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## LANZAROTE CONVENTION

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

**Replies to the thematic questionnaire**

**GERMANY**

**2<sup>nd</sup> 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 14 November 2017

## Prevention

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

- 1.1. Are there awareness-raising or educational activities/tools/materials/measures addressed to children, about the risks they face when they produce and/or share:
- self-generated sexually explicit images and/or videos?
  - self-generated sexual content?

**Answer:**

Educational and awareness-raising activities, tools, materials, and measures addressed to children are available particularly at the level of *Land* institutions. Thus, the *Landesmedienzentrum Baden-Württemberg* (LMZ, media centre of the *Land* Baden-Württemberg) looks after media-education projects serving the protection of young persons, on instruction of the State Ministry and Ministry of Culture of **Baden-Württemberg**, which have the objective of educating people throughout the state of the potential dangers inherent to the use of media, while ensuring that children, adolescents, and adults have the necessary skills in order to deal with media in competent fashion. Each year, the LMZ provides events geared towards adolescents on sexting, cyber-grooming and internet pornography as well as regarding the topic of “media and (sexual) violence.” Moreover, instructional units are available that address overriding topics such as social networks, presenting yourself on the web, data protection, as well as smartphone and apps. The issues of sexualised content and sexual harassment are addressed, as are opportunities for mindfully presenting yourself on the web, questions of developing an identity, and personality rights. Teachers may call upon the qualified speakers of the LMZ to teach the instructional units. The *Schüler-Medienmentoren-Programm* (SMEP, media mentoring programme for pupils) likewise address the topics referenced above. A twenty-hour training course trains pupils to become media mentors, who will then be able to pass on their knowledge and competencies in projects and/or working groups to their fellow students. Moreover, **Baden-Württemberg** developed what are called “*Starke Kisten*” (strong boxes) in 2015 (a “red box” for elementary schools, a “blue box” for secondary schools). These are boxes providing working materials for the prevention of sexual violence. They also include, *inter alia*, materials on the dangers posed by new media in connection with sexual self-determination.

In **Bavaria**, children and adolescents are educated in targeted projects and measures offered by the children and youth welfare services in a broad range of contexts (projects in the state-funded child and youth work, in youth associations, in the *Jugendarbeit an Schulen* (JaS, social work with adolescents at schools) programmes, in the aid provided in a child-rearing context, in educational measures regarding the protection of minors etc.) about the risks entailed by “sexting” and by sending sexualised images, while their awareness is raised as concerns the low-risk consumption and use of new media in a manner appropriate to their age. Moreover, *JFF – Institut für Medienpädagogik in Forschung und Praxis* (Institute for Media Education in Research and Practice) offers peer-to-peer projects that are oriented by real-world conditions and allow for a high degree of participation; they take a critical look at the opportunities provided by the new media, along with the challenges and risks they entail. At this institute, children and adolescents have the opportunity to obtain information about new apps, internet platforms and internet forums, chat rooms and messenger services, while also trying them out in a protected environment. The project “webhelm.de” teaches adolescents more about their rights as well as their obligations on the web (data protection, privacy, copyright etc.). Furthermore, young people learn at webhelm.de how to protect their own boundaries while also respecting the personality rights of others.

In similar fashion, children and adolescents have the opportunity to critically reflect on pornographic content and “sexting.” In this context, knowing about the persistence, the visibility, the spread of personal content on the internet and knowing how easy it is to find such content can have a preventive effect on the dissemination of sexual content by creating awareness for the potential consequences. In this context, the webhelm.de-project is based on the insights most recently gained in the study “*Mobile Medien in der Familie (Mofam)*” (Mobile Media in the Family) published by the JFF institute, which addresses the usage behaviour of children, adolescents, their parents, and the expert staff in child daycare centres. This study takes a close look at the high-risk consumption and the online use of offerings on the web that are not appropriate for children.

It is planned to expand webhelm.de by the topic of “friendship” in the first quarter of 2018. This will specifically target contacts launched on the internet while answering questions on how to deal with networking forums and the corresponding apps. A primary matter of relevance in this context is the presentation of oneself in supposed groups of friends, and the matter of “sexting” will also be addressed. In this framework, the corresponding model projects for children and adolescents are in the process of being conceptualised and implemented, so that it will be possible in future to deal with the risks entailed by the dissemination of sexually explicit content.

