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

### **Compilation of Replies to Question 11 (Reference in law to ICT facilitated sexual coercion and/or extortion)**

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 11 (Référence dans la législation à la contrainte et/ou l'extorsion sexuelles facilitées par l'utilisation des TIC)**

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 11. Reference in law to ICT facilitated sexual coercion and/or extortion**

How does national law address ICT facilitated sexual coercion and/or extortion of children and/or other persons related to the child depicted on the:

- a. self-generated sexually explicit images and/or videos?
- b. self-generated sexually explicit images and/or videos?

**Question 11. Référence dans la législation à la contrainte et/ou l'extorsion sexuelles facilitées par l'utilisation des TIC**

Comment la législation nationale traite-t-elle la question de la contrainte et/ou de l'extorsion sexuelles facilitées par l'utilisation des TIC qui concernent des enfants et/ou d'autres personnes liées aux enfants représentés sur :

- a. des images et/ou des vidéos sexuellement explicites autoproduites ?
- b. des contenus à caractère sexuel autoproduits ?

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## COMPILATION of replies / des réponses<sup>1</sup>

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

#### ALBANIA / ALBANIE

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

###### Question 11.a.

The law does not explicitly mention ICT facilitated sexual coercion or extortion of children depicted in the self-generated sexually explicit images or videos.

Coercion is a criminal offence according to Art. 109/b of the Criminal Code, which includes a general criminalisation of coercion “through threatening or violence, to do or not do a certain action, in order to gain money”.

On the other hand Art. 100 and 101 of the Criminal Code contain a general provision of criminalising sexual abuse with children under the age of sexual consent, and criminalizing the use of force to engage in sexual activities with children.

###### Question 11.b.

Same as above.

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

###### Question 11.

There are no laws or regulations related to ICT's apart from the Criminal Code of Albania. However, there is lack of awareness and knowledge on this issue when it comes to people working with such technologies, apart from Mobile companies that usually have some form or policy in place in relation to the issues.

#### ANDORRA / ANDORRE

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

###### Question 11.

La législation nationale aborde cette question à travers la législation pénale, notamment l'article 155, paragraphe 2. Voir encadré du texte de l'article 155 à la réponse de l'article 8 :

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,

<sup>1</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)

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.

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 11.**

There is no explicit reference in the Austrian Criminal Code to ICT facilitated sexual coercion or extortion. However both is punishable under the general provisions of (serious) coercion (Art. 105, 106CC) and (aggravated) extortion (Art. 144, 145 CC). Furthermore who, except of the cases mentioned in Section 201, coerces a person by using force or dangerous threat to perform a sexual act or have a sexual act performed on him/her, is to be punished for sexual coercion according to Art. 202 of the CC. The basic penalty is imprisonment from six months up to five years.

## **BELGIUM / BELGIQUE**

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

#### **Question 11.**

Même si les infractions nommées ci-après ne visent pas l'élément d'extorsion en lui-même, l'extorsion d'images et / ou des vidéos sexuellement explicites autoproduites ou de contenus à caractère sexuel autoproduits peut, si les éléments constitutifs sont réunis, constituer l'infraction de grooming (si la victime a moins de seize ans) ou de cyberprédation d'enfants (en cas d'auteur majeur et de victime mineure) ou d'une des incriminations sexuelles dites 'classiques' (incitation à la débauche, à la corruption ou à la prostitution d'un mineur, pédopornographie ou outrage aux bonnes mœurs, qui s'appliquent selon l'incrimination également aux victimes majeures).

En ce qui concerne l'incrimination d'extorsion même, il convient de renvoyer à l'article 470 CP :

*« Sera puni des peines portées à l'article 468, comme s'il avait commis un vol avec violences ou menaces, celui qui aura extorqué, à l'aide de violences ou de menaces, soit des fonds, valeurs, objets mobiliers, obligations, billets, promesses, quittances, soit la signature ou la remise d'un document quelconque*

*contenant ou opérant obligation, disposition ou décharge. »*

Cette description fait sous-entendre qu'un bénéfice de nature patrimoniale (par exemple la destruction des images en échange de l'argent) est requise. Si par contre, l'auteur ne demande pas un bénéfice patrimonial, mais, par exemple, d'autres photos, la qualification d'extorsion devient moins évidente. Néanmoins, la Cour de Cassation a jugé dans un arrêt du 17 février 2016 (en annexe) que « les éléments constitutifs de l'extorsion sont notamment l'appropriation du bien d'autrui ou d'un avantage illégitime au préjudice d'autrui et, d'autre part, une contrainte tout aussi illégitime dès lors qu'elle consiste à vicier par violence ou menace le consentement de la victime. Ces conditions sont cumulatives. » Cette jurisprudence indique que l'extorsion peut consister en l'une appropriation d'un avantage illégitime au préjudice d'autrui.

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

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

#### **Question 11.**

Of the three Criminal Codes, only the Criminal Code of the Republika Srpska provides generally, in Article 177, „Whosoever sells, gives, shows or renders available through public display, internet or other communication network or in any other manner, writings, photos, audio-visual or other objects containing pornographic material or shows a pornographic show to a child under fifteen years of age shall be punished by imprisonment for a term of between six months and three years“.

Further, Article 178 of the Criminal Code provides: „Whoever, by using computer network or communication by other technical means, arranges meeting with a child over fifteen years of age for sexual intercourse or an equivalent sexual act, or for production of pornographic material or for other types of sexual abuse and shows up at the arranged meeting point, shall be punished by imprisonment for a term of between one and five years. If the offence under paragraph 1 of this Article is committed against a child under fifteen years of age, the offender shall be punished by imprisonment for a term of between two and eight years.“

## **BULGARIA / BULGARIE**

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

#### **Question 11.**

##### **Ministry of Justice:**

Please see below for example the provisions of Art. 155a, 155b, 155c, 158a and 159, para. 6 of the Criminal Code:

„Article 155a

(New, SG No. 38/2007, amended and supplemented, SG No. 27/2009, amended, SG No. 26/2010, SG No. 74/2015)

(1) Anyone who, by using information or communication technology or otherwise, discloses or collects information about a person under 18 years of age for the purpose of establishing contact with that person so as to perform molestation, copulation, sexual intercourse, or prostitution, or to create pornographic material, or for the purpose of involvement in a pornographic show shall be punished by imprisonment from one to six years and a fine from BGN 5,000 to BGN 10,000.

(2) The punishment under Paragraph 1 shall also be imposed on anyone who, by using information or communication technology or otherwise, establishes contact with a person under 18 years of age so as to perform molestation, copulation, or sexual intercourse, or to create pornographic material, or for the

purpose of involvement in a pornographic show.

#### Article 155b

(New, SG No. 27/2009, supplemented, SG No. 26/2010)

(1) (Previous text of Article 155b, amended, SG No. 74/2015) A person who persuades a person who is under the age of 14 to participate in or to observe actual, virtual or simulated sexual intercourse between persons of the same or different sex or lascivious demonstration of human sexual organs, sodomy, masturbation, sexual sadism or masochism shall be punished by imprisonment for up to three years or probation.

(2) New, SG No. 74/2015) When the crime under Paragraph 1 was committed:

1. through the use of force or threat,
2. through taking advantage of a state of dependence or supervision,
3. by two or more persons who have conspired in advance,
4. repeatedly,

the punishment shall be from two to ten years.

Article 155c. (New, SG No. 74/2015) Anyone who, through the use of force or threat or through taking advantage of a state of dependence or supervision, persuades an underage person to participate in an actual, virtual or simulated act of molestation, copulation, sexual intercourse, including sodomy, masturbation, sexual sadism or masochism, as well as in lascivious exhibition of human sexual organs, shall be punished by imprisonment for up to five years.

#### Article 158a

(New, SG No. 27/2009, amended, SG No. 74/2015)

(1) Anyone who, in any manner whatsoever, recruits, supports, or uses an underage person or a group of such persons to participate in a pornographic show shall be punished by imprisonment for up to six years.

