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## **LANZAROTE COMMITTEE / COMITE DE LANZAROTE**

### **Compilation of Replies to Question 10**

**(Production and possession of self-generated sexually images and/or videos by children for their own private use)**

of the Thematic Questionnaire on the protection of children against sexual exploitation and sexual abuse facilitated by information and communication technologies (ICTs)

### **Compilation des réponses à la Question 10**

**(Production et possession d'images et/ou de vidéos sexuellement explicites autoproduites par des enfants pour leur usage personnel)**

du Questionnaire Thématique sur la protection des enfants contre l'exploitation et les abus sexuels facilités par les technologies de l'information et de la communication (TIC)

**Question 10. Production and possession of self-generated sexually explicit images and/or videos by children for their own private use**

10.1. For Parties having made a reservation in accordance with Article 20(3) indent 2<sup>1</sup>

What measures have been taken to ensure that the production and/or possession of self-generated sexually explicit images and/or videos is not criminalised when it involves children who have reached the age set in application of Article 18(2) where these images and/or videos are produced and possessed by them with their consent and solely for their own private use?

10.2. For Parties that have not made a reservation in accordance with Article 20(3) indent 2<sup>2</sup>

Does national law criminalise the production and/or possession of self-generated sexually explicit images and/or videos when it involves children who have reached the age set in application of Article 18(2) where these images and/or videos are produced and possessed by them with their consent and solely for their own private use?

**Question 10. Production et possession d'images et/ou de vidéos sexuellement explicites autoproduites par des enfants pour leur usage personnel**

10.1. Pour les Parties ayant fait une réserve en application de l'article 20(3), alinéa 2<sup>3</sup>

Quelles mesures ont été prises pour faire en sorte que la production et/ou la possession d'images et/ou de vidéos sexuellement explicites autoproduites ne soient pas érigées en infraction pénale lorsqu'elles concernent des enfants ayant atteint l'âge fixé par l'article 18(2) et que ces images et/ou vidéos sont produites et détenues par eux-mêmes, avec leur consentement et à leur seul usage personnel ?

10.2. Pour les Parties qui n'ont pas fait de réserve en application de l'article 20(3), alinéa 2<sup>4</sup>

Le droit interne érige-t-il en infraction pénale la production et/ou la possession d'images et/ou de vidéos sexuellement explicites autoproduites lorsqu'elles concernent des enfants ayant atteint l'âge fixé par l'article 18(2) et que ces images et/ou vidéos sont produites et détenues par eux-mêmes, avec leur consentement et à leur seul usage personnel ?

<sup>1</sup> Denmark, Germany, Liechtenstein, the Russian Federation, Sweden, Switzerland.

<sup>2</sup> Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Georgia, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Monaco, Montenegro, Netherlands, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, "The former Yugoslav Republic of Macedonia", Turkey and Ukraine.

<sup>3</sup> Allemagne, Danemark, Fédération de Russie, Liechtenstein, Suède et Suisse.

<sup>4</sup> Albanie, Andorre, Autriche, Belgique, Bosnie-Herzégovine, Bulgarie, Croatie, Chypre, Espagne, Estonie, L'ex-République yougoslave de Macédoine, Finlande, France, Géorgie, Grèce, Hongrie, Islande, Italie, Lettonie, Lituanie, Luxembourg, Malte, Monaco, Monténégro, Pays-Bas, Pologne, Portugal, République de Moldova, République tchèque, Roumanie, Saint-Marin, Serbie, Slovaquie, Slovénie, Turquie et Ukraine.

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## COMPILATION of replies / des réponses<sup>5</sup>

### States to be assessed / Etats devant faire l'objet du suivi

#### **ALBANIA / ALBANIE**

##### **State replies / Réponses de l'Etat**

###### **Question 10.2.**

As explained above, the current provision of the Criminal Code can be interpreted to include such criminalisation.

##### **Comments sent by / Commentaires envoyés par ECPAT, CRCA, ALO 116 and /et ANYN**

###### **Question 10.2.**

For children below the age the law provides a degree of clarity that they cannot be criminalised, but when it comes to children above 14 and below 18 years old such clarity is lacking, which means that they could be exposed to criminal investigation or process.

#### **ANDORRA / ANDORRE**

##### **State replies / Réponses de l'Etat**

###### **Question 10.1.**

N/A – La Principauté d'Andorre n'a pas fait de réserve pour l'application de l'article 20(3) alinéa 2.

###### **Question 10.2.**

L'article 155, dans son paragraphe 3 (voir encadré réponse à la question 8) est la disposition ici applicable :

###### Article 155 CP

1. Quiconque capture des images d'un mineur ou d'une personne considérée juridiquement incapable dans l'intention de produire du matériel pornographique est puni d'une peine de prison maximale de deux ans. La tentative est punissable.

2. Quiconque recrute, utilise un mineur ou une personne juridiquement incapable à des fins pornographiques ou d'exposition ou favorise la participation et qui produit, acquiert, vend, importe, exporte, distribue, diffuse, cède ou expose par quelque moyen que ce soit du matériel pornographique dans lequel apparaissent des images de mineurs consacrés à des activités sexuelles explicites, réelles ou avec apparence de réalité, ou toute autre représentation des organes sexuels d'un enfant à des fins principalement sexuelles, doivent être punis d'une peine de prison d'un à quatre ans.