Furthermore, there are the explanatory video clips published by *Handysektor*, an online offering provided by the *Landesanstalt für Medien Nordrhein-Westfalen – LfM* (Media Authority of **North Rhine-Westphalia**) and the *Medienpädagogischer Forschungsverbund Südwest* (research association for matters of media education in the South-West of Germany) in cooperation with klicksafe.de. This is available under the URL <https://www.handysektor.de/mediathek/videos/erklaervideo-sexting.html>. Moreover, the information portal run by the international EU project headed by ECPAT for the project “make IT safe” provides information on, *inter alia*, the online risks of sexting; this is available under <http://webhosting-einfach.de/make-it-safe.net/index.php/de/>.

1.2. Are there awareness-raising or educational activities/tools/materials/measures specifically targeting children as bystanders/observers of other children producing and/or sharing:

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

**Answer:**

Some of the measures cited under Item 1.1 also have been conceived to cover children who are looking on or observing as other children are uploading self-generated sexual images and/or videos, respectively are creating and/or sharing self-generated content. This is reported, for example, by **Baden-Württemberg**. In the measures taken in that *Land*, it is pointed out to adolescents, or they are in fact urged, to not stand by when they see this happening and instead to take action. They learn, *inter alia*, that anyone transmitting pornographic content will be liable to punishment under German law and that adolescents (like adults) are entitled in Germany to enforce their “rights relating to images of themselves” (section 22 of the Art Copyright Act).

Moreover, the “make IT safe”-project cited under Item 1.1 takes a peer-to-peer education approach, providing materials allowing adolescents to coach other adolescents; these materials are available under [http://www.make-it-safe.net/images/coach\\_de.pdf](http://www.make-it-safe.net/images/coach_de.pdf)

1.3. Are there awareness-raising activities/tools/materials/measures addressed to parents and persons who have regular contact with children (teachers, psychologists, health care professionals, etc.) about the risks children face when they produce and/or share:

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

→ Please specify which entities carry out the above-mentioned awareness raising or educational activities (questions 1.1, 1.2 and 1.3) and how they coordinate their action.

→ Please share links to awareness-raising or educational materials (e.g. booklet, video, smartphone application, manual on non-formal education, tool-kit, internet tools) produced for the above mentioned activities (questions 1.1, 1.2 and 1.3).

**Answer:**

In all Ministries of Education and Cultural Affairs of the *Länder* in Germany, there are departments competent for the ongoing professional training and counselling regarding sexualised violence in schools as well as for its prevention (teacher training institutions, prevention departments, psychological counselling for school matters, etc.). Schools have the opportunity to obtain support regarding all forms of sexualised violence in the form of prevention offerings for pupils, counselling opportunities for parents, and ongoing professional training for specialists working in schools (demand-based); this also applies to self-generated sexually explicit images respectively content (the offerings available will differ, in terms of their nature and scope, from one *Land* to the next). By participating in ongoing professional training courses, specialists working in schools have the opportunity to obtain information on prevention and intervention, while getting to know the bodies offering means of prevention and the content they have available, and becoming familiar with specialist counselling services on sexual abuse.

As part of the initiative “*Schule gegen sexuelle Gewalt*” (Schools taking a stance against sexual violence) launched by the Independent Commissioner for Matters of Sexual Abuse of Children (UBSKM) (*Unabhängiger Beauftragter für Fragen des sexuellen Kindesmissbrauchs* – UBSKM), sexual violence is addressed as it presents itself in digital media and through them. Further information on the initiative is available under the URL <https://www.schule-gegen-sexual-gewalt.de/>. (For further details, see the answer to Question 3). The Independent Commissioner for Matters of Sexual Abuse of Children (UBSKM) is the agency of the Federal Government serving the interests of parties affected and their relatives, the expert practitioners and scientists and researchers in the field, as well as all people who are dedicating themselves, by their work in politics and society at large, to combating sexual violence. The Commissioner for Matters of Sexual Abuse of Children is independent and not subject to instruction. It is solely for organisational reasons that the agency forms part of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ).

