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## **LANZAROTE CONVENTION**

## **CONVENTION DE LANZAROTE**

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

Convention du Conseil de l'Europe sur la protection des enfants contre l'exploitation et les abus sexuels

**Compilation of Replies to Question 11  
of the Thematic Questionnaire  
(including Replies to Question 17 of the  
General Overview Questionnaire to which it refers)**

**Compilation des réponses à la Question 11  
du Questionnaire Thématique  
(y compris les réponses à la Question 17 du Questionnaire  
« Aperçu général » à laquelle elles se réfèrent)**

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)

## Introduction

The Committee approved its indicative calendar for the 1<sup>st</sup> monitoring round at its 7<sup>th</sup> meeting (9 December 2013) (see §13 of the 7<sup>th</sup> meeting report as well as its Appendix III)<sup>1</sup>. During this meeting, the Committee also decided that the Secretariat should compile the replies to the questionnaires following the indicative calendar. During its 8<sup>th</sup> meeting (8-10 April 2014), the Committee decided to modify its indicative calendar (see §61 of the 8<sup>th</sup> meeting report<sup>2</sup>). As a consequence, replies to questions 10, 11 and 12 of the Thematic Questionnaire should be compiled in view of the 9<sup>th</sup> meeting of the Committee (9-11 September 2014).

This document is therefore aimed at responding to this request by compiling replies to question 11 of the thematic questionnaire (and includes replies to question 17 of the General Overview Questionnaire to which it refers).

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Le Comité a approuvé son calendrier indicatif pour le 1<sup>er</sup> cycle de suivi lors de sa 7<sup>e</sup> réunion (9 décembre 2013) (voir §13 du rapport de la 7<sup>e</sup> réunion ainsi que son annexe III<sup>3</sup>). Lors de cette réunion, le Comité a également décidé que le Secrétariat devrait compiler les réponses aux questionnaires selon le calendrier indicatif. Lors de sa 8<sup>e</sup> réunion (8-10 avril 2014), le Comité a décidé de modifier son calendrier indicatif (voir §61 du rapport de la 8<sup>e</sup> réunion<sup>4</sup>). Par conséquent, les réponses aux questions 10, 11 et 12 du questionnaire thématique doivent être compilées en vue de la 9<sup>e</sup> réunion du Comité (9-11 septembre 2014).

Le présent document vise donc à répondre à cette demande en compilant les réponses reçues à la question 11 du questionnaire thématique (et comprend les réponses à la question 17 du Questionnaire « Aperçu général » à laquelle elles se réfèrent).

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<sup>1</sup> The 7<sup>th</sup> meeting report is online at:

[http://www.coe.int/t/dghl/standardsetting/children/T-ES\(2013\)12Report7thMeeting\\_en.pdf](http://www.coe.int/t/dghl/standardsetting/children/T-ES(2013)12Report7thMeeting_en.pdf).

<sup>2</sup> Le rapport de la 8<sup>e</sup> réunion est en ligne ici :

[http://www.coe.int/t/dghl/standardsetting/children/documents8thmeeting\\_EN.asp?](http://www.coe.int/t/dghl/standardsetting/children/documents8thmeeting_EN.asp?)

<sup>3</sup> Le rapport de la 7<sup>e</sup> réunion est en ligne ici :

[http://www.coe.int/t/dghl/standardsetting/children/T-ES\(2013\)12Report7thMeeting\\_fr.pdf](http://www.coe.int/t/dghl/standardsetting/children/T-ES(2013)12Report7thMeeting_fr.pdf)

<sup>4</sup> Le rapport de la 8<sup>e</sup> réunion est en ligne ici :

[http://www.coe.int/t/dghl/standardsetting/children/Documents8thmeeting\\_fr.asp](http://www.coe.int/t/dghl/standardsetting/children/Documents8thmeeting_fr.asp)

### **Question 11 of the TQ: Corporate liability**

The reply to question 17 of the GOQ will be examined by the Committee to assess the implementation of Article 26 of the Convention with respect to the theme of the monitoring round. If, in addition, any other measures are foreseen, please specify.

### **Question 17 of the GOQ: Corporate liability**

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

### **Question 11 du QT : Responsabilité des personnes morales**

La réponse à la question 17 du QAG sera examinée par le Comité pour évaluer la mise en œuvre de l'article 26 par rapport au thème du cycle de suivi. Si, en outre, d'autres mesures sont envisagées, veuillez spécifier.

### **Question 17 du QAG : Responsabilité des personnes morales**

Est-ce que votre système juridique prévoit qu'une personne morale puisse être tenue pour responsable pour une infraction conformément à l'article 26 ? Veuillez en préciser les conditions.

## Relevant extracts from the Lanzarote Convention and its Explanatory report

### Lanzarote Convention, Article 26 – Corporate liability

1 Each Party shall take the necessary legislative or other measures to ensure that a legal person can be held liable for an offence established in accordance with this Convention, committed for its benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- a power of representation of the legal person;
- b an authority to take decisions on behalf of the legal person;
- c an authority to exercise control within the legal person.

2 Apart from the cases already provided for in paragraph 1, each Party shall take the necessary legislative or other measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of an offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.

3 Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.

4 Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.

### Explanatory report

177. Article 26 is consistent with the current legal trend towards recognising corporate liability. The intention is to make commercial companies, associations and similar legal entities (“legal persons”) liable for criminal actions performed on their behalf by anyone in a leading position in them. Article 26 also contemplates liability where someone in a leading position fails to supervise or check on an employee or agent of the entity, thus enabling them to commit any of the offences established in the Convention.

178. Under paragraph 1, four conditions need to be met for liability to attach. First, one of the offences described in the Convention must have been committed. Second, the offence must have been committed for the entity’s benefit. Third, a person in a leading position must have committed the offence (including aiding and abetting). The term “person who has a leading position” refers to someone who is organisationally senior, such as a director. Fourth, the person in a leading position must have acted on the basis of one of his or her powers (whether to represent the entity or take decisions or perform supervision), demonstrating that that person acted under his or her authority to incur liability of the entity. In short, paragraph 1 requires Parties to be able to impose liability on legal entities solely for offences committed by such persons in leading positions.

179. In addition, paragraph 2 requires Parties to be able to impose liability on a legal entity (“legal person”) where the crime is committed not by the leading person described in paragraph 1 but by another person acting on the entity’s authority, i.e. one of its employees or agents acting within their powers. The conditions that must be fulfilled before liability can attach are: 1) the offence was committed by an employee or agent of the legal entity; 2) the offence was committed for the entity’s benefit; and 3) commission of the offence was made possible by the leading person’s failure to supervise the employee or agent. In this context failure to supervise should be interpreted to include not taking appropriate and reasonable steps to prevent employees or agents from engaging in criminal activities on the entity’s behalf. Such appropriate and reasonable steps could be determined by various factors, such as the type of business, its size, and the rules and good practices in force.

180. Liability under this article may be criminal, civil or administrative. It is open to each Party to provide, according to its legal principles, for any or all of these forms of liability as long as the requirements of Article

27 paragraph 2 are met, namely that the sanction or measure be “effective, proportionate and dissuasive” and include monetary sanctions.

181. Paragraph 4 makes it clear that corporate liability does not exclude individual liability. In a particular case there may be liability at several levels simultaneously – for example, liability of one of the legal entity’s organs, liability of the legal entity as a whole and individual liability in connection with one or other.

## Extraits pertinents de la Convention de Lanzarote et de son rapport explicatif

### Convention de Lanzarote, Article 26 – Responsabilité des personnes morales

1 Chaque Partie prend les mesures législatives ou autres nécessaires pour que les personnes morales puissent être tenues pour responsables des infractions établies conformément à la présente Convention, lorsqu'elles sont commises pour leur compte par toute personne physique, agissant soit individuellement, soit en tant que membre d'un organe de la personne morale, qui exerce un pouvoir de direction en son sein, sur les bases suivantes:

- a un pouvoir de représentation de la personne morale;
- b une autorité pour prendre des décisions au nom de la personne morale;
- c une autorité pour exercer un contrôle au sein de la personne morale.

2 Outre les cas déjà prévus au paragraphe 1, chaque Partie prend les mesures législatives ou autres nécessaires pour s'assurer qu'une personne morale puisse être tenue pour responsable lorsque l'absence de surveillance ou de contrôle de la part d'une personne physique mentionnée au paragraphe 1 a rendu possible la commission d'une infraction établie conformément à la présente Convention pour le compte de ladite personne morale par une personne physique agissant sous son autorité.

3 Selon les principes juridiques de la Partie, la responsabilité d'une personne morale peut être pénale, civile ou administrative.