(2) Anyone who forces a person under the age of 18 or a group of such persons to participate in a pornographic show shall be punished by imprisonment from one to six years.

(3) When the act under Paragraph 1 or 2 was committed in respect of a person who has not reached 14 years of age, the punishment shall be imprisonment from two to eight years.

(4) Where a material benefit has been received as a result of the criminal act, the punishment shall be:

1. in the cases under Paragraph 1 or 2 - imprisonment from two to eight years and a fine from BGN 10,000 to 20,000;
2. in the cases under Paragraph 3 - imprisonment from three to ten years and a fine from BGN 20,000 to 50,000;

(5) Anyone who watches a pornographic show involving a person under 18 years of age shall be punished by imprisonment for up to three years.

Article 158b. (New, SG No. 74/2015) For a crime under Articles 149 - 157 or Article 158a, the court may also impose a punishment which entails deprivation of rights under Article 37, Paragraph 1, subparagraphs 6 or 7.

#### Article 159

(Amended, SG No. 28/1982, SG No. 10/1993, SG No. 62/1997, SG No. 92/2002)



(1) (Amended, SG No. 38/2007) A person who produces, displays, presents, broadcasts, distributes, sells, rents or otherwise circulates a pornographic material, shall be punished by imprisonment of up to one year and a fine from BGN 1,000 to 3,000.

(2) (New, SG No. 38/2007, supplemented, SG No. 27/2009, amended, SG No. 74/2015) Anyone who distributes pornographic material by means of information or communication technology or in another similar manner shall be punished by imprisonment for up to two years and a fine from BGN 1,000 to 3,000.

(3) (Renumbered from paragraph 2 and amended, SG No. 38/2007) An individual who displays, presents, offers, sells, rents or distributes in another manner a pornographic material to a person who has not turned 16 years of age, shall be punished by imprisonment of up to three years and a fine of up to BGN 5,000.

(4) (Amended, SG No. 75/2006, renumbered from Paragraph 3, amended, SG No. 38/2007, SG No. 74/2015) For acts under Paragraphs 1 - 3, the punishment shall be imprisonment for up to six years and a fine of up to BGN 8,000, where:

1. a person who has not reached 18 years of age (or anyone who looks like such a person) has been used for the production of the pornographic material;
2. a person who does not understand the nature or meaning of the act has been used for the creation of the pornographic material;
3. the act has been committed by two or more persons;
4. the act has been committed repeatedly.

(5) (Renumbered from paragraph 4 and amended, SG No. 38/2007) Where acts under paras. 1 - 4 have been committed at the orders or in implementing a decision of an organized criminal group, punishment shall be imprisonment from two to eight years and a fine of up to BGN ten thousand (10,000), the court being also competent to impose confiscation of some or all the possessions of the perpetrator.

(6) (Renumbered from paragraph 5 and amended, SG No. 38/2007, SG No. 74/2015) Anyone who, by means of information or communication technology or otherwise, possesses or provides for himself/herself or to another person pornographic material for the production of which a person under 18 years of age (or anyone who looks like such a person) has been used shall be punished by imprisonment of up to one year or a fine of up to BGN 2,000.

(7) (New, SG No. 74/2015) The punishment under Paragraph 6 shall also be imposed on anyone who, by means of information or communication technology, has intentionally accessed pornographic material, for the production of which a person under 18 years of age (or anyone who looks like such a person) has been used.

(8) (New, SG No. 74/2015) In the cases under Paragraphs 1 - 7, the court may also impose a punishment which entails deprivation of rights under Article 37, Paragraph 1, sub-paragraphs 6 or 7.

(9) (Renumbered from Paragraph 6, SG No. 38 of 2007, renumbered from Paragraph 7, SG No. 74/2015) The object of criminal activity shall be confiscated to the benefit of the State, and where it is not found or has been expropriated, its money equivalent shall be awarded."

## **CROATIA / CROATIE**

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

#### **Question 11.a.**

The criminal legislation of the Republic of Croatia does not prescribe sexual coercion and/or extortion of children and/or other persons related to the child as an independent criminal offence. Such conducts are described in Article 138 of the Criminal Code, which prescribes the criminal offence of coercion and in Article 243 of the Criminal Code, which prescribes the criminal offence of extortion. The criminal offence of coercion is committed by whoever by the use of force or serious threat coerces another to do or omit to do something or to suffer, for which criminal offence the legislator prescribes the punishment of imprisonment not exceeding three years and prosecution ex officio if committed against a child. The criminal offence of extortion is committed by whoever, with the aim of procuring for himself or herself or a third party an unlawful material gain by the use of force or by serious threat, coerces another to do, refrain from doing or suffer something to the detriment of his or her or another's property. If the perpetrator should by any of the means described in Articles 138 and 243 of the Criminal Code obtain self-generated sexually explicit images and/or videos, he or she would answer for a concurrence of criminal offences with the criminal offence of exploiting children for pornography as referred to in Article 163 para 2 of the Criminal Code, given that the very possession of the said materials is prescribed as a criminal offence.

#### **Question 11.b.**

The described behaviours are not prescribed as a criminal offence.

## **CYPRUS / CHYPRE**

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

#### **Question 11.a.**

Subject to the provisions of Article 12, anyone who, through information communication technology, invites or approaches a child who has not reached the age of consent, and attempts to acquire, or attempts to have access, or acquires or obtains access to child pornographic material which depict that child, is guilty of a felony, and if convicted, is subject to imprisonment not exceeding ten years.

#### **Question 11.b.**

Subject to the provisions of Article 12, anyone who, through information communication technology, invites or approaches a child who has not reached the age of consent, and attempts to acquire, or attempts to have access, or acquires or obtains access to child pornographic material which depict that child, is guilty of a felony, and if convicted, is subject to imprisonment not exceeding ten years.

It must be noted that according to the Penal Code of the Republic of Cyprus no one is liable for any kind of offence under the age of fourteen years old.

## **CZECH REPUBLIC / REPUBLIQUE TCHEQUE**

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

#### **Question 11.**

Conduct described could be covered by several offences depending on specific circumstances of the case. According to Section 193b whoever proposes a meeting to a child under the age of fifteen with the intention to commit a crime according to Section 187(1) [Sexual Abuse], 192 (Production and other Disposal with Child Pornography), 193 (Abuse of a Child for Production of Pornography), 202(2) [Seduction to Sexual Intercourse] or another sexually motivated criminal offense, will be sentenced to imprisonment for up to two years. The proposal to meet a child could be made in any form, e.g. in writing,

orally or using the information and communication technology. The offence is completed even though the meeting with a child has never taken place.

Provision of Section 192(2) of the Criminal Code stipulates the punishment up to two years of imprisonment for anyone who gains access to child pornography by the means of an information or communication technology.

According to Section 186 of the Criminal Code (Sexual Duress) whoever forces another person to masturbation, indecent exposure, or other comparable conduct by a threat of violence or a threat of another serious detriment, or whoever exploits the vulnerability of another for such conduct, will be sentenced to imprisonment for one year to five years (if the offence is directed against a child). The same sentence will be imposed to anyone who makes another person perform sexual intercourse, masturbation, indecent exposure, or other comparable conduct by exploiting his addiction or the offender's position and credibility or influence derived therefrom.

## **DENMARK / DANEMARK**

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

#### **Question 11.**

According to Section 262 a, Subsection 1, of the Danish Criminal Code, a penalty of imprisonment for a term not exceeding ten years is imposed on any person who recruits, transports, transfers, harbours or subsequently receives another person who is or has been subjected to (i) duress as defined in Section 260; (ii) deprivation of liberty as defined in Section 261; (iii) threats as defined in Section 266; (iv) the wrongful creation, confirmation or exploitation of a mistake or; (v) any other improper procedure; to exploit such other person for prostitution, the taking of pornographic photographs, the recording of pornographic films, pornographic performances, forced labour, slavery, practices similar to slavery, criminal acts or the removal of organs.

