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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 10 of the Thematic Questionnaire

(including Replies to Question 16 of the General Overview Questionnaire
as regards Article 18 of the Lanzarote Convention)

Compilation des réponses à la Question 10 du Questionnaire Thématique

(y compris les réponses à la Question 16 du Questionnaire « Aperçu général »
en ce qui concerne l'article 18 de la Convention de Lanzarote)

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

Introduction

During its 7th meeting (9 December 2013, see §13 of the report as well as its Appendix III)¹, the Committee decided that the Secretariat should compile the replies to the questionnaires following 1st monitoring indicative calendar. During its 8th meeting (8-10 April 2014), the Committee modified its indicative calendar (see §61 of the 8th meeting report²). As a consequence, replies to questions 10, 11 and 12 of the Thematic Questionnaire should be compiled for the 9th meeting of the Committee (9-11 September 2014).

This document is aimed at responding to this request by compiling replies to question 10 of the thematic questionnaire (and replies to question 16 of the General Overview Questionnaire to which it refers insofar as Article 18 of the Lanzarote Convention is concerned).

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Lors de sa 7^e réunion (9 décembre 2013, voir §13 du rapport ainsi que son annexe III³), le Comité a décidé que le Secrétariat devrait compiler les réponses aux questionnaires selon le calendrier indicatif pour le 1^{er} cycle de suivi. Lors de sa 8^e réunion (8-10 avril 2014), le Comité a modifié son calendrier indicatif (voir §61 du rapport de la 8^e réunion⁴). Par conséquent, les réponses aux questions 10, 11 et 12 du questionnaire thématique doivent être compilées en vue de la 9^e réunion du Comité (9-11 septembre 2014).

Le présent document vise à répondre à cette demande en compilant les réponses reçues à la question 10 du questionnaire thématique (et à la question 16 du Questionnaire « Aperçu général » à laquelle elles se réfèrent en ce qui concerne l'article 18 de la Convention de Lanzarote).

¹ The 7th 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).

² The 8th meeting report is online at:

[http://www.coe.int/t/dghl/standardsetting/children/T-ES\(2014\)10%20Report%208th%20meeting%2017%20June_en.pdf](http://www.coe.int/t/dghl/standardsetting/children/T-ES(2014)10%20Report%208th%20meeting%2017%20June_en.pdf)

³ Le rapport de la 7^e 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)

⁴ Le rapport de la 8^e réunion est en ligne ici :

[http://www.coe.int/t/dghl/standardsetting/children/T-ES\(2014\)10%20Rapport%208e%20réunion%2017%20juin_fr.pdf](http://www.coe.int/t/dghl/standardsetting/children/T-ES(2014)10%20Rapport%208e%20réunion%2017%20juin_fr.pdf)

Question 10 of the TQ: The offence of sexual abuse

The reply to question 16 of the GOQ will be examined by the Committee to assess the implementation of Article 18 with respect to the theme of the monitoring round. The reply to question 1 of the GOQ will also be considered while assessing the situation in the Party with respect to Article 18. While replying to this questionnaire, please therefore only add:

- a. what is understood by “intentional conduct” in internal law? (Explanatory Report, para. 117);
- b. what is understood by “sexual activities” in internal law? (Explanatory Report, para. 127).

Question 16 of the GOQ: Criminal law offences

- a. Please indicate whether the intentional conducts in the box below are considered criminal offences in internal law;
- b. Wherever the intentional conduct which is criminalised differs from the Lanzarote Convention benchmark, please justify;
- c. Please highlight whether there are any other offences not included in the box below incriminating sexual exploitation and sexual abuse of children in your country? Please provide their definitions and specify in which act these are included;
- d. Please also specify whether the age of a child plays a role in determining the gravity of the offence.

Sexual Abuse (Article 18)

1. Engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;
2. Engaging in sexual activities with a child where
 - use is made of coercion, force or threats;
 - abuse is made of a recognised position of trust, authority or influence over the child, including within the family;
 - abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.

Question 10 : L'infraction d'abus sexuel

La réponse à la question 16 du QAG sera examinée par le Comité pour évaluer la mise en œuvre de l'article 18 par rapport au thème du cycle de suivi. La réponse à la question 1 du QAG sera également prise en compte en évaluant la situation dans l'état partie par rapport à l'article 18. En répondant à ce questionnaire, veuillez uniquement rajouter :

- a. Ce que l'on comprend par « comportements intentionnels » dans le droit interne (Rapport explicatif, par. 117) ;
- b. Ce que l'on comprend par « activités sexuelles » dans le droit interne (Rapport explicatif, par. 127).

Question 16 : Infractions pénales

- a. Veuillez indiquer si les comportements intentionnels mentionnés dans l'encadré ci-dessous sont érigés en infractions pénales dans le droit interne;
- b. Si le comportement intentionnel qui est érigé en infraction pénale s'écarte de la norme de la Convention de Lanzarote, veuillez expliquer pourquoi;
- c. Veuillez signaler s'il existe dans votre pays d'autres infractions qui criminalisent l'exploitation et les abus sexuels concernant des enfants mais qui ne figurent pas dans l'encadré ci-dessous. Veuillez fournir leur définition respective et préciser la loi dans laquelle elles sont incluses;
- d. Veuillez également préciser si l'âge de l'enfant influe sur la détermination du degré de gravité de l'infraction.

Abus sexuels (article 18)

1. Le fait de se livrer à des activités sexuelles avec un enfant qui, conformément aux dispositions pertinentes du droit national, n'a pas atteint l'âge légal pour entretenir des activités sexuelles ;
2. Le fait de se livrer à des activités sexuelles avec un enfant :
 - en faisant usage de la contrainte, de la force ou de menaces ; ou
 - en abusant d'une position reconnue de confiance, d'autorité ou d'influence sur l'enfant, y compris au sein de la famille ; ou
 - en abusant d'une situation de particulière vulnérabilité de l'enfant, notamment en raison d'un handicap physique ou mental ou d'une situation de dépendance.

Relevant extracts from the Lanzarote Convention and its Explanatory report

Lanzarote Convention, Article 18 – Sexual abuse

- 1 Each Party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised:
 - a engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;
 - b engaging in sexual activities with a child where:
 - use is made of coercion, force or threats; or
 - abuse is made of a recognised position of trust, authority or influence over the child, including within the family; or
 - abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.
- 2 For the purpose of paragraph 1 above, each Party shall decide the age below which it is prohibited to engage in sexual activities with a child.
- 3 The provisions of paragraph 1.a are not intended to govern consensual sexual activities between minors.

Explanatory report

117. Article 18 sets out the offence of sexual abuse of a child. This offence has to be committed intentionally for there to be criminal liability. The interpretation of the word “intentionally” is left to domestic law, but the requirement for intentional conduct relates to all the elements of the offence.

118. Article 18 distinguishes two types of sexual abuse of minors.

119. Firstly, paragraph 1 a criminalises the fact of a person engaging in sexual activities with a child who has not reached the age as defined in domestic law below which it is prohibited to engage in sexual activities with him or her.

120. Secondly, paragraph 1 b criminalises the fact of a person engaging in sexual activities with a child, regardless of the age of the child, where use is made of coercion, force or threats, or when this person abuses a recognised position of trust, authority or influence over the child, or where abuse is made of a particularly vulnerable situation of the child.

121. When assessing the constituent elements of offences, the Parties should have regard to the case-law of the European Court of Human Rights; in this respect, the negotiators wished to recall, subject to the interpretation that may be made thereof, the *M.C. v. Bulgaria* judgment of 4 December 2003, in which the European Court of Human Rights stated that it was “persuaded that any rigid approach to the prosecution of sexual offences, such as requiring proof of physical resistance in all circumstances, risks leaving certain types of rape unpunished and thus jeopardising the effective protection of the individual’s sexual autonomy. In accordance with contemporary standards and trends in that area, the member States’ positive obligations under Articles 3 and 8 of the Convention must be seen as requiring the penalisation and effective prosecution of any non-consensual sexual act, including in the absence of physical resistance by the victim” (§ 166). The Court also noted as follows: “Regardless of the specific wording chosen by the legislature, in a number of countries the prosecution of non-consensual sexual acts in all circumstances is sought in practice by means of interpretation of the relevant statutory terms (“coercion”, “violence”, “duress”, “threat”, “ruse”, “surprise” or others) and through a context-sensitive assessment of the evidence” (§ 161).

122. Under the first indent, where use is made of coercion, force or threats, lack of consent to the sexual activities can be inferred in cases where the child is over the age referred to in Article 18, paragraph 2.

123. The second indent relates to abuse of a recognised position of trust, authority or influence over the child. This can refer, for example, to situations where a relationship of trust has been established with the

child, where the relationship occurs within the context of a professional activity (care providers in institutions, teachers, doctors, etc) or to other relationships, such as where there is unequal physical, economic, religious or social power.

124. The second indent provides that children in certain relationships must be protected, even when they have already reached the legal age for sexual activities and the person involved does not use coercion, force or threat. These are situations where the persons involved abuse a relationship of trust with the child resulting from a natural, social or religious authority which enables them to control, punish or reward the child emotionally, economically, or even physically. Such relationships of trust normally exist between the child and his or her parents, family members, foster or adoptive parents, but they could also exist in relation to persons who :

- have parental or caretaking functions; or
- educate the child; or
- provide emotional, pastoral, therapeutic or medical care; or
- employ or have financial control over the child; or
- otherwise exercise control over the child.

Volunteers who look after children in their leisure-time or during voluntary activities, for example at holiday-camps or in youth organisations, can also be viewed as holding positions of trust. This list is not exhaustive, but aims at giving a description of the wide range of the recognised positions of trust, authority or influence.

125. The reference to “including within the family” clearly intends to highlight sexual abuse committed in the family. Research has demonstrated this to be one of the most frequent and most psychologically damaging form of child sexual violence with long-lasting consequences for the victim. Further, the term “family” refers to the extended family.

126. The third indent relates to abuse of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence. Disability includes children with physical and sensory impairments, intellectual disabilities and autism, and mentally ill children. A “situation of dependence” refers not only to children with drug or alcohol addiction problems, but also to situations in which a child has become intoxicated by alcohol or drugs, whether through his or her own actions or by the perpetrator, and whose subsequent vulnerability is then abused. The term dependence also covers other situations in which the child has no other real and acceptable option than to submit to the abuse. The reasons for such situations may be physical, emotional, family-related, social or economic, such as, for example, an insecure or illegal administrative situation, a situation of economic dependence or a fragile state of health. In such a case the child may consent to the sexual relations, but his or her situation of vulnerability renders the capacity to consent invalid. Notions of particular vulnerability of a child and situations of dependence could also cover acts committed against children in the framework of activities within sects which are characterised by a physical and mental isolation of the child who is cut off from the outside world and very often subjected to various forms of brainwashing. The situation of unaccompanied migrant minors could also fall within the situation of particular dependence or vulnerability.

127. The term “sexual activities” is not defined by the Convention. The negotiators preferred to leave to Parties the definition of the meaning and scope of this term.

128. Paragraph 2 reinforces for the purpose of legal certainty the requirement for all Parties to the Convention to define the age below which it is prohibited to engage in sexual activities with a child. The negotiators considered the possibility of harmonising criminal law in this area by establishing a legal age for sexual relations in the Convention, but as this age varies greatly in member States of the Council of Europe (from age 13 to 17) and even within each member State, depending on the relation which may exist between the perpetrator and the child victim. For these reasons it was decided to leave the definition to each Party.

129. It is not the intention of this Convention to criminalise sexual activities of young adolescents who are discovering their sexuality and engaging in sexual experiences with each other in the framework of sexual development. Nor is it intended to cover sexual activities between persons of similar ages and maturity. For this reason, paragraph 3 states that the Convention does not aim to govern consensual sexual activities between minors, even if they are below the legal age for sexual activities as provided in internal law. It is left to Parties to define what a “minor” is.

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

Convention de Lanzarote, Article 18 – Abus sexuels

- 1 Chaque Partie prend les mesures législatives ou autres nécessaires pour ériger en infraction pénale les comportements intentionnels suivants:
 - a le fait de se livrer à des activités sexuelles avec un enfant qui, conformément aux dispositions pertinentes du droit national, n'a pas atteint l'âge légal pour entretenir des activités sexuelles;
 - b le fait de se livrer à des activités sexuelles avec un enfant:
 - en faisant usage de la contrainte, de la force ou de menaces; ou
 - en abusant d'une position reconnue de confiance, d'autorité ou d'influence sur l'enfant, y compris au sein de la famille; ou
 - en abusant d'une situation de particulière vulnérabilité de l'enfant, notamment en raison d'un handicap physique ou mental ou d'une situation de dépendance.
- 2 Pour l'application du paragraphe 1, chaque Partie détermine l'âge en deçà duquel il n'est pas permis de se livrer à des activités sexuelles avec un enfant.
- 3 Les dispositions du paragraphe 1.a n'ont pas pour objet de régir les activités sexuelles consenties entre mineurs.

Rapport explicatif

117. L'article 18 définit l'infraction d'abus sexuel sur un enfant. Cette infraction doit être commise intentionnellement pour entraîner une responsabilité pénale. L'interprétation du mot « intentionnellement » est laissée à l'appréciation du droit interne, mais l'exigence d'une conduite intentionnelle porte sur tous les éléments de l'infraction.

118. L'article 18 distingue deux types d'abus sexuels sur mineurs.

119. Premièrement, le paragraphe 1 a prévoit l'incrimination du fait, pour une personne, de se livrer à des activités sexuelles avec un enfant n'ayant pas atteint l'âge, défini par le droit national, en deçà duquel il n'est pas permis d'entretenir des activités sexuelles avec lui.

120. Deuxièmement, le paragraphe 1 b prévoit l'incrimination du fait, par une personne, de se livrer à des activités sexuelles avec un enfant, quel que soit son âge, lorsqu'il est fait usage de la contrainte, de la force ou de menaces, ou lorsque cette personne abuse d'une position reconnue de confiance, d'autorité ou d'influence sur l'enfant, ou d'une situation de particulière vulnérabilité de ce dernier.

121. En appréciant les éléments constitutifs des infractions, les Parties doivent avoir égard à la jurisprudence de la Cour européenne des Droits de l'Homme. A cet égard, les négociateurs ont souhaité rappeler, sous réserve de l'interprétation qui peut en être donnée, l'arrêt *M.C. c. Bulgarie* du 4 décembre 2003, par lequel la Cour européenne des Droits de l'Homme s'est déclarée « convaincue que toute approche rigide de la répression des infractions à caractère sexuel, qui consisterait par exemple à exiger dans tous les cas la preuve qu'il y a eu résistance physique, risque d'aboutir à l'impunité des auteurs de certains types de viol et par conséquent de compromettre la protection effective de l'autonomie sexuelle de l'individu. Conformément aux normes et aux tendances contemporaines en la matière, il y a lieu de considérer que les obligations positives qui pèsent sur les Etats membres en vertu des articles 3 et 8 de la Convention commandent l'incrimination et la répression effective de tout acte sexuel non consensuel, y compris lorsque la victime n'a pas opposé de résistance physique. » (§166). La Cour relève encore que « Indépendamment de la formulation spécifique retenue par le législateur, dans un certain nombre de pays la répression des actes sexuels non consensuels, quelles qu'en soient les circonstances, est rendue possible en pratique par l'interprétation des termes pertinents de la loi (« contrainte », « violence », « coercition », « menace »),

« ruse », « surprise », entre autres) et par une appréciation des éléments de preuve dans leur contexte » (§161).

122. Au premier tiret, le recours à la contrainte, la force ou les menaces permet, s'agissant des enfants ayant atteint l'âge visé à l'article 18 paragraphe 2, de présumer l'absence de consentement pour les activités sexuelles incriminées.

123. Le deuxième tiret traite de l'abus d'une position reconnue de confiance, d'autorité ou d'influence sur l'enfant. Il peut s'agir par exemple des situations dans lesquelles des relations de confiance ont été établies avec les enfants, que ces relations s'inscrivent dans un cadre d'une activité professionnelle (personnels soignants dans les établissements, enseignants, médecins, etc.) ou autres, ou celles de toutes les personnes occupant une position supérieure sur les plans physique, économique, religieux ou social.

124. Le deuxième tiret prévoit que les enfants, dans le cadre de certaines relations, doivent être protégés même lorsqu'ils ont déjà atteint l'âge légal pour entretenir des activités sexuelles et que la personne impliquée n'a recours ni à la coercition, ni à la force, ni à la menace. Il s'agit de situations dans lesquelles les personnes impliquées abusent d'une relation de confiance avec l'enfant résultant d'une autorité naturelle, sociale ou religieuse qui leur permet de contrôler, punir ou récompenser l'enfant, sur les plans émotionnel, économique ou même physique. De telles relations de confiance existent entre l'enfant et ses parents, les membres de sa famille, les parents adoptifs mais elles peuvent également se rencontrer à l'égard des personnes qui :

- exercent des fonctions parentales ou qui ont la charge de l'enfant ; ou
- ont un rôle éducatif vis-à-vis de l'enfant ; ou
- fournissent une assistance psychologique, religieuse, thérapeutique ou médicale ; ou
- emploient l'enfant ou exercent sur lui un contrôle financier ; ou
- exercent autrement un contrôle sur l'enfant.

Les personnes qui exercent des activités bénévoles ou volontaires impliquant des contacts avec les enfants, par exemple, dans des colonies de vacances ou au sein d'organisations de jeunesse, peuvent également être considérées comme ayant une position de confiance vis-à-vis de l'enfant. Cette liste n'est pas exhaustive, mais vise à donner une énumération d'un large éventail de positions reconnues de confiance, d'autorité, ou d'influence.