4 Cette responsabilité est établie sans préjudice de la responsabilité pénale des personnes physiques ayant commis l'infraction.

### Rapport explicatif

177. L'article 26 est conforme à la tendance juridique actuelle à reconnaître la responsabilité des personnes morales. Il vise à imposer une responsabilité aux sociétés commerciales, associations et personnes morales similaires pour les actions criminelles commises pour leur compte par une personne exerçant un pouvoir de direction au sein de la personne morale. L'article 26 prévoit aussi une responsabilité lorsqu'une personne exerçant un pouvoir de direction omet de superviser ou de contrôler un employé ou un agent de la personne morale, dans les cas où une telle omission facilite la perpétration, par cet employé ou agent, de l'une des infractions définies dans la Convention.

178. Le paragraphe 1 énumère quatre conditions pour que la responsabilité soit engagée. Premièrement, l'une des infractions définies dans la Convention doit avoir été commise. Deuxièmement, l'infraction doit avoir été commise pour le compte de la personne morale. Troisièmement, c'est une personne exerçant un pouvoir de direction qui doit l'avoir commise (y compris en tant que complice). L'expression "personne exerçant un pouvoir de direction" désigne une personne physique occupant un rang élevé dans l'organisation, comme le directeur. Quatrièmement, la personne exerçant un pouvoir de direction doit avoir agi sur la base de l'une de ses compétences – un pouvoir de représentation ou le pouvoir de prendre des décisions ou d'exercer un contrôle –, ce qui démontre que ladite personne physique a agi dans le cadre de son pouvoir d'engager la responsabilité de la personne morale. En résumé, le paragraphe 1 oblige les Parties à avoir la capacité d'imposer une responsabilité à la personne morale uniquement au titre des seules infractions commises par des personnes exerçant un pouvoir de direction.

179. En outre, le paragraphe 2 oblige les Parties à avoir la capacité d'imposer une responsabilité à une personne morale lorsque l'infraction est commise non par la personne exerçant un pouvoir de direction visée au paragraphe 1, mais une autre personne agissant sous l'autorité de la personne morale, c'est-à-dire l'un de ses employés ou agents agissant dans le cadre de leur pouvoir. Les conditions à remplir pour que la responsabilité soit engagée sont les suivantes : 1) une infraction a été commise par un employé ou agent de

la personne morale, 2) l'infraction a été commise pour le compte de la personne morale, et 3) la commission de l'infraction a été rendue possible par le fait que la personne exerçant un pouvoir de direction n'a pas supervisé l'employé ou l'agent en question. A cet égard, le défaut de supervision devrait être interprété comme incluant le fait de ne pas avoir pris des mesures appropriées et raisonnables pour empêcher les employés ou les agents de se livrer à des activités illégales pour le compte de la personne morale. La forme de ces mesures appropriées et raisonnables pourrait dépendre de plusieurs facteurs, tels que la nature de l'entreprise, sa taille, les normes applicables ou les bonnes pratiques en vigueur, etc.

180. La responsabilité visée par cet article peut être pénale, civile ou administrative. Il est loisible à chaque Partie de décider de prévoir l'une quelconque ou l'ensemble de ces formes de responsabilité, conformément à ses principes juridiques, dès l'instant que la forme de responsabilité retenue satisfait aux critères énoncés au paragraphe 2 de l'article 27, selon lesquels les sanctions ou mesures doivent être "effectives, proportionnées et dissuasives" et incluent les sanctions pécuniaires.

181. Le paragraphe 4 précise que la responsabilité des personnes morales n'exclut pas la responsabilité des personnes physiques. Dans un cas concret, la responsabilité peut être établie en même temps à plusieurs niveaux, par exemple la responsabilité d'un organe, à distinguer de la responsabilité de la personne morale dans son ensemble et de la responsabilité individuelle qui peut se combiner avec l'une ou l'autre.

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

### **I – States to be assessed in the 1st monitoring round / Etats devant faire l’objet du 1er cycle de suivi**

#### **ALBANIA / ALBANIE**

##### **Question 11 of the TQ / du QT**

Did not reply to this question / N’a pas répondu à cette question

##### **Question 17 of the GOQ / du QAG**

Our legal system provides maintaining of criminal liability from a legal person, for acts committed in the name of their bodies and their representatives. According to Law no.7895, dated 27.1. 1995 “Criminal Code of the Republic of Albania”, as amended, namely:

Article 45 “The Application of the criminal law on legal persons/entities”

The legal persons, with the exception of the state, are criminally responsible for criminal acts performed by their bodies or representatives on their behalf or for their benefit.

The local government entities are criminally responsible only for the actions performed during the exercise of their activity that may be exercised by the delegating public services.

The criminal responsibility of the legal persons does not exclude that of the physical persons that have committed criminal acts or are collaborators for the committal of the same criminal acts.

The criminal acts and the sanctioning measures taken against the legal entities, as well as the procedures for the approval and application of these measures are regulated by a special law.

#### **AUSTRIA/AUTRICHE**

##### **Question 11 of the TQ / du QT**

See question 17 of GOQ.

In view of the general criminal liability for legal persons for all criminal offences (including those committed in the circle of trust) no further measures are foreseen or considered necessary.

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<sup>5</sup> The replies are reproduced here in the language they were received / Les réponses sont reproduites ici dans la langue où elles ont été reçues.



### **Question 17 of the GOQ / du QAG**

The Austrian Federal Statute on the Responsibility of Entities for Criminal Offences (*Verbandsverantwortlichkeitsgesetz – VbVG*) provides for a general criminal liability for legal persons and other bodies like partnerships for all criminal offences (including those covered by the convention), intentional and negligent, in addition to and independent of the liability of natural persons involved.

The criminal liability of a legal person requires that a criminal act has been committed for the benefit of the legal person or in violation of obligations of the legal person. The liability according to Article 26 para 1 is explicitly provided in Section 3 para 2 VbVG for an offence committed by a person with a leading position in a legal person (a so-called “decision-maker”). The liability according to Article 26 para 2 is established in Section 3 para 3 VbVG for an offence by a person under the authority of a legal person based on the lack of supervision or control of a person in a leading position.

## **BELGIUM / BELGIQUE**

### **Question 11 of the TQ / du QT**

Il n’y pas d’autres mesures qui sont prises que celles déjà mentionnées dans la réponse à la question 17 du QAG.

### **Question 17 of the GOQ / du QAG**

Oui, les personnes morales peuvent être tenues pénalement responsables pour ces infractions. Voir l’article 5 du Code pénal :

*« Art. 5. Toute personne morale est pénalement responsable des infractions qui sont intrinsèquement liées à la réalisation de son objet ou à la défense de ses intérêts, ou de celles dont les faits concrets démontrent qu’elles ont été commises pour son compte.*

*Lorsque la responsabilité de la personne morale est engagée exclusivement en raison de l’intervention d’une personne physique identifiée, seule la personne qui a commis la faute la plus grave peut être condamnée. Si la personne physique identifiée a commis la faute sciemment et volontairement, elle peut être condamnée en même temps que la personne morale responsable.*

*Sont assimilées à des personnes morales :*

*1° les associations momentanées et les associations en participation;*

*2° les sociétés visées à l’article 2, alinéa 3, des lois coordonnées sur les sociétés commerciales, ainsi que les sociétés commerciales en formation;*

*3° les sociétés civiles qui n’ont pas pris la forme d’une société commerciale.*

*Ne peuvent pas être considérées comme des personnes morales responsables pénalement pour l’application du présent article : l’Etat fédéral, les régions, les communautés, les provinces, les zones de secours, les prézones l’agglomération bruxelloise, les communes, les zones pluricommunales, les organes territoriaux intra-communales, la Commission communautaire française, la Commission communautaire flamande, la Commission communautaire commune et les centres publics d’aide sociale. »*

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

### **Question 11 of the TQ / du QT**

Did not reply to this question / N'a pas répondu à cette question

### **Question 17 of the GOQ / du QAG**

Chapter XIV of the Criminal Code of BIH regulates corporate liability for criminal offence.

## **BULGARIA / BULGARIE**

Did not reply yet. / N'a pas encore répondu.

## **CROATIA / CROATIE**

### **Question 11 of the TQ / du QT**

See the answer to question 17 of the General Overview Questionnaire.

