



T-ES(2017)ICT-AT

LANZAROTE CONVENTION

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

Replies to the thematic questionnaire

AUSTRIA

2nd thematic monitoring round

"The protection of children against sexual exploitation and sexual abuse facilitated by information and communication technologies (ICTs)"

Replies registered by the Secretariat on 25 October 2017

The texts of the available relevant provisions in English are attached to that document.

Prevention

Note: When it comes to prevention, no difference is made between self-generated sexually explicit images and/or videos and self-generated sexual content.

Question 1 Awareness-raising or educational activities/tools/materials/measures:

See also the answers to question 7.

1.1.:

The Crime Prevention Unit of the Criminal Intelligence Service works together with the crime prevention officers. There are 1.200 crime prevention officers all over Austria, educated for different parts of prevention. In 2016 they advised in summary 365 789 people. The education as a youth prevention officer takes 5 weeks and includes the use of training kits (they can be provided in German language) and various clips like: https://www.youtube.com/watch?v=INMgNBXdqgc. These specialised crime prevention officers work with kids at school aged 13 or elder in the framework of the program "Under 18", generally aiming at the prevention of violence, addiction resulting from substance abuse, as well as other forms of addiction (e.g. gambling, or excessive cell phone use). Staying safe online is a big part in it and so sexting is usually on the agenda of those trainings and workshops. In 2016 about 115.800 kids where reached with those workshops.

"Safer Internet" - an EU- initiative - has published the brochure SEXTING informing children about the risks they face when they produce or share self-generated sexually explicit images or videos or self-generated sexual content: https://www.saferinternet.at/uploads/tx_simaterials/Flyer_Sexting_01.pdf This awareness raising initiative is being sponsored and promoted by the Austrian Federal Ministry of Families and Youth, the Federal Ministry of Education, the Federal Chancellor's Office and the Internet Ombudsman.

Awareness-raising materials have also been made available children to the Children's **Ombudspersons** of the Länder Tyrol by (e.g. http://www.kija-tirol.at/fileadmin/user_upload/pdf/Sexting_Falter_2016.pdf, Upper Austria http://www.kija-ooe.at/1263.htm, Salzburg http://www.kija-sbg.at/news/newsletter/newsletter-2013/newsletter-kija-sbg-1013.html#c898

and Styria http://www.kinderanwalt.at/fileadmin/kija/res/Download/Infoblaetter/Handy.pdf).

Furthermore, the children's ombuds office of Upper Austria (Kija) is drawing attention to the mentioned risks through theatre performances conducted throughout the State.

1.2.:

There are no special activities targeting bystanders. The awareness raising activities mentioned above reach all children as the most important aim is their empowerment so they can help themselves and others.

<u>1.3.:</u>

A variety of documents is available on the website of the Austrian Centre for Citizenship Education in Schools, Zentrum polis (http://www.politik-lernen.at/) that refer to the issue in a broader sense (s. Appendix 2). Zentrum polis is an educational service institution operating under the Ministry of Education, which offers training courses for teachers, teaching material and textbooks developed in close cooperation with national and international organisations. The programmes primarily aim at linking universal human rights with everyday experience, focusing on the importance of these rights in practice.

The initiatives in the framework of "Safer Internet" comprise educational activities and brochures particularly addressed to teachers, parents and students about the risks children face when they produce and/or share self-generated sexually explicit images and/or videos or self-generated sexual content (https://www.saferinternet.at/

and https://www.bmb.gv.at/schulen/pwi/pa/saferinternet.html).

The Austrian Federal Ministry of Families and Youth informs parents about the risks of self-generated sexually images or contents produced by their children with the following issues on the ministerial website www.eltern-bildung.at:

- https://www.eltern-bildung.at/sicher-unterwegs-im-internet/ concerning the topics Sexting, Posing, Cyber-Grooming.
- https://www.eltern-bildung.at/handy-in-kinder-und-jugendhand/ concerning the safe use of WhatsApp-Chats.

The explicit issue "Sexual child abuse" informs parents how to avoid the risk and where to get help in case of suspicion: https://www.eltern-bildung.at/sexueller-missbrauch-an-kindern/

Parents can also find support and advice concerning sex education:

- https://www.eltern-bildung.at/sexualerziehung/
 informing about how to talk about sexuality with children of different ages and how to interact with pornographic content in the media.
- https://www.eltern-bildung.at/geschlecht-und-sexualitaet-wenn-jugendliche-anders-sind/ informing about LGBTI.

The Austrian Federal Ministry of Families and Youth has also developed workshops for young adults, as well as youth workers, educators and parents, concerning sexuality and digital media (www.sextalks.at). Due to recent developments, these workshops have succeeded their original design, now containing additional support for the above mentioned group with tools such as a WhatsApp-Broadcast and a chat tool for weekly advice from our experts.

Furthermore parallel to the workshops with children mentioned under 1.1., awareness raising activities by the crime prevention officers are carried out with their parents and their teachers so that they are able to target the issues when the workshop is over or during other lessons. There are also educational activities at pedagogic high schools or for students that are working with kids in the future. They include input to get an idea of what is going on when a child is abused, what the police does and what the part of youth welfare is. Apart of that, sexting is also a part of the agenda.

In Vorarlberg – one of the nine Länder of Austria – the "Werkstatt für Suchtprophylaxe der Stiftung Maria Ebene" offered the following services:

Information material:

- Speaking about television with children. What parents should know. (Mit Kindern übers Fernsehen sprechen. Was Eltern wissen sollten.)
- Speaking about new media with children. What parents should know. (Mit Kindern über neue Medien sprechen. Was Eltern wissen sollten.)
- Speaking about new media with teenager. What parents should know. (Mit Jugendlichen über neue Medien sprechen. Was Eltern wissen sollten.)

Trainings:

- klartext: neue Medien (for teachers working with teens)
- Neue Medien in der Volksschule (for teachers working with children in elementary schools).

Question 2 Civil society involvement

See also answers to question 1.

State authorities in Austria encourage the implementation of prevention projects and programmes carried out by civil society with regard to the subject in question by availing the funds needed for the said purpose.