125. Le texte comprend la mention "y compris au sein de la famille" pour clairement mettre l'accent sur l'abus sexuel commis dans la famille. La recherche a en effet démontré qu'il s'agit d'une des formes de violences sexuelles les plus fréquentes et les plus dévastatrices pour l'enfant sur le plan psychologique, entraînant des dommages durables pour la victime. De plus, le terme "famille" fait référence à la famille élargie.

126. Le troisième tiret traite de l'abus d'une situation de particulière vulnérabilité de l'enfant, notamment en raison d'un handicap physique ou mental ou d'une situation de dépendance. Par "handicap" l'on entend également les enfants présentant des déficiences physiques ou sensorielles, un handicap intellectuel ou souffrant d'autisme, ainsi que les enfants souffrant de troubles mentaux. La "situation de dépendance" désigne non seulement les enfants qui ont une dépendance à des drogues ou de l'alcool, mais également les situations dans lesquelles un enfant se retrouve sous l'emprise de l'alcool ou de la drogue, que ce soit de sa propre initiative ou du fait de l'auteur de l'infraction, qui abuse ensuite de la vulnérabilité en résultant. Le terme dépendance couvre également d'autres situations dans lesquelles l'enfant n'a d'autre choix réel et acceptable que de se soumettre à l'abus. Ces situations peuvent trouver leurs sources dans des raisons d'ordre physique, psychique, affective, familiale, sociale ou économique comme, par exemple, une situation administrative précaire ou illégale, une situation de dépendance économique ou un état de santé fragile. Dans un tel cas l'enfant peut consentir à des rapports sexuels, mais sa vulnérabilité enlève toute validité à sa capacité à consentir. Les notions de « particulière vulnérabilité » de l'enfant et « situations de dépendance » peuvent également permettre d'appréhender les faits commis à l'encontre d'enfants dans le cadre d'activités sectaires, caractérisées par un isolement physique et mental de l'enfant, coupé du monde extérieur et soumis, le plus souvent, à des formes diverses de conditionnement mental. Peut également être considéré comme traduisant une situation de particulière dépendance et de vulnérabilité, la situation de mineurs migrants non accompagnés.

127. L'expression « activités sexuelles » n'est pas définie par la Convention, les négociateurs ayant estimé préférable de laisser aux Parties le soin d'en définir le contenu et la portée.

128. Le paragraphe 2 renforce, dans un souci de certitude juridique, l'exigence pour toutes les Parties à la Convention de définir un âge spécifique en deçà duquel il est interdit de se livrer à des activités sexuelles avec un enfant. Les négociateurs ont considéré la possibilité d'harmoniser le droit pénal dans ce domaine en fixant dans la Convention un âge légal pour entretenir des relations sexuelles. Toutefois, cet âge variant fortement d'un Etat membre du Conseil de l'Europe à l'autre (de 13 à 17 ans), et même à l'intérieur de chaque Etat en fonction des relations existantes entre l'auteur des abus sexuels et l'enfant victime, ils ont préféré laisser chacune des Parties le définir.

129. La Convention ne vise pas à incriminer les activités sexuelles des adolescents qui découvrent leur sexualité et vivent entre eux une expérience sexuelle dans le cadre de leur développement sexuel. Elle ne vise pas non plus à appréhender les activités sexuelles entre personnes d'âges et de degrés de maturité comparables. C'est pourquoi le paragraphe 3 déclare que la Convention n'a pas pour objet de régir les relations sexuelles consenties entre mineurs, même si l'un, voire les deux, n'ont pas atteint l'âge légal pour entretenir des activités sexuelles en vertu du droit national. Il appartient aux Parties de définir la notion de « mineur ».

**COMPILATION
of replies / des réponses⁵**

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

ALBANIA / ALBANIE

Question 10 of the TQ / du QT

Question a.

In the domestic laws “intentional conduct” is specified under article 15 of Law no. 7895, dated 27.1.1995 “Criminal Code of the Republic of Albania”, as amended,

Article 15

A criminal act is committed intentionally when the person foresees the consequences of the criminal act and wants them to occur or, although he foresees but does not want them, consciously allows them to occur.

The domestic legislation in accordance to article 18 of the Convention of Lanzarote, was cited answering the question 16 of the GOQ.

Question b.

“Sexual activities” in internal law, does not have a specific definition, (ref. response to question 16 of the GOQ).

Question 16 of the GOQ / du QAG

Question a.

All the “intentional conducts” in the box below are considered as criminal offences in internal law. According to Law no. 7895, dated 27.1.1995 “Criminal Code of the Republic of Albania”, as amended, and to Law no. 144/2013, dated 20.5.2013 “On some amendments to Law no.7895, dated 27.1.1995 “Criminal Code of the Republic of Albania”.

Question b.

Article 100 “Sexual or homosexual relations/intercourse with minors/children”

Having sexual or homosexual relations with children that are less than 14 years old, or with a female child, who is not sexually matured, is punished by imprisonment from seven to fifteen years.

- When the sexual or homosexual intercourse was committed with accomplices, more than once or by violence, or when the child victim had serious health consequences; this is punished by imprisonment not less than twenty five years.

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

- When that act brought as a consequence the minor's death or suicide, this is punished by imprisonment not less than thirty years or life imprisonment.

Article 101 "Sexual or homosexual intercourse by violence with a minor who is fourteen-eighteen years old"

- Having sexual or homosexual relations by violence with children that are fourteen to eighteen years old, or with a female child, who is sexually matured, is punished by imprisonment from five to fifteen years.
- When the sexual or homosexual intercourse by violence was done with accomplices, more than once, or when the child victim had serious health consequences; this is punishable by imprisonment from ten to twenty years.
- When that act brought as a consequence the minor's death or suicide, this is sentenced by imprisonment not less than twenty years

Article 106 "Sexual or homosexual intercourse with persons that are related (of the same blood) or persons under custody"

- Having sexual or homosexual intercourse between parents and children, brother and sister, between brothers, sisters, between persons that are related in a straight line or with persons that are under custody or adoption, is sentenced by imprisonment up to seven years.

Article 107/a "Sexual Violence"

Exercise of sexual violence, by performing actions of a sexual nature in the body of another person with objects, constitutes a criminal offense and is sentenced by imprisonment from three to seven years.

- When this is done in collaboration, against several persons, more than once, or against children aged fourteen to eighteen years, is sentenced by imprisonment from five to fifteen years.
- When this offense is committed against a minor who has not attained the age of fourteen years or a minor who has not reached sexual maturity, regardless of whether is conducted violently or not, is sentenced by imprisonment of not less than twenty years.
- When that act brought as a consequence the victim's death or suicide, is sentenced by imprisonment of not less than twenty five years.

Article 108 "Serious immoral acts"

Serious immoral acts conducted with minors under the age of fourteen are punishable by up to five years of imprisonment."

- The same act, if committed against a minor who has not attained the age of fourteen years of age, to which the offender has any familiar relationship, shall be punishable from five to ten years.
- Intentional involvement as a witness, in action with a sexual character, of a minor who has not attained the age of fourteen years of age or a minor who has not reached sexual

maturity, constitutes a criminal offense and is sentenced by imprisonment from one to five years.

- The proposal made by an adult, by any means or form, to meet a of a minor who has not attained the age of fourteen years of age or a minor who has not reached sexual maturity, with purpose of committing any of the criminal offenses set forth in this section or in section VII of chapter II of this Code, constitutes a criminal offense and is punishable by one to five years.

Question c.

(...)

Question d.

The age of a child plays a role in determining the gravity of the sentence for the perpetrator, as regards the punishments for the offenses against children under fourteen, are more severe than for the 14-18 age group. This is clearly seen in the articles cited above.

AUSTRIA/AUTRICHE

Question 10 of the TQ / du QT

Question a.

According to Section 5 par. 1 of the Criminal Code (CC) a person is behaving intentionally who wants to produce the facts constituting an offence under the law; to this end it is sufficient that the offender seriously believes such production to be possible and that he/she resigns in it.

Question b.

The term "sexual activity" is not defined by law. According to the jurisprudence of the Supreme Court (see e.g. decisions No. 12 Os 5/09s of 26 March 2009, No. 14 Os 142/06y of 12 June 2007) sexual activities are defined as "acts related to sexuality according to their outward experience that are both from their meaning, their intensity and length of some substantiality and by that constitute an unacceptable, socially disturbing negative impact to the public area. The definition includes at least acts in which the parts of the body that belong to the immediate sexual sphere of either the victim or the perpetrator are brought into a not only volatile contact related to sexuality. It necessitates only an objective relation to sexuality, a sexual tendency is not necessary." This definition includes all forms of an oral, vaginal or other penetration as well as intensive touches of the sexual organs of a person.

Question 16 of the GOQ / du QAG

Question a.

(...)

Article 18, Par. 1:

The offence according to Article 18 par. 1 of the Convention is covered by Sections 206 and 207 of the CC which penalize any sexual contact with minors. Under Section 206 (severe

sexual abuse of minors) anyone who has sexual intercourse or performs a sexual act equal to sexual intercourse with a minor, or induces a minor to perform a sexual act or to have a sexual act performed on him/her, is to be sentenced to imprisonment from one year up to ten years. A penalty increasing qualification applies if the offence results in a grievous bodily injury, a pregnancy or the death of the victim or the victim is set into a torturous state for a longer time or is humiliated in a special manner. In case of the death of the victim, the imposition of life imprisonment is also possible.

Section 207 (sexual abuse of minors) penalizes other sexual acts than the ones covered by Section 206 which are performed on minors, the basic penalty being imprisonment from six months up to five years. A penalty increasing qualification applies if the offence results in a grievous bodily injury, a pregnancy or the death of the victim or the victim is set into a torturous state for a longer time or is humiliated in a special manner. In case of the death of the victim, the imposition of life imprisonment is also possible.

Par. 2 1st indent:

Section 201 (Rape) penalizes sexual intercourse or sexual acts equal to sexual intercourse performed by using force, deprivation of liberty or dangerous threat. The offender is to be sentenced to imprisonment from one year up to ten years.

A penalty increasing qualification applies if the offence results in a grievous bodily injury, a pregnancy or the death of the victim or the victim is set into a torturous state for a longer time or is humiliated in a special manner. In case of the death of the victim, the imposition of life imprisonment is also possible.

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 Section 202 of the CC. The basic penalty is imprisonment from six months up to five years. A penalty increasing qualification applies if the offence results in a grievous bodily injury, a pregnancy or the death of the victim or the victim is set into a torturous state for a longer time or is humiliated in a special manner. In case of the death of the victim, the imposition of life imprisonment is also possible.

If the victim of the rape or sexual coercion is under 14 years of age, the perpetrator is to be punished for both the rape/sexual coercion and the (severe) sexual abuse of minors.

Par. 2 2nd indent:

This provision is implemented by Section 212 of the CC (abuse of a position of authority). Section 212 par. 1 penalizes a person who performs a sexual act, has a sexual act performed on him/her, or with the intent to sexually stimulate himself/herself or a third person, induces the victim to perform a sexual act on himself/herself.

The perpetrator of the offence under par. 1 commits the offence against a person under age who is either related to him/her in degressive line, or his/her adopted child, stepchild or ward (subpar. 1) or against a person under age who is under the perpetrator's education, schooling or supervision (e.g. the perpetrator is a person cohabiting with the child, such as

the mother's new partner) and the perpetrator abuses his/her position towards the victim (subpar. 2).

Par. 2 penalizes the same sexual acts as par. 1. However the perpetrator's position is different. Par. 2 applies if the perpetrator commits the sexual act as a doctor, psychologist, psychotherapist, nurse or pastor with a person he/she is in charge of professionally (subpar. 1), as an employee of an educational establishment with a person that is looked after in the establishment (subpar. 2) or as an official with a person entrusted to his/her care (subpar. 3).

Par. 2 applies regardless of the victim's age, whereas par. 1 only applies to persons under age.

If the victim is under 14 years of age, the perpetrator is to be punished for (severe) sexual abuse of minors (Sections 206 or 207) and abuse of a position of authority according to Section 212.

Par. 2 3rd indent:

The behaviour referred to in this provision is covered by Sections 205 and 207b par. 1 and 2 of the CC:

According to Section 205 par. 1 of the CC anyone who abuses a defenceless person or a person, who as a consequence of a mental disease, intellectual disability, deep disturbance of consciousness, or other grave psychic disturbance equivalent to one of these conditions, lacks the capacity either to appreciate the meaning of his/her behaviour or to conform his/her conduct to this appreciation (= psychologically impaired person), by way of abusing this condition, thereby having sexual intercourse or performing a sexual act equal to sexual intercourse with the person, or, with the intent to sexually stimulate himself/herself or a third person, inducing the person to perform a sexual act or to have a sexual act performed on him/her, is to be sentenced to imprisonment from one year up to ten years.

Section 205 par. 2 of the CC penalizes other sexual acts than the ones covered by par. 1 of this provision which are performed on a defenceless or psychologically impaired person, the basic penalty being imprisonment from six months up to five years.

A penalty increasing qualification applies if the offence results in a grievous bodily injury, a pregnancy or the death of the victim or the victim is set into a torturous state for a longer time or humiliated in a special manner. In case of the death of the victim, the imposition of life imprisonment is also possible.

In addition, Section 207b of the CC aims to protect juveniles who have not yet completed the 16th or 18th year of age from sexual abuse. Par. 1 of the cited law protects juveniles under the age of 16 years who, for certain reasons, are not sufficiently mature to understand the meaning of a sexual act or to act according to this understanding or whose capability to do so is clearly limited. The penalty is imprisonment of up to one year.

Par. 2 of Section 207b of the CC applies if the perpetrator abuses a position of vulnerability of a juvenile under the age of 18 years for sexual acts. The penalty is imprisonment of up to three years.

Question b.

The above-mentioned criminal offences do not differ from the Lanzarote Convention benchmark.

Question c.

(...)

Question d.

As mentioned above under Question 16a, most of the criminal offences related to sexual exploitation and sexual abuse of children provide for different terms of imprisonment according to whether the offence was committed against a minor or a person under age who has reached the age of sexual consent (e.g. Sections 106, 207a, 215a of the CC). As for the rest, the low age of victim may be regarded as an aggravating circumstance, since the Criminal Code (Section 33) does not provide for a closed list of aggravating circumstances.

BELGIUM / BELGIQUE

Question 10 of the TQ / du QT

Question a.

En droit belge, outre l'élément légal et l'élément matériel, toute infraction comporte un élément moral. Il s'agit d'un esprit coupable, lequel peut revêtir l'une des quatre formes suivantes : un dol général, un dol spécial, une faute – avec ou sans prévoyance – ou un concours entre le dol et la faute.

La notion « comportements intentionnels » est couverte en droit belge par la notion de « dol général ». Le dol général est l'élément requis pour les infractions intentionnelles. Il se définit comme l'intention soit de poser l'acte interdit, soit de ne pas agir comme la loi le commande. Il se compose de deux éléments : la connaissance (sciens) et la volonté ou l'acceptation (volens aut accipiens) de poser l'acte interdit ou de s'abstenir d'intervenir.

Question b.

Ce que l'on comprend par « activités sexuelles » dans le droit interne (Rapport explicatif, par. 127).

En droit belge, la notion « activités sexuelles » n'est pas reprise comme telle dans les dispositions du Code pénal.

Toutes les infractions sexuelles sont reprises sous le Titre VII du Code pénal, relatif aux crimes et délits contre l'ordre des familles et contre la moralité publique.

En ce qui concerne l'attentat à la pudeur, le Code pénal prévoit l'infraction sans définir ou préciser cette notion. La notion a été explicitée par la doctrine et la jurisprudence qui ont déterminé de manière évolutive les valeurs protégées par l'infraction et les actes

susceptibles de constituer un attentat à la pudeur. La Cour de Cassation a décidé par son arrêt du 7 janvier 1997 que l'attentat à la pudeur n'existe que lorsque sont accomplis des actes d'une certaine gravité portant atteinte à l'intégrité sexuelle d'une personne telle qu'elle est perçue par la conscience collective d'une société déterminée à une époque déterminée. Cette notion a depuis lors été explicitée par la Cour de Cassation statuant que 'l'attentat à la pudeur suppose une atteinte contraignante à l'intégrité sexuelle, qui se réalise sur une personne vivante ou à l'aide de celle-ci, sans exiger nécessairement un contact physique avec elle' (Cass. 6 octobre 2004).

En ce qui concerne le viol, l'article 375, alinéa 1er, du Code pénal définit ce qui doit être entendu sous la notion de viol: « Tout acte de pénétration sexuelle, de quelque nature qu'il soit et par quelque moyen que ce soit, commis sur une personne qui n'y consent pas, constitue le crime de viol. »

Question 16 of the GOQ / du QAG

Abus sexuels (article 18)

1. Le fait de se livrer à des activités sexuelles avec un enfant qui, conformément aux dispositions pertinentes du droit national, n'a pas atteint l'âge légal pour entretenir des activités sexuelles ;

Oui, article 372 du Code pénal (attentat à la pudeur) et article 375 du Code pénal (viol).
Des circonstances aggravantes liées à l'âge de la victime sont prévues.

« Art. 372. Tout attentat à la pudeur commis sans violences ni menaces sur la personne ou à l'aide de la personne d'un enfant de l'un ou de l'autre sexe, âgé de moins de seize ans accomplis, sera puni de la réclusion de cinq ans à dix ans.

Sera puni de la réclusion de dix à quinze ans l'attentat à la pudeur commis, sans violences ni menaces, par tout ascendant ou adoptant sur la personne ou à l'aide de la personne d'un mineur, même âgé de seize ans accomplis, mais non émancipé par le mariage. La même peine sera appliquée si le coupable est soit le frère ou la sœur de la victime mineure ou toute personne qui occupe une position similaire au sein de la famille, soit toute personne cohabitant habituellement ou occasionnellement avec elle et qui a autorité sur elle. »

« Art. 375. Tout acte de pénétration sexuelle, de quelque nature qu'il soit et par quelque moyen que ce soit, commis sur une personne qui n'y consent pas, constitue le crime de viol.