According to Section 262 a, Subsection 2, of the Danish Criminal Code, the same penalty is imposed on any person who, for the purpose of exploitation of another person by prostitution, the taking of pornographic photographs, the recording of pornographic films, pornographic performances, forced labour, slavery, practices similar to slavery, criminal acts or the removal of organs (i) recruits, transports, transfers, harbours or subsequently receives a person under 18 years of age or; (ii) gives payment or other benefit to achieve the consent to such exploitation from a person having control over the victim and from the person receiving such payment or benefit.

Furthermore, according to Section 260 of the Danish Criminal Code, a penalty of imprisonment for a term not exceeding 2 years is imposed on any person who, inter alia, by violence or threat of violence causes someone to do, tolerate or omit something (coercion). According to Section 281 a penalty of imprisonment for a term not exceeding 1 year and 6 months is imposed on any person who, inter alia, by means of obtaining an unjustified gain, threatens anyone with violence (extortion).

## **ESTONIA / ESTONIE**

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

#### **Question 11.**

Applicable Article § 1751 lg 1 (Penal Code).

## **FINLAND / FINLANDE**

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

#### **Question 11.a.**

It can be punishable as coercion (Chapter 25, section 8 of the Criminal Code), extortion (Chapter 31, section 3 of the Criminal Code) or aggravated extortion (Chapter 31, section 4 of the Criminal Code).

#### **Question 11.b.**

It can be punishable as coercion (Chapter 25, section 8 of the Criminal Code), extortion (Chapter 31, section 3 of the Criminal Code) or aggravated extortion (Chapter 31, section 4 of the Criminal Code).

The penal scale for the aforementioned offences is as follows: According to chapter 25, section 8 of the Criminal Code, for coercion a fine or imprisonment at most 2 years, according to Chapter 31, section 3 of the Criminal Code for extortion a fine or imprisonment at most 2 years, and according to Chapter 31, section 4 of the Criminal Code for aggravated extortion imprisonment at least 4 months and at most 4 years.

## **FRANCE**

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

#### **Question 11.**

La législation française incrimine la menace de diffuser des images ou des vidéos sexuellement explicites autoproduites en utilisant des TIC ou de contenus à caractère sexuel autoproduit du chef d'extorsion (ou de tentative d'extorsion) sans distinguer la nature de la contrainte exercée sur la victime (sans distinction selon l'âge de la victime) : il suffit qu'une contrainte soit exercée sur celle-ci pour que l'infraction soit constituée :

L'article 312-1 du code pénal dispose : « *L'extorsion est le fait d'obtenir par violence, menace de violences ou contrainte soit une signature, un engagement ou une renonciation, soit la révélation d'un secret, soit la remise de fonds, de valeurs ou d'un bien quelconque.*

*L'extorsion est punie de sept ans d'emprisonnement et de 100 000 euros d'amende. »*

L'article 312-10 du code pénal dispose : « *Le chantage est le fait d'obtenir, en menaçant de révéler ou d'imputer des faits de nature à porter atteinte à l'honneur ou à la considération, soit une signature, un engagement ou une renonciation, soit la révélation d'un secret, soit la remise de fonds, de valeurs ou d'un bien quelconque.*

*Le chantage est puni de cinq ans d'emprisonnement et de 75 000 euros d'amende. »*

La législation comme la jurisprudence ne distingue pas selon que les images soient ou non autoproduites, les infractions sont constituées dès lors qu'il existe une telle menace de diffusion. Cette qualification a été confirmée par la Cour de cassation (cf. notamment Pourvoi n° 13-83458 24/7/2013 (qualification d'extorsion) ; Crim. Pourvoi n°92-83593 17/11/1993 (qualification de chantage)).

### **Comments sent by / Commentaires envoyés par Stop Aux Violences Sexuelles**

#### **Question 11.**

Echelle de gravité des faits correspondant à des infractions pénales caractérisées.

## **GEORGIA / GEORGIE**

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

#### **Question 11.**

As mentioned above, Article 255 of CCG criminalizes purchase, storage, attendance on the demonstration, proposal, proliferation, transferring, advertising, making accessible of or using of a child pornographic work. If a child is forced to make self-generated sexually explicit images, videos or sexual content through ICT, a perpetrator will be liable under Article 255.

## **GERMANY / ALLEMAGNE**

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

#### **Question 11.**

Item 11 letter e of the preliminary remarks of the Questionnaire defines "ICT facilitated sexual coercion and/or extortion" as using self-generated sexually explicit images and/or videos and/or self-generated sexual content to procure a sexual gain (mainly new images or videos or sexual favours), financial gain or other personal gain from the child or any other person under a particular threat (mainly posting previously acquired images and/or videos online.

Inasmuch as the threat is used in order to obtain a sexual favour, section 177 (2) no 5 of the Criminal Code (StGB) is the stipulation relevant to such an act. According to this stipulation of the law, whosoever engages in sexual activity with another person or causes that person to engage in sexual activity, or induces that person to perform sexual acts on a third person or to suffer sexual acts by a third person, and has coerced the person to perform or suffer the sexual acts by threatening serious harm, shall be punished by a term of imprisonment of six months to no more than five years. Depending on the individual case involved, this would cover instances in which the perpetrator threatens the victim, should he or she refuse to perform sexual acts on himself or herself before the perpetrator, for example using an internet camera, that the perpetrator will publish data files on the internet showing the victim performing sexual acts, which the victim – acting on his or her own volition – had previously sent to the perpetrator.

Pursuant to section 240 (1) of the Criminal Code (StGB), whosoever unlawfully causes a person, *inter alia* by using force or by threatening serious harm, to commit, suffer or omit an act shall be liable to imprisonment for coercion, such imprisonment not exceeding three years or a fine. Depending on the individual case given, holding out the prospect of a self-generated explicit image and/or video of the victim being published may constitute such a serious harm. Where damage is caused to the assets of the party being coerced or of another party in order to unlawfully enrich the perpetrator or a third person, the offence is punished as blackmail pursuant to section 253 (1) of the Criminal Code (StGB) by a term of imprisonment not exceeding five years or a fine.

## **GREECE / GRECE**

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

#### **Question 11.**

Article 348C paragraph 2 addresses the coercion part but it is not specific for ICT.

## **HUNGARY / HONGRIE**

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

#### **Question 11.**

The national law regards self-generated sexually explicit images and/or videos, or other contents as evidence, which captures the criminal offences of sexual coercion and/or sexual violence. The violent sexual criminal offences (like sexual coercion or violence) can further be established as 'multiple offences' thus when one or more acts committed by the same person result in more than one crime, which are adjudicated in the same proceeding, in this case child pornography and sexual coercion/violence would constitute a multiple offence, and thus punishable more severely.

In other cases, when the perpetrator attempts to exploit children through sexually explicit images and/or videos generated by the children in question, then, taking into consideration all circumstances of a given case, also the criminal offence of coercion (section 195 of the CC) or extortion (section 367 of the CC) can also be established.

The manner of the threat by which the perpetrator attempts to influence the child does not matter; it can be in person or through ICTs. Threat, unless otherwise prescribed by law, shall mean any declaration of intention to cause considerable harm that is suitable for inducing serious fear in the person threatened (section 459.7. of the CC).

## **ICELAND / ISLANDE**

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

#### **Question 11.**

Icelandic law does not explicitly address ICT facilitated sexual coercion and/or extortion of children and/or other persons related to the child depicted on self-generated sexually explicit material.

