The condition is that the act is one of particular gravity in the individual case as well and other means of establishing the facts or determining the accused's whereabouts would be much more difficult or offer no prospect of success. The measure may not be directed at merely obtaining insights into the core area of the private conduct of life. Further, the measure may only be directed against the accused or against persons receiving or transmitting messages intended for, or transmitted by, the accused, or whose telephone connection the accused is using (*Nachrichtenmittler*).

b. Audio surveillance of residential premises may only be carried out in accordance with section 100c (1), (2) no. 1 (d), (e), and (g) StPO in particularly serious cases of sexual abuse of a child or where the perpetrator disseminates child pornography on a commercial basis or as member of a gang if they depict an actual or realistic event, as well as in the case of serious offences against personal liberty and in regard to trafficking in human beings for the purpose of sexual exploitation. Further conditions are that the offence must be one of particular gravity in the individual case as well, that on the basis of factual indications it may be assumed that the surveillance will result in the recording of statements by the accused that would be of significance in establishing the facts or determining the whereabouts of the co-accused, and that other means of establishing the facts or determining a co-accused's whereabouts would be disproportionately more difficult or offer no prospect of success. The measure may be directed only against the accused and may be implemented only on the

private premises of the accused; the measure is admissible on the private premises of other persons only if it can be assumed that the accused is present on those premises and applying the measure on the accused's premises alone will not lead to the establishment of the facts or the determination of a co-accused person's whereabouts. Further, the measure may not be directed against merely gaining insights into the core area of private conduct of life.

c. Audio surveillance of words spoken in a non-public context outside residential premises may, in accordance with section 100f StPO, be carried out in serious cases of sexual abuse of children, child pornography and criminal offences against liberty. The conditions are that the offence is one of particular gravity in the individual case as well, and that other means of establishing the facts or determining the accused's whereabouts would offer no prospect of success or would be much more difficult. The measure may only be directed against the accused or other persons if it is assumed, on the basis of certain facts, that they are in contact with the accused or that such contact will be established, the measure will result in the establishment of the facts or the determination of an accused's whereabouts, and other means of establishing the facts or determining an accused's whereabouts would offer no prospect of success or would be much more difficult.

d. In accordance with section 100g StPO, it is possible to obtain telecommunications traffic data in cases that are of substantial significance in the individual case or if the offence was committed by means of telecommunication and only to the extent that this is necessary to establish the facts or determine the accused's whereabouts. Where the offence was committed by means of telecommunication, the measure is permissible only where other means of establishing the facts or determining the accused's whereabouts would offer no prospect of success and if the acquisition of the data is proportionate to the importance of the case.

e. In accordance with section 100h StPO, photographs may only be taken outside private premises where other means of establishing the facts or determining an accused's whereabouts would offer less prospect of success or would be more difficult.

f. In accordance with section 100i StPO, it is permissible to determine the device ID of a mobile end terminal and the card number of the card used therein and to determine the location of the mobile end terminal where certain facts give rise to the suspicion that a person, either as perpetrator or as inciter, has committed a criminal offence of substantial significance, in the individual case as well, or where this is necessary to establish the facts or determine the whereabouts of the accused person.

g. Longer-term observation is possible in accordance with section 163f StPO in the case of criminal offences of substantial significance where other means of establishing the facts or of determining the perpetrator's whereabouts would offer much less prospect of success or

be much more difficult. The measure is admissible against other persons if it can be assumed on the basis of certain facts that they are linked to the perpetrator or that such a link is being established, that the measure will lead to the establishment of the facts or to the determination of the perpetrator's whereabouts, and that using other means would offer much less prospect of success or be much more difficult.

- g. Please also describe what techniques have been developed for examining material containing pornographic images of children (**Article 30, para. 5**).

One of the key tasks of the Central Office for Child Pornography at the Federal Criminal Police Office is the evaluation of photo and video files containing depictions of sexual abuse involving children that were secured in the context of police work in Germany and abroad. Photo and video files containing child pornography are examined at the Federal Criminal Police Office with regard to possible investigatory approaches (content, optical and technical aspects) that would enable the perpetrator and the victim to be identified.

The measures to identify the perpetrator and victim are a recognised priority area in the work of the Federal Criminal Police Office in this area of criminality. The Federal Criminal Police Office has in recent years time and again successfully identified perpetrators and victims and has thus made a significant contribution to a number of ongoing acts of sexual abuse to the detriment of various children being brought to an end and the perpetrators being brought before the courts.