Il n'y a pas consentement notamment lorsque l'acte a été imposé par violence, contrainte ou ruse, ou a été rendu possible en raison d'une infirmité ou d'une déficience physique ou mentale de la victime.

Quiconque aura commis le crime de viol sera puni de réclusion de cinq ans à dix ans

Si le crime a été commis sur la personne d'un mineur âgé de plus de seize ans accomplis, le coupable sera puni de la peine de la réclusion de dix à quinze ans.

Si le crime a été commis sur la personne d'un enfant âgé de plus de quatorze ans accomplis et de moins de seize ans accomplis, le coupable sera puni de la peine de la réclusion de quinze à vingt ans.

Est réputé viol à l'aide de violences tout acte de pénétration sexuelle, de quelque nature qu'il soit et par quelque moyen que ce soit, commis sur la personne d'un enfant qui n'a pas atteint l'âge de quatorze ans accomplis. Dans ce cas, la peine sera la réclusion de quinze à vingt ans.

Elle sera de la réclusion de vingt ans à trente ans si l'enfant était âgé de moins de dix ans accomplis. »

2. Le fait de se livrer à des activités sexuelles avec un enfant :

- en faisant usage de la contrainte, de la force ou de menaces ; ou

Oui, article 373 du Code pénal (attentat à la pudeur) et 375 du Code pénal (viol)

« Art. 373. L'attentat à la pudeur, commis avec violences ou menaces, sur des personnes de l'un ou de l'autre sexe, sera puni d'un emprisonnement de six mois à cinq ans.

Si l'attentat a été commis sur la personne d'un mineur de plus de seize ans accomplis, le coupable subira la réclusion de cinq ans à dix ans.

La peine sera de la réclusion de dix à quinze ans, si le mineur était âgé de moins de seize ans accomplis. »

« Art. 375. Tout acte de pénétration sexuelle, de quelque nature qu'il soit et par quelque moyen que ce soit, commis sur une personne qui n'y consent pas, constitue le crime de viol.

Il n'y a pas consentement notamment lorsque l'acte a été imposé par violence, contrainte ou ruse, ou a été rendu possible en raison d'une infirmité ou d'une déficience physique ou mentale de la victime.

Quiconque aura commis le crime de viol sera puni de réclusion de cinq ans à dix ans

Si le crime a été commis sur la personne d'un mineur âgé de plus de seize ans accomplis, le coupable sera puni de la peine de la réclusion de dix à quinze ans.

Si le crime a été commis sur la personne d'un enfant âgé de plus de quatorze ans accomplis et de moins de seize ans accomplis, le coupable sera puni de la peine de la réclusion de quinze à vingt ans.

Est réputé viol à l'aide de violences tout acte de pénétration sexuelle, de quelque nature qu'il soit et par quelque moyen que ce soit, commis sur la personne d'un enfant qui n'a pas atteint l'âge de quatorze ans accomplis. Dans ce cas, la peine sera la réclusion de quinze à vingt ans.

Elle sera de la réclusion de vingt ans à trente ans si l'enfant était âgé de moins de dix ans accomplis. »

- en abusant d'une position reconnue de confiance, d'autorité ou d'influence sur l'enfant, y compris au sein de la famille ; ou

- en abusant d'une situation de particulière vulnérabilité de l'enfant, notamment en raison d'un handicap physique ou mental ou d'une situation de dépendance.

Pour les deux tirets ensemble, oui, voir les articles 372, 375, 376 et 377 CP:

« Art. 372. Tout attentat à la pudeur commis sans violences ni menaces sur la personne ou à l'aide de la personne d'un enfant de l'un ou de l'autre sexe, âgé de moins de seize ans accomplis, sera puni de la réclusion de cinq ans à dix ans.

Sera puni de la réclusion de dix à quinze ans l'attentat à la pudeur commis, sans violences ni menaces, par tout ascendant ou adoptant sur la personne ou à l'aide de la personne d'un mineur, même âgé de seize ans accomplis, mais non émancipé par le mariage. La même peine sera appliquée si le coupable est soit le frère ou la sœur de la victime mineure ou toute personne qui occupe une position similaire au sein de la famille, soit toute personne cohabitant habituellement ou occasionnellement avec elle et qui a autorité sur elle. »

«Art. 375. Tout acte de pénétration sexuelle, de quelque nature qu'il soit et par quelque moyen que ce soit, commis sur une personne qui n'y consent pas, constitue le crime de viol.

Il n'y a pas consentement notamment lorsque l'acte a été imposé par violence, contrainte ou ruse, ou a été rendu possible en raison d'une infirmité ou d'une déficience physique ou mentale de la victime.

Quiconque aura commis le crime de viol sera puni de réclusion de cinq ans à dix ans.

Si le crime a été commis sur la personne d'un mineur âgé de plus de seize ans accomplis, le coupable sera puni de la peine de la réclusion de dix à quinze ans.

Si le crime a été commis sur la personne d'un enfant âgé de plus de quatorze ans accomplis et de moins de seize ans accomplis, le coupable sera puni de la peine de la réclusion de quinze à vingt ans.

Est réputé viol à l'aide de violences tout acte de pénétration sexuelle, de quelque nature qu'il soit et par quelque moyen que ce soit, commis sur la personne d'un enfant qui n'a pas atteint l'âge de quatorze ans accomplis. Dans ce cas, la peine sera la réclusion de quinze à vingt ans.

Elle sera de la réclusion de vingt ans à trente ans si l'enfant était âgé de moins de dix ans accomplis.»

«Art. 376. Si le viol ou l'attentat à la pudeur a causé la mort de la personne sur laquelle il a été commis, le coupable sera puni de la réclusion de vingt ans à trente ans.

Si le viol ou l'attentat à la pudeur a été précédé ou accompagné des actes visés à l'article 417ter, alinéa premier, ou de séquestration, le coupable sera puni de la réclusion de quinze ans à vingt ans.

Si le viol ou l'attentat à la pudeur a été commis soit sur une personne dont la situation de vulnérabilité en raison de l'âge, d'un état de grossesse, d'une maladie, d'une infirmité ou d'une déficience physique ou mentale était apparente ou connue de l'auteur des faits, soit sous la menace d'une arme ou d'un objet qui y ressemble, le coupable sera puni de la réclusion de dix à quinze ans. »

« Art. 377. Les peines seront fixées comme prévu aux alinéas 2 à 6 :

- si le coupable est l'ascendant ou l'adoptant de la victime, un descendant en ligne directe de la victime ou un descendant en ligne directe d'un frère ou d'une sœur de la victime;

- si le coupable est soit le frère ou la sœur de la victime mineure ou toute personne qui occupe une position similaire au sein de la famille, soit toute personne cohabitant habituellement ou occasionnellement avec elle et qui a autorité sur elle;

- si le coupable est de ceux qui ont autorité sur la victime; s'il a abusé de l'autorité ou des facilités que lui confèrent ses fonctions; s'il est médecin, chirurgien, accoucheur ou officier de santé et que l'enfant ou toute autre personne vulnérable visée à l'article 376, alinéa 3, fut confié à ses soins;

- si dans le cas des articles 373, 375 et 376, le coupable, quel qu'il soit, a été aidé dans l'exécution du crime ou du délit, par une ou plusieurs personnes.

Dans les cas prévus par le § 1 de l'article 372 et par le § 2 de l'article 373, la peine sera celle de la réclusion de dix ans à quinze ans.

Dans le cas prévu par le paragraphe 1 de l'article 373, le minimum de l'emprisonnement sera doublé.

Dans les cas prévus par l'alinéa 3 de l'article 373, par l'alinéa 4 de l'article 375 et par l'alinéa 3 de l'article 376, la peine de la réclusion sera de douze ans au moins;

Dans le cas prévu par le paragraphe 1 de l'article 375, la peine de la réclusion sera de sept ans au moins.

Dans les cas prévus par les alinéas 5 et 6 de l'article 375 et par l'alinéa 2 de l'article 376, la peine de la réclusion sera de dix-sept ans au moins. »

(...)

Complicité et tentative (article 24)

1. Toute complicité intentionnelle en vue de commettre l'une des infractions visées ci-dessus ;

Les règles de participation (complicité et corréité) sont prévues au Chapitre VII du Code pénal dans les articles 66 et suivants:

« Art. 66. Seront punis comme auteurs d'un crime ou d'un délit :

Ceux qui l'auront exécuté ou qui auront coopéré directement à son exécution;

Ceux qui, par un fait quelconque, auront prêté pour l'exécution une aide telle que, sans leur assistance, le crime ou le délit n'eût pu être commis;

Ceux qui, par dons, promesses, menaces, abus d'autorité ou de pouvoir, machinations ou artifices coupables, auront directement provoqué à ce crime ou à ce délit;

Ceux qui, soit par des discours tenus dans des réunions ou dans des lieux publics, soit par des écrits, des imprimés, des images ou emblèmes quelconques, qui auront été affichés, distribués ou vendus, mis en vente ou exposés aux regards du public, auront provoqué directement à le commettre, sans préjudice des peines portées par la loi contre les auteurs de provocations à des crimes ou à des délits, même dans le cas où ces provocations n'ont pas été suivies d'effet. »

« Art. 67. Seront punis comme complices d'un crime ou d'un délit :

Ceux qui auront donné des instructions pour le commettre;

Ceux qui auront procuré des armes, des instruments, ou tout autre moyen qui a servi au crime ou au délit, sachant qu'ils devaient y servir;

Ceux qui, hors le cas prévu par le § 3 de l'article 66, auront, avec connaissance, aidé ou assisté l'auteur ou les auteurs du crime ou du délit dans les faits qui l'ont préparé ou facilité, ou dans ceux qui l'ont consommé. »

« Art. 68. Ceux qui, connaissant la conduite criminelle des malfaiteurs exerçant des brigandages ou des violences contre la sûreté de l'Etat, la paix publique, les personnes ou les propriétés, leur auront fourni habituellement logement, lieu de retraite ou de réunion, seront punis comme leurs complices.

« Art. 69. Les complices d'un crime seront punis de la peine immédiatement inférieure à celle qu'ils encourraient s'ils étaient auteurs de ce crime, conformément aux articles 80 et 81 du présent code.

La peine prononcée contre les complices d'un délit n'excédera pas les deux tiers de celle qui leur serait appliquée s'ils étaient auteurs de ce délit. »

2. Toute tentative intentionnelle de commettre l'une des infractions visées ci-dessus.

Les articles 372, 373 (si la victime est mineure), 375, 379 et 380 du Code pénal prévoient des peines criminelles; la tentative est alors d'office punissable, via les règles prévues au Chapitre VII du Code pénal relative à la tentative de crime ou délit, voir les articles 51 et 52 du Code pénal :

“Art. 51. Il y a tentative punissable lorsque la résolution de commettre un crime ou un délit a été manifestée par des actes extérieurs qui forment un commencement d'exécution de ce crime ou de ce délit, et qui n'ont été suspendus ou n'ont manqué leur effet que par des circonstances indépendantes de la volonté de l'auteur.

“Art. 52. La tentative de crime est punie de la peine immédiatement inférieure à celle du crime même, conformément aux articles 80 et 81. »

En qui concerne la tentative relative aux infractions établies conformément à l'article 20, paragraphe 1, e) et f), l'article 21, paragraphe 1, c) et à l'article 23, de la Convention, la Belgique a fait une réserve lors de la ratification de la Convention, conformément à l'article 24, paragraphe 3, de la Convention, la Belgique se réserve le droit de ne pas appliquer le paragraphe 2 de l'article 24 relatif à la répression de la tentative des infractions établies par la Convention.

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

Question 10 of the TQ / du QT

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

Question 16 of the GOQ / du QAG

(...) In the Criminal Codes of entites⁶ and Criminal Code of District⁷, in chapters „criminal offences against sexual integrity and moral“ and „criminal offences against marriage and family“, a list of criminal offences having elements of sexual abuse and sexual exploitation of children are being indicated (persons who are 14 years old), respectively juvenile (persons younger than 18 years of age):

- Rape⁸
- Sexual intercourse with a helpless person⁹ - Sexual intercourse with a helpless person¹⁰ - Sexual intercourse with helpless person¹¹
- Sexual intercourse with a child¹² - Sexual violence on a child¹³ - Sexual intercourse with a child¹⁴
- Sexual intercourse by abuse of position¹⁵ - Sexual intercourse by abuse of position¹⁶ - Sexual intercourse by abuse of position¹⁷
- Lecherous act¹⁸
- (...)

⁶ Criminal Code of the Federation of Bosnia and Herzegovina (“Official Gazette of the Federation of Bosnia and Herzegovina” nos. 36/03, 37/03, 21/04, 69/04, 18/05, 42/10, 42/11) ; Criminal Code of Republic of Srpska (“Official Gazette of Republic of Srpska” nos. 49/03, 108/04, 37/06, 70/06, 73/10, 1/12, 67/13)

⁷ Criminal Code of Brčko District of BiH, cleared text („Official Gazette 33/13)

⁸ Criminal Code of the Federation of BiH, Article 203(5) and (6); Criminal Code of Republic of Srpska, Article 193(2), Criminal Code of Brčko District of Bosnia and Herzegovina, Article 200 (5)

⁹ Criminal Code of the Federation of Bosnia and Herzegovina, Article 204

¹⁰ Criminal Code of Republic of Srpska, Article 194(2)

¹¹ Criminal Code of Brčko District of Bosnia and Herzegovina, Article 201

¹² Criminal Code of the Federation of Bosnia and Herzegovina, Article 207

¹³ Criminal Code of Republic of Srpska, Article 195

¹⁴ Criminal Code of Brčko District, Article 204

¹⁵ Criminal Code of the Federation of Bosnia and Herzegovina, Article 205(2): „A teacher, educator, parent, adoptive parent, guardian, step-father, step-mother or any other person who, by abusing his status or relationship toward a juvenile who is entrusted to him for education, upbringing, custody or care, performs sexual intercourse or equivalent sexual act upon a juvenile, shall be punished by imprisonment for a term between six months and five years“.

¹⁶ Criminal Code of Republic of Srpska, Article 196.

¹⁷ Criminal Code of Brčko District, Article 202

¹⁸ Criminal Code of the Federation of Bosnia and Herzegovina, Article 208(2); Criminal Code of Brčko District of Bosnia and Herzegovina, Article 205(2)

– Incest¹⁹ - Incest²⁰

(...)

Age of a child plays a very important role taking into consideration criminal offences related to sexual abuse and those cases are considered as qualified forms of criminal offences. Moreover, when it is about determination of gravity of sanctions for perpetrator of those offences, the court, in compliance with the rules on determination of sanction takes into consideration all circumstances influencing on determination of sanction, especially on motives to commit such an act, his/her relationships against a victim etc.

BULGARIA / BULGARIE

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

CROATIA / CROATIE

Question 10 of the TQ / du QT

Question a.

Under internal law a criminal offence may be committed with direct (*dolus directus*) or indirect intent (*dolus eventualis*). The perpetrator is acting with direct intent when he/she is aware of the material elements of the criminal offence and wants or is certain of their realisation. The perpetrator is acting with indirect intent when he/she is aware that he/she might realise the material elements of the criminal offence and agrees to this.

Question b.

Under internal law the concept of sexual activities is not specially defined. However, in relation to the subject-matter of the Convention, the said concept subsumes concepts that are generally considered criminal offences, such as, for instance, sexual intercourse, sexual acts to which a person has not consented, lewd acts.

Non-consensual sexual intercourse means any sexual intercourse to which the victim has not consented.

A sexual act – any act which includes the penetration of the vaginal, anal or oral cavity with another person's body part or an object, to which the person has not consented.

Lewd acts – acts performed on the body or through contact with another person's body for the purpose of satisfying or inciting one's own or another person's lust, which under established social views represent a gross intrusion into sexuality.

¹⁹ Criminal Code of the Federation of Bosnia and Herzegovina, Article 213, para 2 and 3; Criminal Code of Brčko District of Bosnia and Herzegovina, Article 210, paras 2 and 3

²⁰ Criminal Code of Republic of Srpska, Article 201.

Question 16 of the GOQ / du QAG

Question a.

The entire Title XVII of the Criminal Act passed in 2011 refers to sexual activities involving a child who has not reached the legal age for sexual activities.

The content of Article 18 of the Lanzarote Convention is covered by Articles 158²¹, 159²², and 166²³ of the CA. Engaging in sexual activities with a child below the age of 15 years, above which age a child may engage in sexual activities if the age difference between him/her and his/her sexual partner does not exceed three years, is regulated by Article 158 of the CA.²⁴ Furthermore, a special paragraph of the said Article provides for a more severe punishment where this criminal offence is committed by means of the use of force or threats, deception, fraud, abuse of authority or of a situation of hardship or dependence of the child on him/her. Article 159 of the CA further prescribes punishment for the said acts of sexual abuse if the child is over 15 years of age. Paragraph 2 of the said Article prescribes punishment for the said criminal acts committed by a direct-line relative by blood or by adoption, a step-father or step-mother. Article 166 of the CA prescribes serious criminal offences of child sexual abuse and exploitation, including the criminal offence committed against a “particularly vulnerable child”.²⁵

Question b.

There is no difference between the said criminal offences defined by the Criminal Act from those stated in the Convention.

²¹ Article 158, paragraph 1, of the CA reads as follows: “Whoever engages in sexual intercourse or an equivalent sexual act with a child under the age of fifteen, or induces a child under the age of fifteen to engage in sexual intercourse or an equivalent sexual act with a third party or to perform upon himself or herself a sexual act equated with sexual intercourse, ...”