La tentative est punissable.

La proposition à travers les technologies de l'information et de la communication d'une réunion avec un mineur âgé de moins de quatorze ans, afin de commettre l'infraction décrite au paragraphe précédent, est considérée comme une tentative si la proposition a été suivie d'actes matériels qui conduisent à cette rencontre.

<sup>5</sup> The full replies submitted by States and other stakeholders are available at / Les réponses intégrales des Etats et autres parties prenantes sont disponibles ici : [www.coe.int/lanzarote](http://www.coe.int/lanzarote)

3. Quiconque offre, possède, cherche pour soi ou pour un tiers, ou y accède, moyennant la technologie de communication ou d'information, un matériel pornographique dans lequel apparaissent des images de mineurs engagés dans des activités sexuelles explicites, réelles ou liées à la réalité, ou toute autre représentation des organes sexuels d'un mineur à des fins principalement sexuelles, sera puni d'une peine de prison maximale de deux ans.

La tentative est punissable.

4. Toute personne ayant participé à des spectacles pornographiques impliquant une personne mineure ou juridiquement incapable, doit être condamnée à une peine de prison maximale de deux ans.

5. Lorsque le coupable de l'une des infractions prévues dans cet article obtient un avantage économique, outre les peines envisagées il sera condamné à une amende maximale de 30.000 euros.

## **AUSTRIA / AUTRICHE**

### **State replies / Réponses de l'Etat**

#### **Question 10.2.**

No. The production and possession of self-generated sexually explicit images and videos by children is not punishable under Art. 207a CC (see also answer to question 9.7. a to d):

With the Criminal Law Amendment Act 2017, Federal Law Gazette.vol. I no. 117/2017, which entered into force on the first of September 2017, a new para. 6 was introduced in Art. 207a CC to decriminalise such cases. This exception is applicable if a minor of or above the age of 14 produces or possesses a pornographic image of himself/herself or if the minor offers, provides, relinquishes, displays, or otherwise makes such an image available to others in the sense of para.1, para. 2 first alternatives or para. 3 of Art. 207a CC. The distribution is still punishable if it is done commercially (see Art. 70 CC).

## **BELGIUM / BELGIQUE**

### **State replies / Réponses de l'Etat**

#### **Question 10.1.**

Comme la Belgique n'a pas mis de réserve il faut répondre la question 10.2

#### **Question 10.2.**

Oui, voir l'article 383bis CP, mais avec l'explication donnée sous 9.2 :

La formulation recourant au terme "de droit" dans l'article 383bis du Code pénal, y inclus dans le § 2, fait écho au libellé de la Directive Abus sexuels dont le Considérant n°17 (inspiré du passage n°141 du Rapport explicatif de la Convention de Lanzarote) précise ce qui suit:

"(17) Dans le cadre de la pédopornographie, les termes "sans droit" permettent aux États membres de prévoir une défense pour les actes relatifs au matériel pornographique ayant, par exemple, un objectif médical, scientifique ou similaire. Ils permettent également de mener des activités en vertu de compétences légales nationales, telles que la détention légitime de pédopornographie par les autorités à des fins de poursuites pénales ou de prévention, de détection ou d'enquête pénale. En outre, ils n'excluent pas les défenses légales ou les principes similaires applicables qui exemptent une personne de sa responsabilité dans certaines circonstances, par exemple dans le contexte d'activités de signalement de tels cas via des lignes d'urgence, téléphoniques ou via l'internet."

L'expression "sans droit" permet donc d'"exclure de la portée de l'article 383bis les représentations didactiques, artistiques ou scientifiques qui doivent permettre l'exemption de toute poursuite" (C. Falzone et F. Gazan, "La pornographie enfantine en Belgique", JT, n°6313 – 21/2008 – 31/05/2008, p. 357 et sv., notamment la note 39. Voir aussi la section "La dimension immunitaire" dans la contribution de 2013 d'I. Wattier aux Qualifications juridiques (p.18 et 19) et le Rapport explicatif de la Convention de Lanzarote

(n°142) », DOC parlementaires 54 1701, page 14-15).

Dans un article de doctrine récent, l'exemple suivant est donné :

« La jurisprudence (supérieure) pourrait tenir compte de la consensualité dans le cadre de l'interprétation de notions telles que la « débauche » et les « bonnes mœurs ». Elle semble être suffisamment ouverte à cela. Concernant la diffusion et la possession de pédopornographie, la qualification actuelle du délit offre certainement un point de référence pour une telle interprétation. Depuis la loi du 31 mai 2016, elle exige effectivement un caractère « illégal » pour le transfert comme pour la possession du matériel visé. Le caractère consensuel de la communication entre mineurs pourrait enlever cette illicéité. Si les mineurs sont trop jeunes (moins de seize ans) ou s'il devait y avoir une trop grande différence d'âge entre les personnes qui communiquent, on pourrait quand même encore toujours partir du principe que l'intéressé doit être protégé en punissant les faits. En juger autrement en agissant de manière répressive dans chaque cas, par exemple également lorsqu'il s'agit de mineurs considérés comme sexuellement majeurs, entraînerait qu'ils peuvent bel et bien poser des actes sexuels consensuels mais ne peuvent pas s'envoyer des images à caractère sexuel.