The Ministry of Health and Women's Affairs and the Ministry of Interior Affairs for example finance the Violence Protection Centres (one in each province, some with further regional offices), which offer support to victims of domestic violence and to victims of (Cyber)Stalking (women, men and children) http://www.gewaltschutzzentrum.at. The Ministry of Health and Women's Affairs further financially supports numerous women and girls specific counselling agencies, many of which offer support in cases of cyber mobbing (which includes support in case of (sexualised) online exposure); as for 2018 a number of specific trainings for staff of women and girls specific counselling agencies are planned, covering the various forms of cyber violence; furthermore the Ministry of Health and Women's Affairs also offers information on cyber violence on its website (https://www.bmgf.gv.at/home/Frauen_Gleichstellung/Gewalt_gegen_Frauen/Gewalt_im_Netz/).

The "Platform against domestic violence" was founded in 1993 and comprises 45 organisations active in the fields of prevention of violence and intervention against it, such as child protection centres, women's shelters, youth centres, organisations working with elderly people and gender-specific work with boys and men. Beside networking among the institutional and vocational groups active in the field of violence prevention, one of the main topics on this platform's agenda is gender sensitive work with boys, which is carried out by the counselling centres for men set up in schools in virtually every Austrian Province and in out-of-school youth work. This type of work in the field of violence prevention aims at providing the boys with new ways of perceiving themselves and others. The website www.gewaltinfo.at serves as an information pool on current issues in violence within the family. This is where persons exposed to violence will find contact addresses and advice.

There is also a very close and strong cooperation with the Austrian "Safer Internet" platform as well as with "Rat auf Draht" which is a helpline for kids in those cases as well as in other questions. With "Safer Internet" Crime Prevention Unit of the Criminal Intelligence Service shares an information campaign (see one of the ten common topics in the attachment).

Question 3 National curriculum

The national curricula (primary and secondary schools, and vocational education) include awareness-raising about child sexual abuse and sexting. The cross-curricular principle of sexual education supports the ability to build (sexual) relationships characterized by mutual understanding and respect for the needs and limitations of the counterpart, and to lead to equal rights. This helps to prevent sexual abuse and sexual violence. Furthermore the cross-curricular principle of media education as well as digital education include information about the dangers of sexting and the safe use of internet.

High-quality school psychology supports educational consulting and in-service teacher trainings especially in the context of violence prevention. This measure is also part of the comprehensive initiative "National strategy on school violence prevention" (for further information: http://www.schulpsychologie.at/gewaltpraevention).

The national strategy on school violence prevention includes annual meetings of the school support system on various topics - 2017 on cyber bullying. Case studies on self-generated sexually images and sexual content will be discussed.

There have been several scientific projects at Pedagogical Universities in Austria with regard to this particular topic, i.e. at the Pedagogical University of Salzburg a research project took place between 2013 and 2015 on "Sexual education in schools within a multicultural context". Also the Pedagogical University of Linz dealt with "Sexual Education within the Austrian Educational System".

The Federal Center for Sex Education (BZSP) is located at the Pedagogical University of Salzburg too.

Its tasks are specified as:

- Coordinating activities and measures in the pedagogics of Sex Education and Violence Prevention at Austrian Pedagogical Universities, in particular within initial and further training departments.
- Professional development measures for educators in the field of Sex Education and Violence Prevention
- To conduct research projects on Sex Education and Violence Prevention in schools
- To develop quality standards for Sex Education and Violence Prevention in context with the general quality assurance measures in schools.
- Development of projects with reference to personnel measures for Sex Education and Violence Prevention at schools for general and instruction purposes.
- Organisation of special events on Sex Education and Violence prevention (meetings, seminars and conferences)
- Exchange of information and making use of synergies with other institutions dealing with this topic
- Publications on the topic of Sex Education and Violence Prevention
- Promoting the interdisciplinary dialogue between pedagogy, psychology, sociology, didactics etc. as well as national and international exchange and networking on this topic
- Implementing and maintaining a platform for the purpose of disseminating information and material on the topic of Sex Education and Violence Prevention

Further projects of the BZSP:

Initiated by the Austrian Federal Ministry of Education a study was launched in 2015 at all Austrian schools on Sexual Health and Sexual Awareness at Austrian Schools. The study was based on the WHO guidelines on sexual pedagogics at schools. A further project is entitled Lovelife and is carried out as part of an EU Erasmus project.

In addition the topic of the protection of children against sexual exploitation and sexual abuse is part of further training and education programmes for teachers on the subject of "Safer Internet". In particular attention will be drawn to the offer by the On Line Campus "Virtuelle PH" (http://www.virtuelle-ph.at/).

Question 4 Higher education curriculum and continuous training

See answer to question 3.

Question 5 Research

Safer Internet. promoted a study on the topic of Sexting in Austria: https://www.saferinternet.at/news/news-detail/article/aktuelle-studie-sexting-in-der-lebenswelt-von-jugendlichen-489/. Safer Internet is sponsored and promoted by the Austrian Federal Ministry of Families and Youth, the Federal Ministry of Education, the Federal Chancellery and the Internet Ombudsman.

The network known as "Platform against domestic violence" - "Plattform gegen die Gewalt in der Familie" (www.gewaltinfo.at) - consists of 45 aid organizations, including the "Tiroler Kinder und Jugend GmbH". The "Tiroler Kinder und Jugend GmbH" is a main actor within the network and contact

partner for the other members of the network, which has a focus on research (see question 7. Cooperation with civil society).

Currently there is no specific research on the issues raised by self-generated sexually explicit images and/or videos or self-generated sexual content.

Protection

Question 6 Assistance to victims

<u>6.1.:</u>

Child victims of online exposure of self-generated sexual content are provided with the necessary support, assistance and psychological help by the general helpline for victims 0800 112 112, which is accessible cost-free twenty-four-seven. Furthermore in addition to regular police reporting systems and the right to get proper support for victims, the Interior Ministry did supporting and working close together with an external helpline called "Rat auf Draht" as well as with "Safer Internet". Both Organizations are aiming at providing support and sharing information about issues like the mentioned ones. "Rat auf Draht" is a helpline especially for kids, also with psychological trained persons while "Safer Internet" is dealing with the whole range of risks and chances online, for kids as well as for adults.