### **Question 17 of the GOQ / du QAG**

Within the criminal law system of the Republic of Croatia, definitions of the legal person and the responsible person are contained in the CA and the Act on Corporate Liability for Criminal Offences<sup>6</sup> (hereinafter referred to as: the ACLCO). The latter act also regulates the matter of corporate liability for criminal offences. Within the meaning of the said Act, the responsible person is any natural person in charge of the operations of the legal person or entrusted with carrying out the tasks falling within the legal person's sphere of activity.<sup>7</sup> Corporate liability is based on the responsible person's established guilt. It exists where the responsible person has violated the legal person's duty or where the legal person acquired or was to obtain unlawful pecuniary benefit for itself or another person. Pursuant to the provisions of ACLCO and in relation to the provisions of the Convention, the Republic of Croatia has fulfilled the conditions for the punishment of legal persons where the latter committed a criminal offence established in the Convention.

## **DENMARK / DANEMARK**

### **Question 11 of the TQ / du QT**

See answer to question 17 of the GOQ.

### **Question 17 of the GOQ / du QAG**

According to section 306 of the Criminal Code, "Companies and other incorporated bodies (legal persons) may incur criminal liability under the rules of Part 5 for violation of this Code" (unofficial translation). According to section 27(1) of the Criminal Code (which appears in Part 5 of the Code), "It is a condition precedent to the criminal liability of a legal person that an offence has been committed in the course of its activities and that the offence was caused by one or more natural persons connected to the legal person or by the legal person as such." (unofficial translation).

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<sup>6</sup> Official Gazette 151/03, 110/03, 110/07, 45/11 and 143/12.

<sup>7</sup> Article 4 of the ACLCO.

## **FINLAND / FINLANDE**

### **Question 11 of the TQ / du QT**

See general questionnaire, question 17.

### **Question 17 of the GOQ / du QAG**

The basic principles for liability of legal persons are laid down in Chapter 9 of the Criminal Code. As it is stated in Section 1 the liability of legal persons can be applied only to offences for which corporate fine has been provided. At the end of each Chapter of the Criminal Code there is a provision on corporate criminal liability. These provisions define which of the offences in that Chapter may give rise to a corporate fine. The liability of legal persons has been attached to those offences established in accordance with the Convention where it has been considered that it is possible that the crime has been committed in the framework of a legal person (See Criminal Code Chapter 17, Section 24; Chapter 20, Section 13; Chapter 25, Section 10).

A corporation may be sentenced to a corporate fine if a person who is part of its statutory organ or other management or who exercises actual decision-making authority therein has been an accomplice in an offence or allowed the commission of the offence or if the care and diligence necessary for the prevention of the offence have not been observed in the operations of the corporation. A corporate fine may be imposed even if the offender cannot be identified or otherwise is not punished (Chapter 9, Section 2).

In cases where criminal liability is not possible it is still possible to order a legal person to pay damages for the harm.

## **FRANCE**

Did not reply yet. / N'a pas encore répondu.

## **GREECE / GRÈCE**

Did not reply yet. / N'a pas encore répondu.

## **ICELAND / ISLANDE**

### **Question 11 of the TQ / du QT**

Reference is made to the reply to question 17 of the GOQ.

### **Question 17 of the GOQ / du QAG**

The general provisions of Article 19 a – d in the General Penal Code apply. This entails that provisions of Law on the criminal liability of legal persons shall, subject to any limitations provided for therein, apply to any entity who while not being a natural person is capable of enjoying rights and bearing duties under Icelandic Law, including public limited liability Companies, private limited liability Companies, Companies with mixed liability of owners, European Interest Groupings, partnership Companies, co-operative societies, public associations, independent foundations, administrative authorities, institutes and Municipalities. A legal person can only be made criminally liable if its spokesman,

employee or other person acting on its behalf has committed a criminal and unlawful act in the course of its business. Administrative authorities can only be made criminally liable if a criminal and an unlawful act have been committed in the course of an operation deemed comparable to the operations of private entities.

## ITALY / ITALIE

### Question 11 of the TQ / du QT

Did not reply to this question / N'a pas répondu à cette question

### Question 17 of the GOQ / du QAG

The Italian law provides for the punishment of legal persons in relation to offenses of sexual exploitation of minors (Law 38/2006).

Moreover, Art. 25 quinquies of Legislative Decree (D.lgs.) 8 June 2001, n. 231 on liability ex crimine of legal persons stipulates that a legal person may be held liable for offences about child prostitution and child pornography.

<p>CETS 201 – Protection of Children against Sexual Exploitation and Sexual Abuse Lanzarote, 25.X.2007</p>	<p><b>Internal law</b></p>
<p><i>Article 26 – Corporate liability</i></p> <p>1. Each Party shall take the necessary legislative or other measures to ensure that a legal person can be held liable for an offence established in accordance with this Convention, committed for its benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:</p> <p>a) power of representation of the legal person;</p> <p>b) an authority to take decisions on behalf of the legal person;</p> <p>c) an authority to exercise control within the legal person.</p> <p>2. Apart from the cases already provided for in paragraph 1, each Party shall take the necessary legislative or other measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of an offence established in accordance with this</p>	<p><b>Legislative Decree 231/2001, Article 25 quinquies (Offences against individual personality)</b></p> <p><b>1. In relation to the commission of the offences set out in Section I, Chapter III, Title XII, Book II of the Criminal Code the following pecuniary sanctions shall be imposed on corporate entities:</b></p> <p><b>a) a pecuniary sanction from four hundred to a thousand quotas for the offences as per Articles 600, 601 and 602;</b></p> <p><b>b) a pecuniary sanction from three hundred to eight hundred quotas for the offences as per Articles 600-bis, paragraph one, 600-ter, paragraphs one and two and 600-quinquies;</b></p> <p><b>c) a pecuniary sanction from two hundred to seven hundred quotas for the offences as per Articles 600-bis, paragraph two, 600-ter, paragraphs three and four and 600-quater.</b></p> <p><b>2. In case of conviction for one of the offences set out in paragraph 1, letters a) and b), the disqualification sanctions under Article 9, paragraph 2 shall apply for at least</b></p>

<p>Convention for the benefit of that legal person by a natural person acting under its authority.</p> <p>3. Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.</p> <p>4. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.</p>	<p><b>one year.</b></p> <p><b>3. If a corporate entity or one of its organisational units is constantly used to the sole or main purpose of allowing for, or facilitating, the commission of the offences laid down in paragraph 1, the definitive disqualification from carrying on the relevant business activity shall apply in compliance with Article 16, paragraph 3.</b></p>
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## LITHUANIA / LITUANIE

### Question 11 of the TQ / du QT

The national legal framework provides that a legal entity may be held liable for an act of sexual abuse of children. Liability of a legal entity is stipulated regarding the following acts of sexual abuse as defined in the CC:

**“Article 149. Rape**

*6. A legal entity shall also be held liable for an act provided for in paragraphs 3 and 4 of this Article.”*

Article 149(3) of the CC provides for liability for raping a minor, and paragraph 4 of the same article provides for liability for raping a young child.

**“Article 150. Sexual assault**

*6. A legal entity shall also be held liable for an act provided for in paragraphs 3 and 4 of this Article.”*

Article 150(3) of the CC provides for liability for sexual assault with respect to a minor, and paragraph 4 of the same article provides for sexual assault with respect to a young child.

**“Article 151. Sexual abuse**

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

Article 151(2) of the CC provides for liability for compelling a minor to have sexual intercourse.

**“Article 151<sup>1</sup>. Satisfaction of sexual desires by violating a minor’s freedom of sexual self-determination and/or inviolability**

*4. A legal entity shall also be held liable for the acts provided for in this Article.”*

A legal entity shall also be held liable in cases where a child is used for the production of pornographic material or is involved in pornographic events:

**“Article 162. Use of a child for pornography**

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

### Question 17 of the GOQ / du QAG

Provisions in Article 20 of the Criminal Code (CC) stipulate for the criminal liability of legal persons. Par. 1 of Article 20 of the Criminal Code provides that a legal entity shall be held liable solely for the committed criminal acts as provided for in the Special Part of this Code. Criminal liability of a legal entity is defined for the rape of a juvenile or a minor (Par. 6 of Article 149 of the CC), sexual abuse (par. 6 of Article 150 of the CC), coercion of a minor to

sexual intercourse (Par. 4 of Article 151 of the CC), satisfying sexual desires by violating the freedom of sexual self-determination and/or inviolability of the minor (Article 151), purchase or sale of a child (par. 3 of Article 157 of the CC), exploitation of a child for pornography (Article 162 of the CC), profiting from prostitution of another person (par. 4 of Article 307 of the CC), the involvement in prostitution (par. 3 of Article 308 of the CC), disposal of pornographic material (par. 5 of Article 309 of the CC). It is suggested to impose criminal liability on legal entities also for criminal acts proposed for criminalization in the Draft Criminal Code, as well as for corruptive actions (Article 153 of the CC)).