Il ne serait en tout cas pas insolite que la consensualité entraîne l'impunité de la communication lorsque nous examinons la communication éducative entre parent et enfant. Effectivement, on peut difficilement penser dans ce contexte que l'article 379, alinéa 1<sup>er</sup>, du Code pénal (incitation à la débauche) est violé. Dans la communication éducative entre parent et enfant, il ne sera en effet pas question de l'intention requise de « satisfaire les passions d'autrui ». Ce même contexte n'est cependant pas sans difficulté. La question se pose également de savoir si dans ce cas, il sera question d'une diffusion et d'une possession de pornographie enfantine au sens de l'article 383bis du Code pénal. Pensez au parent qui reçoit de la part de son enfant une photo des organes sexuels de celui-ci dans un contexte éducatif, et les transfère ensuite à l'autre parent. Avant la modification législative de cet article par la loi du 31 mai 2016, il n'était pas évident d'échapper à cette qualification. Il aurait pu être considéré que le parent transférant la photo reçue à l'autre parent diffusait du matériel pornographique. En outre, la simple possession de cette photo risquait d'être punissable sur la base de l'article 383bis, § 2, du Code pénal. La seule manière d'échapper à cette incrimination était d'admettre que cette photo n'avait pas de caractère pornographique. En soi, cela est certainement défendable étant donné que la photo et son transfert n'ont pas l'intention d'être sexuellement stimulants ou autrement dit, d'exciter artificiellement les sens de la personne qui la regarde et d'offenser la pudeur du citoyen moyen en raison des attitudes ou comportements vicieux ou pervers qu'elle représente. Même s'il n'est pas sûr que chaque juge du fond aurait partagé cet avis. Il est à présent plus facile d'échapper à cette qualification du délit. En effet, elle exige à présent un caractère « illégal » pour le transfert comme pour la possession de la photo. En outre, la loi établit maintenant explicitement qu'une telle photographie n'équivaut à de la pornographie enfantine que si les organes sexuels apparaissent « à des fins principalement sexuelles ». Dans ce cas, on peut difficilement admettre qu'il s'agit de communication éducative telle que visée plus haut (A. DIERICKX, « Noopt nieuwe seksuele criminaliteit tot nieuwe seksuele misdrijven, Nullum Crimen, n° 3, 2017, p. 237-238). »

Enfin, il convient de rappeler le principe de l'opportunité des poursuites applicable en Belgique, principe qui est, depuis 1998, inscrit dans l'article 28quater du Code d'instruction criminelle :

*« Compte tenu des directives de politique criminelle définies en vertu de l'article 143ter du Code judiciaire, le procureur du Roi juge de l'opportunité des poursuites. Il indique le motif des décisions de classement sans suite qu'il prend en la matière. Il exerce l'action publique suivant les modalités prévues par la loi. Le devoir et le droit d'information du procureur du Roi subsistent après l'intentement de l'action publique. Ce devoir et ce droit d'information cessent toutefois pour les faits dont le juge d'instruction est saisi, dans la mesure où l'information porterait sciemment atteinte à ses prérogatives, sans préjudice de la réquisition prévue à l'article 28septies, alinéa premier, et dans la mesure où le juge d'instruction saisi de l'affaire ne décide pas de poursuivre lui-même l'ensemble de l'enquête. »*

## **BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE**

### **State replies / Réponses de l'Etat**

#### **Question 10.2.**

See answer 9.7.:

Criminal Codes of the FBiH and Brcko District do not criminalise these cases at all, while the new RS Criminal Code recognises cases when children themselves produce self-generated sexually explicit content and distribute it (whether they participate alone or with other children), but does not criminalise them, i.e. does not consider the child criminally liable and does not prosecute him/her<sup>6</sup>.

## **BULGARIA / BULGARIE**

### **State replies / Réponses de l'Etat**

#### **Question 10.2.**

**Ministry of Justice:**

Such cases are not criminally prosecuted in practice.

## **CROATIA / CROATIE**

### **State replies / Réponses de l'Etat**

#### **Question 10.2.**

No, the provision of Article 163 para 5 of the Criminal Code prescribes that a child shall not be punished for producing and possessing pornographic material depicting him and another child, where this material is produced and possessed by them with their consent and solely for their own private use.

## **CYPRUS / CHYPRE**

### **State replies / Réponses de l'Etat**

#### **Question 10.1.**

Provisions of the article 12 consensual sexual activities

#### **Question 10.2.**

No.

## **CZECH REPUBLIC / REPUBLIQUE TCHEQUE**

### **State replies / Réponses de l'Etat**

#### **Question 10.2.**

No, the conduct described is not regulated (criminalised) by Czech laws.