All Ministries of Education and Cultural Affairs of the *Länder* have undertaken to support the initiative. The website cited above accordingly is a forum where all Ministries of Education and Cultural Affairs of the *Länder* present their own content and contact persons.

The Independent Commissioner for Matters of Sexual Abuse of Children (UBSKM) furthermore provides information about the abusive distribution of sexting content, while providing advice to parents and educational staff under the URL

<https://beauftragter-missbrauch.de/praevention/sexual-gewalt-mittels-digitaler-medien/missbraechliche-verbreitung-von-sexting/>.

Moreover, the topic of “sexual abuse in the media” has been made a fixture of teacher training courses in the third phase of their professional training. On a regular basis, events are offered to teachers regarding this topic. In some instances, informational events will be held at universities and universities of applied sciences together with representatives of the police. They will be targeted at specific groups of persons such as psychologists training to become specialist psychologists for children and adolescents.

Finally, the internet offering “*SchauHin!*” (Look at what is happening!) provides comprehensive information to parents and educational staff. Besides providing background information on the topic, the website also provides pointers and advice. It is available under the URL <https://www.schau-hin.info/medien/mobile-geraete/wissenswertes/sexting.html>.

The teaching module on “sexting” available from Klicksafe should also be noted, which is available under the URL <http://www.klicksafe.de/themen/problematische-inhalte/sexting/#s|sexting>.

Moreover, the *Länder* also have instituted numerous awareness-raising measures of their own.

**Baden-Württemberg**, for example, has reported that pursuant to section 100b (3) of the Schooling Act for Baden-Württemberg (*Schulgesetz für Baden-Württemberg – SchG*) and pursuant to no 3 of the Guidelines on Family and Gender Education in Schools (*Richtlinien zur Familien- und Geschlechtererziehung in der Schule*, administrative regulation of 12 May 2001), care guardians are to be involved in all matters concerning sexual education.

It is against this backdrop, for example, that the “strong boxes” already mentioned under Item 1.1. are geared not only towards pupils and teachers, respectively social workers in schools, they are also targeted at parents. In the boxes and also in the accompanying booklets, the supporter systems are set out and the importance of networking is emphasised.

Furthermore, the qualified speakers of the Media Centre of the *Land of Baden-Württemberg* (LMZ) train teachers on the topics addressed under Question 1.3. a. and b., provide input and ideas for their teaching practice, and refer them to reviewed course materials and didactic examples. As part of the media mentoring programme for parents offered by the LMZ, measures against sexting, internet pornography, and sexualised harassment are addressed and parents are lent support for their media education efforts in raising their children. The advice booklet “*Medien – aber sicher. Ein Ratgeber für Eltern*” (Playing media safe. A guidebook for parents) is also available. The brochure “*Let’s talk about Porno. Jugendsexualität, Internet und Pornografie. Arbeitsmaterialien für Schule und Jugendarbeit*” (The sexuality of adolescents, the internet and pornography. Working materials for schools and youth work ) created by the “Klicksafe” initiative of the European Union in cooperation with *pro familia Bayern* and the LMZ **Baden-Württemberg** is also available from the LMZ. The above-referenced measures are implemented throughout the *Land of Baden-Württemberg* by the LMZ **Baden-Württemberg**.

The awareness-raising materials are available for retrieval under the following links:

<http://www.lmz-bw.de/pornografie.html>

<http://www.lmz-bw.de/sexting.html>

<http://www.lmz-bw.de/broschuere-lets-talk-about-porno.html>

<http://www.lmz-bw.de/elternratgeber.html>

[http://www.km-bw.de/\\_Lde/Startseite/Schule/Medien](http://www.km-bw.de/_Lde/Startseite/Schule/Medien)

<https://www.trau-dich.de/>

Above and beyond this, a number of thematically oriented prevention offerings should be mentioned, as examples, that have been instituted by the Federal *Länder* **Saxony**, **Bavaria**, and **Lower Saxony**:

The Ministry of Education and Culture of **Saxony** lends support to schools developing and implementing protection concepts against sexual abuse as part of its project “*Kinder in guten Händen*” (Children in good hands), providing targeted information, guidance, and ongoing professional training; in so doing, it cooperates with the *Land Association of Saxony* of the *Deutscher*

*Kinderschutzbund* (German Child Protection Federation), which provides ongoing training to the schools involved while also offering advice (<http://kinderschutzbund-sachsen.de/projekte/kinder-in-guten-haenden/kiguuh-in-schule>).