In each of the nine federal states of Austria an "Ombuds office for Children and Youths" (kija) has been legally established. They can be contacted in cases e.g. of conflicts with parents, teachers, friends and colleagues, violence or sexual assault or the breach of law. Their task is also to help the children by giving assistance and counsel to them. Concerning assistance provided by the "Länder" e.g. according to § 2 Tiroler Kinder- und Jugendhilfegesetz (TKJHG), LGBI. Nr. 150/2013 idF LGBI. Nr.32/2017, social services of the child- and youth welfare offer help for parents, young people, and minors. The service offering covers among others consultation for minors, school social work and child protection institutions. The Tyrolean regional authority has to provide for the necessary social services (§ 18 TKJHG). Article 13 of the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (Lanzarote Convention) lays down that the member states shall take the necessary legislative or other measures to encourage and support the setting up of information services, such as telephone or internet helplines, to provide advice to callers, even confidentially or with due regard for their anonymity. The child protection institutions which are spread throughout Austria have the appropriate information structure. The "Tiroler Kinder und Jugend GmbH" offers free personal and telephone advice for children and young people.

The purpose of school social work is consultation and assistance relating to students in coordination with measures of the school administration (§ 20 para 2 TKJHG). The costs of the school social work are financed by the Tyrolean regional authority and the municipalities (§ 15 para 7 TKJHG).

In the context of school social work the social workers directly take action in the area of schools. They operate as a kind of "turntable" because they help to find the appropriate help system for the prevailing target group. The activity focuses on prevention in terms of new media (e.g. information and communication technologies), violence and sexuality. § 37 Bundes-Kinder- und Jugendhilfegesetz 2013 (B-KJHG 2013) lays down that in case of a reasonable suspicion of a threat to the child welfare the local child- and youth welfare services has to be informed about that and a written report has to be sent. There is a duty to report among others for professionals, public authorities and other facilities. This regulation is directly applicable federal law for the Tyrol. Further to that, the "Children's and Young People's Advocacy" ("Kinder- und Jugendanwaltschaft Tirol") is one of the first places to go when

children need help and support. This also includes victims of exposure online of self-generated sexually explicit images/videos or self-generated sexual content.

6.2.:

A variety of victim support organisations, e.g. women shelters, violence intervention centres, womenand men counselling centres and the "white ring" offer counselling and support for victims of violence. The helplines mentioned under point 6.1. inform children about the possibilities of support and put them in touch with the victim support organisations.

Children that have become victims of crimes can get psycho-social or legal assistance during civil and criminal proceedings. The psycho-social and legal assistance is carried out by victim organisations that have a treaty with the ministry of justice for that service. These organisations are specialised in those areas and the persons, carrying out the psycho-social and legal assistance are specially trained for the support of children.

There are numerous measures to protect victims in criminal proceedings regardless of the age of the victim. Besides that, the Code of Criminal Proceedings Amendment Act No I 2016 (Federal Law Gazette I No 26/2016), which entered into force on 1 June 2016, strengthened the protection both of victims and witnesses of criminal offences aged between 14 and 18 year.

According to Sec. 65 para. 1 of the Code of Criminal Proceedings (CCP) a victim is

- a) any person who could have been exposed to violence or dangerous threat or whose sexual integrity could have been compromised through an intentional criminal offence or whose personal dependence was exploited by such a criminal offence,
- b) the spouse, life companion, relative in a direct line, brother or sister and other dependents of a person whose death could have been caused by a criminal offence, or other relatives, who were witnesses of the criminal offence,
- c) any other person who could have suffered damage caused by a criminal offence or who could have otherwise been affected with respect to his/her interests protected by criminal legislation.

Pursuant to Art. 66 para. 2 CCP, victims as defined in Art. 65 para 1 lit. a or b CCP shall be granted psycho-social or legal assistance during criminal proceedings upon their request, insofar as this is necessary for reasons of protecting the procedural rights of victims, taking their specific consternation into consideration. Victims whose sexual integrity might have been violated and who are under 14 years old are granted psychosocial assistance in any case. Psycho-social assistance during criminal proceedings comprises the preparation of the affected person for the proceedings and for the emotional burden related to it, as well as accompanying the person to the hearings during preliminary proceedings and the trial. Legal assistance during the criminal proceedings encompasses legal advice and representation by an attorney. The Federal Minister of Justice is authorized to delegate contractually provision of assistance to victims during criminal proceedings, as defined under Art. 65 para 1 lit. a or b CCP to suitable experienced institutions.

All victims under the age of 18 years are considered to be particularly vulnerable victims and are therefore regarded as "victims with specific protection needs" (Art. 66a para. 1 subpara. 3 CCP). Thus, they are provided with special rights during the criminal proceedings in addition to the general victims rights, namely (Art. 66a para 2 CCP):

- to be interviewed during the investigation proceedings by a person of the same sex if the victim so wishes and if possible;
- to refuse to answer specific questions regarding details of the criminal act if the victim considers the answer unbearable or concerning his or her personal sphere (Art. 158 para. 1 subpara. 2 and 3, para. 2 CCP);

- to be interviewed during the investigation and the trial phase in a protecting manner upon request (Art. 165, 250 para. 3 CCP), namely a minor victim who could have been injured in his or her sexual sphere by the offence which the accused person is charged with in any case in the manner described in Art. 165 para. 3 CCP, if necessary by an expert;
- to exclude the public from the trial upon request (Art. 229 CCP);
- to be immediately informed ex officio of the release or escape of the accused person from custody (Art. 172 para 4, 177 para. 5, 181a CCP);
- to be interviewed in the presence of a person of his/her trust (Art. 160 para. 2 CCP).

According to Art. 66a para. 3 CCP, the public prosecution service or the criminal court have to initiate the appointment of a curator (i.e. special representative) for the minor victim if a legal representative of the minor victim is suspected of having committed the criminal offence or if there is a risk of a conflict of interests between the minor victim and his/her legal representative otherwise or if no legal representative can assist the minor victim in criminal proceedings.