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<sup>6</sup> Article 175(5) of the Code provides that: „The child shall not be punished for production or possession of self-generated sexually explicit images and/or videos involving him personally or him and another child if they self-generated and consensually possessed for their own use exclusively“. The Code defines child pornography in the following wording: „any material that visually or in another way shows a child or realistically presented non-existing child or a face that looks like a child, in a real or simulated (explicit) obvious sexual act or that shows sex organs of children for sexual purposes.“



## DENMARK / DANEMARK

### State replies / Réponses de l'Etat

#### Question 10.1.

According to Section 235, Subsection 3 of the Danish Criminal Code, the possession of photographs, films or similar recordings of a person who has attained the age of 15 years, is not criminalised, if such person has consented to the possession. It should be recalled that the age of criminal responsibility is 15 years.

## ESTONIA / ESTONIE

### State replies / Réponses de l'Etat

#### Question 10.2.

No. The aim of PC § 178 is not to criminalise such situations.

## FINLAND / FINLANDE

### State replies / Réponses de l'Etat

#### Question 10.2.

Yes. Such conduct is criminalized provided that the perpetrator is 15 years old or older (see reply to Question 9.7 above; the age of criminal liability in Finland is 15):

#### **9.7. Does national law criminalise cases when children:**

At the outset, the Government notes that in Finland, criminal liability under the Criminal Code begins at the age of 15 years.

##### **a. produce self-generated sexually explicit images and/or videos?**

Yes, it is sanctioned pursuant to Chapter 17, section 18 or Chapter 17, section 18a of the Criminal Code.

##### **b. possess self-generated sexually explicit images and/or videos?**

Yes, it is sanctioned pursuant to Chapter 17, section 19 of the Criminal Code.

##### **c. distribute or transmit self-generated sexually explicit images and/or videos of themselves to peers?**

Yes, it is sanctioned pursuant to Chapter 17, section 18 or Chapter 17, section 18a of the Criminal Code.

##### **d. distribute or transmit self-generated sexually explicit images and/or videos of themselves to adults?**

Yes, it is sanctioned pursuant to Chapter 17, section 18 or Chapter 17, section 18a of the Criminal Code.

##### **e. distribute or transmit self-generated sexually explicit images and/or videos of other children to peers?**

Yes, it is sanctioned pursuant to Chapter 17, section 18 or Chapter 17, section 18a of the Criminal Code.

##### **f. distribute or transmit self-generated sexually explicit images and/or videos of other children to adults?**

Yes, it is sanctioned pursuant to Chapter 17, section 18 or Chapter 17, section 18a of the Criminal Code.

## **FRANCE**

### **State replies / Réponses de l'Etat**

#### **Question 10.1.**

La France n'a pas fait de réserve en application de l'article 20(3), alinéa 2.

#### **Question 10.2.**

L'article 227-23 premier alinéa du code pénal n'incrimine pas la production lorsque cette production n'est pas effectuée « en vue de la diffusion » : « *Le fait, en vue de sa diffusion, de fixer, d'enregistrer ou de transmettre l'image ou la représentation d'un mineur lorsque cette image ou cette représentation présente un caractère pornographique est puni de cinq ans d'emprisonnement et de 75 000 euros d'amende. Lorsque l'image ou la représentation concerne un mineur de quinze ans, ces faits sont punis même s'ils n'ont pas été commis en vue de la diffusion de cette image ou représentation.* »

En revanche, une fois produite, la détention de ces images ou vidéos relève de l'article 227-23 cinquième alinéa du code pénal si la personne qui a fixé ou enregistré ces images ou vidéos détient celles-ci : « *Le fait de consulter habituellement ou en contrepartie d'un paiement un service de communication au public en ligne mettant à disposition une telle image ou représentation, d'acquérir ou de détenir une telle image ou représentation par quelque moyen que ce soit est puni de deux ans d'emprisonnement et 30 000 euros d'amende.* »

### **Comments sent by / Commentaires envoyés par Stop aux violences sexuelles**

#### **Question 10.2.**

Pas de différence de gestion mineurs/majeurs – toutefois jugés devant tribunaux pour mineurs

## **GEORGIA / GEORGIE**

### **State replies / Réponses de l'Etat**

#### **Question 10.2.**

Georgian legislation does not criminalize the production and/or possession of self-generated sexually explicit images that are produced and possessed by children with their consent and solely for their private use.

## **GERMANY / ALLEMAGNE**

### **State replies / Réponses de l'Etat**

#### **Question 10.1.**

Pursuant to section 184c (4) of the Criminal Code (StGB), the stipulations of section 184c (1) no 3 of the Criminal Code (StGB) (production of juvenile pornography) and section 184c (3) of the Criminal Code (StGB) (obtaining possession and possession of juvenile pornography) are not to be applied to acts committed by persons relating to such juvenile pornography that they have produced exclusively for their personal use with the consent of the persons depicted (on the details, see the answer provided above under Item 9.7. letters a and b).