The *Zentralstelle für polizeiliche Prävention* (Central Department for Prevention Work by the Police) forming part of the *Land Criminal Police Office of Saxony* has published a brochure, “*Umgang mit sexuellem Missbrauch an Mädchen und Jungen – Handreichung für Lehrkräfte an Grund- und Förderschulen*” (Dealing with sexual abuse of girls and boys – Guidance for teaching staff at elementary schools and special schools). The material provides insights into the phenomenon of sexual abuse of children, with further information and suggestions for prevention work with children and parents, as well as recommendations on how to act when a case of sexual abuse is suspected (<https://publikationen.sachsen.de/bdb/artikel/24681>).

Additionally, the efforts pursued in schools in **Saxony** to promote life skills make a significant contribution towards promoting the ability of students to take self-determined decisions, giving them the ability to assess the consequences of their actions based on critical reflection. A large variety of support offerings for schools are available on the online portal, which can be used for life skills education; accordingly, these are available for the specific work done by the schools on the ground. The offerings run the gamut from media education, violence prevention, sexual health, to physical and mental wellbeing (<http://www.lernportal-sachsen-lebenskompetenz.de/>).

The police of the Free State of **Saxony** offers events on prevention, which are held at secondary schools for teachers, parents, and pupils; these events address a range of topics such as violence, cyber-mobbing, as well as the dangers and risks posed by digital media. In this context – in keeping with the requirements set out under Item 1.2 – the role of those who are observing or witnessing dangerous situations is addressed, and the opportunities available to such persons to lend support to the victims. As a rule, the prevention events will refer attendees to the regional counselling centres for children, adolescents, and families, respectively to the offerings available from third parties at the federal level and at the level of the European Union ([www.jugend.support](http://www.jugend.support), [www.klicksafe.de](http://www.klicksafe.de), [www.polizeifürdich.de](http://www.polizeifürdich.de), [www.juuuport.de](http://www.juuuport.de), [www.nummergegenkummer.de](http://www.nummergegenkummer.de)).

In **Lower Saxony**, the *Landesstelle Jugendschutz Niedersachsen* (LJS, agency for the protection of minors) has instituted the project “*Grenzgebiete – Sexuelle Übergriffe unter Jugendlichen*” (Borderlands – sexual harassment among adolescents) in the period from 2014 until 2016. A 2016 symposium on the topic of sexting likewise addressed issues of the unauthorised transmission or publication of images (of nudity) that originally were shared as a private matter. Both the project and the conference targeted the educational staff in youth welfare services and schools.

The project “*Grenzgebiete – Sexuelle Übergriffe unter Jugendlichen*” (Borderlands – sexual harassment among adolescents) took a closer look, as part of an ongoing professional training, at harassment using media. The major aspects have also become part of a comprehensive working aid serving youth work, youth welfare services, and schools. The set of working tools provides compact-form information on the risk factors enabling sexual harassment and teen-dating violence as well as fundamental pointers on how to deal with transgressions. The main part of the publication consists of a collection of methods for low-threshold, gender-sensitive prevention work with adolescents. It describes exercises for leading in to the topic in an uncomplicated way and allowing this difficult topic to be dealt with more easily. The working aid is available for retrieval under the link: <http://jugendschutz-materialien.de/shop/gewaltpraevention/grenzgebiete-sexual-uebergriffe-unter-jugendlichen-arbeitshilfe>. The project *Grenzgebiete* is published online at: <http://www.jugendschutz-niedersachsen.de/grenzgebiete>.

The conference “*Sexting - (k)ein Problem*” (sexting – (not) a problem) dealt with the background and reasons for which people present themselves in sexualised fashion, with sexual scientists and media educators providing insights. At the symposium, specific means of “safer sexting” were also addressed, this being a thoughtful and mindful way of dealing with self-generated erotic images.