²² Article 159, paragraph 1, of the CA reads as follows: “Whoever engages in sexual intercourse or an equivalent sexual act with a child over the age of fifteen with whose upbringing, education, custody, spiritual guidance or care he/she has been entrusted, or whoever induces a child over the age of fifteen with whose upbringing, education, custody, spiritual guidance or care he/she has been entrusted to engage in sexual intercourse or an equivalent sexual act with a third party or to perform upon himself/herself a sexual act equated with sexual intercourse, ...”

²³ Article 166, paragraph 1, of the CA reads as follows: “If as a result of the criminal offence referred to in Article 158, paragraph 1, Article 162, paragraph 1 or 2, Article 163, paragraph 1 or 2, or Article 164, paragraph 1, of this Act the child suffers serious bodily injury or his/her physical or emotional development is compromised, or the child becomes pregnant, or where the offence was committed by several people acting together, or where the offence was committed against a particularly vulnerable child, or where it was committed by a person close to the child or a person the child lives with in a shared household, or where it was committed in an especially cruel or degrading manner, ...”

²⁴ Article 158 of the CA reads as follows: “Whoever engages in sexual intercourse or an equivalent sexual act with a child under the age of fifteen, or induces a child under the age of fifteen to engage in sexual intercourse or an equivalent sexual act with a third party or to perform upon himself or herself a sexual act equated with sexual intercourse ... There shall be no criminal offence referred to in paragraphs 1 and 2 of this Article if the age difference between the persons engaging in sexual intercourse or an equivalent sexual act or a lewd act does not exceed three years.”

²⁵ “... If as a result of the criminal offence referred to in Article 158, paragraph 1, Article 162, paragraph 1 or 2, Article 163, paragraph 1 or 2, or Article 164, paragraph 1, of this Act the child suffers serious bodily injury or his/her physical or emotional development is compromised, or the child becomes pregnant, or where the offence was committed by several people acting together, or where the offence was committed against a particularly vulnerable child, or where it was committed by a person close to the child or a person the child lives with in a shared household, or where it was committed in an especially cruel or degrading manner, ...”

Question c.

(...)

Question d.

That the age of the child plays a role in determining the gravity of criminal offences is evident from the Criminal Act itself which has provided for a special group of criminal offences committed against children under the age of 15 years. This fact, in addition to the circumstances referred to in Article 47 of the CA, may be taken into account when determining the type and severity of punishment.²⁶

DENMARK / DANEMARK

Question 10 of the TQ / du QT

Question a.

Intentional conduct include, in particular, as regards factual circumstances, knowledge or firm assumption (i.e., the assumption that something is more likely to be the case than not to be the case) and, as regards future events, a wish that such events occur or a belief that, on the balance of probabilities, that they will occur.

Question b.

Sexual activities include sexual intercourse (penile-vaginal and penile-anal) and other sexual activities. Other sexual activities include, in particular, non-penile vaginal and anal penetration, oral-genital contact and manipulation of another person's genitals. Briefly touching, without manipulating, another person's genitals with one's hand does not amount to sexual activities.

Question 16 of the GOQ / du QAG

Question a.

(...), the intentional conducts in the box below are criminal offences in Denmark. For details please refer to Annex I.

Question b.

In accordance with Article 20(3), Denmark has reserved the right not to apply Article 20(1)(a) and (e) to the production and possession of pornographic material involving children who have reached the age set in application of Article 18(2) where these images

²⁶ Article 47, paragraph 1, of the CA reads as follows: "When determining the type and measure of punishment, the court shall, starting from the degree of guilt and the purpose of punishment, assess all the circumstances affecting the severity of punishment by type and measure of punishment (mitigating and aggravating circumstances), and especially the degree of threat to or violation of a legally protected good, the motive for having committed the criminal offence, the degree to which the perpetrator's duties have been violated, the manner of commission and the consequences arising from the commission of the criminal offence, the perpetrator's prior life, his/her personal and pecuniary circumstances and his/her conduct following the commission of the criminal offence, his/her relationship to the victim and his/her efforts to repair the damage.

are produced and possessed by them with their consent and solely for their own private use.

Question c.

Indecent behaviour with a child is criminalised to a wider extent than specified under “Corruption of Children (Article 22)” (...)

Question d.

The younger the victim, the more serious the offence.

Annex I

As stated in the answer to question 16(a) the intentional conducts referred to in Articles 18-24 of the Lanzarote Convention – except for the conduct referred to in Article 20(3) second indent of the Lanzarote Convention – are criminal offences in Denmark. (...). It should be noted that there is not necessarily one Danish provision criminalising the conduct referred to in a given provision of the Lanzarote Convention (i.e., one Danish provision may cover conduct which is divided between several provisions of the Lanzarote Convention and may even cover conduct outside the scope of the Lanzarote Convention (in particular offences committed against adult victims), and, conversely, one provision of the Lanzarote Convention may cover conduct which is divided between several Danish provisions).

FINLAND / FINLANDE

Question 10 of the TQ / du QT

Question a.

According to the Criminal Code the perpetrator has intentionally caused the consequence described in the statutory definition if the causing of the consequence was the perpetrator’s purpose or he or she had considered the consequence as a certain or quite probable result of his or her actions. A consequence has also been intentionally caused if the perpetrator has considered it as certainly connected with the consequence that he or she has aimed for (Chapter 3, Section 6).

Question b.

The Criminal Code includes definitions on sexual intercourse and sexual act. Sexual intercourse refers to the sexual penetration, by a sex organ or directed at a sex organ, of the body of another. A sexual act refers to an act which, with consideration to the offender, the person at whom the act was directed and the circumstances of commission, is sexually significant (Chapter 20, Section 10).

The term “sexual activities” is understood broadly to cover both, sexual intercourse and other sexual acts.

Question 16 of the GOQ / du QAG

Question a.

All the offences listed in the questionnaire are criminalized in Finland (see the Criminal Code provisions attached). The applicability of each offence depends on the specific case. In some cases several provisions may apply at the same time. For example in cases where a child under the age of sexual consent has been coerced into sexual activities the provisions on sexual abuse of a child and the provision on rape/aggravated rape apply. The provisions on rape crimes are currently being amended. The government has proposed to the Parliament among other changes that one of the aggravated circumstances in a rape would be that the victim is under 18-years of age (Government Bill in Finnish and Swedish: HE 216/2013 vp).

Convention

Article 18, Sexual abuse

Finnish Criminal Code

1. Chapter 20, Section 6 (Sexual abuse of a child), Section 7 (Aggravated sexual abuse of a child),

2. Section 1 (Rape), Section 2 (Aggravated rape), Section 4 (Coercion into a sexual act)
Section 5 (Sexual abuse)

FRANCE

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

GREECE / GRÈCE

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

ICELAND / ISLANDE

Question 10 of the TQ / du QT

Question a.

All levels of intentional conduct apply in relations to sexual offences against children under Icelandic law, see article 202 in the GPC. This also includes the lowest threshold, dolus eventualis. Where violations of Article 201 or Article 202 have been committed in ignorance of the age of the victim, a relatively more lenient punishment may be imposed; however, it may not be reduced to less than the minimum prescribed imprisonment, which is 30 days according to Article 204.

Question b.

Article 202 in the GPC lists three types of punishable sexual conducts: sexual intercourse, other sexual relations and sexual harassment.

The term other sexual relations refers to sexual exploitation of a child's body that is the surrogate of sexual intercourse. Examples are oral sex, anal intercourse, the conduct of putting a finger into vagina or rectum, licking and sucking genitals, to let the victim

masturbate the perpetrator, to have sexual intercourse between the thighs of the victim, on his backside or stomach.

The term sexual harassment refers to fondling and other sorts of physical contact, as well as sexual photography. An example of this conduct is touching breasts and genitals for a brief time that does not result in full satisfaction (ejaculation) for the perpetrator.

Question 16 of the GOQ / du QAG

Question a.

All of the intentional conducts described in the box on page 8 in the questionnaire are considered criminal offences under Icelandic criminal law. A part of the ratification procedure of the Lanzarote Convention was the passing of a legislative bill amending the General Penal Code with respect to the standards set out in the Convention. The bill was prepared by the Standing Committee on Penal Law, who examined the Convention and compared its penal provisions to the Icelandic legal framework. A summary of this examination is a part of the explanatory report attached to the amendment bill.

All conducts in Article 18 (...) are considered criminal offences according to the Icelandic Penal Code no. 19/1940 (articles 194 and 197-202).(...)

Question b.

The Standing Committee on Penal Law reported no differentiation from the Convention benchmark in the amending legislation.

Question c.

Other offences are not incriminated in Icelandic law, as the offences listed below are quite exhaustive.

Question d.

It should be pointed out that the age of sexual consent in Iceland is 15 years and all sexual contact with children under that age is criminal (Art. 202) The age of the child *per se* does not play a role in determining the gravity of the offence. However in cases of incest the gravity is determined higher if the child is below the age of 16 years of age (Art. 201). Furthermore it should be noted that in practice courts do in certain cases make a reference to the young age of the child victim which indicates that it is one of the factors evaluated when determining the gravity of the offence. See also Article 70 para 1, Article 195, Article 198, 200 and Article 202 para 1.

ITALY / ITALIE

Question 10 of the TQ / du QT

Question a.

“Intentional conduct” is defined according to the general rules of the Italian Criminal Code – in particular, Article 42 which describes different criminal liabilities according to different levels of culpability.

Article 42 of the Criminal Code

“Liability for acts committed with malice aforethought or with negligence or for a preterintentional offence. Objective liability.

No person may be punished for an action or omission contemplated by law as an offence, if he has not committed it consciously and wilfully.

No person may be punished for a fact contemplated by law as a crime, if he has not committed it intentionally (with malice aforethought), save in cases of a preterintentional or unintentional crime expressly contemplated by law. The law determines the cases in which the event is otherwise ascribed to the agent, as a consequence of his action or omission.

In infringements, each person answers for his own conscious or voluntary action or omission whether wilful or unintentional.”

Question b.

“Sexual activities”: established case-law of the Supreme Court of Cassation defines “sexual activity” as any act which constitutes an unsolicited and unwarranted intrusion in the sexual sphere of the victim, through any behaviour which may constitute the expression of sexual instincts. This includes, for instance, mere touching of bodily parts which may be generally considered as erogenous or even acts which, though not implying physical contact, may endanger the freedom of sexual determination of the victim.

Question 16 of the GOQ / du QAG

Question a.

All the conducts indicated in the box are considered criminal offences in internal law.

CETS 201 – Protection of Children against Sexual Exploitation and Sexual Abuse Lanzarote, 25.X.2007	Internal law
<p><i>Article 18 – Sexual Abuse</i></p> <p>1. Engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;</p>	<p>Sexual abuse is regulated by article 609 bis of the Italian Criminal Code and it is committed by “Anybody who, by means of violence or threat or because of abuse of authority, obliges somebody to do or be subject to sexual acts”. The crime of “severe sexual abuse” occurs in the case sexual abuse is committed:</p> <p>Article 609bis of the Criminal Code: Sexual violence; Article 609ter of the Criminal Code: Aggravating circumstances; Article 609quater of the Criminal Code: Sexual acts with children</p> <p>1. Article 609quater of the Criminal Code, paragraphs 1 and 5, Para. 1 - The penalty set forth in Article 609 bis, except for the cases envisaged by the said</p>

2. Engaging in sexual activities with a child where:

– use is made of coercion, force or threats; or

– abuse is made of a recognised position of trust, authority or influence over the child, including within the family; or

article, shall be imposed on whomever perpetrates sexual acts with a person who, at the time of the acts:

1) is under fourteen;

2) is under sixteen, when the offender is the ascendant, parent, including a foster parent, or his/her live-in partner, the guardian, or other person entrusted with the child's care, education, instruction, supervision or custody or with whom the child lives.

Para. 5 - The sentence as per Article 609 ter, paragraph 2, shall apply when the victim is under ten.

2. Article 609bis of the Criminal Code, paragraph 1

Para. 1 - Any person who, by violence or threat, or by abuse of authority, forces a person to perform or suffer sexual acts shall be punished by imprisonment from five to ten years.

- Article 609ter of the Criminal Code, paragraph 1, no. 1; paragraph 2

Para. 1 - The sentence of imprisonment shall be from six to twelve years if the acts provided for in Article 609 bis have been committed:

1) against a person under fourteen;

Para. 2 - The sentence shall be a term of imprisonment from seven to fourteen years if the act is committed against a person under ten.

- Article 609quater of the Criminal Code, paragraph 1, no. 2, and paragraph 2

Para. 1 - The penalty set forth in Article 609 bis, except for the cases envisaged by the said article, shall be imposed on whomever perpetrates sexual acts with a person who, at the time of the acts:

2) is under sixteen, when the offender is the ascendant, parent, including a foster parent, or his/her live-in partner, the guardian, or other person entrusted with the child's care, education, instruction, vigilance or custody or with whom the child lives.

Para. 2 - Except for the cases envisaged by Article 609 bis, the ascendant, parent, including a foster parent or his/her live-in partner, or guardian who, by abusing the powers connected to his/her position, performs sexual acts with a child who has reached the age of 16,

<p>– abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.</p>	<p>shall be punished by imprisonment from three to six years.</p> <p>- Article 609ter of the Criminal Code, paragraph 1, no. 5 Para. 1 - The sentence of imprisonment shall be from six to twelve years if the acts provided for in Article 609 bis have been committed: 5) against a person under sixteen in respect of whom the author of the crime is the ascendant, parent or a foster parent, the guardian.</p> <p>- Article 609bis of the Criminal Code, paragraph 2, no. 1 2 – The same penalty shall be imposed on any person who induces a person to perform or suffer sexual acts: 1. abusing the victim’s condition of mental or physical deficiency at the time of the act.</p> <p>Two other articles qualify the legislation that prosecute sexual acts against minors: - Art. 609 <i>quinquies</i> c.p. (corruption of a minor), this law punishes anyone who performs sexual acts in the presence of a person under 14 years of age, with the purpose of making him/her witness the act, the sentence is from six months to three years’imprisonment. - Art. 609 <i>octies</i> c.p. (group sexual violence) prosecutes the participation, by one or more persons reunited, in acts of sexual violence as in article 609 bis.</p>
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(...)

As to ancillary punishments against the authors of such crimes, **art. 609 nonies of the Criminal Code** envisages the loss of the parental authority when the quality of being parent is an element in the crime or an aggravating circumstance of the crime; the perpetual disqualification from any office regarding protection and guardianship, the loss of the right to alimony and the exclusion from the succession of the offended person. In addition, the victim’s parent, though he/she did not materially committed the behaviour envisaged by the rule, can be liable for the crime perpetrated against minor children if he/she is aware of the criminal behaviour of abuse by third parties against them. As a matter of fact, under art. 40 paragraph Criminal Code (according to which “not preventing an event for which one is obliged to prevention is equal to causing it) and art. 147 of the Italian Civil Code (which envisages the parents’ obligation to maintain, educate and instruct children), the parent who did not commit the abuse can be charged with being liable of for concurrence by omission in the same crime committed by others, since he/she is given, under art. 147 of the Italian Civil Code, a position of guarantee, based on which he/she has the obligation to intervene in order to prevent the occurrence of detrimental events against the children. The new Law no. 38/2006 also introduced another provision, to reduce as much as possible the risk of repetition: that of the perpetual disqualification from any office in all types of

schools, as well as from any office or service in institutions or other organizations mainly attended by minors.

Still from the viewpoint of procedure, another significant provision is included in article no. 11 of Law no. 38, regarding the application of the sentence upon request from the parties (art. 444 of the Code of Criminal Procedure): the opportunity for the offender to “**find an agreement**” is cancelled for the following cases:

- Use of minors under 18 to make pornographic exhibitions or produce pornographic materials;
- Instigation of a minor under eighteen to take part in pornographic exhibitions;
- Trade of pornographic material made utilizing minors under 18;
- Distribution, dissemination, spreading or advertising the material above or information aimed at sexual soliciting or sexual exploitation of minors under 18;
- Possession of large quantities of the material above;
- Production or trading in “virtual” pornographic material.

To fully understand the significance of this choice, it is necessary to mention that in the code of criminal procedure the exclusion of plea bargaining only occurs for crimes such as criminal conspiracy, criminal association with mafia objectives, slavery, trafficking of people, kidnapping or crimes for terrorist purposes.

It should finally be noted that Italian law envisages **mandatory arrest in the act** of committing the crime in the following cases:

- instigation to prostitution of a person under eighteen or assisting or exploiting prostitution of a person under eighteen,
- use of minors under eighteen to make pornographic exhibitions or produce pornographic material or induce minors under eighteen to take part in pornographic exhibitions (law 38 extended this provision also to the case of the production of virtual child pornography);
- organization or advertising travel aimed at making use of prostitution to the detriment of minors or which includes such activity.

The Law no. 38/2006 also introduced optional arrest in the act of committing a crime in the cases of offer, sale or possession of pornographic material featuring minors, also in the event of virtual child pornographic material.

In all these cases, it is however mandatory for the public attorney (Procuratore della Repubblica) to give information to the Juvenile Court for the immediate beginning of procedures for the protection of the minors concerned. Support from social services is always guaranteed for minors, and the court must make use of them (art. 609 decies of Criminal Code).

Question b.

There are no particular differences.

However, in order to protect the child victim, Law 1 October 2012, n. 172 has modified Art. 609 sexies of the Criminal Code, providing for the expansion of the range of offenses against minors with respect to which it can no longer claim to be unaware of the minor age, thanks

to the principle of “*non excusability*” about ignorance of the age of the offended person, whose limit has been raised to 18 years.

Question c.