A legal entity shall be held liable for criminal acts committed by a natural person only in the cases, when the natural person committed the criminal act for the benefit or in the interests of the legal entity, acting individually or on behalf of the legal entity, given the natural person in performing his duties in the legal entity was entitled to: 1) represent the legal entity, or 2) take decisions on behalf of the legal entity, or 3) control the activities of the legal entity (par. 2 of Article 20 of the CC). A legal entity may also be held liable for criminal acts in such cases, when criminal acts for the benefit of the legal entity were committed by an employee of the legal entity or an authorised representative thereof as a result of insufficient supervision or control by the person referred to in par. 2 of this Article (par. 3 of Article 20 of the CC).

## **LUXEMBOURG**

### **Question 11 of the TQ / du QT**

Responsabilité pénale :

L'article 34 du Code pénal introduit par la loi du 3 mars 2010 dispose que :

« Lorsqu'un crime ou un délit est commis au nom et dans l'intérêt d'une personne morale par un de ses organes légaux ou par un ou plusieurs de ses dirigeants de droit ou de fait, la personne morale peut être déclarée pénalement responsable et encourir les peines prévues par les articles 35 à 38.

La responsabilité pénale des personnes morales n'exclut pas celle des personnes physiques auteurs ou complices des mêmes infractions.

Les alinéas précédents ne sont pas applicables à l'Etat et aux communes ».

Conformément aux dispositions de l'article 35 du Code pénal, « Les peines criminelles ou correctionnelles encourues par les personnes morales sont: 1) l'amende, dans les conditions et suivant les modalités prévues par l'article 36; 10 Mars 2014 ; 2) la confiscation spéciale; 3) l'exclusion de la participation à des marchés publics; 4) la dissolution, dans les conditions et suivant les modalités prévues par l'article 38. »

Responsabilité civile :

Les règles de droit commun relatives à la responsabilité civile sont applicables (cf. notamment les articles 1382 et suivants du Code civil).

Enfin, des sanctions administratives peuvent être prononcées à l'égard de la personne morale.

### **Question 17 of the GOQ / du QAG**

La responsabilité pénale des personnes morales a été introduite en droit luxembourgeois par la loi du 3 mars 2010.

L'article 34 du Code pénal introduit par cette loi du 3 mars 2010 dispose ce qui suit :

« Lorsqu'un crime ou un délit est commis au nom et dans l'intérêt d'une personne morale par un de ses organes légaux ou par un ou plusieurs de ses dirigeants de droit ou de fait, la personne morale peut être déclarée pénalement responsable et encourir les peines prévues par les articles 35 à 38.

La responsabilité pénale des personnes morales n'exclut pas celle des personnes physiques auteurs ou complices des mêmes infractions.

Les alinéas précédents ne sont pas applicables à l'Etat et aux communes ».

### **MALTA/MALTE**

#### **Question 11 of the TQ / du QT**

Within the context of the [BeSmartOnline!](#) Project, inter-organisational dialogue and collaboration is fostered through an Advisory Board, whereby various stakeholders in the field of internet use meet regularly to discuss how internet safety for children can be enhanced. The views of children themselves, consolidated through another structure within the project, the Youth Panel, are considered and discussed by the Advisory Board.

### **Question 17 of the GOQ / du QAG**

Did not reply to this question / N'a pas répondu à cette question

### **REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA**

#### **Question 11 of the TQ / du QT**

The assumption rape (art. 171 CC), violent actions of sexual nature (art. 172 CC), and two scales are fixed: under 14 years and between 14 and 18 years, constituting aggravating Art. 171 CC and art. 172 CC.

- Art. 171 line 2 letter b) Rape, i.e. sexual intercourse committed by the physical or mental coercion of the person, or by taking advantage of the victim's incapacity to defend himself/herself or to express himself/herself.

- Art. 172 line 2 letter b) Homosexuality or satisfying sexual needs in perverted forms committed through the physical or mental coercion of the person or by taking advantage of the person's incapacity to defend himself/herself or to express himself/herself.

- Art. 172 line 3 letter a) Homosexuality or satisfying sexual needs in perverted forms committed through the physical or mental coercion of the person or by taking advantage of the person's incapacity to defend himself/herself, committed to a juvenile under the age of 14;

- abuse of a recognized position of trust, authority or influence over the child, including the family;

- Art. 171 line e letter b2) rape committed against a family member:

- Art. 171 line 3 letter a) rape of a person under the care, custody, protection, education, or treatment of the perpetrator;

- Art. 172 line 2 letter b2) Homosexuality or satisfying sexual needs in perverted forms committed through the physical or mental coercion of the person or by taking advantage

of the person's incapacity to defend himself/herself or to express his/her, committed against a family member;

- Art. 172 line 3 letter a) Homosexuality or satisfying sexual needs in perverted forms committed through the physical or mental coercion of the person or by taking advantage of the person's incapacity to defend himself/herself or to express his/her, of a person under the care, custody, protection, education, or treatment of the perpetrator;

### **Question 17 of the GOQ / du QAG**

In the Code No 985 of 18.04.2002 Criminal Code of Republic of Moldova, art. 206, the actions provided in paragraph (1) or (2) committed by a public person, an official, by an official foreign or international official, shall be punished with imprisonment from 15 to 20 years, with the deprivation of the right to occupy certain positions or to practice certain activities for a term of 3-5 years or life imprisonment and the legal entity shall be punished by a fine in size from 7000 to 9000 of conventional units with the deprivation of the right to carry out certain activities, or liquidation of the legal entity.

## **MONTENEGRO**

### **Question 11 of the TQ / du QT**

Liability of legal entities for criminal offences is regulated by the Law on Liability of Legal Entities for Criminal Offences. This Law sets several conditions which must be cumulatively met in order for the liability of legal entities to exist: 1. it is necessary that the criminal offence was committed by a natural person; 2. That person must have the position of the person responsible in the legal entity; 3. The person responsible acted on behalf of the legal entity; 4. The person responsible acted within his / her powers; and 5. The liability of legal entities exists only where there was certain intention of the person responsible, i.e. intention to provide some benefit for the legal entity. In addition to the above requirements, the liability of the legal entity also exists when the actions of the person responsible was contrary to the business policy or instructions of the legal entity. Liability of a legal entity does not exclude criminal liability of the person responsible for the committed criminal offence.

The Law on the Liability of Legal Entities for Criminal Offences provides for three types of sanctions against legal entities: 1) penalty; 2) a suspended sentence; and 3) security measures. The penalty can be a fine and termination of the legal entity status.

Answer:

According to the Law on the Protection from Domestic Violence, especially considered as constituting a violation of physical, psychological, sexual or economic integrity, mental health and peace of other family member shall be any of the following acts whereby a family member:

- 1) uses physical force, irrespective of whether it inflicts a bodily injury on other family member;
- 2) threatens to use force or induces danger that may provoke a feeling of personal insecurity or cause physical pain in other family member;
- 3) assaults verbally, swears, calls names or otherwise insults other family member;
- 4) denies other family member freedom of communication with third persons;



- 5) exhausts through labour, deprives of sleep or other rest, threatens to expel from residence or take away children;
- 6) sexually abuses other family member;
- 7) stalks and otherwise severely abuses other family member;
- 8) damages or destroys joint property or property of other family member or attempts to do so;
- 9) denies means of subsistence to other family member;
- 10) behaves rudely and so disturbs family peace of a family member that he does not share family community with.

According to Article 36, a fine amounting to minimum 150.00 euro or a prison term of minimum ten days shall be imposed on abuser if he does any of the above offences.

Also considered as constituting violation of physical, psychological, sexual or economic integrity, mental health and peace of other family member shall be insufficient care by a family member to provide any of the following:

- 1) food, personal hygiene, clothing, medical care or to ensure regular school attendance or his failure to prevent the child from being in harmful company, as well as from vagrancy, beggary or theft or otherwise severely neglect his duties concerning child development and education;
- 2) food, personal hygiene, clothing or medical care to other family member who he has a duty to take care of, where this family member needs special care for reason of his illness, disability, old age or other personal characteristics, which prevent him from taking care of himself.

Considered as constituting major form of domestic violence shall be failure to report (hiding) family member with special needs. According to Article 37, a fine amounting to minimum 250.00 euro or a prison term of minimum ten days shall be imposed on abuser if he does any of the above offences.

#### **Article 9 – Duty to report violence**

A state administration agency, other agency, a health, education or other institution have the duty to report to police the incidence of violence that they learn of in the discharge of affairs within their authority or in conduct of their activities. Under the duty to report violence to the police is the head of the agency or institution from paragraph 1 of this article, as well as a health and social care worker, teacher, pre-school teacher and other person who learns of violence in the discharge of his affairs. A misdemeanour body and the police are under the duty to notify the social work centre of such incidence of violence.