In order to avoid secondary victimisation as well as the direct contact of the witness and the accused person, Art. 165 and 250 CCP provide for the possibility of an adversary questioning of every witness (irrelevant of whether he/she is a victim). With regard to particularly vulnerable victims (Art. 66a CCP) or other witnesses to whom the criteria mentioned in Art. 66a CCP apply (i.e. also minor witnesses), the participation at the interrogation of other participants in the proceeding may be limited either on request by the public prosecutor or ex officio by the use of technical means of audio and visual transmission for following the interrogation and the right to ask questions being exercised without being present at the interrogation. Especially if a witness is particularly vulnerable, it is possible to appoint an expert to conduct the interrogation. In any case, care shall be taken to avoid a possible encounter of the witness with the accused person and other participants in the proceedings. In any case, persons who have not yet turned eighteen and who could have been victims of a sexual offence shall be interrogated in the aforementioned manner. Since 1 June 2016, in cases of sexual offences the accused person does not have the right to get a copy of a DVD of the questioning of the victim (Art. 165 para. 5a CCP).

If an adversary questioning has taken place in accordance with the above mentioned provisions, the witness is released from the obligation to further testify and the protocol of the adversary questioning can be read in the trial (Art. 252 para. 1 subpara. 2a CCP).

Besides the assistance in criminal and civil proceedings, victim protection and assistance measures are carried out by the Länder. E.g. in Tyrol § 35 B-KJHG 2013 read in conjunction with § 11 TKJHG is the statutory basis for the "Children's and Young People's Advocacy". It is an independent office created by the regional authority to act as an ombudsman in protecting the rights and interests of children and young people in the Tyrol. The Children's and Young People's Advocacy offers consultation for minors and support in administrative procedures, administrative penalty proceedings and court procedures. All services are available unbureaucratically, anonymously and for free.

Furthermore § 22 B-KJHG 2013 read in conjunction with § 37 TKJHG statutes an evaluation process concerning the youth welfare service, which has to evaluate all relevant facts and subsequently examine, whether there exists a specific danger for children and young people to initiate appropriate supporting measures. In addition, one measure, which was introduced through the above mentioned "Children's and Young People's Advocacy", is the psychosocial and legal facilitation for children.

Vienna offers a wide range of counselling and therapy to overcome family problems and crises. The psychology service of the MA 11 (Vienna) offers not only preventional but also curative psychological counselling and treatment for children, also in cases of exposure online in the context of sexting (in this respect especially the online counselling service "talkbox.at" should be mentioned).

Question 7 Cooperation with civil society

See answer to question 2.

The Austrian Federal Ministry of Families and Youth acts as Austria's biggest national co-financer to the national branch ("Saferinternet.at" and "Rat auf Draht") of the Insafe-Network in the field of prevention and providing first level support. The Internet Ombudsman and the helpline "Rat auf Draht" are engaged in assistance to victims of the offences covered by the present questionnaire.

The "Platform against domestic violence" - "Plattform gegen die Gewalt in der Familie" (www.gewaltinfo.at) - represents a network in the sense of Article 10 of the Convention. It is a cooperation of established institutions providing consultation and assistance in fields of physical, psychic and sexual violence against children. The "Tiroler Kinder und Jugend GmbH" is a main actor within the network and a contact partner for the other members of the network.

The interconnection within the scope of the network contributes to the improvement of subject-specific standards and the development of prevention models. The work further focuses on research, evaluation, conceptive work, conferences, seminars and public relations activities.

In the context of court assistance including psychosocial assistance (§ 66 para 2 StPO) (see above 6.2) the Austrian Federal Ministry of Justice entrusts appropriate organisations to offer this assistance service. In the Tyrol the "Tiroler Kinder und Jugend GmbH" and the "Verein für Gewaltprävention, Opferhilfe und Opferschutz Tirol – Gewaltschutzzentrum Tirol" support all victims of crime quickly, unbureaucratically and for free. In addition, the "Children's and Young People's Advocacy" and various other organizations are engaged in assistance to victims of the offences covered by the present questionnaire, e.g. the "Kinderschutzzentrum", "Dowas Chill out", "Kriseninterventionszentrum" and the "Weißer Ring Tirol" are organisations with low threshold access for children. Furthermore also other professions like the social workers in school get in touch with those contents.

Social service for children and families in Vienna has to be provided according to the Wiener Kinderund Jugendhilfegesetz 2013 (KJHG 2013). They aim at a positive development of children, support of families in general and upbringing without violence. The nine parents-child-centres (Eltern-Kind-Zentren) and 18 regional centres for social work are often the first place to go for children and families in difficult life situations. The social workers offer information and help e.g. in crisis situations, economic emergencies and family problems. Victims of (sexual) violence are put in contact with specialised NGO's. Also representatives of the psychological service of the City of Vienna (Magistratsabteilung 11) take part in the Vienna network against sexual violence (Wiener Netzwerk gegen sexuelle Gewalt).

The A6 Fachabteilung Gesellschaft of Styria funds, cooperates and changes information with organisations which work in the field of sexual violence and abuse of children. E.g. the organisation Hazissa - Fachstelle zur Prävention von sexualisierter Gewalt works with teenager in the field of prevention. The aim of the organisation is to offer trainings and workshops for adults, parents and children outside school that give an inside view of the reasons and background of sexual violence. This increases awareness raising and lifting the taboo on that topic. The project "Abenteuer Liebe und Liebeslust" that also aims at raising awareness about sexual violence against children should also be mentioned in that respect. In 2016 a conference "unantastbar" took place in Graz. The topic sexual violence against children including the newest study results in that field, how to expose sexual abuse, what kind of cooperation, helping and protecting systems are available and what the relevance of developing and implementing of institutionalised protection concepts are. In this conference cybermobbing and online violence and adequate intervention measures were also discussed. Styria also funds with the ZWEI UND MEHR-Elternbildungsgutschein educational events for parents concerning sexuality and digitisation. Furthermore two parents meetings in cooperation with the organisation "Hazissa" about the topics dealing with sex, pornography and new media took place in Graz. In October 2017 two more parents meetings are planned in Leoben and Liezen that deal with "the digital generation"-growing up in a networked world. During those parents meetings the participants have the opportunity to discuss the topic with each other and experts. In 2016 Styria funded the development of a brochure for parents concerning sexualised violence. In 2015/2016 the counselling organisation TARA was funded for conducting a training project for workers of NGO's and teachers to increase their skills concerning the appropriate handling of victims of sexual violence. The "Verein für Männer- und Geschlechterthemen Steiermark" was also funded by Styria. This organisation works with teenager and men in crisis situations to prevent violence. The aim of this organisation is to counsel men and work on solution-oriented strategies to overcome problems without violence which is a very important part of the prevention of violence.