However, the Supreme Court in Iceland passed a judgement in December 15<sup>th</sup> of 2016 in case no. 441/2016 where coaxing a child to send self-generated sexually explicit material and then trying to coerce a child to perform sexual act has been found to be in violation of Article 209 of the Penal Code and Article 99 parag. 3 of the Child protection Act. The court also found that the individual's behaviour was enough to convict for attempt to rape according to article 194 of the Penal Code, even though the child and the perpetrator never met in person and only communicated online.

## **ITALY / ITALIE**

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

#### **Question 11.**

Italian law considers coercion/extortion - also carried out through new technologies - of minors (or even adults) and related to pedopornographic material or self-generated sexually explicit images a criminal conduct that may have different criminal implications based on each specific case. The offences described in the following provisions can, for instance, come into the picture: art. 600 ter (child pornography), art. 610 (private violence), art. 612 (threats), art. 612 bis (persecutory acts), art. 660 (harassment), art. 609 bis (sexual violence), art. 629 (extortion).

When coercion/extortion includes the child's own production of self-generated pedopornographic material (sexually explicit video or content), the perpetrator of the crime (whether an adult or a minor) may also be punished under art. 600-ter of the Criminal Code for the offense of child pornography, aggravated under art. 602-ter as committed by means of violence or threat (see the answer to Question 9). With regard to this offense, it is recalled that the aforementioned provision explicitly provides for

the punishment of anyone, "by any means, even by telematic means, distributing, divulging, spreading or publicising" pedopornographic material.

In addition, as regards specifically the use of new communication or information technologies in relation to sexual crimes on minors, art. 609 duodecies of the Criminal Code foresees aggravated sanctions when the offenses of sexual violence, sexual acts with minors, corruption of minors, gang rape and grooming are committed through *the use of means to prevent the identification of access data to telematics networks*.

It should also be borne into mind that the Italian law defines the **offense of sexual violence** (art. 609) as the conduct of anyone who, by means of **violence or threat** or because of abuse of authority, **forces somebody to commit or undergo sexual acts**. The same sanction applies to who induces somebody to commit or undergo sexual acts: 1) by taking advantage of the condition of the victim's physical or psychic inferiority at the time of the offence; 2) by deceiving the victim by taking somebody else's place. Part of the case-law (Corte di Cassazione, 3<sup>rd</sup> Criminal Section, judgment No. 37076/2012) states that the sexual violence offense can also be committed at a distance, in the case of a person who contacted via chat some underage girls to obtain photographs with pornographic content depicting them. According to this judgment, the sexual violence offense (in conjunction with the offense of production of pedopornographic material and extortion) may also consist in forcing a person (in that case underage) to commit sexual acts on her/himself and can arise even at a distance, i.e. by telephone or via other electronic communication equipment (Corte di Cassazione, 3<sup>rd</sup> Criminal Section, No. 12987 of 03/12/2008).

Moreover, the case law (Corte di Cassazione, 6<sup>rd</sup> Criminal Section, No. 32404/2010) declared that the offense of **persecutory acts** (art. 612 bis, so-called stalking) may arise when repeatedly sending the victim sms or emails or messages via social networks, as well as when **disseminating on social networks videos showing sexual intercourses** of the perpetrator with the victim.

With particular reference to minors and behaviours acted via new technologies, it is also recalled that art. 609-undecies of the Criminal Code punishes **grooming**: anyone who, for the purpose of committing a crime of child prostitution, child pornography or possession of pornographic material (even virtual), sexual violence, sexual acts with minors or corruption of minors, grooms a minor under sixteen, is punished with imprisonment from one up to three years. This provision precises that "grooming" means any act aimed at getting the child's trust through artifices, flattery or even **threats by means of the use of the internet or other networks or communication means**.

Lastly, as regards prevention/awareness-raising activities carried out on that specific subject, the Police has recently started (June 2017) the **#SayNO! Online Coercion and Extortion against Minors** campaign, concerning the phenomena of sextortion or blackmailing via webcam, i.e. crimes that start with online grooming and then evolve with the transmission of self-generated pedopornographic images and videos by underage victims, followed by threats and extortions by the perpetrators of such crimes to extort further material to the involved minor for both sexual and economic ends. This awareness raising and information campaign - carried out in collaboration with Europol, as well as with the associations Save the Children and Telefono Azzurro that manage hotlines of the Safer Internet Center in Italy - is part of the implementation of the *National Plan for the Prevention and Fight Against Child Sexual Abuse and Exploitation 2015-2017* and publishes online alerting tools to protect the victims (<http://www.commissariatodips.it/notizie/articolo/sayno-coercizione-ed-estorsione-online-contro-i-minori.html>).

## **LATVIA / LETTONIE**

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

#### **Question 11.**

We point out that, person who commits ICT facilitated sexual coercion and/or extortion for children's already self-generated sexually explicit images and/or videos and self-generated sexual content, shall be held criminally liable according to Part 2 of Section 166 of the Criminal law, that is, for a person who commits handling of such materials of pornographic nature which contain child pornography, the applicable punishment is the deprivation of liberty for a period of up to three years or temporary deprivation of liberty, or community service, or a fine, with or without the confiscation of property and with probationary supervision for a period of up to three years, and Part 1 of Section 183 of the Criminal Law, that is, for a person who commits demanding without legal basis therefor the surrender of property or rights to property, or the performing of any acts of a financial nature, therewith threatening violence against, or disclosure of defamatory information concerning, the victim or relatives of the victim, or to destroy their property or cause them other substantial harm (extortion), the applicable punishment is the deprivation of liberty for a period of up to five years or temporary deprivation of liberty, or community service, or a fine, with or without the confiscation of property and with or without probationary supervision for a period of up to three years.

Whereas, if person commits ICT facilitated sexual coercion and/or extortion for children to take self-generated sexually explicit images and/or videos or make self-generated sexual content, shall be held criminally liable according to Part 3 of Section 166 of the Criminal Law, that is, for a person who commits encouraging, involvement, forced participation or utilization of minors in a pornographic performance or the production of a material of pornographic nature, the applicable punishment is deprivation of liberty for a period up to six years, with or without confiscation of property and with probationary supervision for a period up to three years, and Part 1 of Section 183 of the Criminal law, that is, for a person who commits demanding without legal basis therefor the surrender of property or rights to property, or the performing of any acts of a financial nature, therewith threatening violence against, or disclosure of defamatory information concerning, the victim or relatives of the victim, or to destroy their property or cause them other substantial harm (extortion), the applicable punishment is the deprivation of liberty for a period of up to five years or temporary deprivation of liberty, or community service, or a fine, with or without the confiscation of property and with or without probationary supervision for a period of up to three years.

## **LIECHTENSTEIN**

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

#### **Question 11.**

The answer to this question depends in part on the age of the perpetrator. If the perpetrator is at least 14 years old, the possible criminal offences are §§ 106 (aggravated coercion), 144 (extortion), and 145 (aggravated extortion) of the Criminal Code. In the case of extortion, unlawful enrichment of the perpetrator or damage to the victim's assets is a prerequisite for the realisation of the offence.

## **LITHUANIA / LITUANIE**

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

#### **Question 11.**

##### **Article 151 of the CC. Sexual Abuse**

1. A person who, by threatening to resort to violence, using other mental coercion or by taking advantage of a person's dependency, compels the person to have sexual intercourse with or otherwise satisfy sexual desires of the offender or a third person, shall be punished by arrest or by a custodial



sentence for a term of up to three years.

2. A person who carries out the actions provided for in paragraph 1 of this Article in respect of a minor, shall be punished by a custodial sentence for a term of up to eight years.(...)