## **GREECE / GRECE**

### **State replies / Réponses de l'Etat**

#### **Question 10.2.**

No

## **HUNGARY / HONGRIE**

### **State replies / Réponses de l'Etat**

#### **Question 10.2.**

As written at Q. 9.7., children are not punishable if they produce sexual explicit images and/or videos of themselves, or of persons above the age of 18 y.o.. Children can be punishable, though, if they produce such images and/or videos of other persons under the age of 18 y.o. Thus, if the self-generated images and/or videos involve other persons under the age of 18 y.o., it can be regarded as child pornography, and the production and/or possession of such material can give ground to establish the criminal offence of child pornography, regardless of the fact that the other child gave consent or not, or they use it for their own private use.

## **ICELAND / ISLANDE**

### **State replies / Réponses de l'Etat**

#### **Question 10.2.**

There are no measures in Icelandic law to ensure the age set in application of Article 18(2) when the material is made with the child's consent and is solely for their own private use.

Production and/or possession of such material is not especially criminalised but could possibly be punishable according to Articles 2010 and 210A of the Penal Code. No indictments have been made in those kinds of cases.

## **ITALY / ITALIE**

### **State replies / Réponses de l'Etat**

#### **Question 10.2.**

The Italian system does not criminalize the production of self-generated sexually explicit material by children who have reached the age of sexual freedom (14 years), nor is there a sanction for the possession of such material by the same minor who has produced it in a consensual way, or for possession by another minor who has received this material directly from the minor who produced it.

See also Q. 8:

In the Italian criminal system at present there is no specific reference to self-generated sexually explicit images/contents/materials produced by children, neither are there specific provisions on the participation by more children in self-generated pedopornographic material, nor does legislation predetermine the extent of the validity of any consent given by the child who has produced self-generated sexually explicit or evocative images to sharing them through ICTs.

The matter of child pornography, as influenced by the indications contained in the Lanzarote Convention, is ruled by the provisions of the Criminal Code, articles 600-ter and 600-quater (for details see the answer to Question 20 of the General Overview Questionnaire and the answer to Q.9 below). Literally these provisions, as interpreted by the jurisprudence on the substance and by the consolidated case-law of the Supreme Court, do not expressly punish the production of self-generated child pornographic material by children and punish only cases in which such material is produced (or marketed, distributed, spread, transmitted, advertised, transferred, even electronically) "*using minors under the age of eighteen*".

The case law has pronounced itself very recently in this regard, with reference to the phenomenon of sexting, in particular in a case of sexually explicit material produced by a girl under eighteen, which she had then transmitted to other children who, in turn, have sent it to other children without her knowledge. In fact, the holders of the self-generated material who had sent it to others were acquitted of the charges based on art. 600 ter of the Criminal Code (production and dissemination of pedopornographic material)

since the Court declared that this provision punishes the transfer of pedopornographic material only when the material has been produced with third parties (adults or minors) using the minor, whereas in this case the material had been self-generated by the girl herself. In this sense, the notion of "pedopornographic material" to which the article refers to, is only the one produced by a person other than the minor being depicted, since the law makes a clear distinction between the user of the material and the minor depicted in the images [3rd Criminal Section of the Supreme Court ("Corte di Cassazione"), judgment of 21 March 2016, No. 11675]. Differently, the case of pedopornographic material which was self-produced and disseminated via ICTs with the participation of an adult or a minor who "uses" a child or more children can fall under the above-mentioned offenses.

Regarding the production of self-generated child pornographic content representing sexual acts among children, it should also be reminded that, in Italy, cases of sexual acts with children fall under different regulations based on the age groups, and that normally sexual consent requires at least the age of fourteen. The Italian law allows to have sexual intercourse with children who have reached the age of 14 if they are consenting to it and if they are not subject to a dominant position. In case of dominant positions (such as those of parents, guardians, teachers, caregivers, physicians, public officials or even partners) the child must be at least 16 years old for the consent to be valid, otherwise there is a criminal offence (art. 609quater of the Criminal Code: sexual acts with children). The age of consent to sexual acts reaches 18 years if the act involves the parent, even adoptive, or a guardian or a partner, and a child who is at least 16 years old, and there is an abuse of powers connected to his/her role. The age of consent validly granted to sexual acts goes down, on the other hand, to 13 years if both partners are underage, provided the age difference is less than 3 years. If the child is less than 10 years old, the offence is considered aggravated (art. 609-quater). Under the age of 14, there is "sexual intangibility" (with the above-mentioned exception of the child who has reached the age of 13): his/her consent is always considered invalid and therefore any sexual activity involving him/her is considered and punished as sexual violence. Therefore, the production of sexually explicit material with the involvement of a child (or more children) being 14 years old and committing sexual acts with other children, could possibly be considered as the above-mentioned criminal offense of **sexual acts with children**.

As regards the self-production and the transmission of child pornographic material by children, it should also be noted that the Italian Criminal Code punishes the "incitement to paedophilic practices and child pornography" (art. 414-bis of the Criminal Code), a crime that takes place whenever anyone (adult or underage), by any means and with any form of expression, publicly incites to commit, against children, one or more crimes of child prostitution, child pornography, possession of pornographic material (even if related to virtual pornography), sexual tourism, sexual violence, sexual acts with children and corruption of children. Those who publicly condones one or more of the above-mentioned crimes are also subject to the same sanction. That law also specifies that, with regard to such offences, it is not possible to invoke, as justification, artistic, literary, historical or social reasons or purposes, precisely to allow for the widest possible protection of children from behaviours that, disguised as artistic/cultural expressions, put them in danger of being sexually abused or exploited.