The Criminal Investigation Department (Bureau 3.2.) is council member of STOPLINE, with is a member of INHOPE – the worldwide network of hotlines against illegal contents on the Internet. Because of the international cooperation it is possible to act quickly and effectively against contents, that are hosted on servers outside of Austria.

Prosecution

Question 8 Legislation

<u>8.1.:</u>

In Art. 207a para. 6 CC self- generated child pornography is explicitly mentioned.

At Länder level there are only general regulations concerning media, items and services that are harmful for children – also pornography (see Art. 15 of the Jugendgesetz of Vorarlberg, Art. 20 and 26 of the Steiermärkisches Jugendgesetz – StJG 2013). It is forbidden to offer or show those contents to children.

8.2.:

If there are more children on the explicit image/video it can lead to a different judgement on a case concerning the question whether someone is punishable under Art. 207a CC or not. If a person between the age of 14 to 18 produces a consensual video/image with another 14 to 18 year old person, this is not punishable under Art. 207a CC. If that person produces such a video/image e.g. with the consent of a 13 year old person, this would be punishable under Art 207a para. 1 CC. Producing or possessing self-generated sexual content, that does not fall under the definition of child pornography is not punishable under Art. 207a CC, nor is the production of such a content with the consent of another person.

<u>8.3.</u>

See answer to question 8.2.

Question 9 Criminalisation

9.1.a to c:

The replies of Austria to the General Overview Questionnaire as regards the implementation of Article 20 of the Lanzarote Convention (see replies to question 16) are still valid. However with the Criminal Law Amendment Act 2017, Federal Law Gazette.vol. I no. 117/2017, para. 5 was amended. A person is not liable under para. 1 and 3 of Art. 207a CC if the person produces or possesses a pornographic image of a person between the age of 14 and 18 with the consent of and for the private use by the minor or him/herself.

9.2.:

According to Arts. 198ff CCP, the Office of the Public Prosecutor and the court have to offer the suspect a so called "diversion measure" if the following prerequisites are met:

- the facts of the case are sufficiently clarified;
- a penalty does not seem indicated with a view to special or general prevention;
- the maximum penalty of the offence does not exceed five years of imprisonment;
- no serious fault is assumed;
- the act did not result in loss of life (with the exception of certain cases where a relative is killed as a result of the suspect's negligent behaviour).

There are four forms of diversion measures: payment of a sum of money (Art. 200), community service (Arts. 201 and 202 CCP), probation with the assistance of a probation officer and obligations (Art. 203 CCP), and victim-offender mediation.

(Art. 204 CCP). Diversion measures require the consent of the suspect. If the diversion measure was completed successfully, the charges are dropped with final effect.

9.3.:

In cases of crimes mentioned in 9.1.a the penalty is up to one year imprisonment or a fine up to 720 penalty units. In cases falling under 9.1.b and c the penalty is up to three years of imprisonment. Also see answer to question 9.2.

9.4.a and b:

Other sexual content does not fall under the provision of Art. 207a CC.

9.4.c to 9.6:

See answer to question 9.4.a and b.

9.7. a and d:

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

9.7. e and f:

There is no exception for those cases. Children over the age of 14 are punishable under Art 207a para 1 CC.

9.8. and 9.9.:

Criminal acts committed by a minor under the age of fourteen years are exempt from all forms of criminal prosecution. In reaction to such acts, only measures to ensure and foster the personal development of the minor can be taken by a tutelage court/family court.

A juvenile (i.e. a person between the age of 14 and the age of 18) who commits an offence shall furthermore not be liable to punishment, if

- 1. he/she is for certain reasons not mature enough to be aware of the unlawfulness of the offence or to act accordingly;
- 2. he/she commits an offence while still under the age of sixteen, if there is not gross fault on his/her part and there are no specific reasons requiring the application of the criminal law relating to young offenders to prevent the young person from committing criminal acts.

The public prosecutor shall refrain from prosecuting a juvenile offender, if the offence carries merely a fine or a prison sentence not exceeding five years and if additional measures do not seem to be necessary in order to prevent the young offender from committing further criminal acts. But the alleged offender must in any event be prosecuted, if the offence has resulted in the death of a human being. On the same conditions the court shall by decision discontinue proceedings for a punishable act after initiation of a preliminary investigation or indictment until closing of the trial.

Where it seems necessary to formally inform the alleged offender of the wrongful character of certain acts such as the one in respect of which information was laid, and of any possible consequences thereof, the guardianship court shall do so upon a request by the public prosecutor.

In the Austrian legal system, there is no principal distinction in substantive law between offences committed by adults and those committed by juveniles. There are however important differences in the gravity of punishment that can be applied and the criminal procedure. As a general rule, in case of juvenile offenders the maximum term of a prison sentence and the maximum amount of fines to be determined on the basis of daily rates, shall be halved.

There is no minimum sentence.

See also the answer to 9.2.

9.10. to 9.12:

These cases do not fall under Art. 207a CC.

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

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

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

A and b:

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

Question 12 Jurisdiction rules

According to Section 62 of the CC, the provisions of the Austrian Criminal Code are applicable to all offences which have been committed in Austria. They also apply to offences committed on board of an Austrian ship or aircraft, no matter where it is located (Section 63). According to Art. 67 para 2 CC an offence has been committed in every location in which the person engaged or ought to have engaged in the prescribed conduct or in the location in which a result element of the offence, in whole or in part, occurred or in the belief of the person should have occurred.