**4. A legal entity shall also be held liable for an act provided for in paragraph 2 of this Article.”**

In all other cases (for example, in the cases of child pornography, prostitution), criminal liability of the offender is tightened additionally under Article 60 of the CC, since criminal act committed against a young child (up to 14 years old) always constitutes an aggravating circumstance of criminal liability:

**Article 60 of the CC. Aggravating Circumstances**

1. The following shall be considered as aggravating circumstances: (...)

5) **the act has been committed against a young child;(…)**”

## **LUXEMBOURG**

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

#### **Question 11.**

Il ressort de l'avis interprétatif qu'il faut entendre par l'expression « *contrainte et/ou extorsion sexuelle facilitée par les TIC* », l'utilisation d'images et/ou de vidéos sexuellement explicites autoproduites et/ou de contenus à caractère sexuel autoproduits dans le **but** d'obtenir de l'enfant ou de toute autre personne **un avantage sexuel** (principalement de nouvelles images ou vidéos, ou des faveurs sexuelles), **un profit pécuniaire** ou tout **autre profit personnel en faisant usage de menaces particulières** (celle consistant, pour l'essentiel, à menacer de mettre en ligne des images et/ou vidéos précédemment acquises).

La législation luxembourgeoise couvre le cas de figure de la contrainte et/ou l'extorsion sexuelles facilitées par l'utilisation des TIC qui concerne des enfants et/ou d'autres personnes liées aux enfants représentés sur des images et/ou vidéos sexuellement autoproduites et/ou de contenus à caractère sexuel autoproduits, par son article 385-2 du Code pénal luxembourgeois.

En effet, il ressort du commentaire des articles du projet de loi n°6046 portant approbation de la Convention de Lanzarote, que la sollicitation à des fins sexuelles, connue sous le nom de « *grooming* » (mise en confiance), vise également l'hypothèse où l'enfant est impliqué dans la production de pornographie enfantine en envoyant des photos personnelles compromettantes prises à l'aide d'un appareil photo numérique, une webcam ou une caméra de téléphone mobile, ce qui offre à la personne sollicitant l'enfant **un moyen de le contrôler en le menaçant.**

La production de pornographie enfantine peut non seulement être visionnée par l'adulte mais peut aussi être partagée en ligne au moyen des TIC, en faisant usage de menaces particulières par la personne sollicitant l'enfant, connue sous le nom de « *sexting* ». Une fois diffusée en ligne, il peut être très difficile de l'effacer, ce qui se traduit par un abus et un préjudice supplémentaire et de longue durée pour l'enfant. L'enfant victime ou toute autre personne dispose de la possibilité de déposer une plainte contre l'adulte, qui sera traitée par les enquêteurs spécialisés du Service de Police Judiciaire ou utiliser les différentes plateformes mises en place par l'organisation BEE SECURE Luxembourg qui permettent de signaler des contenus illicites ou préjudiciables mis en ligne sur internet par l'adulte. Etant donné que ce comportement est préjudiciable à l'enfant, puisque souvent lié à la production, à la possession et à la transmission de pornographie enfantine, tout adulte peut être mis en examen et voir sa responsabilité pénale engagée au titre de l'article 385-2 du Code pénal luxembourgeois qui dispose ce qui suit :

## Article 385-2 Code pénal

« (L. 16 juillet 2011) Le fait pour un majeur de faire des propositions sexuelles à un mineur de moins de seize ans ou à une personne se présentant comme telle en utilisant un moyen de communication électronique est puni d'un emprisonnement d'un mois à trois ans et d'une amende de 251 à 50 000 euros [...]. »

## MALTA / MALTE

### State replies / Réponses de l'Etat

#### Question 11.

This offence is also covered by Article 208A. (1) of the Maltese Criminal Law, 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.

## REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA

### State replies / Réponses de l'Etat

#### Question 11.a.

Actions may be classified under the provisions of the Criminal Code as follows:

1. **Article 175** Criminal Code of the Republic of Moldova, "Pervert Actions";
2. **Article 175<sup>1</sup>** Criminal Code of the Republic of Moldova, "Minor enticement for sexual purposes";
3. **Article 208<sup>1</sup>** Criminal Code of the Republic of Moldova "Child Pornography";
4. **Article 208<sup>2</sup>** Criminal Code of the Republic of Moldova, "Recourse to children prostitution";
5. **Article 206** Criminal Code of the Republic of Moldova, "Trafficking in Children";
6. **Article 174** Criminal Code of the Republic of Moldova, "Sexual Intercourse with a person under the age of 16";
7. **Article 171** (*paragraph 2, b, 3b*) Criminal Code of the Republic of Moldova "Rape" (knowingly committed against a minor);
8. **Article 172** (*paragraph 2b, 3b*) Criminal Code of the Republic of Moldova, "Rape" (of a person under the age of 14);
9. **Article 173** Criminal Code of the Republic of Moldova, "Sexual harassment";
10. **Article 189** Criminal Code of the Republic of Moldova, "Blackmail".

#### Question 11.b.

Actions may be classified under the provisions of the Criminal Code as follows:

1. **Article 175** Criminal Code of the Republic of Moldova, "Pervert Actions";
2. **Article 175<sup>1</sup>** Criminal Code of the Republic of Moldova, "Minor enticement for sexual purposes";
3. **Article 208<sup>1</sup>** Criminal Code of the Republic of Moldova "Child Pornography";
4. **Article 208<sup>2</sup>** Criminal Code of the Republic of Moldova, "Recourse to children prostitution";
5. **Article 206** Criminal Code of the Republic of Moldova, "Trafficking in Children";
6. **Article 174** Criminal Code of the Republic of Moldova, "Sexual Intercourse with a person under the age of 16";

7. **Article 171** (paragraph 2, b, 3b) Criminal Code of the Republic of Moldova "Rape" (knowingly committed against a minor);
8. **Article 172** (paragraph 2b, 3b) Criminal Code of the Republic of Moldova, "Rape" (of a person under the age of 14);
9. **Article 173** Criminal Code of the Republic of Moldova, "Sexual harassment";
10. **Article 189** Criminal Code of the Republic of Moldova, "Blackmail".

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

### **Question 11.**

The national law criminalizes the actions of blackmailing (the request/demand to transfer the property of the owner or holder, or to carry out other actions of patrimonial nature, threatening with violence the person, his relatives, spreading defamatory news about them, threatening with the destruction of that property, kidnapping of the owner, of the holder of the property, his/their relatives).

The national law does not specifically address ICT facilitated sexual coercion and/or extortion of children related to the child depicted on the self-generated sexually explicit images, videos, content. In practice, such kind of situations may be identified as blackmailing, in case of financial demand for sexually explicit images and/or videos or content. The subject for related crime may be the person aged 16 years old.

## **MONACO**

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

#### **Question 11.**

La prise en compte de la contrainte par emploi des TIC comme *modus operandi* punissable est réalisée au titre des éléments matériels constitutifs des menaces.

L'on fera ainsi mentions des articles 230 et 234 du Code pénal :

*« Article 230 (modifié par la loi n° 1.435 du 8 novembre 2016) : Quiconque, par écrit anonyme ou signé ou par symbole, signe matériel ou par quelque autre moyen que ce soit, y compris par le biais d'un système d'information aura menacé autrui d'assassinat, d'empoisonnement ou de meurtre ainsi que de tout attentat emportant une peine criminelle, sera puni d'un emprisonnement de un à cinq ans et de l'amende prévue au chiffre 4 de l'article 26, dans le cas où la menace aurait été faite avec ordre de déposer une somme d'argent dans un lieu indiqué ou sous condition. »*

*« Article 234 (remplacé par la loi n° 1.435 du 8 novembre 2016) Quiconque aura menacé verbalement, par écrit ou par quelque autre moyen que ce soit, y compris par le biais d'un système d'information de voies de fait ou de violences autres que celles visées à l'article 230, si la menace a été faite avec ordre ou sous condition, sera puni d'un emprisonnement de un à six mois et de l'amende prévue au chiffre 2 de l'article 26 ou de l'une de ces deux peines seulement ».*

En outre, le fait de contraindre un mineur à regarder ou à participer à des scènes ou spectacles pornographiques, quelle que soit le mode opératoire de cette contrainte – les TIC étant donc de facto incluses dans le champ répressif – est par ailleurs appréhendé par l'article 294-5 du Code pénal :

*« Article 294-5.- : Est puni d'un emprisonnement de trois à cinq ans et de l'amende prévue au chiffre 3 de l'article 26 :*

*1°) le fait de contraindre un mineur à regarder ou à participer à des scènes ou spectacles pornographiques ou d'en tirer profit ou d'exploiter un mineur de toute autre manière à cette fin ;*

2°) le fait de recruter, avec l'emploi de la contrainte, de violences ou de manœuvres dolosives, un mineur pour qu'il assiste ou participe à des scènes ou spectacles pornographiques ou de favoriser la participation d'un mineur à de tels spectacles ;

3°) le fait d'assister à des spectacles pornographiques impliquant la participation de mineurs.