Incitement to paedophilia and pedopornography as provided for by Art.414 bis of the criminal code and as amended by Art.4 para. 1, letter b) of Law 172/12.

Moreover, in the Criminal Code, Art. 734 bis (“*Disclosure of generalities or images of a person offended by acts of sexual abuse*”) has been modified by the Law 3 august 1998, n. 269 in order to protect also the generalities (name, date of birth etc.) and the image of the child victim of sexual abuse.

Question d.

Yes, in our legal system the fact that the age of a child victim of sexual abuse is less than ten years is considered as an aggravating circumstance.

For this reason:

- the penalty is increased, as stipulated by Articles 609 ter and 609 quarter of the Criminal Code;
- the offence is prosecuted *ex officio*, as stipulated by Art. 609 septies, c. 4 of the Criminal Code.

Moreover, in our Criminal Code there are other cases in which the age of the child plays a role in determining the gravity of the offences:

- Art. 600 bis, c.2;
- Art. 609 ter, c.1 n.1, 5;
- Art. 609 quater, c.1, c.3.

LITHUANIA / LITUANIE

Question 10 of the TQ / du QT

Question a.

Intent means that when committing a criminal act, a person was aware of its dangerous nature and desired to engage therein (in the event of formal elements constituting a criminal act) or, when committing a criminal act, a person was aware of its dangerous nature and anticipated that his act or omission might cause the consequences provided for by the CC and desired that they arise (in the event of material elements constituting a criminal act) – specific intent (CC Article 15(2)); when committing a criminal act, a person was aware of its dangerous nature, anticipated that his act or omission might cause the consequences provided for by the CC and, though he did not desire that they arise, consciously allowed the consequences to arise – general intent (CC Article 15(3)):

“Article 15. Premeditated Crime and Misdemeanour

1. A crime or misdemeanour shall be premeditated where it has been committed with a specific or general intent.

2. A crime or misdemeanour shall be committed with a specific intent where:

- 1) when committing it, the person was aware of the dangerous nature of the criminal act and desired to engage therein;
- 2) when committing it, the person was aware of the dangerous nature of the criminal act, anticipated that his act or omission might cause the consequences provided for by this Code and desired that they arise.
3. A crime or a misdemeanour shall be committed with a general intent where, when committing it, the person was aware of the dangerous nature of the criminal act, anticipated that his act or omission might cause the consequences provided for by this Code and, though he did not desire that they arise, consciously allowed the consequences to arise.”

Question b.

Sexual activities include sexual intercourse and any other satisfaction of sexual desires through any means of physical contact.

Article 149(1) of the CC defines rape, whereas paragraphs 3 and 4 set forth liability for the rape of a minor and a young child:

“Article 149. Rape

1. A person who has sexual intercourse with a person against his will by using physical violence or threatening the immediate use thereof or by otherwise depriving of a possibility of resistance or by taking advantage of the helpless state of the victim [...].
2. A person who rapes another person with a group of accomplices [...].
3. A person who rapes a minor [...].
4. A person who rapes a young child [...].”

Article 150(1) of the CC defines sexual assault, whereas paragraphs 3 and 4 set forth liability for the sexual assault of a minor and a young child:

“Article 150. Sexual assault

1. A person who, against a person’s will, satisfies his sexual desires through anal, oral or interfemoral intercourse by using physical violence or by threatening the immediate use thereof or by otherwise depriving the victim of a possibility of resistance or by taking advantage of the helpless state of the victim [...].
2. A person who carries out the actions provided for in paragraph 1 of this Article together with a group of accomplices [...].
3. A person who carries out the actions provided for in paragraph 1 of this Article in respect of a minor [...].
4. A person who carries out the actions provided for in paragraph 1 of this Article in respect of a young child [...].”

The criminal law provides for a stricter liability (CC Article 151(2)) for compelling a child to have sexual intercourse by threatening to resort to violence or by taking advantage of a person’s dependency on the abuser:

“Article 151. 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 [...].
2. A person who carries out the actions provided for in paragraph 1 of this Article in respect of a minor [...].”

Furthermore, Article 1511(3) of the CC stipulates a criminal liability with regard to father, mother, guardian, custodian or another lawful representative of a child or another person holding statutory powers in respect of a minor who has sexual intercourse or otherwise satisfied his sexual desires with that minor, in the absence of characteristics of a rape, sexual assault or sexual abuse:

“Article 151¹. Satisfaction of sexual desires by violating a minor’s freedom of sexual self-determination and/or inviolability

1. An adult person who has sexual intercourse or otherwise satisfied his sexual desires with a person younger than sixteen years, in the absence of characteristics of a rape, sexual assault or sexual abuse [...].

2. A person who has sexual intercourse or otherwise satisfied his sexual desires with a minor upon offering, promising to provide or upon providing to him in consideration money or a consideration of another form, in the absence of characteristics of a rape, sexual assault or sexual abuse [...].”

It should be noted that Article 1511(3) defines liability for sexual abuse of the child committed by persons in the circle of trust (father, mother, guardian, custodian or another lawful representative of a child or another person holding statutory powers in respect of a minor):

“3. A father, mother, guardian, custodian or another lawful representative of a child or another person holding statutory powers in respect of a minor who has sexual intercourse or otherwise satisfied his sexual desires with that minor, in the absence of characteristics of a rape, sexual assault or sexual abuse [...].”

Question 16 of the GOQ / du QAG

Questions a and b.

Sexual abuse

Yes.

(...)

Article 149. Rape (see above)

Article 150. Sexual assault (see above)

Article 151. Sexual abuse (see above)

Article 151¹ of the Criminal Code Satisfaction of sexual desires by violating a minor’s freedom of sexual self-determination and/or inviolability (see above)

(...)

Aiding or abetting and attempt

Yes.

Article 24 of the Criminal Code. Complicity and Types of Accomplices:

1. Complicity shall be the intentional joint participation in the commission of a criminal act of two or more conspiring legally capable persons who have attained the age specified in Article 13 of this Code.

2. Accomplices in a criminal act shall include a perpetrator, an organiser, an abettor and an accessory.

3. A perpetrator shall be a person who has committed a criminal act either by himself or by involving legally incapacitated persons or persons who have not yet attained the age specified in Article 13 of this Code or other persons who are not guilty of that act. If the criminal act has been committed by several persons acting together, each of them shall be considered a perpetrator/co-perpetrator.
4. An organiser shall be a person who has formed an organised group or a criminal association, and has been in charge thereof or has co-ordinated the activities of its members or has prepared a criminal act or has been in charge of the commission thereof.
5. An abettor shall be a person who has incited another person to commit a criminal act.
6. The accessory shall be a person who has aided in the commission of a criminal act through counselling, issuing instructions, providing means or removing obstacles, protecting or shielding other accomplices, who has promised in advance to conceal the offender, hide the instruments or means of committing the criminal act, the traces of the act or the items acquired by criminal means, also a person who has promised in advance to handle the items acquired or produced in the course of the criminal act.

Article 26 of the Criminal Code. Criminal Liability of Accomplices

1. Accomplices shall be held liable solely for the criminal acts as committed by the perpetrator, which are covered by their intent.
2. Where a perpetrator's criminal act was discontinued at the stage of preparation for committing or an attempt to commit it, an organiser, an abettor and an accessory shall be held liable for complicity in preparation or attempt to commit the criminal act.
3. Where there are the circumstances eliminating, mitigating or aggravating the liability of one of accomplices, they shall not be taken into account when determining the criminal liability of other accomplices.
4. An organiser, an abettor or an accessory shall be held liable under an article of the Code which provides for liability for an act committed by a perpetrator and under paragraph 4, 5 or 6 of Article 24 of this Code.
5. Members of a criminal association shall be held liable under Article 249 of this Code as perpetrators regardless of their roles in the commission of a criminal act which is covered by their intent.

Article 21. Preparation for Commission of a Crime

1. Preparation for the commission of a crime shall be a search for or adaptation of means and instruments, development of an action plan, engagement of accomplices or other intentional creation of the conditions facilitating the commission of the crime. A person shall be held liable solely for preparation to commit a serious or grave crime.
2. A person shall be held liable for preparation to commit a crime according to paragraph 1 of this Article and an article of this Code providing for an appropriate completed crime. A penalty imposed upon such a person may be commuted under Article 62 of this Code.

Article 22. Attempt to Commit a Criminal Act

1. An attempt to commit a criminal act shall be an intentional act or omission which marks the direct commencement of a crime or misdemeanour where the act has not been completed by reason of the circumstances beyond the control of the offender.
2. An attempt to commit a criminal act shall also occur when the offender is not aware that his act cannot be completed, because his attempt is directed at an inappropriate target or he is applying improper means.
3. A person shall be held liable for an attempt to commit a criminal act according to paragraph 1 or 2 of this Article and an article of this Code providing for an appropriate completed crime. A penalty imposed upon such a person may be commuted under Article 62 of this Code.

Question c.

(...)

Question d.

In defining criminal liability for particular criminal acts against the freedom of sexual self-determination and the inviolability, the age of a child is taken into consideration. For example, given the rape or sexual abuse is committed against a juvenile child (under 14 years of age) the punishment shall be heavier than in the case of a similar crime against a minor (under 18 years of age). Subsequently, rape and sexual abuse against a juvenile is considered a more dangerous criminal act. In other cases (for example, in the case of pornography or prostitution of children) similar punishment for criminal acts against children in general is defined. However, punishment is always imposed INTER ALIA with regards to the individual peculiarities of the victim.

LUXEMBOURG**Question 10 of the TQ / du QT****Question a.**

Le « comportement intentionnel » est l'élément moral de l'infraction. Cette notion n'est pas définie par le législateur mais uniquement par la jurisprudence. Ainsi par exemple « le viol est une infraction intentionnelle qui ne peut être constituée que si son auteur a été conscient du fait qu'il imposait à sa victime des rapports sexuels contre la volonté de celle-ci (Garçon, Code pénal français annoté, articles 331 à 333, n°4) » ; « le mobile qui pousse l'auteur à commettre son acte est juridiquement indifférent. Ainsi il importe peu que l'attentat ait été commis dans le but de satisfaire un sentiment de luxure, de vengeance ou de haine, ou pour satisfaire tout simplement la curiosité de son auteur (Cass.fr. 06.02.1829, Dalloz pénal, V° Attentat aux moeurs, n°77 ; Cass fr 14.01.1826, ibid.76) ».

Question b.

« Activités sexuelles » : En droit luxembourgeois, l'infraction y relative peut être qualifiée soit d'attentat à la pudeur, soit de viol.

Attentat à la pudeur : Les éléments constitutifs de cette infraction sont l'action physique, l'intention coupable, le commencement d'exécution et la condition d'âge. « L'action physique » n'est pas définie par le législateur et il existe uniquement une définition jurisprudentielle de ce terme : « L'attentat à la pudeur se définit comme étant tout acte impudique qui ne constitue pas le crime de viol, et qui est exercé directement sur la personne ou à l'aide de la personne de l'un ou de l'autre sexe sans le consentement valable de celle-ci (Garçon, Code pénal français annoté, articles 331 à 333, n° 52 ss) » ; « tout attentat à la pudeur requiert un acte contraire aux moeurs, l'acte devant être de nature à offenser la pudeur. »

Viol : Article 375 du Code pénal : « tout acte de pénétration sexuelle de quelque nature qu'il soit et par quelque moyen que ce soit, commis sur une personne qui n'y consent pas ». Par conséquent, il faut que la victime soit pénétrée pour que la qualification de viol puisse être retenue. N'est donc pas un viol une fellation pratiquée sur la victime ou bien le

fait d'obliger une victime à pénétrer quelqu'un. Ces faits constituent en effet des attentats à la pudeur.

Question 16 of the GOQ / du QAG

Question a.

Abus sexuels : Art. 18.1 et 18.2 de la Convention.

Les comportements décrits au présent article sont érigés en infraction par les articles 372 et 375 du Code pénal luxembourgeois.

Les articles 372 et 375 du Code pénal disposent ce qui suit :

« Art. 372. (L. 21 février 2013) 1° Tout attentat à la pudeur, commis sans violence ni menaces sur des personnes de l'un ou de l'autre sexe sera puni d'un emprisonnement d'un mois à deux ans et d'une amende de 251 à 10.000 euros.

2° L'attentat à la pudeur, commis avec violence ou menaces sur des personnes de l'un ou de l'autre sexe sera puni d'un emprisonnement d'un à cinq ans et d'une amende de 251 à 20.000 euros.

3° L'attentat à la pudeur, commis sur la personne ou à l'aide de la personne d'un enfant de l'un ou de l'autre sexe, âgé de moins de seize ans sera puni d'un emprisonnement d'un à cinq ans et d'une amende de 251 à 50.000 euros.

La peine sera la réclusion de cinq à dix ans, si l'attentat a été commis avec violence ou menaces ou si l'enfant était âgé de moins de 11 ans.

Art. 375. (L. 16 juillet 2011) Tout acte de pénétration sexuelle, de quelque nature qu'il soit et par quelque moyen que ce soit, commis sur une personne qui n'y consent pas, notamment à l'aide de violences ou de menaces graves, par ruse ou artifice, ou en abusant d'une personne hors d'état de donner un consentement libre ou d'opposer la résistance, constitue un viol et sera puni de la réclusion de cinq à dix ans.

Est réputé viol commis en abusant d'une personne hors d'état de donner un consentement libre tout acte de pénétration sexuelle, de quelque nature qu'il soit et par quelque moyen que ce soit, commis sur la personne d'un enfant âgé de moins de seize ans. Dans ce cas, le coupable sera puni de la réclusion de dix à quinze ans. »

Complicité et tentative :

Complicité : En droit luxembourgeois, la complicité est régie par les articles 67 à 69 du Code pénal qui disposent ce qui suit :

« Art. 67. Seront punis comme complices d'un crime ou d'un délit:

Ceux qui auront donné des instructions pour le commettre;

Ceux qui auront procuré des armes, des instruments ou tout autre moyen qui a servi au crime ou au délit, sachant qu'ils devaient y servir;

Ceux qui hors le cas prévu par le paragraphe 3 de l'article 66, auront, avec connaissance, aidé ou assisté l'auteur ou les auteurs du crime ou du délit dans les faits qui l'ont préparé ou facilité, ou dans ceux qui l'ont consommé.

Art. 68. Ceux qui, connaissant la conduite criminelle des malfaiteurs exerçant des brigandages ou des violences contre la sûreté de l'Etat, la paix publique, les personnes ou les propriétés, leur auront fourni habituellement logement, lieu de retraite ou de réunion, seront punis comme leurs complices.

Art. 69. Les complices d'un crime seront punis de la peine immédiatement inférieure à celle qu'ils encourraient s'ils étaient auteurs de ce crime, d'après la graduation prévue par l'article 52 du présent code.

La peine prononcée contre les complices d'un délit n'excédera pas les deux tiers de celle qui leur serait appliquée s'ils étaient auteurs de ce délit. »

Tentative : Au Luxembourg, la tentative est régie par les articles 51 à 53 du Code pénal.

« Art. 51. Il y a tentative punissable, lorsque la résolution de commettre un crime ou un délit a été manifestée par des actes extérieurs qui forment un commencement d'exécution de ce crime ou de ce délit, et qui n'ont été suspendus ou n'ont manqué leur effet que par des circonstances indépendantes de la volonté de l'auteur.

Art. 52. (L. 7 juillet 2003) La tentative de crime est punie de la peine immédiatement inférieure à celle du crime même.

Est considérée comme immédiatement inférieure:

- a) A la peine de la réclusion à vie, celle de la réclusion de vingt à trente ans ;
- b) A la peine de la réclusion de vingt à trente ans, celle de la réclusion de quinze à vingt ans ;
- c) A la peine de la réclusion de quinze à vingt ans, celle de la réclusion de dix à quinze ans ;
- d) A la peine de la réclusion de dix à quinze ans, celle de la réclusion de cinq à dix ans ;
- e) A la peine de la réclusion de cinq à dix ans, celle d'un emprisonnement de trois mois au moins.

Art. 53. La loi détermine dans quels cas et de quelles peines sont punies les tentatives de délits. »

De manière générale, on peut retenir que la tentative d'un crime est toujours punissable alors que la tentative d'un délit ne l'est que si la loi le prévoit expressément.

L'article 24 paragraphe 2 de la Convention prévoit une obligation pour les Etats parties d'ériger en infraction pénale toute tentative intentionnelle de commettre l'une des infractions prévues dans la Convention.

Question b.

(...)

Question c.

L'article 383 du Code pénal tel qu'issu de la loi du 16 juillet 2011 portant approbation de la Convention de Lanzarote incrimine « le fait soit de fabriquer, de transporter, de diffuser par quelque moyen que ce soit et quel qu'en soit le support un message à caractère violent ou pornographique ou de nature à porter gravement atteinte à la dignité humaine, soit de faire commerce d'un tel message, (...) lorsque ce message est susceptible d'être vu ou perçu par un mineur. »

Question d.

L'âge de la victime influe sur la détermination du degré de gravité de l'infraction. A titre d'exemple, l'infraction de l'attentat à la pudeur est passible de la réclusion de 5 à 10 ans, lorsque l'attentat a été commis sur un enfant âgé de moins de 11 ans. De même, l'exploitation des mineurs à des fins sexuels sera punie de la réclusion de cinq à dix ans s'il a été commis envers un mineur âgé de moins de seize ans, et de la réclusion de dix à quinze ans s'il a été commis envers un mineur de moins de onze ans.

MALTA/MALTE

Question 10 of the TQ / du QT

Question a.

Intentional conduct in internal law is the mental capacity of the offender to understand his actions and the requisite will to execute them.

Question b.

The term 'sexual activities' is not defined in our law but is given a wide interpretation to include any conduct with a sexual purpose and which may lead to the defilement of the minor.