According to Section 64 par. 1 subpar. 4a of CC the provisions of Austrian law, regardless of the provisions of the law in the territory in which the offence has been committed, also apply to criminal offences which have been committed abroad, if they constitute, inter alia, a severe coercion under Section 106 par. 1 subpar. 3, rape (Sec 201), sexual coercion (Sec 202), sexual abuse of a defenceless or psychologically impaired person (Sec 205), severe sexual abuse of minors (Sec 206), sexual abuse of minors (Sec 207), pornographic representations involving persons under age under Section 207a par. 1 and 2, sexual abuse of juveniles (Sec 207b), abuse of a position of authority (Sec 212), promotion of prostitution and pornographic performances involving persons under age (Sec 215a), transnational prostitution trade (Sec 217), and

- 1. either the perpetrator or the victim is an Austrian national or has his/her habitual residence in Austria, **or**
- 2. the offence impairs other Austrian interests or
- 3. the perpetrator was an alien at the time the offence was committed, is staying in Austria and cannot be extradited.

As far as Austrian jurisdiction is not already established on ground of the aforementioned provisions, the general provisions of Section 65 of the CC may also apply (in case of offences committed abroad). Under this provision, Austrian nationals as well as foreign nationals caught in Austria who cannot be extradited on other ground than the character of their offence, are subject to Austrian jurisdiction also for offences committed abroad, provided that the principle of double criminality applies.

Question 13 Specialised units/departments/sections

13.1.a.

Yes. There is the Referat .BK/3.2.1 – Meldestelle für Kinderpornografie.

3.1.b:

See answer to question 3.2.

3.1.c:

Within the Austrian Court system there do not exist specialised units or departments dealing exclusively with sexual offences against children facilitated by information and communication technologies (ICTs) or with such offences committed by juvenile offenders.

According to Art. 26 para. 6 of the Federal Court Organisation Act (GOG) all cases concerning sexual offences have to be handled within specialised court units. Crimes committed by juvenile offenders or young adults (under 21) also have to be dealt with in specialised court units by judges who undergo special training (Art. 26 para. 7 of the Federal Court Organisation Act). These specialised units exist at every regional criminal court, their number varies in relation to the size of the respective court. Depending on the age of the accused person ICT facilitated sexual offences against children are dealt within either one or the other of the above named specialised units.

13.2.:

See answer to question 13.1 c.

Public prosecutor's offices (except some small offices) have specialised units/prosecutors dealing with sexual offenses in general (Art. 4 para. 3 DV-StAG [Regulation on the Act of Public Prosecution Service]) and specialised units/prosecutors dealing with violence in social vicinity (violence within the family, violence against children) (Art. 4 para. 3a DV-StAG).

Public prosecutor's offices have specialised units/prosecutors dealing with offenses committed by juvenile offenders (Art. 4 para. 3 DV-StAG).

The organization (in particular number of staff and structure) of the specialised units depends on the size of the respective prosecutor's office.

Law enforcement:

a: Yes, there is a victim identification function.

b: Yes.

Question 14 Challenges in the prosecution phase

Concerning punishable crimes see answer to question 9.

Law enforcement bodies and prosecutors face the difficulty of identifying the owner of a web page providing ICT, e.g. Facebook, who shares sexual content.

Sexual content can be spread easily and quickly by ICT; often, at the time, an offence is being reported, the content has already been passed on several times, which again can be difficult to trace.

By law, internet communication such as provided for instance by WhatsApp cannot be observed. In order to obtain information about the content of previous internet communication and to stop the sharing of sexual content, law enforcement bodies have to seize the mobile devices or other data carriers of the involved persons (accused/victims/witnesses). Often, data are already erased; in these cases, IT-experts have to restore the data, which generally delays the investigation proceedings, especially in default of sufficient skilled personnel.

Question 15 Training of professionals

15.a:

There are trainings for law enforcement agents concerning that topic.

15. b and c:

The Austrian Judiciary periodically offers seminars to public prosecutors and judges on the topic of sexual offences which also cover sexual abuse of children and minors. In this field communication and collaboration with investigators is very important and for this reason an interdisciplinary approach is frequently chosen in the design of seminars. The offence of sexting for example was treated in a seminar in 2016 organised by the Senior Public Prosecutor Innsbruck. Another seminar which can also be mentioned in this context is a conference taking place every two years dealing only with the field of child pornography and sexual abuse of minors.

In Austria we have a general obligation for judges and public prosecutors to do further studies and undergo trainings, but the way how this obligation is fulfilled, is up to the individual. This means, that the visit of a special seminar always happens on a voluntary base.

Partnership

Question 16 International co-operation

16.1 a, b and 16.2. a and b:

At the moment there are no special cooperation with other parties in respect of prevention and protection.

In the context of the Council of Europe's Steering Committee for Education Policy and Practice (CDPPE) session of 19-21 April 2017 delegations have been informed about the importance of the Europa Convention on Protection of Children against sexual exploitation and sexual abuse ("Lanzarote Convention") by Gioia Scappucci (Executive Secretary to the Lanzarote Committee). Regular further information will be provided at future meetings of the CDPPE.

16.1.c und 16.2.c:

Mutual Legal Assistance and exchange of information is provided on the basis of the multilateral instruments in the field of international criminal cooperation, such as the European Convention on Mutual Legal Assistance of April 20th, 1959, ETS no. 030, and bilateral treaties. Special investigative measures – as far as they are available for domestic proceedings – can be applied also upon request of a foreign judicial authority.

Within the framework of the police cooperation act, there is a regular and on-going cooperation with similar departments of other Parties to the Lanzarote Committee and other states.

Annex 1 to the replies by Austria

Relevant Provisions of the Austrian Criminal Code

Translation: Schloenhardt/Höpfel (eds.), Austrian Criminal Code (NWV 2016)

Time and place of the offence

§ 67. (1) ...

(2) An offence has been committed in every location in which the person engaged or ought to have engaged in the prescribed conduct or in the location in which a result element of the offence, in whole or in part, occurred or in the belief of the person should have occurred.