Est puni des mêmes peines le fait d'amener intentionnellement un mineur à assister ou à participer à des activités sexuelles ».

## **MONTENEGRO**

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

#### **Question 11.**

The Criminal Code of Montenegro in Article 211, paragraph 5 prescribes that the perpetrator will be punished by a prison term from two to ten years if he commits a criminal offense by use of force or threat.

## **NETHERLANDS / PAYS-BAS**

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

#### **Question 11.**

In case of coercion and/or extortion of children and/or other persons related to the child depicted, the Public Prosecution Office can use that as an aggregating circumstance within the indictment, f.e. in case of the sexual offence child pornography 240b of the Dutch Criminal Code, grooming (248e of the Dutch Criminal Code) or sexual assault (246 of the Dutch Criminal Code) or prosecute for the general criminalisation of coercion (284 of the Dutch Criminal Code). In general extortion and blackmail are also criminalised (317 and 318 of the Dutch Criminal Code).

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

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

#### **Question 11.**

Article 193-b regulates the criminal act: *enticing a child under the age of 14 to sexual intercourse or other sexual act*. The following actions are criminalised: A person who through a computer communication devices by scheduling a meeting or in other way shall entice a child below the age of 14 to sexual intercourse or other sexual act or to production of child pornography and if the person has arranged a meeting with the minor with such an intention. The Criminal Code stipulates imprisonment between one and five years.

## **NORWAY / NORVEGE**

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

#### **Question 11.**

Different ways of dealing with a depiction of sexual abuse of children are subject to a penalty of a fine or imprisonment for a term not exceeding three years pursuant to Section 310 of the Norwegian Penal Code. Section 310 may under the above described circumstances apply in concurrence with Section 312, which states that a penalty of imprisonment for a term not exceeding six years shall be applied to any person who engages in sexual activity with a relative in the descending line or makes that person perform acts corresponding to sexual activity on himself/herself. Section 313, may apply in cases where the child and the other person involved are siblings.

## **POLAND / POLOGNE**

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

#### **Question 11.**

Except for criminal offences that can be committed only through ICT (eg. grooming – in case of which use of ICT is an essential part of definition) the PC does not distinguish between offenses on the basis of the means employed by the perpetrator. Therefore, it is not the use of ICT but the nature of perpetrator's behaviour (coercion, extortion etc.) that will determine whether his/her action constitutes a criminal offence. In cases of sexual abuse of children the use of ICT can even be treated as an aggravating circumstance while it is much easier that way to mislead a victim, hide one's identity or cause serious harm and suffering (eg. by publication of victim's pictures in social platforms).

## **PORTUGAL**

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

#### **Question 11.a.**

Where sexual crime is concerned, the national law forbids anybody that is criminally responsible that, by means of violence, serious threat, or after making someone unconscious or putting them in the impossibility of resisting, constrains another to suffer or engage, with him or herself or another person, in sexually relevant acts (Article 163, Criminal Code).

Where child pornography is specifically concerned, the law criminalizes offenders that are 16 or older, who intentionally **acquire, detain, access, obtain or facilitate the access** to pornographic material involving other children, by means of ICT's (Article 176, n. 5, Criminal Code).

The law also criminalizes offenders that are 18 or older who, in presence or by means of ICT's, view or facilitate the access to pornographic performances. The law also criminalizes offenders that are 18 or older who, by means of ICT's, lure children to an encounter with the objective of using him/her in pornographic material, or distribute, import, export, disclose, exhibit, or cede such materials (Article 176-A, Criminal Code – see Article 23 of the Lanzarote Convention).

It should be added that in the specific domain of child pornography whoever (16 or older) uses a child (under 18 years old) in a pornographic performance or lures him/her to that end, or uses a child (under 18 years old) in pornographic materials (photograph, film, or recording), or lures him/her to that end, by means of violence or a serious threat, is punishable with a prison penalty of 1 to 8 years (Article 176/3, Criminal Code).

Coercion and extortion are incriminated, under the general provisions, according to Articles 154/155 and 233 of the Criminal Code. It is also important to highlight the importance of criminal prevention. Recently, Law 96/2017, of 23 August has established the objectives, priorities and guidelines for the criminal policy and determined that cybercrime, crimes against freedom and sexual self-determination, as well as crimes against children are crimes considered to be of priority prevention.

#### **Question 11.b.**

See previous answer and 9.4.a.

Portuguese criminal law prohibits the mere possession of any pornographic materials consisting of photographs, films and recordings that involve children (Article 176/5, Criminal Code), regardless of how the material was produced. Law also prohibits the possession with intent to distribute of pornographic material with "realistic representation of children" (Article 176/4, Criminal Code).

## ROMANIA / ROUMANIE

### State replies / Réponses de l'Etat

#### Question 11.

Extortion is criminalised in Romanian legislation<sup>2</sup>, regardless of the means of communication it is perpetrated by. Please see footnote.

## RUSSIAN FEDERATION / FEDERATION DE RUSSIE

### State replies / Réponses de l'Etat

#### Question 11.

The aforementioned cases a) b) are subject to consideration on general grounds. National legislation provides for criminal prosecution (ct.132, 135, 242 of the Criminal Code), the Resolution of the Plenum of the Supreme Court on December 4, 2014 N 16 (pp.16, 17).

## SAN MARINO / SAINT-MARIN

### State replies / Réponses de l'Etat

#### Question 11.

On this subject, the Government adopted a draft law for the transposition, through parliamentary procedure, of the provisions contained in the Council of Europe Convention on Cybercrime (Budapest Convention) and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, signed by the Republic of San Marino on 17 March 2017.

## SERBIA / SERBIE

### State replies / Réponses de l'Etat

#### Question 11.

Ministry of Justice Answer:

Law does not explicitly mention self-generated sexual content, but para. 5 of art 185 CC, states that“(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.”

Public Prosecutor Answers:

National legislation does not proscribe any particular provisions on coercion and/or extortion regarding the material and content of this kind, but the referred to acts are qualified as a criminal offence of coercion under Article 135 of the Criminal Code, extortion under Article 214 of the CC and criminal offence of blackmail under Article 215 of the CC. For the existence of criminal offences of extortion

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<sup>2</sup> ART. 207 of the Criminal code

Blackmail

(1) Coercion of an individual to give, to do, not do, or suffer something for the purpose of unlawfully acquiring a non-financial benefit, for themselves or for another individual, shall be punishable by no less than 1 and no more than 5 years of imprisonment.

(2) The same penalty shall apply to a threat to disclose a real or fictitious fact that is compromising for the threatened individual or for a member of their family, for the purpose set under par. (1).

(3) If the acts set by par. (1) and par. (2) were committed for the purpose of deriving a financial benefit, for themselves or for another individual, they shall be punishable by no less than 2 and no more than 7 years of imprisonment.

under Article 214 and blackmail under Article 215, unlawful acts need to be committed with an intention to obtain wrongful gain. Coercion under Article 135 of the CC is not conditioned by it.

Also, acts of use of children for pornographic purposes, by force or under a threat, but in a situation when the force or threat have not been used, may be qualified as a criminal offence of trafficking in human beings under Article 388 of the CC.