#### **Article 39 – Misdemeanour liability of a third person**

A fine ranging from 100 to 500 euro shall be imposed on:

- 1) the head of a state administration body, other body, a health care and social care institution, teacher, pre-school teacher and other person for not reporting to the police an incidence of violence he learns of in the discharge of his affairs (article 9, para. 2);
- 2) a person who is informed in the discharge of his affairs that the abuser does not comply with the order of protection issued but does not report this to a misdemeanour body, social

welfare centre, or other social and child care institution, police or public prosecutor (article 32, para. 2).

#### **Question 17 of the GOQ / du QAG**

Liability of legal entities for criminal offences is regulated by the Law on Liability of Legal Entities for Criminal Offences. This Law sets several conditions which must be cumulatively met in order for the liability of legal entities to exist: 1. it is necessary that the criminal offence was committed by a natural person; 2. That person must have the position of the person responsible in the legal entity; 3. The person responsible acted on behalf of the legal entity; 4. The person responsible acted within his / her powers; and 5. The liability of legal entities exists only where there was certain intention of the person responsible, i.e. intention to provide some benefit for the legal entity. In addition to the above requirements, the liability of the legal entity also exists when the actions of the person responsible was contrary to the business policy or instructions of the legal entity. Liability of a legal entity does not exclude criminal liability of the person responsible for the committed criminal offence. The Law on the Liability of Legal Entities for Criminal Offences provides for three types of sanctions against legal entities: 1) penalty; 2) a suspended sentence; and 3) security measures. The penalty can be a fine and termination of the legal entity status.

Article 9 of the Law on Protection from Domestic Violence (2010) prescribes that a state administration agency, other agency, a health, education or other institution have the duty to report to police the incidence of violence that they learn of in the discharge of affairs within their authority or in conduct of their activities. Under the duty to report violence to the police is the head of the agency or institution from para. 1 of this article, as well as a health and social care worker, teacher, pre-school teacher and other person who learns of violence in the discharge of his affairs. A misdemeanour body and the police are under the duty to notify the social welfare centre of the violence reported. Article 39 of the same Law prescribes that a fine in the amount from EUR 100 to EUR 500 shall be imposed on a person responsible in the state authority, other authority, health care, educational, or other institution, health and social worker, teacher, educationist and other persons if they fail to report the violence that they learned of in the performance of their duties to the police.

### **NETHERLANDS / PAYS BAS**

#### **Question 11 of the TQ / du QT**

Did not reply. / N'a pas répondu.

#### **Question 17 of the GOQ / du QAG**

In general a legal person can be held liable for criminal offences on the basis of article 51 of the Dutch Criminal Code.

### **PORTUGAL**

#### **Question 11 of the TQ / du QT**

Please refer to the reply provided to question 17 of the GOQ.

### **Question 17 of the GOQ / du QAG**

Legal persons and equivalent entities, with the exception of the state, of other public legal persons and of international organisations of public law, are held liable for the offences provided for in Articles 163 to 166 (sexual coercion, rape, sexual abuse of a person unable to resist, sexual abuse of interned person) when the victim is a child, and Articles 171 to 176 (sexual abuse of children, sexual abuse of dependant minors, sexual activities with adolescents, recourse to child prostitution, minors' pandering and pornography of minors), when the offence is committed: (i) on their behalf and in the collective interest by persons who have a leading position therein or, (ii) by whoever acting under the authority of the persons referred, by virtue of a breach of the supervision or control duties incumbent upon them.

The responsibility of legal persons and equivalent entities does not exclude the individual responsibility of the respective agents nor is dependent on them being responsible.

## **ROMANIA / ROUMANIE**

### **Question 11 of the TQ / du QT**

We do not have anything to add further to the answer given to question 17 of the General Questionnaire.

### **Question 17 of the GOQ / du QAG**

According with internal law, the legal person can be held liable<sup>8</sup>. According with art. 135 of the new Criminal code concerning the conditions of the liability of legal persons, the legal

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<sup>8</sup> TITLE VI Criminal liability of the legal entity

CHAPTER I General provisions

ARTICLE 135

Requirements for the criminal liability of the legal entity

(1) The legal entity, except for the state and public authorities, shall be subject to criminal liability in respect of the offences committed for the achievement of their scope of activity or in the interest or the name of the legal entity.

(2) The public institutions shall not be subject to criminal liability for the offences committed during the exercise of an activity which cannot be subject to the private area.

(3) The criminal liability of the legal entity does not exclude the criminal liability of the individual who contributed to the commission of the same act.

ARTICLE 136

Sentences applicable to the legal entity

(1) The sentences applicable to the legal entity are main and complementary

(2) The main sentence is the fine.

(3) The complementary sentences are:

a) dissolution of the legal entity;

b) suspension of the activity or of one of the activities conducted by the legal entity for 3 months to 3 years;

c) closing certain operating units for 3 months to 3 years;

d) prohibition of the participation to public procurement procedures for one to 3 years;

e) placement under judicial supervision;

f) display or publication of the sentencing judgment.

ARTICLE 137

Establishing the fine applied to the legal entity

(1) The fine represents the amount of money which the legal entity is sentenced to pay to the state

(2) The value of the fine shall be paid using the system of day-fine. The amount corresponding to one day-fine of 100 to 5000 RON shall be multiplied with the number of the days-fine, of 30 days to 600 days.

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(3) The court shall establish the number of the days-fine, taking into account the general criteria for the individualization of the sentence. The amount corresponding to a day-fine shall be established taking into account the turnover, in what concerns the legal entity with lucrative scope, and the value of the assets in what concerns other legal entities, as well as the other obligations of the legal entity.

(4) The special limits of the days-fine are ranging from:

- a) 60 to 180 days-fine, when the law provides for committed offence only the penalty of fine;
- b) 120 to 240 days-fine, when the law provides the imprisonment sentence of up to 5 years, solely or alternatively with the penalty of fine;
- c) 180 to 300 days-fine, when the law provides the imprisonment sentence of up to 10 years;
- d) 240 to 420 days-fine, when the law provides the imprisonment sentence of up to 20 years;
- e) 360 to 510 days-fine, when the law provides an imprisonment sentence exceeding 20 years or life imprisonment.

(5) When by the committed offence, the legal person aimed to obtain a material benefit, the special limits of the days-fine provisioned by the law for the committed offence may be increased by a third, without exceeding the general maximum of the fine. The value of the material benefit, pursued or obtained, shall be taken into account when establishing the fine.

CHAPTER II The regime of the complementary sentences applied to the legal entity

#### ARTICLE 138

Application and enforcement of complementary sentences in the case of the legal entity

(1) The application of one or several complementary sentences shall be ordered when the court notes that, in consideration to the seriousness and nature of the offence, as well the circumstances of the case, these sentences are required.

(2) The application of one or several complementary sentences is mandatory when the law provides as such.

(3) The complementary sentences provisioned in Article 136 (3) b)-f) may be applied jointly.

(4) The service of the complementary sentences begins after the sentencing judgment was rendered enforceable.

#### ARTICLE 139

Dissolution of the legal entity

(1) The complementary sentence of dissolution in respect of the legal entity shall be applied when:

- a) The legal entity was incorporated for the purpose of committing offences;
- b) Its scope of activity was detoured for the purpose of committing offences, and the sentence provisioned by the law for the committed offence exceeds 3 years imprisonment.

(2) If not executing, in bad faith, one of the complementary sentences provisioned in Article 136 (3) b)-e), the court shall order the dissolution of the legal entity.

(3) \*\*\*Repealed.

#### ARTICLE 140

Suspension of the activity conducted by the legal entity

(1) The complementary sentence pertaining to the suspension of the activity conducted by the legal entity stands in the prohibition to conduct one or several activities of the legal entity used in the committal of the offence.

(2) If not executing, in bad faith, one of the complementary sentences provisioned in Article 136 (3) f), the court shall order the suspension of the activity or of one of the activities of the legal entity until the service of the complementary sentence, without exceeding 3 months.

(3) If, until the time limit provisioned in paragraph (2), the complementary sentence was not served, the court shall order the dissolution of the legal entity.

#### ARTICLE 141

Not applying dissolution or suspension of the activity conducted by the legal entity

(1) The complementary sentences provisioned in Article 136 a) and b) cannot be applied to public institutions, political parties, syndicates, business groups and religious organizations or organizations of the national minorities, incorporated according to the law.

(2) Provisions of paragraph (1) shall also apply to the legal entities conducting their activities in the media.