Commercial commission [of an offence]

- § 70. (1) A person commits an offence commercially, if the person commits the offence for the purpose of obtaining a sustained, more than negligible income for the longer term through the repeated commission of the offence, and
- 1. the person employs specific skills or means in the commission of the offence which suggest that the offence will be committed repeatedly, or
- 2. the person has detailed plans for the commission of two further offences of this kind, or
- 3. the person has previously committed two offences of this kind or has been convicted once for an offence of this kind.
- (2) A sustained, more than negligible income is any income that exceeds 400 Euros per month on an annual average.
- (3) Prior offences and convictions are not taken into consideration if more than one year has passed between when the offence was committed or the judgment obtained legal force, and the following offence. Any time for which the person was under official arrest is not considered in the calculation of this period.

Further definitions

§ 74. (1) For the purpose of this federal Act:....

...5. dangerous threat: any threat involving bodily harm, or against liberty, dignity, property, or the personal sphere by way of releasing, announcing, or publishing material facts or visual material capable of instilling apprehension in the threatened person in relation to that person's personal circumstances and condition or the significance of the threatened detriment, regardless of whether the threat is made against the threatened person, that person's relative, other persons under that person's care, or persons closely associated with that person

Coercion

§ 105. (1) Any person who coerces another to do, acquiesce, or omit to do an act by use of force or dangerous threat is liable for imprisonment for up to one year or a fine not exceeding 720 penalty units. (2) The conduct is not unlawful if the use of force or threat, as a means for the intended purpose, does not offend common decency.

Serious coercion

§ 106. (1) Any person who coerces

- 1. by making death threats or threats of serious mutilation or noticeable disfigurement, kidnapping, arson, nuclear power hazards, ionising radiation, explosives, or loss of livelihood or social status;
- 2. by putting the coerced person or another person against which the use of force or dangerous threat is made into a state of agony through these means for a longer period of time; or
- 3. by leading the coerced person into prostitution or to engage in a pornographic performance (§ 215a para. 3) or to do another act, to acquiesce, or to omit the doing of an act which violates particularly

important interests of the coerced person or another person is liable to imprisonment for six months to five years.

- (2) The perpetrator is liable to imprisonment for one to 10 years if the offence results in the suicide or a suicide attempt of the coerced person or of another person against which the force is used or the threat is made.
- (3) The same penalty applies to any person who commits the coercion in order to lead a minor into prostitution or to engage in a pornographic performance, or who commits the coercion as part of a criminal association, by using serious violence, or in a manner which intentionally or grossly negligently (§ 6 para. 3) places the life of another at risk, or if the offence causes a particularly serious detriment to the other person.

Extortion

- § 144. (1) Any person who by use of force or dangerous threat coerces another to do, tolerate, or omit an act which causes a financial or other material loss to the other person or to a third person and who has the intention to gain an unlawful material benefit for himself, herself, or a third person from the conduct of the coerced person is liable to imprisonment for six months to five years.
- (2) The offence is not unlawful if the use of force or threat as a means to achieve the purpose does not conflict with common decency.

Aggravated extortion

§ 145. (1) Any person who extorts

- 1. by threatening with death, serious mutilation or noticeable disfigurement, kidnapping, arson, nuclear power hazards, ionising radiation, explosives, or with the loss of one's livelihood or social status; or
- 2. by placing the coerced person or another against whom the force is used or the dangerous threat is made into a state of agony through these means for a longer period, is liable to imprisonment for one to 10 years.
- (2) The same penalty applies to any person who
- 1. extorts commercially, or
- 2. continuously extorts the same person over a longer period of time.
- (3) The same penalty also applies if the offence results in the suicide or a suicide attempt of the coerced person or of another person against whom the force is used or the dangerous threat is made.

Sexual coercion

- § 202. (1) Any person who, except in cases under § 201, by use of force or dangerous threat coerces another to engage in or acquiesce to sexual conduct is liable to imprisonment for six months to five years.
- (2) The person is liable to imprisonment for five to 15 years if the offence results in a serious assault (§ 84 para. 1) or pregnancy of the victim or if the victim is placed into a state of agony or treated in a particularly humiliating way for a longer period of time; the person is liable to imprisonment for 10 to 20 years or imprisonment for life if the offence results in the death of the victim.

Pornographic images of a minor

§ 207a. (1) Any person who

- 1. produces or
- 2. offers, provides, relinquishes, displays or makes available to another a pornographic image of a minor (para. 4) is liable to imprisonment for up to three years.
- (2) Any person who produces, imports, transfers, or exports a pornographic image of a minor (para. 4) for the purpose of distribution, or who commits the offence under para. 1 commercially is liable to imprisonment for six months to five years. Any person who commits theoffence as a member of a criminal association or in a manner that is particularly detrimental for the minor is liable to imprisonment for one to 10 years; the same penalty applies to any person who produces a pornographic image of a minor (para. 4) by using serious violence or who intentionally or grossly negligently (§ 6 para. 3) endangers the life of the minor in the production process.

(3) Any person who procures or possesses a pornographic image of a minor of or over the age of 14 (para. 4 subparas. 3 and 4) is liable to imprisonment for up to one year or a fine not exceeding 720 penalty units.

Any person who procures or possesses a pornographic image of a person under the age of 14 (para. 4) is liable to imprisonment for up to two years.

- (3a) Any person who knowingly accesses a pornographic image of a minor on the internet is also liable under para. 3.(4) Pornographic images of a minor are
- 1. realistic images of sexual acts committed on a person under the age of 14, or committed by a person under the age of 14 on himself, herself, another person, or on an animal;
- 2. realistic images of an incident involving a person under the age of 14, the viewing of which creates, in the circumstances, the impression that it involves sexual acts committed on a person under the age of 14, or committed by a person under the age of 14 on himself or herself, on another person, or an animal;
- 3. realistic images of
- a) sexual acts within the meaning of subpara. 1 or incidents within the meaning of subpara. 2 involving a minor of or above the age of 14 or
- b) the genitalia or pubic area of a minor, insofar as they are sensationalised distorted, reduced depictions removed from other manifestations of life, serving the sexual arousal of the viewer.
- 4. illustrations, the viewing of which through modification of an image or without the use of an image creates in the circumstance the impression that they are depictions under subparas. 1 to 3 (5) A person is not liable under paras. 1 and 3 if the person
- 1. produces or possesses a pornographic image of a minor of or above the age of 14 that was produced with the consent of and for use by the minor of or above the age of 14;
- 1a.is a minor of or above the age of 14 who produces or possesses a pornographic image of himself or herself or who offers, provides, relinquishes, displays, or otherwise makes such an image available to others,
- 2. produces or possesses a pornographic image under para. 4 subpara. 4 of a minor of or above the age of 14, insofar as the offence does not involve any risk of distribution of the image.