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

Question 16 of the GOQ / du QAG

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

REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA

Question 10 of the TQ / du QT

Question a.

The "acts committed with intent", according to art. 17 of the Penal Code shall be considered "offense committed is considered intentional if the person who committed it realized the

harmful nature of its action or inaction, foresaw harmful or admission wished consciously, occurrence of such consequences."

Question b.

(...) the term "sexual abuse" means "attracting and involving a child by another person in a child's sexual activity against their will."

Question 16 of the GOQ / du QAG

Question a.

Actions under the Convention Lanzarote, committed intentionally, are considered offenses under the Criminal Code of the Republic, as follows:

Sexual abuse (art. 18 Convention)

Engaging in sexual activity with a child, in accordance with the relevant provisions of law, that has not reached the legal age for sexual activities:

- Art. 174 CC RM- Sexual intercourse other than rape as well as any other acts of vaginal or anal penetration committed with a person certainly known to be under the age of 16;
- Art. 175 CC RM- The commission of perverted actions against a person certainly known to be under the age of 16, consisting of the exhibition of indecent touching, obscene or cynical discussions held intercourse with the victim on the determination of the victim to participate or to assist in pornographic performances, making the victim pornographic material and other actions with sexual character.

Engaging in sexual activity with a child where use is made of coercion, force or threats:

- 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;

Abusing by taking advantage of a particularly vulnerable situation of the child, especially mental or physical disability or a situation of dependence.

- Art. 77- Aggravating Circumstances
(...)

Aiding or abetting and attempt (art. 24)

- are qualified under Article 323 CC RM- fostering crime and art. 27 CC RM- attempted felony.
- child's age plays a role in determining the seriousness of the offense.
- 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.

Question b.

Criminal Code - Art. 17 Offence committed with intent;

It is considered that the offense was committed with intent if the person who committed it was aware of the harmful nature of his action or inaction, foresaw its injurious consequences, wanted or consciously admitted the occurrence of these consequences.

According to Art. 30 § 1 of the Lanzarote Convention, the Code of Criminal Procedure was amended and supplemented par. (6), art. 10 of the Code of Criminal Procedure, the basis of principle, and provides that in cases when a minor is a victim or witness in the trial, the court will act to meet his interests.

The changes made were aimed at extend the applicability of the rule over the entire criminal process.

Question c.

Regarding the offenses stipulated in the monitoring Questionnaire, it can be mentioned that those are reflected in the national legislation, and incriminated by our criminal law in the content of Chapter IV - Crimes related to sexual life and Chapter VII - Offences against family and children of the Special Part from the Criminal Code of the Republic of Moldova.

Question d.

The criminal law identifies situations which requires the necessity to determine the child's age, this being an inevitable argument in the process of establishing the punishment (see Article 77 Criminal Code).

In this context, the Criminal Code classifies rape committed against a minor if the perpetrator knew for sure that commits a forced sexual intercourse with a person aged 14 to 18. While rape of a person under the age of 14 years qualifies as if the offender knew or admitted that commits a sexual intercourse with a minor under the age of 14.

Thus, for these types of crimes can be established a punishment between 5-12 years (Article 171 par. (2) b) of the Criminal Code) and 10-20 years (Article 171 par. (3) b) of the Criminal Code).

MONTENEGRO**Question 10 of the TQ / du QT****Question a.**

Criminal offence has been committed with guilty mind (intent) when the offender was aware of his/her act and wanted it to be committed or when the offender was aware that he/she could commit an act thereof and he/she consented to it. An offender is guilty of a criminal offence if s/he is of sound mind and if s/he acted with guilty mind, and if s/he was aware or was obliged to be aware and could have been aware that his/her act is prohibited.

10b. what is understood by "sexual activities" in internal law? (Explanatory Report, para. 127).

Question b.

"Sexual activities" in the context of the criminal legislation refer to the criminalisation of sexual act with a child, including rape, sexual intercourse or an equal act through the use of force or threat, procuring a juvenile for sexual intercourse, mediation in prostitution, child pornography, instigating a juvenile to attend the criminal offence committed against sexual freedoms, inciting a child to commit a criminal offence against sexual freedoms, sexual intercourse, or an equal act which is committed through the abuse of position or prohibited sexual acts.

Question 16 of the GOQ / du QAG**Question a.**

Title Eighteen of the Criminal Code – Criminal Offences against Sexual Freedom, comprehensively regulates the conduct in the field above, through the criminal offences of Rape, Article 204, Sexual Intercourse with a Helpless Person, Article 205, Sexual Intercourse with a Child, Article 206, Sexual Intercourse by Abuse of Position, Article 207, Prohibited Sexual Acts, Article 208, Pimping and Enabling having a Sexual Intercourse, Article 209, Mediation in Prostitution, Article 210, and Displaying Pornographic Material to Children and Production and Possession of Child Pornography, Article 211. Through the Amendments to the Criminal Code, which are underway, it was proposed that Article 211 above is amended so as to be entitled Child Pornography. This Article would encompass criminalised actions in

a more extensive manner, and would stipulate harsher sanctions for the offenders. Also, the introduction of a new Article is proposed, which would be entitled Alluring the Child in Order to Commit a Criminal Offence against Sexual Freedom, Article 211b.

Question b.

Criminal offences prescribed by the Criminal Code have been fully aligned with the present Convention through the latest amendments.

Question c.

Law on Protection from Domestic Violence prescribes misdemeanour liability of the person who sexually harasses another member of the family.

Question d.

Age of the child plays a very important role when it comes to the criminal offences related to the sexual abuse of children and in these cases these are severe forms of criminal offences. Also, when it comes to sentencing the perpetrator of these criminal offences, the court, pursuant to the rules of sentencing, takes into account all the circumstances which affect the length of the sentence, and in particular the motives for the offence, against whom the offence was committed, treatment of the victim, etc.

NETHERLANDS / PAYS BAS

Question 10 of the TQ / du QT

Did not reply. / N'a pas répondu.

Question 16 of the GOQ / du QAG

Question a.

Sexual Abuse (*Article 18*)

1. Engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;
2. Engaging in sexual activities with a child where
 - use is made of coercion, force or threats;
 - abuse is made of a recognised position of trust, authority or influence over the child, including within the family;
 - abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.

→ These acts are covered by the set of offences described in Articles 242 – 249 of the Dutch Criminal Code. Article 249 is most relevant in this respect (...)

PORTUGAL

Question 10 of the TQ / du QT

Question a.

Intentional conduct is generally understood as meaning that the perpetrator is capable of representing the consequences of his act and notwithstanding directs his/her will towards the commission of such act. In Portuguese criminal law, intent is a general requisite to establish the guilt of the offender.

Article 14 of the Criminal Code refers to the various degrees of the intentionality.

Intentional conduct encompasses the situation where the perpetrator knows that the conduct fulfils a typified criminal offence, but nonetheless carries it out; represents the commission of a criminal offence as a necessary consequence of his/her conduct but nevertheless carries it out; represents the commission of the typified criminal offence as a possible consequence of his/her conduct but nevertheless carries it out.

Question b.

The concept of sexual activities does not exist per se in Portuguese criminal law, but that of 'relevant sexual act' (acto sexual de relevo), an expression referred to in many of the criminal types of the crimes against sexual freedom and sexual self-determination (Chapter V, sections I and II of the Criminal Code).

Explicitly provided for and punished as "relevant sexual acts" are acts such as vaginal coitus, coitus per anus, oral coitus or vaginal or per anus penetration by parts of the body or objects (Article 171 (2) of the Criminal Code). Other examples of relevant sexual acts as identified by legal doctrine would be acts of masturbation, kisses on the erogenous zones of the body such as breasts, the pubic area and the sexual organs or pulling off the victim's clothing exposing her/him for erotic satisfaction purposes.

Question 16 of the GOQ / du QAG

Questions a - c.

(...) the Portuguese Criminal Code criminalizes the conduct referred to in Article 18 of the Convention in its following Articles: (i) 171 (sexual abuse of children), (ii) 172 (sexual abuse of dependant minors), 173 (sexual activities with adolescents) , 163 (sexual coercion), 164 (rape), 165 (sexual abuse of a person unable to resist), 166 (sexual abuse of a interned person), the aggravation of sentences consisting of Article 177 (1), (5) and (6).

Still, it is observed that, unlike Article 18 (3) of the Convention, according to which it should not be regarded as a criminal offense to engage in sexual intercourse with a child who has not yet reached the legal age provided for this purpose, when at stake are sexual acts between consenting minors, the Portuguese law does not exclude the liability of the perpetrator in these cases, punishing, for example the practice of sexual acts between a victim of 13 years and an agent of 16 years, although the act was consented by both.

(...)

- In the crimes set forth in Articles 171 (1), (2) and (4) (sexual abuse of children), 172 (1) (sexual abuse of dependant minors); 175 (pandering of minors); (...), it does not seem necessary to expressly provide for the punishment of the attempt, following the provisions of Article 23 of the Criminal Code (*a contrario*);

- Regarding the crimes set forth in Articles 171 (3), 172 (2) and (3), 173 (sexual activities with adolescents), which provide penalties of less than or equal to 3 years of imprisonment, there is no explicit norm punishing the attempt, given that such will not be punishable under Article 23 (except in cases of punishment with imprisonment up to 3 years where there is aggravation of Article 177 - aggravation of a third, which puts the penalty in 4 years imprisonment, and therefore in such cases punishing the attempt. It is the case of Articles 171 (3), 172 (3), 173 (2)). In any case, taking into account the provisions of Article 24 (3) of the Convention, which allows the states the right not to apply paragraph 2, in whole or in part, and considering the internal provisions regarding the punishment of the attempt in these cases, it appears to be no inconsistency with the Convention.

Question d.

The age of the victim plays an aggravating role on the criminal frame in the following way:

- The penalties provided for in Articles 163, 164, 168, 174, 175 and Article 176 (1) of the Criminal Code are aggravated by one-third in its minimum and maximum limits, if the victim is under 16 years;
- The penalties provided for in Articles 163, 164, 168, 175 and Article 176 (1) are aggravated by half in its minimum and maximum limits, if the victim is under 14 years; Furthermore, the age of the victim functions as a reference parameter in the structure of certain criminal types, in particular:
 - The most serious level of incrimination is built by reference to victims under 14 years: Article 171 of the Criminal Code (Sexual abuse of children);
 - There are two legal types constructed by reference to victims aged between 14 and 18 years, Articles 172 (sexual abuse of dependant minors) and 174 (recourse to child prostitution);
 - There is a criminal type built by reference to victims aged between 14 and 16 years, Article 173 (sexual intercourse with adolescents).

ROMANIA / ROUMANIE

Question 10 of the TQ / du QT

Question a.

According to the domestic law, the offence is committed by fault when the offender foresees the outcome of the act, aiming to that outcome by committing the act or foresees the outcome of his act and, although the offender does not pursues the outcome, accepts the possibility of its occurrence (Article 163 of the new Penal Code – Law no. 286/2009)

According to the domestic law, the offence is committed by fault when the offender foresees the outcome of the act, aiming to that outcome by committing the act or foresees

the outcome of his act and, although the offender does not pursue the outcome, accepts the possibility of its occurrence (Article 163 of the new Penal Code – Law no. 286/2009)

Question b.

The words “sexual life” is not defined as such in the domestic law. However, the Penal Code, in respect of the offence regarding the sexual freedom and integrity, gives an indirect definition as follows:

Rape is “the sexual intercourse, the sexual oral or anal intercourse, committed by ...”, while the sexual aggression is “the act of a sexual nature, other than the one provisioned in Article 218 (rape)...”, the sexual intercourse with a minor, incriminated by Article 220 is “the sexual intercourse, the oral or anal sexual intercourse, as well as any other acts of vaginal or anal penetration committed with a minor ...”.

In fact, the provisions having in view the protection of the personal freedom and sexual integrity refer to any type of manifestation of the protected values, as listed above.

Question 16 of the GOQ / du QAG

Question a.

In internal law the conducts described in this question are considered criminal offences, including complicity and instigation to committing these acts²⁷. For the text of the pieces of legislation which incriminate these conducts see the foot notes in the answer to question no. 3a)

Question b.

There are some differences between the acts incriminated by the convention and the Romanian criminal provisions, as follows:

²⁷ The New Penal Code– Law no. 286/2009

GENERAL PART

ARTICLE 47

The instigator

The instigator is the person who deliberately determines another person to commit an act provided by the criminal law.

ARTICLE 48

The accomplice

- (1) The accomplice is the person who deliberately facilitates or assists in any manner the perpetration of action provided by the criminal law.
- (2) As well, an accomplice is the person who promises, prior to or during the perpetration of the action, not to reveal the assets resulted from the perpetration of that criminal action or to favor the offender, even if after the perpetration of the crime he does not fulfill the promise.

ARTICLE 49

Penalty applied to participants

The co-author, the instigator and the accomplice to an offence committed with intent shall be penalized with the penalty provisioned by law for the author. In determining the sentence, the contribution of each of them in the committal of the offence shall be taken into consideration, as well the provisions of Article 74.

Having recourse to child prostitution is incriminated only if committed within minors trafficking, which means that, in order to achieve constitutive content of the offense, the minor must also be a victim of trafficking in children (see the offenses of using the services of a exploited person - art. 216 of the new Penal Code, in the answer to question no. 3a);

Possessing child pornography: the Criminal Code only incriminates the possession of child pornography in the scope of distributing or exposing it (see the content of the child pornography crime – art. 374 of the new Criminal Code, within the answer to question 3a).

Procurement of child pornography for oneself or for another: the law only criminalizes the purchase of child pornography, which involves buying and not simply procuring in any way (see the content of the child pornography crime – art. 374 of the new Criminal Code, within the answer to question 3a);

Knowingly attending pornographic performances involving the participation of children - is punished by the new Criminal Code only if the conditions of complicity or instigation to an offense under the Convention.

For the detailed content of the legal texts criminalizing acts of sexual abuse of children, see the answer to question 3a).

We must mention that Romania is currently in the process of implementing the Directive 2011/93 of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004 / 68/JAI and transposition will achieve full alignment with the standards and Conventions incriminations.

Question c.

Yes, internal law incriminates distinctly trafficking in minors, as well as the use of the services of a person who is subject to trafficking²⁸.

²⁸ ARTICLE 197

Maltreatments inflicted to the minor

The parents or any other person in whose care the minor is, grievously jeopardizing, by measures or treatments of any kind, the physical, intellectual or moral development of the minor, shall be punished with 3 to 7 years imprisonment and prohibition on the exercise of certain rights.

(...)

ARTICLE 210

Trafficking in persons

(1) Recruiting, transporting, sheltering or receiving a person for the purpose of his/her exploitation, committed by:

- a) Coercion, abduction, mislead or abuse of authority;
- b) Taking advantage of his/her inability to protect oneself or to express his/her will or by the obvious vulnerability of such person;
- c) Offering, giving, accepting or receiving money or other benefits in exchange of the consent of the person with authority on such person,

shall be punished with 3 to 10 years and prohibition on the exercise of certain rights.

(2) The offence of trafficking of persons committed by a public servant in the exercise of his/her duties shall be punished with 5 to 12 years imprisonment.

(3) The consent of the person subject to the trafficking of persons does not represent justifiable cause.

ARTICLE 211

Furthermore, the offence of ill-treatment applied to a child can, depending on the concrete way of perpetration, also be sanctioned as sexual abuse on children.

Question d.

The age of a child plays an important role in determining the gravity of the offence in the following situations:

- In case of the offences of sexual intercourse with a child and sexual corruption of children – the penalty is different depending on the following:
 - o The child has not reached 13 years of age;
 - o The child is aged between 13 and 15 years;
 - o The child is aged between 15 and 18 years.

The offence of recruiting children for sexual purposes has as its passive subject the child who has not yet reached the age of 13.

SAN MARINO / SAINT-MARIN

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

SERBIA / SERBIE

Question 10 of the TQ / du QT

Question a.

Ministry of Justice: Criminal offences are committed with intent where the perpetrators were aware of their act and wanted to commit it, or where perpetrators were aware of their capacity to commit the act and consented to that commission.

State Prosecutor: Under Article 25 of the Criminal Code, criminal offences are committed with intent where the perpetrators were aware of their act and wanted to commit it, or where perpetrators were aware of their capacity to commit the act and consented to that commission.

Question b.

State Prosecutor: There is no definition of sexual activity provided for in internal law. However, with view to the provisions of the Criminal Code falling within the group of sexual

Trafficking in minors

- (1) Recruiting, transporting, sheltering or receiving a minor, for the purpose of his/her exploitation shall be punished with 3 to 10 years and prohibition on the exercise of certain rights.
 - (2) If this act was committed according to Article 210 (1) or by a public servant during the exercise of his/her duties, the punishment is 5 to 12 years imprisonment and prohibition on the exercise of certain rights.
 - (3) The consent of the person subject to the trafficking of persons does not represent justifiable cause.
- (...)

ARTICLE 216

Using the services of an exploited person

The act of using the services provisioned in Article 182, provided by a person who is a victim of the trafficking in persons or of the trafficking in minors, shall be punished with 6 months to 3 years imprisonment or a fine, if the act does not represent a more serious offence.

offences against sexual liberty, sexual activity and equivalent actions/acts are regarded of as sexual activity.

NVO Astra answer: The Article 25 of the Criminal Code states: A criminal offence is premeditated if the perpetrator was aware of his act and wanted it committed or when the perpetrator was aware that he could commit the act and consented to its commission. The law does not specially prescribe sexual activities.

Question 16 of the GOQ / du QAG

Question a.