NGO Astra Answers:

Beside Articles 185, 185a and 185b, mentioned above, Article 388 of the Criminal Code regarding the human trafficking, states the following:

Whoever by force or threat, deception or maintaining deception, abuse of authority, trust, dependency relationship, difficult circumstances of another, retaining identity papers or by giving or accepting money or other benefit, recruits, transports, transfers, sells, buys, acts as intermediary in sale, hides or holds another person with intent to exploit such person's labour, forced labour, commission of offences, prostitution, mendacity, **pornography**, removal of organs or body parts or service in armed conflicts, shall be punished by imprisonment of three to twelve years.

If the offence specified in paragraph 1 of this Article is committed against a minor, the offender shall be punished by imprisonment of minimum five years.

## **SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE**

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

#### **Question 11.**

Slovak legal order does not comprise of explicit regulation related to above mentioned cause of conduct, explicit terms "sexual coercion" or "sexual extortion" are not recognised by national law. In practise, there are often cases when the offender **forces minors** who had already created/produced pornographic material- images and/or videos- **to produce more** such images and/or videos and **to send** them to him under the threat of making already received pornographic materials public.

Pertinent conduct could be subsumed under the bodies of criminal offences stated in the second part of the Criminal Code as follows:

- criminal offence of Manufacturing of Child Pornography according to Article 368 of the Criminal Code ("Any person who exploits, elicits, offers or otherwise abuses a child for manufacturing child pornography, or enables such abuse of a child, or otherwise participates in such manufacturing...")

The offender of such criminal offence shall be liable to a term of imprisonment of four to ten years. (In case the offender commits the offence against a child less than twelve years of age or by acting in a more serious manner (e.g. against more than two children) or in public, he shall be liable to a term of imprisonment of seven to twelve years. In case the offender commits the offence and causes grievous bodily harm or death through its commission or obtains substantial benefit through its commission, he shall be liable to a term of imprisonment of ten to fifteen years. When offender commits the offence and causes grievous bodily harm or death to several persons through its commission or obtains large-scale benefit through its commission or commits the offence as a member of a dangerous grouping, he shall be liable to a term of imprisonment of twelve to twenty years.)

- criminal offence of Extortion according to Article 189 of the Criminal Code ("Any person who forces another person by violence, the threat of violence or the threat of other serious harm to do anything, omit doing or endure anything being done...")

The offender of such offence shall be liable to a term of imprisonment from two to six years.

In line with Article 189 of the Criminal Code para. 2 letter b) of the Criminal Code and Article 139 para. 1 letter a) of the Criminal Code, there is a special regulation protecting children as an object of the criminal offence. In case the offender commits the offence against a protected person (e.g. against children), he shall be liable to term of imprisonment of four to ten years. The offender shall be liable to a term of imprisonment of ten to twenty years if he commits the offence and causes grievous bodily harm or death through its commission or causes substantial damage through its commission. The offender shall be liable to a term of imprisonment of twenty to twenty-five years or to life imprisonment if he commits the offence and causes grievous bodily harm or death to several persons through its commission or causes large-scale damage through its commission or commits the offence as a member of a dangerous grouping.

- criminal offence of Gross Coercion according to Article 190 of the Criminal Code (“Any person who, by violence, the threat of violence or other serious harm, forces another to render consideration of proprietary or other than proprietary nature for himself or for a third party in return for his own services or the services of a third party, which he forces on such person against his will, even if he pretends providing the services concerned...”)

The offender of such offence shall be liable to a term of imprisonment from four to ten years. (The offender shall be liable to a term of imprisonment of seven to twelve years if he commits the offence against protected person (e.g. against child) or causes larger damage through its commission or commits the offence by reason of specific motivation or commits the offence by acting in a more serious manner (e.g. commission of the offence against more than two children). The offender shall be liable to a term of imprisonment of twelve to twenty years if he commits the offence and causes grievous bodily harm or death through its commission or causes substantial damage through its commission. The offender shall be liable to a term of imprisonment of twenty to twenty-five years or to life imprisonment if he commits the offence and causes large-scale damage through its commission or causes death to several persons through its commission or commits the offence as a member of a dangerous grouping.

## **SLOVENIA / SLOVENIE**

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

#### **Question 11.**

Such actions are incriminated in Criminal Code in Art. 171/3<sup>3</sup> of the Criminal Code. Furthermore, possession and distribution of such material is incriminated in Art. 176/3<sup>4</sup> of the Criminal Code.

### **Comments sent by / Commentaires envoyés par Association Against Sexual Abuse**

#### **Question 11.**

Yes, in accordance with Article 173 and Article 176 of the Criminal Code.

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<sup>3</sup> 171/3 Whoever compels a person of the same or opposite sex to perform or submit to any lewd act by threatening him/her with a large loss of property to him/her or to his/her relatives or with the disclosure of any matter concerning him/her or his/her relatives which is capable of damaging his/her or his/her relatives' honour and reputation shall be sentenced to imprisonment for not more than five years.

<sup>4</sup> 176/3 of Criminal Code Whoever produces, distributes, sells, imports or exports pornographic or other sexual material depicting minors or their realistic images, supplies it in any other way, or possesses such material, or discloses the identity of a minor in such material shall be subject to the same sentence as in the preceding paragraph.



## **SPAIN / ESPAGNE**

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

#### **Question 11.**

This behaviour could be addressed in several different ways. For instance:

- In case the coercion and/or extortion's victim is the child depicted in the images, videos or content, it could be coercion in concurrence with sexual abuse, coercion in concurrence with production of child pornography, even sexual aggression or black mail.
- In case the coercion and/or extortion's victim is a person related to the child it could be considered conditional threat.

## **SWEDEN / SUEDE**

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

#### **Question 11.a.**

According to Chapter 6 Section 8 a person who promotes or exploits performance or participation in sexual posing by a child less than fifteen years of age shall be sentenced for exploitation of a child for sexual posing to a fine or imprisonment for at most two years. This also applies to a person who commits such an act against a child who has attained the age of fifteen but not eighteen if the posing is by its nature likely to damage the child's health or development. If the offence is gross, a sentence to imprisonment for at least six months and at most six years shall be imposed for gross exploitation of a child for sexual posing. In assessing whether the crime is gross, special consideration shall be given to whether the crime has concerned a large-scale activity, brought significant financial gain or involved ruthless exploitation of the child.

#### **Question 11.b.**

According to Chapter 6 Section 10 a person who, otherwise than as previously provided in the Chapter, sexually touches a child under fifteen years of age or induces the child to undertake or participate in an act with sexual implications, shall be sentenced for sexual molestation to a fine or imprisonment for at most two years. This also applies to a person who exposes himself or herself to another person in a manner that is likely to cause discomfort or who otherwise by word or deed molests a person in a way that is likely to violate that person's sexual integrity.

### **Comments sent by / Commentaires envoyés par ECPAT Sweden**

#### **Question 11.a. and b.**

In 2018, the Court of Appeal in Stockholm ruled several offences as rape, even though the offender and the children who were his victims were not physically present in the same room. The offender had contacted several children in other countries through social media and had forced them to commit sexual acts on themselves through coercion and extortion. The court's decision sent a clear signal that sexual acts performed under threats of violence issued online can be considered as serious and traumatic as physical attacks.

Thus, offences such as rape and sexual abuse, can be relevant in cases of ICT facilitated coercion and/or extortion.

## **SWITZERLAND / SUISSE**

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

#### **Question 11.**

La « sextorsion », facilitée par l'utilisation des TIC, n'est pas explicitement mentionnée dans la législation nationale. Les articles sur la pornographie (art. 197 CP), sur le chantage/l'extorsion (art. 156 CP), sur la calomnie (art. 174 CP), sur la violation du domaine secret ou du domaine privé au moyen d'un appareil de prise de vues (art. 179<sup>quater</sup> CP) et sur la contrainte (art. 181 CP) s'appliquent.