#### ARTICLE 142

Closing the operational units of the legal entity

(1) The complementary sentence of closing the operational units of the legal entity consists in the closing of one or several operational units, property of the legal entity, with lucrative purpose, used to carry on activities with the purpose of committing offences.

person, except the state and public authorities, is held liable for the offences committed in the fulfilment of its business area or in the interest or on behalf of the legal person.

Public institutions are not held liable for offences committed in performing an activity which cannot be object of the private field. The criminal liability of a legal person does not exclude the criminal liability of the natural person who contributed to the perpetration of the respective offence.

## **SAN MARINO / SAINT-MARIN**

Did not reply yet. / N'a pas encore répondu.

## **SERBIA / SERBIE**

### **Question 11 of the TQ / du QT**

Ministry of Justice:

Under the Law on Liability of Legal Entities for Criminal Offence (Official Gazette of RS, 97/08), the Law shall regulate conditions governing liability of legal entities for criminal offences, penal sanctions that may be imposed on legal entities as well as procedural rules when ruling on the liability of legal entities, on imposing penal sanctions, passing a decision on rehabilitation, termination of security measure or legal consequences of the conviction, and on enforcement of court decisions. Under Article 2 thereof, a legal entity may be liable for criminal offences constituted under a special part of the Criminal Code and under laws if the conditions governing the liability of legal entities provided for by this law are satisfied. Article 6 proscribes legal grounds for liability of legal entities. Under this

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(2) Provisions of paragraph (1) shall not apply to the legal entities conducting their activities in the media.

#### **ARTICLE 143**

Prohibition of participation to public procurement procedures

The complementary sentence of prohibition of participation to public procurement procedures represent the probation of participating directly or indirectly to the procedures concerning the assignment of the public procurement contract, provisioned by the law.

#### **ARTICLE 144**

Placement under judicial supervision

(1) The complementary sentence of placement under judicial supervision involves the conduction under the supervision of a judicial proxy of the activity used for the commission of the crime, for a period of one to 3 years.

(2) The judicial proxy has the obligation to notify the court when observing that the legal entity did not take the necessary measures to prevent the commission of new offences. If the court notes that the claim is well-founded, the court shall order the replacement of this sentence with the one provisioned by Article 140.

(3) The placement under judicial supervision shall not be applied to the legal entities listed in Article 141.

#### **ARTICLE 145**

Display or publication of the sentencing judgment

(1) The display or publication of the enforceable sentencing judgment shall be made on the expense of the sentenced legal entity.

(2) By display or publication of the sentencing judgment, the identity of other persons cannot be disclosed.

(3) The display of the sentencing judgment shall be made in excerpt, in the form and place set by the court, for one to 3 months.

(4) The publication of the sentencing judgment shall be made in excerpt, in the form and place set by the court, using the written or audio-visual media or other audio-visual means of communication, set by the court.

(5) If the publication is made using written or audio-visual media, the court shall set the number of appearances, which cannot exceed 10, and if the publication is made using other audio-visual means, the publication period cannot exceed 3 months.

Article, a legal person shall be held accountable for criminal offences, which have been committed for the benefit of the legal person by a responsible person within the remit, that is, powers thereof. The liability referred to in paragraph 1 of this Article shall also exist where the lack of supervision or control by a natural person allowed the commission of crime for the benefit of the legal person by a natural person operating under the supervision and control of the responsible person.

Article 7 proscribes limits of the liability of legal entities. Therefore, Liability of legal entities shall be based upon culpability of the responsible person. Under the conditions referred to in Article 6 of this Law, a legal person shall be held accountable for criminal offences committed by the responsible person even though criminal proceedings against responsible persons have been discontinued or the act of indictment refused. Article 8 proscribes termination or change of status of legal entities. Therefore, should a legal entity cease to exist before the completion of criminal proceedings, a fine, security measures and confiscation of the proceeds from crime may be imposed against the legal entity being a legal successor thereof, if the liability of the legal entity that ceased to exist had been established. Should the legal entity cease to exist after the final completion of the proceedings where the liability has been established and a penal sanction for a criminal offence imposed, a fine, security measures and confiscation of the proceeds from crime shall be enforced against the legal entity being a legal successor thereof. A legal entity who, after the commission of a criminal offence changed its legal form which it had operated within, shall be liable for criminal offences under the conditions stipulated in Article 6 of the Law. Article 9 proscribes liability of legal entities in cases of bankruptcy. Therefore, a legal entity that has bankrupted shall be liable for criminal offences committed before the instigation of or in the course of the bankruptcy procedure. The punishment of confiscation of the proceeds from crime or a security measure of confiscation of instrumentalities shall be imposed against the liable legal entity referred to in paragraph 1 of this Article. Under Article 10, a legal entity shall be liable for an attempt of a criminal offence under the conditions stipulated in Article 6 of this Law if law as punishable provides for the attempt. An accountable legal entity may be imposed a punishment for an attempt as provided for by this Law, but it may be also punished less severely. A legal person who has prevented the commission of a criminal offence to complete may be exonerated from the punishment. Article 11 proscribes measures in case of continuance of a criminal offence. Therefore, a legal person shall be liable for the continuance of a criminal offence if, in compliance with Article 6 of this Law, it is accountable for several criminal offences committed by two or several responsible persons, provided that the criminal offences constitute a joinder as mentioned in Article 61, paragraph 1 of the Criminal Code. The sanction imposed against the liable person for the continuance of a criminal offence may be aggravated to the extent of a double amount stipulated in Article 14 of this Law.

NVO Astra answer:

Please see the answer to the question 17 of the GOQ.

## **Question 17 of the GOQ / du QAG**

Ministry of Justice:

Under the Law on Liability of Legal Entities for Criminal Offence (Official Gazette of RS, 97/08), the Law shall regulate conditions governing liability of legal entities for criminal offences, penal sanctions that may be imposed on legal entities as well as procedural rules when ruling on the liability of legal entities, on imposing penal sanctions, passing a decision on rehabilitation, termination of security measure or legal consequences of the conviction, and on enforcement of court decisions. Under Article 2 thereof, a legal entity may be liable for criminal offences constituted under a special part of the Criminal Code and under laws if the conditions governing the liability of legal entities provided for by this law are satisfied.

Article 6 proscribes legal grounds for liability of legal entities. Under this Article, a legal person shall be held accountable for criminal offences, which have been committed for the benefit of the legal person by a responsible person within the remit, that is, powers thereof. The liability referred to in paragraph 1 of this Article shall also exist where the lack of supervision or control by a natural person allowed the commission of crime for the benefit of the legal person by a natural person operating under the supervision and control of the responsible person.

Article 7 proscribes limits of the liability of legal entities. Therefore, Liability of legal entities shall be based upon culpability of the responsible person. Under the conditions referred to in Article 6 of this Law, a legal person shall be held accountable for criminal offences committed by the responsible person even though criminal proceedings against responsible persons have been discontinued or the act of indictment refused. Article 8 proscribes termination or change of status of legal entities. Therefore, should a legal entity cease to exist before the completion of criminal proceedings, a fine, security measures and confiscation of the proceeds from crime may be imposed against the legal entity being a legal successor thereof, if the liability of the legal entity that ceased to exist had been established.

Should the legal entity cease to exist after the final completion of the proceedings where the liability has been established and a penal sanction for a criminal offence imposed, a fine, security measures and confiscation of the proceeds from crime shall be enforced against the legal entity being a legal successor thereof. A legal entity which, after the commission of a criminal offence changed its legal form which it had operated within, shall be liable for criminal offences under the conditions stipulated in Article 6 of the Law. Article 9 proscribes liability of legal entities in cases of bankruptcy. Therefore, a legal entity that has bankrupted shall be liable for criminal offences committed before the instigation of or in the course of the bankruptcy procedure. The punishment of confiscation of the proceeds from crime or a security measure of confiscation of instrumentalities shall be imposed against the liable legal entity referred to in paragraph 1 of this Article. Under Article 10, a legal entity shall be liable for an attempt of a criminal offence under the conditions stipulated in Article 6 of this Law if law as punishable provides for the attempt. An accountable legal entity may be imposed a punishment for an attempt as provided for by this Law, but it may be also punished less severely. A legal person who has prevented the commission of a criminal offence to complete may be exonerated from the punishment. Article 11 proscribes measures in case of continuance of a criminal offence. Therefore, a legal person shall be liable for the

continuance of a criminal offence if, in compliance with Article 6 of this Law, it is accountable for several criminal offences committed by two or several responsible persons, provided that the criminal offences constitute a joinder as mentioned in Article 61, paragraph 1. The sanction imposed against the liable person for the continuance of a criminal offence may be aggravated to the extent of a double amount stipulated in Article 14 of this Law.