Ministry of Justice: refers to its reply to Question 3(a) of the GOQ which reads as follows:

Under Article 178, of the Criminal Code, Rape, the following is proscribed: (1) Whoever by using of force or a threat of direct attack against at person's body or the body of another forces that person to copulation or an equivalent act, shall be punished with imprisonment of from three to twelve years. (2) If the offence referred to in paragraph 1 of this Article is committed under threat of disclosure of information against such person or another that would discredit such person's reputation or honour, or by threat of other grave evil, the offender shall be punished with imprisonment of from two to ten years. (3) If the offence referred to in paragraphs 1. and 2. of this Article resulted in grievous bodily harm of the person against whom the offence is committed, or if the offence is committed by more than one person or in a particularly cruel or particularly humiliating manner or against a juvenile or the act resulted in pregnancy, the offender shall be punished with imprisonment from five to fifteen years. (4) If the offence referred to in paragraphs 1. and 2 of this Article results in death of the person against whom it was committed or if committed against a child, the offender shall be punished with imprisonment of minimum ten years. The Article 179 provides for the criminal offence of Sexual Intercourse with a Helpless Person. Thus, under paragraph (1) thereof, Whoever has sexual intercourse with another or commits an equal act by taking advantage of such person's mental illness, mental retardation or other mental disorder, disability or some other state of that person due to which the person is incapable of resistance, shall be punished with imprisonment of two to ten years. Under paragraph (2) thereof, If the helpless person suffers serious bodily harm due to the offence referred to in paragraph 1 of this Article, or the offence has been committed by several persons, or in a particularly cruel or humiliating manner, or against a juvenile, or if the act resulted in pregnancy, the perpetrator shall be punished with imprisonment of five to fifteen years. (3) If the offence referred to in paragraphs 1. And 2 of this Article results in death of the person against whom it was committed or if committed against a child, the offender shall be punished with imprisonment of minimum ten years. Article 180 regulates criminal offence of Sexual Intercourse with a Child. Therefore, under paragraph (1) thereof, whoever has sexual intercourse or commits an equal act against a child, shall be punished with imprisonment from three to twelve years. Under paragraph (2) thereof, if the offence specified in paragraph 1 of this Article results in grievous bodily harm of the child against whom the act was committed or if several persons or the act commits the act resulted in pregnancy, the offender shall be punished with imprisonment from five to fifteen years. (3) If death of the child results due to the offence specified in paragraphs 1. and 2 of this Article, the offender shall be punished with imprisonment of minimum ten years. (4) An

offender shall not be punished for the offence specified in paragraph 1 of this Article if there is no considerable difference between the offender and the child in respect of their mental and physical development. Article 181 regulates criminal offence of Sexual Intercourse through Abuse of Position. Therefore, under paragraph (1) thereof, whoever by abuse of position induces to sexual intercourse or an equal act a person who is in a subordinate or dependant position, shall be punished with imprisonment of three months to three years (2) Teacher, tutor, guardian, adoptive parent, stepfather or other person who through abuse of his position or authority has sexual intercourse or commits an act of equal magnitude a juvenile entrusted to him for learning, tutoring, guardianship or care, shall be punished with imprisonment from one to ten years. (3) If the offence specified in paragraph 2 of this Article is committed against a child, the offender shall be punished with imprisonment of three to twelve years. (4) If the offence specified in paragraphs 1 through 3 of this Article resulted in pregnancy, the offender shall be punished for the offence specified in paragraph 1 by imprisonment from six months to five years, and for the offence specified in paragraph 2 by imprisonment from two to twelve years, and for the offence specified in paragraph 3 by imprisonment from three to fifteen years. (5) If death of the child results due to offence specified in paragraph 3 of this Article, the offender shall be punished with imprisonment of minimum ten years. Article 183 regulates Prohibited Sexual Acts. Under paragraph (1) thereof, whoever pimps a minor for sexual intercourse or an equal act or other sexual act, shall be punished with imprisonment of one to eight years and a fine. (2) Whoever procures a minor for sexual intercourse or an act of equal magnitude or other sexual act, shall be punished with imprisonment of six months to five years and a fine. Mediation in Prostitution is criminalised under Article 184 of the Criminal Code. Thus, under paragraph (1) thereof, whoever causes or induces another person to prostitution or participates in handing over a person to another for the purpose of prostitution, or who by means of media or otherwise promotes or advertises prostitution, shall be punished with imprisonment of six months to five years and a fine. (2) If the offence specified in paragraph 1 of this Article is committed against a minor, the offender shall be punished with imprisonment from one to ten years and a fine. Showing, procuring and possession of Pornographic Material and Juvenile Pornography is subject of Article 185. Thus, under paragraph 1 thereof, (1) whoever sells, shows or publicly displays or otherwise makes available texts, pictures, audio-visual or other items of pornographic content to a minor or shows to a child a pornographic performance, shall be punished with a fine or imprisonment up to six months. (2) Whoever uses a minor to produce photographs, audio-visual or other items of pornographic content or for a pornographic show, shall be punished with imprisonment from six months to five years. (3) If the offence specified in paragraphs 1 2 hereof has been perpetrated against a child, the offender shall be punished with imprisonment of six months to three years for the offence from paragraph 1 and with imprisonment of one year to eight years for the offence from paragraph 2. (4) Whoever obtains for himself or another, possesses, sells, shows, publicly exhibits or electronically or otherwise makes available pictures, audio-visual or other items of pornographic content resulting abuse of a juvenile, shall be punished with imprisonment from three months to three years. (5) Items specified in paragraphs 1 through 4 of this Article shall be confiscated. The criminal act of inducing a Minor to Attend Sexual Acts is regulated under Article 185. Thus, under paragraph (1) thereof, whoever induces a minor to attend a rape, sexual intercourse, or an act equivalent to it, or some other sexual act, shall be punished with imprisonment of six months to five years and a fine. (2) If the offence referred to in paragraph 1 hereof has been perpetrated using force or threat, or against a

child, the offender shall be punished with imprisonment of one year to eight years. Abuse of Computer Networks and Other Methods of Electronic Communication to Commit Criminal Offences Against Sexual Freedom of Minors is criminalized under Article 185b. Therefore, Under Article (1) thereof, whoever with intent to commit an offence referred to in Article 178 178 paragraph 4, Article 179, paragraph3, Article 180, paragraphs 1 and 2, Article 181, paragraphs 2 and 3, 2. Article 182, paragraph 1, Article 183, paragraph 2, Article 184, paragraph 3, Article 185, paragraph 2, and Article 185a herein and using computer networks or other method of electronic communication makes an arrangement to meet with a minor and arrives at the prearranged meeting place in order to meet with the minor, shall be punished with imprisonment of six months to five years and a fine. (2) Whoever perpetrates the offence referred to in paragraph 1 hereof against a child, shall be punished with imprisonment of one year to eight years. Under Article 197, of the Criminal Code, Incest, the following is proscribed: an adult who engages in sexual intercourse or an act of equal magnitude with an underage relative by blood, or an underage sibling, shall be punished with imprisonment of six months to five years. Under Article 388, of the Criminal Code, Human Trafficking, the following is proscribed: Under paragraph (1) thereof, 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. (2) When the offence specified in paragraph 1 of this Article is committed against a minor, the offender shall be punished by the penalty prescribed for that offence even if there was no use of force, threat or any of the other mentioned methods of perpetration. (3) 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. (4) If the offence referred to in paragraphs 1 and 2 of this article resulted in severe bodily harm, the perpetrator shall be punished with imprisonment from five to fifteen years, and in case of severe bodily harm to a juvenile person due to the offence referred to in para 3, the perpetrator shall be punished with minimum five years' imprisonment. (5) If the offence referred to in paragraphs 1 and 3 of this Article, resulted in death of one or more persons, the offender shall be punished with imprisonment of minimum ten years. 6) Whoever habitually engages in offences specified in paragraphs 1 and 3 of this Article or if a group commits the offence, shall be punished by imprisonment of minimum five years. (7) If the offence specified in paragraphs 1 through 3 hereof has been perpetrated by an organized crime group, the offender shall be punished with imprisonment of minimum ten years. (8) Whoever knows or should have known that a person is a victim of human trafficking and abuses their position or allows another to abuse their position for the purpose of exploitation referred to in paragraph 1 hereof, shall be punished with imprisonment of six months to five years. (9) If the offence referred to in paragraph 8 hereof has been committed against a person whom the offender knows or should have known is a minor, the offender shall be punished with imprisonment of one year to eight years. (10) Person's consent to be exploited or held in slavery or servitude referred to in paragraph 1 hereof shall not prejudice the existence of the criminal offence stipulated under paragraphs 1, 2, and 6 hereof.

(...)

NGO Astra:

- 1) rape (Article 178 paragraph 3 and 4 of the Criminal Code);
- 2) sexual intercourse with a helpless person (Article 179 paragraph 2 and 3 of the Criminal Code);
- 3) sexual intercourse with a child (Article 180 of the Criminal Code);
- 4) sexual intercourse through abuse of position (Article 181 of the Criminal Code);
- 5) prohibited sexual acts (Article 182 of the Criminal Code); (...)

NGO Centre for Children Rights:

Under the Criminal Code of the Republic of Serbia, large number of criminal offences committed with intent referred to in the box is criminalized. Such offences are criminalised under the Chapter XVIII of the Criminal Code – Criminal Offences Against Sexual Freedom (rape, sexual intercourse with helpless person, intercourse with a child, sexual intercourse through abuse of a position, prohibited sexual acts, procurement of sexual services, mediation in prostitution, Exhibition, Procurement and Possession of Pornographic Materials and Exploiting Juveniles for Pornography, Incitement of Minors to Attend Sexual Acts, Abuse of Computer Networks or other Technical Communication Means for Committing Criminal Offences against Sexual Freedom of Juveniles) Chapter XIX of the Criminal Code - CRIMINAL OFFENCES AGAINST MARRIAGE AND FAMILY (Cohabitation with Minors, Neglecting and Abusing Juveniles, Domestic Violence, Incest), Chapter XXXIV - CRIMINAL OFFENCES AGAINST HUMANITY AND OTHER RIGHT GUARANTEED BY INTERNATIONAL LAW (Human Trafficking).

Engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities (Article 18, paragraph 1), is defined as a criminal offence under Article 180 of the CC – Sexual Intercourse with a Child).

Engaging in sexual activities with a child where - use is made of coercion, force or threats; abuse is made of a recognised position of trust, authority or influence over the child, including within the family; abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence – is classified as a criminal act under the Criminal Code in Article 178 – Rape, Article 179 – Sexual Intercourse with Helpless Person, Article 181 – Sexual Intercourse Through Abuse of a Position, Article 182 – Illicit Sexual Acts.

(...)

Question b.

NGO Centre for Children Rights:

A child's age is not relevant for establishing the gravity of criminal offence, whereas the legislator with regard to a number of sexual offences (criminal offences against sexual freedoms) makes distinction of an criminal offence committed against a child - meaning the child under 14 years of age, and against a minor who has reached 14 years of age and has not yet reached 18 years of age. The criminal offence committed against the child under 14 years of age is a qualifying form of criminal offence (it falls within such a criminal offences with higher degree of seriousness and gravity) that more serious criminal sanction is proscribed for in comparison to the basic form of a criminal offence: Rape – CC, Art 179,

Sexual Intercourse with Helpless Person – CC, Article 179, Sexual Intercourse Through Abuse of a Position – Article 181, Abuse of Computer Networks or other Technical Communication Means for Committing Criminal Offences against Sexual Freedom of Juveniles – Article 185, Inducing a Minor to Attend Sexual Acts—Article 185a, Abuse of Computer Networks or other Technical Communication Means for Committing Criminal Offences against Sexual Freedom of Juveniles- Article 185b of the Criminal Code.

Ministry of Interior: The referred to practice is criminalized under Chapter 18 of the Criminal Code of the Republic of Serbia – Sexual Offences (Art 178 – 185b) of the Criminal Code. (...)

SPAIN / ESPAGNE

Question 10 of the TQ / du QT

Question a.

The Spanish Criminal Code does not define this concept. However, the element of “intentional conduct” is always present in the criminal behaviour of those who perpetrate an offence themselves, alone, jointly or by means of another used to aid and abet (principals and accessories).

Question b.

Although there is not a general definition of “sexual activity” in our criminal system, different forms of sexual activity are included in sexual offences regulated in the Criminal Code.

Question 16 of the GOQ / du QAG

Question a.

Spanish legislation criminalises all behaviours identified by the Convention (articles 183, 183 bis, 187-194). The 2010 review of the Criminal Code added Chapter II bis to Title VIII, on sexual abuse and assault on children under the age of thirteen years, which extended the scope of the crime of child pornography, introduced the crime of sexual cyber-harassment (“grooming”) and increased the penalties for these crimes to up to 15 years of imprisonment.

Question c.

The offence of trafficking in human beings was introduced in the Spanish Criminal Code by Organic Act 5/2010 through the new Title VII bis in order to protect the human dignity and freedom of victims of trafficking. Article 177 bis of the Criminal Code defines this offence as “the use of violence, intimidation, deceit, or abuse of power or of a position of need or vulnerability of a national or foreign victim in order to recruit, transport, transfer, harbour, receive or house such a victim in Spanish territory, from Spain, in transit or bound for Spain, for any of the following purposes: forced work or services, slavery or practices similar to slavery, servitude or begging; **sexual exploitation, including pornography**; and the removal of organs”.

Question d.

Offences of sexual abuse, prostitution, pornography and trafficking of human beings carry a tougher punishment when the victim is under the age of thirteen.

TURKEY / TURQUIE**Question 10 of the TQ / du QT****Question a.**

With regard to penal law, intentional act has been identified as the intentional and wilful commission of an act defined in the law as an offence. This matter has been expressed in Article 21 of the Turkish Penal Code as follows: *“Malice is an intention to cause harm being aware of the legal consequences of the crime defined in the laws.”* Paragraph 2 of the same Article includes legal arrangements regarding eventual malice: *“Execution of an act by a person being aware of its legal consequences defined in the law is considered as eventual malice. In that case, the offender is sentenced to life imprisonment in offences which require heavy imprisonment and to imprisonment between twenty years and twenty-five years in the offenses which require life imprisonment; in other offenses the basic punishment is abated from one third to one half.”*

Question b.

The definition and scope of sexual activities have not been indicated in a concrete manner under the Turkish legislation. However, the system of the Turkish Penal Code, by its nature, considers in broad terms all acts (real or abstract) performed with a sexual motivation as sexual acts. For example, the offence of sexual harassment arranged under Article 105 of the Turkish Penal Code considers all acts performed verbally, in writing or by bodily movements that target the sexuality of the other person within the scope of sexual acts.

On the other hand, in more narrow terms, sexual act is defined as “all actions that target the inviolability and integrity of a person’s body in a sexual manner.” In this respect, not only sexual intercourse, but also sexually motivated acts such as kissing, touching, stroking, etc. are also considered as sexual acts. While in general terms performing such acts with mutual consent does not constitute an offence, it was indicated in the answer to Question 1/c of the General Overview Questionnaire that an exception was made in the case of children. As stated before, under Turkish law, the consent given by children who have not attained the age of 15 for any sexual act is not valid. The consent given by children aged 15 to 18 is considered valid on condition that no complaint is filed subsequently.

Question 16 of the GOQ / du QAG**Questions a - d.**

Under Article 103 of the Turkish Penal Code, any attempt at physical contact with the child with a sexual aim, shall be sentenced with imprisonment. Under this article, all kinds of sexual attempt against children who are under the age of fifteen or against those attained the age of fifteen but lack of ability to understand the legal consequences of such act, as well as sexual abuse of other children by force, threat or fraud, or any other reason having an influence on the will of the child are defined as sexual abuse.

According to Article 104 of the said Code, any person who is in sexual intercourse with a child who completed the age of fifteen without using force, threat and fraud, is sentenced to imprisonment from six months to two years upon filing of a complaint. Then again, other than the abovementioned offences, in the event of sexual molestation without physical contact, the perpetrator shall also be punishable under Article 105 of the Turkish Penal Code.

However, under Article 109 of the Turkish Penal Code, unlawfully restricting the freedom of a person by preventing him from travelling or living in a place is sentenced to imprisonment from one year to five years. The fact that the victim is a child or that the offence was committed with a sexual aim are among the aggravated circumstances of such offence.

On the other hand, the section entitled "Obscenity" under Article 226 of the Turkish Penal Code provides that those, who give, show, or read to the child any products containing obscene imagery, text or words, shall be sentenced to imprisonment. Paragraph 3 of this Article rules that employing children in the manufacturing of obscene products is punishable with five to ten years imprisonment, while Paragraph 5 stipulates that those who publish or cause the publication of any obscene imagery, text or words via the press, or act as intermediaries thereof, or those who cause children to see, hear or read such products, shall also be punishable with imprisonment and fines. Then again, Article 227 of the said Code governs that encouraging the child or facilitating the way of the child into prostitution, or procuring or abetting with this aim or acting as an intermediary of a child prostitute, shall be punishable with imprisonment and judicial fine. Also under the same Article, an as an intentional offense, the preparatory acts with a view to the commission of such offence shall be punishable as if the offence itself has been thoroughly committed.

The institutions of criminal attempt and perpetration are arranged under Articles 35 and 41 of the Turkish Penal Code.

Sexual Abuse (*Article 18*)- *Article 103 of the Turkish Penal Code*

1. Engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;
2. Engaging in sexual activities with a child where:
 - use is made of coercion, force or threats;
 - abuse is made of a recognised position of trust, authority or influence over the child, including within the family;
 - abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.

(...)

UKRAINE

Question 10 of the TQ / du QT

Question a.

According to Article 23 of the CCU, guilt shall mean a mental stance of a person in regard to the performed act or omission under the CCU and to the consequences thereof, as expressed in the form of intent or recklessness.