## **LATVIA / LETTONIE**

### **State replies / Réponses de l'Etat**

#### **Question 10.2.**

Yes, these actions are criminalized even when it involves children who have reached the age set in application of Article 18(2) where these images and/or videos are produced and possessed by them with their consent and solely for their own private use according to Part 2 of Section 166 of the Criminal Law, which stipulates that a person who commits visiting or demonstration of such pornographic performance or handling of such materials of pornographic nature which contain child pornography shall be held criminally liable.

The child's self-generated sexually explicit image or video, in accordance with Point 2 of Section 1 of the Law on Pornography Restrictions (in relation to definition of child's pornography please, see answer to question 9.1.a) is interpreted as a material which contain child pornography, because the above-

mentioned law does not provide exceptions whether the producer is the child himself or another person, for example, adult.

Although, we point out that in practice, from the point of view of the best interests of the child, a minor may not be held liable for the possession or production of materials of the sexual nature of his own.

## LIECHTENSTEIN

### State replies / Réponses de l'Etat

#### Question 10.1.

See response to question 9.7.:

Under § 219(6) StGB, criminal liability is excluded for the production or possession of child pornography material if production or possession of the pornographic depiction of an adolescent is with the adolescent's consent and for the adolescent's own use. According to the legal definition set out in § 74(1)(2) StGB, an adolescent is a person between the age of 14 and 18. The transfer of pornographic depictions by the adolescent depicted and the transfer of pornographic depictions of other adolescents or children by adolescents are, however, prohibited by criminal law.

*Children under the age of 14 have not reached the age of criminal responsibility and thus cannot be held criminally responsible for the production, possession, or transfer of pornographic depictions of a minor (i.e. of a person who has not reached the age of 18), irrespective of whether the depictions are transferred to other children/adolescents or to adults.*

## LITHUANIA / LITUANIE

### State replies / Réponses de l'Etat

#### Question 10.1.

Republic of Lithuania has not made a reservation.

#### Question 10.2.

No.

## LUXEMBOURG

### State replies / Réponses de l'Etat

#### Question 10.2.

Production d'images et/ou de vidéos sexuellement explicites autoproduites par des enfants ayant atteint l'âge de 16 ans :

L'article 379, 2° du Code pénal luxembourgeois dispose ce qui suit :

#### **Article 379, 2° Code pénal**

« (L. 21 février 2013) Sera puni d'un emprisonnement d'un à cinq ans et d'une amende de 251 à 50 000 euros :

2° quiconque aura recruté, exploité, contraint, forcé, menacé ou eu recours à un mineur âgé de moins de dix-huit ans à des fins de prostitution, aux fins de la production de spectacles ou de matériel à caractère pornographique ou aux fins de participation à de tels spectacles, aura favorisé une telle action ou en aura tiré profit ; [...] »

**Possession d'images et/ou de vidéos sexuellement explicites autoproduites par des enfants ayant atteint l'âge de 16 ans :**

L'article 384 du Code pénal luxembourgeois dispose ce qui suit :

**Article 384 Code pénal**

« (L. 21 février 2013) Sera puni d'un emprisonnement d'un mois à trois ans et d'une amende de 251 à 50 000 euros, quiconque aura sciemment, acquis, détenu ou consulté des écrits, imprimés, images, photographies, films, ou autres objets à caractère pornographique impliquant ou présentant des mineurs.

(L. 16 juillet 2011) La confiscation de ces objets sera toujours prononcée en cas de condamnation, même si la propriété n'en appartient pas au condamné ou si la condamnation est prononcée par le juge de police par l'admission de circonstances atténuantes. »

**MALTA / MALTE**

**State replies / Réponses de l'Etat**

**Question 10.1.**

Malta has made a reservation to this effect.

**Question 10.2.**

Maltese law does not specify any particular age. Even a minor can be prosecuted if he engages in sexual activities with another minor.

- The offence of 'production' of child pornography is covered under Article 208A. (1) of the Maltese Criminal Code (Chapter 9 Laws of Malta), which stipulates that:
- Any citizen or permanent resident of Malta whether in Malta or outside Malta, as well as any person in Malta, who makes or produces permits to be made or produced any indecent material or produces, distributes, disseminates, imports, exports, offers, sells, supplies, transmits, makes available, procures for oneself or for another, or shows such indecent material shall, on conviction, be liable to imprisonment for a term from twelve months to five years.

The offence of possession of child pornography is however regulated by Article 208A (1B) of the Criminal Code, which states that:

- "Any person who acquires, knowingly obtains access through information and
- communication technologies to, or is in possession of, any indecent material which shows, depicts or represents a person under age, shall on conviction, be liable to imprisonment for a term from not exceeding three years".

**REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA**

**State replies / Réponses de l'Etat**

**Question 10.1.**

The Republic of Moldova did not make a reservation.

**Question 10.2.**

The legislator does not refer, in the legal provisions of art. 208<sup>1</sup> of the Criminal Code of the Republic of Moldova, "Child Pornography", to the producing and / or owning of images or videos for personal or

non-personal use, so according to the grammatical interpretation of the legal norm in the Criminal Code of the Republic of Moldova allows to conclude that such products can be owned.

## **Replies sent by / Réponses envoyées par La Strada**

### **Question 10.2.**

The national law is unclear with regard to this situation and it should be applied by the analogy. For example a person cannot be punished for committing suicide or for self-harming. This situation is similar to the situation when images are self-produced by the person (child) for own private use. Therefore, it is considered that that the person (child) cannot be prosecuted. Yet, the national law is not precise with regard to this situation and does not exactly provide for the described situation.

## **MONACO**

### **State replies / Réponses de l'Etat**

#### **Question 10.2.**

Le droit pénal interne ne comporte aucune incrimination spécifique sur ce point.

## **MONTENEGRO**

### **State replies / Réponses de l'Etat**

#### **Question 10.2.**

The law distinguishes between a younger juvenile (14 to 16 years of age) and a juvenile (16 to 18 years of age), who may be tried in criminal proceedings and pronounced diversion measures (warning or attendance order) or criminal sanctions (correctional measures, a juvenile detention term, or security measures). A younger juvenile may only be sanctioned by correctional measures. An older juvenile may be sanctioned by correctional measures and, by exception and under conditions set by this Act, may also be sanctioned by a juvenile detention term. A juvenile may also, under conditions set by the law, be sanctioned by the security measures, save for the ban on engagement in a profession, business or duty and publication of the judgment. A juvenile may not be sanctioned by suspended sentence and court admonition. A person who, at the time of the commission of a criminal offense was younger than 14, does not have legal consequences for the abovementioned behaviour.

## **NETHERLANDS / PAYS-BAS**

### **State replies / Réponses de l'Etat**

#### **Question 10.1.**

The opportunity principle makes it possible not to prosecute.

#### **Question 10.2.**

The opportunity principle makes it possible not to prosecute.

## **NORTH MACEDONIA / MACEDOINE DU NORD**

### **State replies / Réponses de l'Etat**

#### **Question 10.2.**

The Criminal Code of the Republic of Macedonia in paragraph 1 of the criminal act of Article 193 'Showing pornographic materials to a child' criminalises the actions of a person who sells, shows or by public presentation in some other way makes available pictures, audio-visual or other materials with a pornographic content, as well as the actions of the person who would take part in the presentation.

These persons shall be sentenced to prison between six months and three years.

Paragraph 2 stipulates imprisonment between three to five years if the act was committed with the use of media.

Paragraph 3 stipulates that the sentence referred to in paragraph 2 will be imposed to a person abusing a minor under the age of 14<sup>7</sup> for the purposes of audio-visual materials or other items with pornographic content or for pornographic presentation.

Paragraph 5 stipulates imprisonment of at least eight years for a person forcing a child under the age of 14 to produce or generate images or other materials with pornographic content or for a pornographic presentation.

However, this criminal act does not contain explicit criminalisation of self-generated production and/or possession of images/videos with sexually explicit content where the children produced these with their consent and solely for their own private use.

## **NORWAY / NORVEGE**

### **State replies / Réponses de l'Etat**

#### **Question 10.1.**

N.A.

#### **Question 10.2.**

Section 311 of the Norwegian Penal Code applies to any of the forms of conduct described in the provision as long as the child depicted on the picture is below the age of 18. The penalty may however be waived for a person who takes and possesses a picture of a person between 16 (which is the ages set in application of 18(2)) and 18 years of age if this person consented and the two are approximately equal in age and development.

## **POLAND / POLOGNE**

### **State replies / Réponses de l'Etat**

#### **Question 10.1.**

Not applicable.

#### **Question 10.2.**

Not applicable.

## **PORTUGAL**

### **State replies / Réponses de l'Etat**

#### **Question 10.2.**

As already mentioned above criminal responsibility starts at 16 years of age.

The Portuguese law does not consider, on one hand, the self-generated images; on the other does not consider the cases when the images / videos were produced by children for their own private use.

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<sup>7</sup> Article 188 of the Criminal Code of the Republic of Macedonia incriminates the actions of a person having sexual intercourse or performing other sexual act to a minor under the age of 14 who will be punished with at least twelve years imprisonment.



## ROMANIA / ROUMANIE

### State replies / Réponses de l'Etat

#### Question 10.2.

National law does not criminalise such cases.

## RUSSIAN FEDERATION / FEDERATION DE RUSSIE

### State replies / Réponses de l'Etat

#### Question 10.1.

The Russian Federation has made a reservation.

The criminal legislation of the Russian Federation does not establish criminal responsibility of minors for the production and storage of pornographic materials for solely personal use.

## SAN MARINO / SAINT-MARIN

### State replies / Réponses de l'Etat

#### Question 10.

As already indicated in previous answers, at present, the production and not the mere possession of child pornography is criminalised. The provisions on the age of criminal liability referred to in answer to question 9.10 shall not be affected.