## **SPAIN / ESPAGNE**

### **Question 11 of the TQ / du QT**

Did not reply to this question / N'a pas répondu à cette question

### **Question 17 of the GOQ / du QAG**

Organic Act 5/2010 amending the Criminal Code introduced a new article (31 bis) that sets out corporate liability in these terms:

*"1...legal entities shall be criminally liable for offences committed in their or on their behalf, and for their benefit, by their legal representatives and administrators, whether de facto or de jure.*

*... legal entities shall be criminally liable for offences committed, in the course of their business and on their behalf and for their benefit, by those who, being subject to the authority of the individuals referred to in the preceding paragraph, may have committed the acts on account of not having exercised due control over them, given the specific circumstances of the case.*

*2. The criminal liability of legal entities shall be enforceable provided that it can be established that an offence has been committed, which must have been committed by an individual holding or carrying out any of the posts or duties referred to in the preceding section, even when the specific individual responsible has not been singled out or it has not been possible to bring proceedings against him ...*

*3. Neither the fact of the circumstances in which the individuals that committed the acts, or made them possible on account of not exercising due control, affect or aggravate the liability of the accused, nor the fact that those individuals have died or absconded, shall preclude or alter the criminal liability of legal entities ..."*

Moreover, article 189 bis of the Criminal Code sets forth the responsibility of legal persons for the offences of prostitution and corruption of minors.

## **"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" / "L'EX-REPUBLIQUE YUGOSLAVE DE MACEDOINE"**

Did not reply yet. / N'a pas encore répondu.

## **TURKEY / TURQUIE**

### **Question 11 of the TQ / du QT**

As indicated in the answer to Question 17 of the General Overview Questionnaire, security measures may be ordered for offences listed in the Convention against legal entities in accordance with Article 20 of the Turkish Penal Code. Article 60 of the Code specifies what



these measures are and rules that if the legal entity subject to special law is intentionally involved in an offence, the operating license of this entity may be cancelled and, depending on the circumstances provisions relating to partial or total confiscation may be applied on the entity's assets. However, it should be noted that these provisions shall be applied if the law presents explicit provisions. In this respect, Article 226/6 of the Turkish Penal Code includes explicit provisions on the matter. Provisions of Article 60 of the Turkish Penal Code are as follows:

***Security Precaution For The Legal Entities***

*ARTICLE 60-(1) In case of conviction of a crime through participation of the organs or representatives of a legal entity subject to special law and operating under the license granted by a public institution or misuse of authorization conferred upon by this license, the court may decide cancellation of this license.*

*(2) The provisions relating to confiscation are applied also for the legal entities involved in commission of offense.*

*(3) In cases where application of the provisions of the afore subsections is likely to create heavier consequences, the judge may refrain from imposition of such precautions.*

*(4) The provisions of this article are applicable for the cases specifically defined by the law.*

**Question 17 of the GOQ / du QAG**

It is indicated under Article 20 of the Turkish Penal Code that legal persons cannot be subject to criminal sanctions due to the commission of an offence, however that sanctions provided by the law against the offence such as security measures may be implemented.

**UKRAINE**

**Question 11 of the TQ / du QT**

Did not reply to this question / N'a pas répondu à cette question

**Question 17 of the GOQ / du QAG**

Criminal / administrative law does not contain norms, which would enable holding a legal person liable for criminal or administrative offenses due to commission of actions, which should be punishable in Ukraine as a member-state of the Convention.

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## **II – States not included in the 1st monitoring round / Etats ne participant pas au 1er cycle de suivi<sup>9</sup>**

### **ANDORRA / ADORRE<sup>10</sup>**

Did not reply. / N'a pas répondu.

### **ARMENIA / ARMENIE**

#### **Question 17 of the GOQ / du QAG**

Within the Republic of Armenia, a legal person is subject only to civil and administrative liability. In compliance with the Criminal Code of the Republic of Armenia, only a natural person is considered to be the subject of a crime. According to Article 24 of the Criminal Code of the Republic of Armenia, only a person having attained the age of sixteen before committing a criminal offence shall be subject to criminal liability, and for certain criminal offences also persons having attained the age of fourteen.

Furthermore, according to the Administrative Offences Code of the Republic of Armenia, only a natural person having attained the age of 16 may be a subject of administrative liability.

### **AZERBAIJAN / AZERBAÏDJAN**

#### **Question 17 of the GOQ / du QAG**

By the Law 314-IVQD dated March 7th, 2012 to the Criminal Code has been added Chapter 15-2 which determines responsibility of legal persons and criminal law measures.

### **CYPRUS / CHYPRE**

#### **Question 17 of the GOQ / du QAG**

Under the National Criminal Law, a corporate entity could be held liable for offences related to offences covered by the Convention provided guilt is established / proved beyond reasonable doubt.

### **ESTONIA / ESTONIE**

#### **Question 17 of the GOQ / du QAG**

In cases provided by Estonian law, a legal personality is responsible for an act that is committed by its body, its member, senior employee or a qualified representative in the interests of such legal person.

Legal entity is responsible for the above offences pursuant to the same grounds as natural person.

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<sup>9</sup> These States were invited to reply, if they so wished, to the General overview questionnaire only, not to the thematic questionnaire. / Ces Etats ont été invités à répondre, sur une base volontaire, au questionnaire : aperçu général, seulement, et non au questionnaire thématique.

<sup>10</sup> Andorra became a State party after the 1<sup>st</sup> monitoring round was launched and as such does not have to reply to the thematic questionnaire. As all Parties it has to reply to the General Overview Questionnaire. Its replies should be received by 31 March 2015 at the latest. / Andorre est devenu Etat Partie après le lancement du premier cycle de suivi et de ce fait n'a pas l'obligation de répondre au questionnaire thématique. Comme toutes les Parties, il doit répondre au Questionnaire « Aperçu Général ». Ses réponses doivent être reçues au plus tard le 31 mars 2015.

All provisions except § 144 provide the liability of a legal entity. In case of § 144 it could not be possible even theoretically, as a legal person cannot have descendants/children. In all other compositions, the responsibility of a legal entity is provided.

## **GEORGIA / GEORGIE**

### **Question 17 of the GOQ / du QAG**

Corporate liability has been introduced to CCG since 2006. Principles of responsibility of legal persons are given in Article 1071 of CCG. Legal person (commercial/non-commercial) may be held liable for criminal offence if it is committed by responsible person on behalf of the legal person, through the legal person or for the benefit of the legal person. Responsible person is person who is authorized to manage or represent the legal person, take decision on behalf of the legal person or member of its supervising or controlling bodies. The legal person shall be held liable if responsible person's failure to exercise effective supervision/control has made possible the commission of the crime for the benefit of the legal person by the natural person under its authority. Liability of the legal person shall be without prejudice to the criminal responsibility of the natural persons who have committed the offence. According to Article 1072 legal person may be held criminally liable if such responsibility is envisaged by the relevant articles of CCG. In terms of crimes referred to in section III legal persons may be held criminally responsible for the commission of crimes under Article 1432, Article 253, Article 255 and Article 2551 of CCG.

## **GERMANY / ALLEMAGNE**

### **Question 17 of the GOQ / du QAG**

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

## **HUNGARY / HONGRIE**

Did not reply. / N'a pas répondu.

## **IRELAND / IRELANDE**

Did not reply. / N'a pas répondu.

## **LATVIA / LETTONIE**

### **Question 17 of the GOQ / du QAG**

According to the regulations of the Criminal Law, legal entities are not held criminally liable. Criminal liability enters into effect to a particular person who has committed the respective crime. Yet, at the same time, legal entities are also "punishable" by applying them special coercive measures prescribed by the Criminal Law.

***The Criminal Law Section 12. Liability of a Natural Person as the Representative of a Legal Person***

*In a proceeding against a legal person regarding a criminal offence, the natural person who has committed such offence as the representative or at the instruction of the legal person concerned, or while in the service of the legal person, as well as a joint participant of such natural person, shall be criminally liable therefor.*

***The Criminal Law Section 701 The basis for determination of compulsory measures to a legal person***

*Compulsory measures for criminal offences to private rights defined in the special part of this Law committed by a legal person, including state or municipal corporation, as well as a partnership, a court or a prosecutor in cases provided by law may determine compulsory means if the offence towards interests or benefit of the legal person or in the result of the lack of inadequate supervision or control by the legal persona has been committed by a natural person, acting either individually or as the party of the respective legal person's collegiate institution:*

- 1) Based on the right of representation of the legal person, or acting on its behalf;*
- 2) Based on the right to make decisions on behalf of the legal person;*
- 3) In exercising control within the legal person.*

***The Criminal Procedure Law Section 439. Procedures for Criminal Proceedings***

*(2) Proceedings for the application of coercive measures to a legal person shall take place within the framework of the criminal proceedings.*

*(3) when determination of a coercive measure to a legal person, a person directing proceedings, with a decision may separate a proceedings in a separate records in following cases:*

- 1) the criminal proceedings against a natural person shall be terminated on the basis of non-rehabilitating conditions;*
- 2) identified conditions that prevent to ascertain whether a particular natural person is to be held criminally liable, or due to objective reasons referral of the criminal case to the Court in the near future (within a reasonable period of time) is not possible;*
- 3) to timely resolve the criminal-law relationship with a natural person who has the right to defence;*
- 4) it is requested by a representative of the legal person.*

**LIECHTENSTEIN**

Did not reply. / N'a pas répondu.