## **TURKEY / TURQUIE**

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

#### **Question 11.**

Sexual coercion and extortion of children, as defined in this questionnaire, can be committed in different forms because in some cases the offender can ask for more images or videos, in other cases he or she can look for financial gain and finally the perpetrator's main aim can be sexually abusing child. We can also add the possibility that any other non-financial interest of the offender can exist. Therefore, we need to clarify crimes applicable for different types of sexual extortion and coercion of children.

Firstly, in case where the offender aims at getting a financial gain, this act can be accepted as the crime of "extortion" (blackmail) by the article 107 of Turkish Criminal Code. Pursuant to the 2<sup>nd</sup> paragraph of this article, "Where a person threatens to disclose or to make an accusation as to a matter that would damage a person's honour or reputation for the purposes of obtaining a benefit for himself or others, he or she shall be sentenced to a penalty of imprisonment for a term of one to three years and a judicial fine of up to five thousand days."

In the cases where the aim of the offender is getting more images or videos, as the text of the article does not make a distinction between financial or non-financial gains (benefits), this act can also constitute also this crime.

In addition to the crime of blackmailing, offender's act can also be accepted as the crime of "violation of private life". Pursuant to the article 134 of Turkish Criminal Code, violating privacy of another person's personal life is sentenced to a penalty of imprisonment for a term of six months to two years or a judicial fine. Where the violation of privacy occurs as a result of recording images or sound, the penalty of imprisonment to be imposed shall not be less than one year. Any person who discloses the images or sounds of another person's private life shall be sentenced to a penalty of imprisonment from a term of one to three years. Where the offence is committed through the press or broadcasting, the penalty shall be increased by one half.

If the offender's goal is having sexual gain and abusing the victim and if she or he uses this material in this respect, this act can be examined also as the crime of sexual abuse of children. The offender who abuses the child shall be also sentenced to the penalty under article 103 of Turkish Criminal Code, which foresees a penalty of imprisonment up to life imprisonment pursuant to form of committing the crime and the aggravation of the harmful results on child.

Regarding above-mentioned crimes, criminal code does not make any clear reference of ICT. This is a correct choice for any criminal law system because if the text of law makes a reference to a form of communication, it cannot adapt itself to improvements of technology. Bearing in mind that text of laws are not easy to change in a short time, making concrete references gives result to the danger of loopholes, from which criminals will benefit. Therefore, in the event that "extortion-blackmailing" occurs on ICT, this will be under scope of the article as well.

Besides criminal code there is also certain reference to ICT facilitated sexual abuse of children. Pursuant to the Law On Regulation Of Publications On The Internet And Suppression Of Crimes Committed By Means Of Such Publications, where the crimes of sexual abuse of children or obscenity are committed on internet, access on internet to such websites are denied by a judge. decision. Furthermore, according to the article 9/a of the same code, persons whose privacy are violated on internet have the right to make a claim to block the access to a web page. These rights are very accessible and prompt legal remedies for victims of ICT facilitated sexual coercion or extortion. Besides, victims can always address to the police to start investigation against offenders.

Furthermore, we also refer to our answers under question 6, regarding legal remedies for online child abuse.

## **UKRAINE**

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

#### **Question 11.**

National legislation envisages criminal liability for the deprivation of minors (Article 156 of the CCU).

1. Depraved actions committed against a person under the age of sixteen - are punishable by restraint of liberty for a term up to five years or imprisonment for the same term.
2. The same actions committed against a minor by a father, mother, stepfather, stepmother, guardian or caregiver, the person entrusted with responsibilities for upbringing of the victim or care about him or her - shall be punished by imprisonment for a term from five to eight years, with the deprivation of the right to occupy certain positions or engage in certain activities for a term up to three years or without such.

Article 156 of the Criminal Code of Ukraine reflects the legislative resolution of the problem of sexual deviation - pedophilia, which reflects itself in the pursuit of sexual activity with children.

2. The object of the crime is sexual intactness and normal physical, mental and social development of minors.
3. The victim is a person of the male or female who has not reached the age of 16 years. To qualify acts under Art. 156 of the Criminal Code there is no difference whether the victim has reached puberty, who was the initiator of committing indecent acts as well as characteristics of the victim (previous sexual conduct, the presence of sexual experience, etc.).
4. On the objective side, the crime is expressed in committing perjury acts of a sexual nature, which can cause physical and moral deprivation of minors. Disruptive actions can be both physical and intellectual.

Physical abuse - is, in particular, exposure of sexual organs of the perpetrator or the victim, obscene touching that cause sexual arousal, teaching masturbation, committing in the presence of the victim sex, the act of masturbation, satisfaction of sexual passion unnatural way, inclining or coercion of victims to commit certain sexual acts among themselves or against guilty, etc.

Art. 156 of the Criminal Code also covers, sexual offender unnatural manner (eg, oral or anal sex), provided that to a person under 16 years of age, shall not apply physical or mental violence or used the helpless condition of the victim.

Natural sexual intercourse with a person who has not reached the age of 16 years and has not reached sexual maturity, with its consent, qualify for art. 155 CCU.

Committing depraved acts of physical nature for a person who has attained the age of 16, can be seen as hooliganism, celebrated exceptional cynicism (Art. 296 of the Criminal Code), only in cases where these actions combined with gross violation of public order caused by the desire to demonstrate a clear disrespect to society.

Depravation of minors, combined with beatings and torture, bodily injury, death threats, infection with human immunodeficiency virus or other incurable infectious disease should be qualified for multiple offenses under Art. 156 and the relevant article on a crime against a person's health.

Intelligent depravation can be as example cynical conversations with victims on sexual topics, explicit narratives and naturalistic sexual stories, photographing victims in various sexual situations, and displaying pornographic subjects. Creating in the process of perpetration works, images or other objects of a pornographic nature, as well as coercion to participate in their creation, require additional qualification in accordance with the relevant part of Art. 301.

Punitive actions with a victim who has not reached the age of 16, committed directly before her rape, violent pleasure of sexual desire in an unnatural way or sexual intercourse with a person who has not reached puberty, is fully covered by the relevant parts of Art. Art. 152, 153, 155 of the Criminal Code of Ukraine, since in such cases the depravation of juveniles, taking into account the direction of the will of the perpetrator, is considered only as a stage in committing other sexual crimes. The existence of a significant break in time between dissolute acts and the committing to the same victim another sexual offense, which excludes the extension of one offense to another, means that the offense must be qualified in the totality of the offenses in question.

If guilty, intending to rape a minor, committed apostasy to her, and did not commit a rape on reasons that are not dependent on his will, the committed must be qualified not according to Art. 156, and under Art. 15 and part 3 or 4 of Art.152 CCU. In the case when the deprivation of a juvenile was preceded by rape, from the completion of which the person voluntarily refused, its actions, if there are grounds, should be qualified according to Art. 156 CCU.

Depravation of minors is an accomplished crime since the day of committing impunity. The consent of the victim to commit such actions does not affect on qualification under art. 156 CCU.

5. The subject of a crime is a person of a male or female who has reached the age of 16 years. The guilty and victim may be individuals of the same or different gender.

6. The subjective aspect of the crime is characterized by direct intent. At the same time, the attitude of the offender regarding the age of the victim can be both intentional and careless. In the case of a conscientious mistake of the person concerning the age of the victim, responsibility for Art. 156 CCU is excluded. Depraved actions stipulated in Art. 156 CCU, aimed at satisfying by guilty sexual desire, on the excitation of a juvenile person's sexual instinct or his satisfaction. The motives of this crime do not affect its qualification. The perpetrator can be guided not only by sexual but also by other motives (revenge or involvement in prostitution, etc.).

7. The qualifying signs of a crime are the committing of depravity: 1) regarding a young person; 2) by father, mother or person who replaces them.