Annex 2

Beilage zu Erledigung Zl. BMB-16.822/0033-Präs.13/2017:

Auf folgende, von der Website von Zentrum polis (<u>www.politik-lernen.at</u>) abrufbare Materialien verweisen, die im weitesten Sinne die Problematiken aufgreifen:

polis aktuell 2017/01: Re-Traditionalisierung in der Geschlechterfrage?

Die Leitfrage bei der Erstellung dieser Ausgabe war: Gibt es das Phänomen der Re- Traditionalisierung in der Geschlechterfrage im Erstarken traditionell-dualistischer Geschlechtervorstellungen tatsächlich?

Materialienpaket: Schutz der Frauen vor Gewalt

Das Materialienpaket ist ein Beitrag zum Nationalen Aktionsplan zum Schutz von Frauen vor Gewalt. Die Unterlagen beleuchten die Hintergründe der Entstehung von Gewalt, zeigen mögliche Lösungswege auf und bieten methodische Anregungen für den Unterricht.

polis aktuell 2016/01: Zwangsheirat

Diese Ausgabe beschäftigt sich mit einem Thema, mit dem Zentrum *polis* in seinem Gründungsjahr 2006 die Herausgabe der Zeitschrift *polis* aktuell begonnen hat. Das Thema Zwangsheirat hat an Aktualität und Brisanz nichts verloren. Zwangsheirat wird der sogenannten "Gewalt im Namen der Ehre" zugezählt und ist eindeutig als Menschenrechtsverletzung zu qualifizieren, die sowohl Frauen wie Männer treffen kann, jedoch sind weltweit überwiegend Frauen davon betroffen.

Gender - Gleichstellung - Geschlechtergerechtigkeit

Leeb, Philipp / Tanzberger, Renate / Traunsteiner, Bärbel. Wien: Edition polis, 2014. ISBN 978-3-902659-08-8.

Die Vorstellungen davon, wie sich Frauen und Männer, Buben und Mädchen verhalten bzw. zu verhalten haben, verschwinden nicht in dem Maß aus unseren Köpfen, in dem sich etwa die gesetzlichen Grundlagen ändern. Es lohnt sich also nach wie vor, Geschlechterrollen im Unterricht zu reflektieren.

polis aktuell 2014/03: Frauenrechte sind Menschenrechte

Mädchen und Frauen sind allen vorhandenen Gefahren von Menschenrechtsverletzungen genauso ausgeliefert wie alle anderen Menschen. Zusätzlich werden sie aber immer noch aus keinem anderen Grund benachteiligt als dem, dass sie eben als Frauen und Mädchen leben. Dabei sind die Formen von Diskriminierung und Gewalt, die sie erfahren, so vielfältig wie die Frauen und Mädchen und deren Lebensrealitäten selbst.

polis aktuell 2014/11: Kinderrechte sind Menschenrechte (aktual. 2015)

Kinderrechte sind der beste Ice-Breaker in der schulischen Menschenrechtsbildung – vor allem für jüngere Schülerinnen und Schüler ist es ein Aha-Erlebnis, wenn sie begreifen, dass sie selbst und alle anderen Kinder und Jugendlichen auf diesem Planeten Rechte haben.

polis aktuell 2014/09: Geschlechtsspezifische Gewalt gegen Kinder und Jugendliche mit Behinderung Dieses *polis* aktuell möchte Lehrkräften eine Hilfestellung bieten, wenn sie in Integrations-, aber auch in Regelschulklassen das Thema "Gewalt und Behinderung" gemeinsam mit Kindern und Jugendlichen mit und ohne Behinderungen erarbeiten.

polis aktuell 2013/7: Menschenhandel (aktual. 2014)

Am 18. Oktober ist der Europäische Tag gegen den Menschenhandel. Die vorliegende Ausgabe widmet sich diesem Thema. Menschen werden mit falschen Versprechungen und Täuschungen,

durch die Androhung bzw. Anwendung von Gewalt oder den Missbrauch von Macht verkauft oder verschleppt, um beispielsweise sexuell oder durch Zwangsarbeit ausgebeutet zu werden.

polis aktuell 2010/6: Gewalt gegen Frauen und Kinder (aktual. 2014)

Eine von fünf Frauen wird laut Schätzungen zumindest einmal im Leben Opfer von Gewalt durch einen männlichen Verwandten, Freund oder Bekannten. Kinder mit der "g'sunden Watsch'n" zu bestrafen, ist leider kein Relikt aus alten Zeiten, sondern noch immer – entgegen moderner gewaltfreier pädagogischer Konzepte – ein nicht unübliches Erziehungsmittel. Dieses *polis* aktuell widmet sich daher dem Thema Gewalt in der Familie.

polis aktuell 2010/2: Weibliche Genitalverstümmelung (aktual. 2016)

Österreich hat 2008 einen Nationalen Aktionsplan gegen weibliche Genitalverstümmelung verabschiedet und der Kampf gegen FGM ist auch Bestandteil des 2014 in Kraft getretenen Nationalen Aktionsplans zum Schutz von Frauen vor Gewalt. Das Heft wurde aktualisiert und ist ein Beitrag zu diesem Aktionsplan und will die Bemühungen um Aufklärung in Österreich verstärken, weil auch Lehrkräfte zu jenen Berufsgruppen gehören, die möglicherweise mit gefährdeten oder betroffenen Mädchen zu tun haben