## SERBIA / SERBIE

### State replies / Réponses de l'Etat

#### Question 10.2.

Ministry of Justice Answer:

*The law criminalises cases defined in art 185 CC, paragraph (4) Whoever procures for himself or another and possesses, sells, shows, publicly exhibits or electronically or otherwise makes available pictures, audio-visual or other items of pornographic content resulting **from abuse of minor person (minor person is anyone under age of 18 as per CC)**, shall be punished with imprisonment of three months to three years., and (5) Whoever uses the means of information technologies to deliberately access the photographs, audio-visual or other items of pornographic content resulting from the abuse of a minor shall be punished with a fine or imprisonment of up to six months. *CC is covering cases when there is abuse of minor.**

Public Prosecutor Answers:

The acts herewith referred to do not contain elements of any criminal offence whatsoever.

## SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE

### State replies / Réponses de l'Etat

#### Question 10.2.

Cases of production and possession of self-generated sexually explicit images and/or videos produced and possessed by children for their own private use is not regulated by Slovak criminal law.

## **SLOVENIA / SLOVENIE**

### **State replies / Réponses de l'Etat**

#### **Question 10.2.**

Production of pornographic content that includes minors above the age set in application of Article 18(2), is a criminal offence, provided in Art. 176/3 of the Criminal Code. In relation to this offence, the law does not contain any specific provisions regarding the production and/or possession of self-generated sexually explicit images and/or videos when it involves children who have reached the age set in application of Article 18(2) of the Convention but are below 18 years old, where these images and/or videos are produced and possessed by them with their consent and solely for their own private use.

It can be therefore concluded that the production of such material in context stated in the question (of self-generated sexually explicit images and/or videos when it involves children who have reached the age set in application of Article 18(2) of the Convention but are below 18 years old, **where these images and/or videos are produced and possessed by them with their consent and solely for their own private use** is not incriminated, since this material lacks the elements of the pornographic content in Art. 176/3 of the Criminal Code.

### **Comments sent by / Commentaires envoyés par Association against sexual abuse**

#### **Question 10.2.**

No, unless the material is produced under the conditions defined in Article 176/3 of the Criminal Code. We do not have a defined age to which sexual activities of children are not allowed. But it is certain that mutual, consensual activities among minors would not be prosecuted. But, in case of disclosure, centre for social work would be notified.

## **SPAIN / ESPAGNE**

### **State replies / Réponses de l'Etat**

#### **Question 10.2.**

No, it does not.

## **SWEDEN / SUEDE**

### **State replies / Réponses de l'Etat**

#### **Question 10.1.**

See the answer to 9.2.:

According to Chapter 16 Section 10 b of the Swedish Penal Code the prohibitions in Section 10 a against depiction and possession do not apply to a person who produces a pornographic picture, if the difference in age and development between the child and the person who produces the picture is minor and the circumstances otherwise do not warrant the person who has committed the act being convicted of a crime. Furthermore, the prohibitions in Section 10 a against depiction and possession do not apply to a person who draws, paints or in some other similar hand-crafted fashion produces a picture of the kind described in the first paragraph as long as it is not intended for dissemination, transfer, granted use, exhibition or in any other way be made available to others. Even in other cases the act shall not constitute a crime if, having regard to the circumstances, it is justifiable.

## **SWITZERLAND / SUISSE**

### **State replies / Réponses de l'Etat**

#### **Question 10.1.**

La Suisse a fait usage de la possibilité d'apporter une réserve (art. 197, al. 8, CP).

Art. 197, al. 8, CP : N'est pas punissable le mineur âgé de 16 ans ou plus qui produit, possède ou consomme, avec le consentement d'un autre mineur âgé de 16 ans ou plus, des objets ou des représentations au sens de l'al. 1 qui les impliquent.

## **TURKEY / TURQUIE**

### **State replies / Réponses de l'Etat**

#### **Question 10.2.**

Republic of Turkey has not made a reservation under article 20/3 of the Convention. Regarding our judicial system, a child means any person under 18 years old. Therefore, there is no difference between children who are under or above the age limit in the sense of article 18/2.

## **UKRAINE**

### **State replies / Réponses de l'Etat**

#### **Question 10.2.**

No reply to this question.

### **Comments sent by / Commentaires envoyés par La Strada**

#### **Question 10.1.**

At the time of this alternative report, the national law does not contain the term 'age of consent'.

Several draft laws were submitted to the Verkhovna Rada, intended to strengthen protection of children against sexual abuse and sexual exploitation, in particular, draft laws Nos. 7390 and 7391 of 20/11/2010, No. 9540 of 06/12/2011, No. 4099a of 17/06/2014. None of these draft laws were supported.

At present, the draft law 'On Amendments to the Criminal Code of Ukraine Concerning Protection of Children Against Sexual Abuse and Sexual Exploitation', registration No. 2016 of 03/02/2015, is currently being considered by the Verkhovna Rada of Ukraine and was adopted in principle upon a first reading.