**MONACO**

**Question 17 of the GOQ / du QAG**

La responsabilité pénale des personnes morales est prévue pour toutes les infractions précédemment évoquées à l'article 4-4 du Code pénal édictant :

*« Toute personne morale, à l'exclusion de l'État, de la commune et des établissements publics, est pénalement responsable comme auteur ou complice, selon les distinctions déterminées aux articles 29-1 à 29-6, de tout crime, délit ou contravention lorsqu'ils ont été commis pour son compte, par l'un de ses organes ou représentants.*

*L'action est dirigée contre la personne morale prise en la personne de son représentant légal.*

*La responsabilité pénale de la personne morale n'exclut pas celle, en qualité de co-auteurs ou complices, des personnes la représentant au moment des faits. En ce cas, s'il y a contrariété d'intérêts, ces personnes peuvent saisir par requête le président du tribunal de première instance, aux fins de désignation d'un mandataire ad hoc pour représenter la personne morale. »*

## **NORWAY / NORVEGE**

Did not reply. / N'a pas répondu.

## **POLAND / POLOGNE**

Did not reply. / N'a pas répondu.

## **RUSSIAN FEDERATION / FEDERATION DE RUSSIE<sup>11</sup>**

Did not reply yet. / N'a pas encore répondu.

## **SLOVAK REPUBLIC / REPUBLIQUE**

Did not reply. / N'a pas répondu.

## **SLOVENIA / SLOVENIE<sup>12</sup>**

Did not reply yet. / N'a pas encore répondu.

## **SWEDEN / SUEDE<sup>13</sup>**

### **Question 17 of the GOQ / du QAG**

The Swedish penal system is based on the assumption that only individual natural persons can commit criminal offences and be punished for them. Legal persons may, however, be subject to sanctions or other serious legal consequences as a result of offences committed in connection with their activities. The traditional institutions are damages and forfeiture of

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<sup>11</sup> The Russian Federation became a State party after the 1<sup>st</sup> monitoring round was launched and as such does not have to reply to the thematic questionnaire. As all Parties it has to reply to the General Overview Questionnaire. Its replies should be received by 31 July 2014 at the latest. / La Fédération de Russie est devenue Etat Partie après le lancement du 1<sup>er</sup> cycle de suivi et de ce fait n'a pas l'obligation de répondre au questionnaire thématique. Comme toutes les Parties, elle doit répondre au Questionnaire « Aperçu Général ». Ses réponses doivent être reçues au plus tard le 31 juillet 2014.

<sup>12</sup> Slovenia became a State party after the 1<sup>st</sup> monitoring round was launched and as such does not have to reply to the thematic questionnaire. As all Parties it has to reply to the General Overview Questionnaire. Its replies should be received by 31 August at the latest. / La Slovénie est devenue Etat Partie après le lancement du premier cycle de suivi et de ce fait n'a pas l'obligation de répondre au questionnaire thématique. Comme toutes les Parties, elle doit répondre au Questionnaire "Aperçu Général". Ses réponses doivent être reçues au plus tard le 31 août 2014.

<sup>13</sup> Sweden became a State party after the 1<sup>st</sup> monitoring round was launched and as such does not have to reply to the thematic questionnaire. As all Parties it has to reply to the General Overview Questionnaire. / La Suède est devenue Etat Partie après le lancement du premier cycle de suivi et de ce fait n'a pas l'obligation de répondre au questionnaire thématique. Comme toutes les Parties, elle doit répondre au Questionnaire "Aperçu Général".

assets. In addition administrative fines, corporate fines, can be imposed directly on legal persons in various circumstances.

Under Swedish law all entrepreneurs can be subject to corporate fines for crimes committed in the exercise of their business. The term entrepreneur has a broad definition and covers natural and legal persons who professionally run a business of an economic nature, regardless of whether the business is run with the aim to generate profit or not. Also state owned companies can therefore be subject to corporate fines. However, if the crime committed is related to the exercise of public authority it is not considered to be committed in the exercise of business in such way that it can lead to corporate fines.

## **SWITZERLAND / SUISSE<sup>14</sup>**

Did not reply. / N'a pas répondu.

## **UNITED KINGDOM / GRANDE BRETAGNE**

Did not reply. / N'a pas répondu.

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<sup>14</sup> Switzerland became a State party after the 1<sup>st</sup> monitoring round was launched and as such does not have to reply to the thematic questionnaire. As all Parties it has to reply to the General Overview Questionnaire. Its replies should be received by 28 February 2015 at the latest. / La Suisse est devenue Etat Partie après le lancement du premier cycle de suivi et de ce fait n'a pas l'obligation de répondre au questionnaire thématique. Comme toutes les Parties, il doit répondre au Questionnaire « Aperçu Général ». Ses réponses doivent être reçues au plus tard le 28 février 2015.

### III – Other stakeholders / Autres parties prenantes

#### **BLÁTT ÁFRAM (ICELAND / ISLANDE)**

##### **Question 17 of the GOQ / du QAG**

There is Icelandic legislation that is intended to hold people accountable (16 gr and 17 gr, nr 80/2002), however, it has never been enforced, and therefore rendered ineffective. People have a tendency not to report if there are no consequences. In Blátt Áfram's experience, there have been too many institutions that should have fired teachers, coaches, or other staff members for inappropriate touching, interaction, and sexual abuse, but have chosen not to do so.

#### **FUNDACIÓN ANAR (MISSING CHILDREN EUROPE) (SPAIN / ESPAGNE)**

##### **Question 17 of the GOQ / du QAG**

Corporate liability was introduced in the Penal code in 2010.

#### **UNICEF (ICELAND / ISLANDE)**

##### **Question 11 of the TQ / du QT**

Chapter II A of the General Penal Code deals with the criminal liability of legal persons<sup>15</sup>.

##### **Question 17 of the GOQ / du QAG**

Chapter II A of the General Penal Code deals with the criminal liability of legal persons<sup>16</sup>.

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<sup>15</sup> [Art. 19 a. A legal person shall be ordered to pay a fine if this is provided for by Law.]1) 1) Act 140/1998, Art. 1. [Art. 19 b. Provisions of Law on the criminal liability of legal persons shall, subject to any limitations provided for therein, apply to any entity who while not being a natural person is capable of enjoying rights and bearing duties under Icelandic Law, including public limited liability Companies, private limited liability Companies, Companies with mixed liability of owners, European Interest Groupings, partnership Companies, co-operative societies, public associations, independent foundations, administrative authorities, institutes and Municipalities.]1) 1) Act 140/1998, Art. 1. [Art. 19 c. Subject to provisions in Law, a legal person can only be made criminally liable if its spokesman, employee or other person acting on its behalf has committed a criminal and unlawful act in the course of its business. Penalties shall be imposed even if the identity of this legal person has not been established. Administrative authorities can only be made criminally liable if a criminal and an unlawful act has been committed in the course of an operation deemed comparable to the operations of private entities.]1)

<sup>16</sup> [Art. 19 a. A legal person shall be ordered to pay a fine if this is provided for by Law.]1) 1) Act 140/1998, Art. 1. [Art. 19 b. Provisions of Law on the criminal liability of legal persons shall, subject to any limitations provided for therein, apply to any entity who while not being a natural person is capable of enjoying rights and bearing duties under Icelandic Law, including public limited liability Companies, private limited liability Companies, Companies with mixed liability of owners, European Interest Groupings, partnership Companies, co-operative societies, public associations, independent foundations, administrative authorities, institutes and Municipalities.]1) 1) Act 140/1998, Art. 1. [Art. 19 c. Subject to provisions in Law, a legal person can only be made criminally liable if its spokesman, employee or other person acting on its behalf has committed a criminal and unlawful act in the course of its business. Penalties shall be imposed even if the identity of this legal person has not been established. Administrative authorities can only be made criminally liable if a criminal and an unlawful act has been committed in the course of an operation deemed comparable to the operations of private entities.]1)