Where no such investigatory approaches are discernible, the means of last resort in the context of identifying perpetrators and victims is a public search pursuant to section 131b StPO. According to that provision it is permissible to publish pictures of both perpetrators and victims. The Federal Criminal Police Office carried out its first such public search in Germany in 1999, as a result of which the victim of a child pornography series was identified and the ongoing serious sexual abuse of the child was brought to an end. The Federal Criminal Police Office has in numerous cases in the past cooperated successfully with the competent public prosecution office in carrying out public searches to identify perpetrators and/or victims.

Question 23: Child friendly interviewing and proceedings

a. Please describe how interviews (**Article 35**) with child victims are carried out, indicating in particular whether:

- they take place without unjustified delay after the facts have been reported to the competent authorities;

In accordance with no. 19 of the Guidelines, all circumstances that are of significance in regard to the credibility of a child or juvenile are to be determined at an early stage wherever possible; parents, teachers, youth/child care workers and other people to whom the child or juvenile relates closely should be questioned to that end.

No. 135 para. 3 of the Guidelines stipulates that children and juveniles are, wherever possible, to be heard in the presence of other witnesses.

No. 221 para. 1 of the Guidelines stipulates that in particular proceedings following sexual offences with child victims are to be expedited, especially since children's powers of recall decline rapidly and they are very easily influenced.

- they take place, where necessary, in premises designed or adapted for this purpose;

The investigating authorities have child-friendly rooms at their disposal when it comes to the examination of children.

In accordance with no. 135 para. 3 of the Guidelines, children and juveniles are not only to be heard in the presence of other people, but where they have to spend time waiting before being heard they should be supervised and, where possible, looked after while waiting.

- they are carried out by professionals trained for this purpose;

Staff in specialist criminal police departments are specially trained as regards the particular concerns and the examination of child victims.

In the case of sexual offences no. 222 para. 1 of the Guidelines provides that an expert be called in to examine children; the expert should have undergone special training and have experience in the field of child psychology.

In accordance with section 81a StPO, bodily intrusions must be effected by a physician in accordance with the rules of medical practice. No. 220 para. 1 of the Guidelines supplements this provision in regard to examinations following sexual offences to the extent that necessary physical examinations must be carried out carefully, sensitively and providing sufficient support and information and, having regard to the victim's sense of shame, by a person of the same sex wherever possible.

In the case of legitimate interest, the wish that the examination be carried out by a person or a physician of a specific sex should be complied with.

- the same persons are, if possible and where appropriate, conducting all interviews with the child;

Any examination in the main hearing of witnesses under the age of 18 years is carried out by the presiding judge alone (section 241a (1) StPO).

- the number of interviews is as limited as possible and in so far as strictly necessary for the purpose of proceedings;

The possibilities of conducting an examination using video technology (for details please refer to the answer to question 23 b) and the aforementioned preferment of charges directly with the regional court are intended to prevent multiple examinations having to be conducted. No. 19 para. 1 of the Guidelines also stipulates that multiple examinations of children and juveniles before the main hearing are to be avoided if possible on account of the associated psychological stress this causes them.

In accordance with no. 222 para. 2 of the Guidelines, in the case of child victims of sexual offences it should be examined whether it is still necessary to hear the victim if the accused has already made a credible confession before the judge.

- the child may be accompanied by his or her legal representative 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.

The victim's lawyer is permitted to be present when the victim is examined by the court or the public prosecution office (section 406f (2) StPO). If the victim is heard as a witness, a trusted third party must, upon application, always be permitted to be present during the examination (section 406f (2) StPO).

No. 220 para. 1 of the Guidelines stipulates that, in the context of examinations by a physician, a trusted third party must be permitted to be present upon the request of the person concerned.

Reference is here again made to the possibility of appointing a lawyer to be present during the examination of the witness in accordance with section 68b StPO (answer to question 21 b).

- b. Please also specify whether all interviews with the victim or, where appropriate, those with a child witness, may be videotaped and whether these videotaped interviews may be accepted as evidence during the court proceedings;

Examinations of victimised witnesses in the investigation proceedings may be recorded on audio-visual media. This should always be done in the case of underage victims (section 58a StPO). These audio-visual recordings may, under certain circumstances, be shown in the main hearing instead of examining the witness in court. Simplified requirements may apply in the case of underage witnesses who are the victims of offences against sexual self-determination, ill-treatment of an individual placed in the care of another or of offences against personal liberty (section 255a (2) StPO).

- c. Please describe under which conditions the judge may order the hearing to take place without the presence of the public and the child victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies? (**Article 36**).

Simplified requirements apply when it comes to removing the accused and excluding the public during the examination of child and juvenile witnesses (section 247 StPO, section 172 no. 4 GVG); in addition, the examination of a child may be carried out in another room than that occupied by the other persons attending the hearing (Section 247a StPO).