According to Article 24 of the CCU, intent may be classified as direct and indirect.

The intent is considered to be direct where a person was conscious of the socially dangerous nature of his or her act (action or omission), anticipated its socially dangerous consequences, and wished them to be fulfilled.

The intent is considered to be indirect where a person was conscious of the socially dangerous nature of his or her act (action or omission), foresaw its socially dangerous consequences, and, while not wishing them to be fulfilled, could anticipate their emergence.

Crimes, which shall be punishable in line with stipulations of Article 18 “Sexual abuse”, are characterized as exclusively crimes of intent (such actions are stipulated by Articles 152 “Rape”, 153 “Forceful satisfaction of sexual passion by unnatural means”, 155 “Having a sexual intercourse with an individual who has not reached puberty”, 156 “Corruption of individuals under the age of majority”, 301 “Import, production, sale or distribution of pornographic items” as envisaged by the CCU).

Question b.

The CCU does not contain definition of “sexual activities”.

Detailed content of CCU Articles criminalizing those actions, which shall be punishable in accordance with Article 18 of the Convention, is presented in response to question 16 of the general overview questionnaire.

Question 16 of the GOQ / du QAG

Questions a - d.

Sexual Abuse (Article 18)

1. Engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;
2. Engaging in sexual activities with a child where
 - use is made of coercion, force or threats;
 - abuse is made of a recognised position of trust, authority or influence over the child, including within the family;
 - abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.

Article 156 of the CCU (hereinafter referred to as CCU) foresees liability for corruption of minors. Thus, commission of activities aimed at corrupting an individual under the age of 16

is punishable by arrest for a time-span of up to six months, or deprivation of freedom for a time-span of up to three years (Paragraph one, Article 156 of the CCU); if such activities are committed against a minor or by the father, mother or an individual performing their functions, they are punishable by deprivation of freedom for a time-span of up to five years or imprisonment for a time-span of up to three years.

At the same time, we note that in accordance with the provisions of Item 17 of the Supreme Court of Ukraine resolution as of 30 May 2008 #5 “On court practice regarding cases dealing with crimes against sexual freedom and inviolability of person”, activities, which are envisaged by Article 156 of the CCU, must have sexual character and take shape of physical or mental corruption. Such actions are aimed at satisfying sexual passion of the perpetrator or at arousal of sexual instinct of the individual under the age of majority.

Physical corruption may encompass exposure of genitals of the perpetrator or victim, indecent touch to genitals, which leads to arousal, teaching of sexual perversions, imitation of a sexual intercourse, inducing or coercion of victims to perform certain sexual activities between each other, engaging in sexual intercourse or masturbation in presence of a victim, etc. Mental corruption may encompass exposure of the victim to pornographic images, video-films, cynical talks to the victim on sexually-related topics, etc.

Use of works, images or other pornographic items is qualified by joint application of liability envisaged by relevant Paragraphs of Article 156 and Article 301 of the CCU.

Corruption of minors may take place both consensually and with use of physical coercion to perform certain sexually-related activities. If corruption was preceded or it was taking place alongside beating, physical damage or death threat, the actions shall fall under combined application of norms described by Articles 156, 125, 126, 121, 122 or 129 of the CCU.

It is also worthwhile mentioning that liability for coercing individuals under the age of majority to participate in creation of items, images, film or video-production, as well as computer programmes of pornographic essence, is foreseen by Paragraph three, Article 301 of the CCU.

(...)

* * *

II – States not included in the 1st monitoring round / Etats ne participant pas au 1er cycle de suivi²⁹

ANDORRA / ADORRE³⁰

Did not reply. / N'a pas répondu.

ARMENIA / ARMENIE

Question a.

The internal law provides for all types of acts indicated in the table of this questionnaire.

Question b.

With regard to protection of children from sexual exploitation and sexual abuse, the following acts have been defined as crimes in Chapter 18 of the Criminal Code of the Republic of Armenia titled Crimes against the sexual integrity and sexual freedom:

- (1) rape of a minor (Point 2 of Article 138(2));
- (2) rape of a person under 18 by a parent ,or teacher or an employee of the educational or medical education, charged with his or her upbringing or care (point 1 of Article 138(3));
- (3) rape of a person under 14 (Point 2 of Article 138(3));
- (4) sexual, including homosexual actions against the will of the person, through abuse or threat of abuse of the latter or another person, or by use of the helpless situation of the victim (According to Article 138(4), any person below the age of twelve shall also be considered to be in a helpless situation, the same actions against a minor (point 3 of Article 139(2)), actions against a person below the age of fourteen (point 2 of Article 139(3)), against a person under the age of eighteen by a parent, or teacher or an employee of an educational or medical establishment charged with his or her upbringing or care (point 1 of Article139(3));
- (5) compelling a person below the age of sixteen to sexual intercourse or actions of sexual, including homosexual nature, through blackmail, threat to destruct, damage or take property, or by use of the victim's material or other dependence (Article 140(2));
- (6) sexual intercourse or other sexual actions with a person obviously below the age of sixteen by a person having attained the age of eighteen, where there are no elements of the criminal offences provided for in the points above (Article 141(1)); the same actions against a person below the age of fourteen (point 2 of Article 141(3)); against a person below the age of eighteen by a parent, or teacher or an employee of an educational or medical establishment or another person charged with his or her upbringing or care (point 1 of Article 141(3));

²⁹ 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.

³⁰ Andorra became a State party after the 1st 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.

(7) lecherous actions with a person obviously below the age of sixteen by a person having attained the age of eighteen, or with a person below the age of fourteen by a person having attained the age of sixteen (Article 143(1)); the same actions against a person below the age of fourteen (point 2 of Article 142(3)); against a person below the age of eighteen by a parent, or teacher or an employee of an educational or medical establishment, or another person charged with his or her upbringing or care (point 1 of Article 142(3)); the same actions committed:

- (a) by a person having attained the age of sixteen, by use or threat of use of violence;
- (b) against a person obviously below the age of sixteen by a person having attained the age of twenty one;
- (c) against a person below the age of fourteen by a person having attained the age of eighteen;
- (d) through electronic communication networks (points 1-3 and 6 of Article 142(2)).(...)

AZERBAIJAN / AZERBAÏDJAN

Crime committed against minors (i.e. under 18) is considered an aggravating circumstance. (...)

CYPRUS / CHYPRE

Question a.

Sexual Abuse: Yes (...)

Question d.

If the child is under the age of 12, then it is considered to be 'particularly vulnerable'. This, according to Law 87(I)/2007, is an aggravating factor in the course of the trial.

ESTONIA / ESTONIE

Question a.

Intentional conducts in the box below are considered criminal offences by Estonian internal law. Estonian Penal Code is available online in English:

<https://www.riigiteataja.ee/en/eli/523122013003/consolide>

Chapters are marked in text. (§ 141-145 and § 175-179.)

1) Sexual Abuse (Article 18)

1. Engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities; (Penal Code § 145 (1))

2. Engaging in sexual activities with a child where

- use is made of coercion, force or threats; (Penal Code § 133 (1), § 141)

- abuse is made of a recognised position of trust, authority or influence over the child, including within the family; (Penal Code § 143² (1);)

- abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence. (§143² (1), however § 133 and 175 are also possible)

The above-mentioned crimes are all offences under the Penal Code. Punishments for crimes that have been committed against a person under 14 years of age, are more stringent.

GEORGIA / GEORGIE

Chapter XXII of Criminal Code of Georgia (CCG) contains crimes against Sexual Freedom and Inviolability. Among them are: Rape (Article 137); Sexual Abuse under Violence (Article 138); Coercion into Sexual Intercourse or Other Action of Sexual Character (Article 139); Sexual Intercourse or Other Action of Sexual Character with One under Sixteen (Article 140); Perversion (Article 141). (see the answer on question 3 and question 19).

GERMANY / ALLEMAGNE

Question a.

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

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

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

Question b.

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

Question c.

(...)

Question d.

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

HUNGARY / HONGRIE

Did not reply. / N'a pas répondu.

IRELAND / IRELANDE

Did not reply. / N'a pas répondu.

LATVIA / LETTONIE

Question a.

From the offences listed below with the individual differences mentioned in the clause b of this questionnaire's question b, all are criminalized in Latvia.

Question b.

Convention Article 18, Clause 1 , sub-clause b - criminal liability in Latvia is provided for engaging in sexual activities with a child who has not attained the age of puberty (16 years). If the child is 16 or 17 years old, criminal liability is only for those cases where sexual activity is carried out through a child's state of helplessness or using violence or threats (circumstanced referred to in the Article 18, Clause 1, Sub-Clause b paragraphs 1 and 3).

In addition, please be informed that the Saeima (the Parliament) is currently viewing a draft bill providing Amendments to the Criminal Law to transpose the Directive 2011/93/EU of the European Parliament and Council on combating the sexual abuse and sexual exploitation of children and child pornography and replacing Council Framework Decision 2004/68/TI. The draft bill provides to significantly expand substances of offences determining criminal liability not only in cases when used violence, threat or taken an advantage of the state of helplessness, but also in cases where the use of trust, authority or other influence on the victim (regardless of whether the person is of legal age or minor). As soon as these amendments will enter into force the Criminal Law of Latvia will comply fully with the provisions of Article 18 of the Convention. (...)

Question c.

Criminal liability in Latvia is provided for different sexual acts with children not related to physical contact with the child (non-contact acts). The Convention covers only those cases in which a child who has not attained the age of puberty (16 years), is made to witness sexual abuse or sexual acts, while the Section 162 of the Criminal Law provides criminal liability for any kind of immoral acts committed with a minor, if such have been committed by a person who has attained the age of majority or if they have been committed against the will of the minor. Acts that are also considered as immoral acts are such as cynical conversations with children about sexual topics or if these talks are being held in the presence of a child, instructions for types of sexual gratification, demonstration to a child production containing immoral content, including - materials of a pornographic nature, etc..

Question d.

The child's age plays a role in determining the gravity of the crime. Minority (a child has not reached the age of 18) and pupillage (a child has not reached the age of 14) have been defined as qualifying elements, namely sanctions for offences against a minor's morality and sexual inviolability are provided more severe compared with analogous offences against a person of full age. If the crime has been committed against a preteen, the sanctions are even more severe than those prescribed for cases where the victim is 14-17 years old.

In addition, please be informed that the pupillage, i.e, the fact that a child is under the age of 14, in the theory of the criminal law in Latvia has been recognized as the state of

helplessness, so that sexual intercourse or other similar acts with these children in all cases to be classified as rape or forcible sexual gratification.

In addition please be informed that in the near future, alterations are planned in relation to those qualifying elements. Namely, the sanctions will be graded, dividing the children into the following age groups: 1) minors (as before - children under the age of 18) and 2) persons under the age of puberty (children under 16, i.e. the age at which engaging into sexual acts is permitted in Latvia). This means that the most severe sanctions that are currently applied in cases where the child is a preteen (has not reached the age of 14) will also apply in cases where the child is 14 or 15 years old.

LIECHTENSTEIN

Did not reply. / N'a pas répondu.

MONACO

Question a.

Pour l'ensemble des catégories d'infractions déclinées dans ce paragraphe, la tentative et les actes de complicité sont réprimés.

Les abus sexuels

▪ L'article 261 du Code pénal réprime : « *Tout attentat à la pudeur, consommé ou tenté sans violence sur la personne d'un mineur de l'un ou l'autre sexe, au-dessous de l'âge de seize ans accomplis, sera puni de la réclusion de cinq à dix ans. Sera puni de la même peine l'attentat à la pudeur commis par tout ascendant sur la personne d'un mineur, même âgé de plus de seize ans, mais non émancipé par le mariage.* »

▪ L'article 263 dispose : « *Quiconque aura commis un attentat à la pudeur, consommé ou tenté avec violence, contre un individu de l'un ou l'autre sexe, sera puni de la réclusion de cinq à dix ans.*

Si le crime a été commis sur la personne d'un mineur au-dessous de l'âge de seize ans accomplis, le coupable subira la peine de la réclusion de dix à vingt ans. »

Ainsi, le fait d'avoir des relations sexuelles avec un mineur de moins de 16 ans même si elles sont consenties constitue un crime, que l'auteur soit majeur ou mineur.

▪ En revanche, ne sont pas réprimés les attentats à la pudeur commis sans violence sur des mineurs de plus de 16 ans sauf recours aux dispositions de l'article 273 du Code pénal réprimant plus spécifiquement d'avoir des relations immorales avec un mineur, s'il a été séduit, soit à l'aide de manœuvres frauduleuses, soit en abusant de son autorité de droit ou de fait. Dans ce cas, la poursuite n'aura lieu que sur la plainte du mineur séduit, de ses père, mère ou tuteur.

▪ Ensuite, l'article 262 du Code pénal réprime le viol, défini comme tout acte de pénétration sexuelle, de quelque nature qu'il soit et par quelque moyen que ce soit, commis sur la personne d'autrui, par violence, contrainte, menace ou surprise. Cet article précise :

« Est en outre un viol tout acte de pénétration sexuelle, de quelque nature qu'il soit et par quelque moyen que ce soit, commis sur un mineur par :

1°) toute personne ayant un lien de parenté avec la victime, qu'il soit légitime, naturel ou adoptif, ou un lien d'alliance ;

2°) toute personne vivant avec lui sous le même toit ou y ayant vécu durablement et qui exerce ou a exercé à son égard une autorité de droit ou de fait.

Quiconque aura commis le crime de viol sera puni de la réclusion de dix à vingt ans.

Si le viol a été commis sur la personne d'un mineur au-dessous de l'âge de seize ans ou dans les conditions définies au troisième alinéa, le coupable encourra le maximum de la réclusion à temps.

Il en est de même si le viol a été commis sur une personne dont la vulnérabilité ou l'état de dépendance étaient apparents ou connus de son auteur. »

▪ Les peines encourues pour les crimes d'attentats à la pudeur et de viol sont aggravées par l'article 264 du Code pénal :

« Si les coupables sont les ascendants de la personne sur laquelle a été commis l'attentat, s'ils sont de la classe de ceux qui ont autorité sur elle, s'ils sont ses instituteurs ou ses serviteurs à gages, ou serviteurs à gages de personnes ci-dessus désignées, s'ils sont fonctionnaires ou ministres d'un culte ou si le coupable, quel qu'il soit a été aidé dans son crime par une ou plusieurs personnes, la peine sera la réclusion de dix à vingt ans dans les cas prévus aux articles 261 (1er alinéa) et 263 (1er alinéa) et du maximum de la réclusion à temps dans les cas prévus aux articles 262 (1er alinéa) et 263 (2e alinéa). »

Mais, la loi monégasque ne prévoit pas d'aggravation spécifique lorsque l'auteur abuse « d'une situation de particulière vulnérabilité de l'enfant, notamment en raison d'un handicap physique ou mental ou d'une situation de dépendance tel que prévu à l'article 18 de la convention. » La répression est celle du principe général.

L'âge de 16 ans est un seuil retenu par la loi tantôt pour incriminer, tantôt pour aggraver la sanction d'abus sexuels commis à l'encontre de mineurs.

(...)

NORWAY / NORVEGE

Did not reply. / N'a pas répondu.

POLAND / POLOGNE

Did not reply. / N'a pas répondu.

RUSSIAN FEDERATION / FEDERATION DE RUSSIE³¹

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

SLOVAK REPUBLIC / REPUBLIQUE

Did not reply. / N'a pas répondu.

SLOVENIA / SLOVENIE³²

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

SWEDEN / SUEDE

Question a - c.

	Sexual Abuse (Article 18)		Penal Code
1	Engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities.	YES	Ch. 6, Section 4-6
2	Engaging in sexual activities with a child where;		
–	use is made of coercion, force or threats;	YES	Ch. 6, Section 1–6
–	abuse is made of a recognised position of trust, authority or influence over the child, including within the family	YES	–“–
–	abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.	YES	–“–
	Aiding or abetting and attempt (Article 24)		
1	Intentionally aiding or abetting the commission of any of the above offences.	YES	Ch. 23, Section 4
2	The attempt to commit any of the above offences in Article 18–21.	YES	Ch. 6, Section 15, and Ch. 16, Section 17
	Pursuant to Article 24.3 of the Convention Sweden has reserved the right not	NO	

³¹ The Russian Federation became a State party after the 1st monitoring round was launched. 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^{er} cycle de suivi. Comme toutes les Parties, elle doit répondre au Questionnaire « Aperçu Général ». Ses réponses doivent être reçues au plus tard le 31 juillet 2014.

³² Slovenia became a State party after the 1st monitoring round was launched. As all Parties it has to reply to the General Overview Questionnaire. Its reply should be received by 31 August at the latest. / La Slovénie est devenue Etat Partie après le lancement du premier cycle de suivi. Comme toutes les Parties, elle doit répondre au Questionnaire “Aperçu Général”. Ses réponses doivent être reçues au plus tard le 31 août 2014.

to apply paragraph 2 to offences established in accordance with Article 22 and 23.		
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Question d.

Chapter 6 of the Swedish Penal Code contains a number of penal provisions focusing on sexual crimes against children. Some of these concern acts committed against someone who is under 15 years of age and some acts committed against someone who is under 18 years of age. The differences reflect the fact that the age limit for the right to sexual self-determination in Sweden is 15. Thus, in respect of children under the age of 15, Swedish criminal law offers complete protection against all forms of sexual acts. Additionally, there is special protection for the 15-18 age group against being exploited in various contexts.

SWITZERLAND / SUISSE³³

Did not reply. / N'a pas répondu.

"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA" / "L'EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE"

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

UNITED KINGDOM / GRANDE BRETAGNE

Did not reply. / N'a pas répondu.

³³ Switzerland became a State party after the 1st 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 reply 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.