In **Bavaria**, *Aktion Jugendschutz Bayern* (aj, campaign for the protection of minors in Bavaria) is developing methods of sexual education and ongoing professional training courses as well as other offerings, while also providing advice to the staff of children and youth welfare services on how to implement projects appropriate to their clients’ respective age in the walk-in institutions, part-residential facilities, and in-patient institutions in which they work. Likewise, the phenomenon of “sexting” and self-presentation by children and adolescents on the web are the subject of critical reflection. In this context, “aj” keeps available a variety of teaching and other materials such as the booklet published as part of the “aj-praxis” series, “*Sex und Liebe – Methodenbox zu sexueller Selbstbestimmung und Wahrung von Grenzen*” (Sex and love – method box on sexual self-determination and the protection of boundaries), “*Wenn-ich-Karten*” (If-I-were-to... deck of cards), as well as the magazine “*pro Jugend*” (For youth), which reports, *inter alia*, about offers available to parents on preventive measures (such as the cell-phone ABC, a guidebook for parents that also addresses the transmission of sexualised media content by children and adolescents).

Additionally, the *knipsclub* (a photographic community for children) as well as *ICH WIR IHR im Netz* (Me, we, you on the web) (workshops promoting values competency and media literacy) are directed at educational staff and parents. The website provides information about a range of topics relevant to growing up with digital media. The objective is to strengthen the competencies of specialists and parents by knowledge, in order to enable them to give the support to children and adolescents they need, as well as the understanding. Additionally, the website provides suggestions and material for educational staff, which they can use for their own media education projects.

The overall concept for the protection of children in **Bavaria** provides for a variety of primary, secondary, and tertiary prevention measures lending support to children, parents, and specialist staff in dealing with transgression of sexual boundaries. Further information is available from [www.kinderschutz.Bavaria.de](http://www.kinderschutz.Bavaria.de). The Bavarian State Ministry for Work and Social Affairs, Family and Integration has been working together with the Bavarian State Ministry for Education, Culture and Religion, Science and Art since April of 2016 on the federal initiative “*Trau dich!*” (Just dare!) on the prevention of sexual abuse of children. Since 2012, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and the Federal Centre for Health Education (BZgA) have been implementing the prevention campaign the in various *Länder*. “*Trau dich!*” is a stage play that addresses the difficult topic of the transgression of sexual boundaries and injuries by violence in a way that children of the third and fourth grades can understand and that is suitable for their age group, while dealing with the matter in a very sensitive way. The educators, who previously participate in intense training courses for information disseminators, prepare the children for what they will be seeing; the children have the opportunity to follow up with the actors at the theatre or, back in the classroom, with their teachers about any questions or matters that have troubled them. In parallel, the stage plays are also prepared for at parent-teacher evenings, so that parents as well are able to prepare for questions their children may have following the event. In this way, parents are also informed about the background of transgressions of sexual boundaries and violence, the forms they may take, and their symptoms. The flanking parent-teacher evenings and teacher training courses also address sexual violence, as well as the transgression of sexual boundaries on the internet, respectively by mobile media.

In the fall of 2017, the federal initiative “*Schule gegen sexuelle Gewalt*” (Schools taking a stance against sexual violence) will be launched in **Bavaria**. The objective is to lend support to all 30,000 schools in Germany in developing concepts for the protection of children and adolescents against sexual violence. Around 180 parenting guidance centres designed to work in multi-disciplinary fashion (including branch offices and external consultation facilities) are available to children, adolescents, and parents, offering qualified assistance in clearing up and coming to terms with individual and family-related issues. Multi-disciplinary teams work at the parenting guidance centres to provide counselling regarding inner-family problems, separations, divorce, access to the child, matters of child-rearing and child development; increasingly, they deal with mental strain on families and with ways of responsibly using digital media.

The “aj” campaign has developed a format for the ongoing professional training provided to the specialist staff of the parenting guidance centres, together with *Landesarbeitsgemeinschaft Erziehungsberatung* (*Land* working group on parenting guidance); this addresses the way in which adolescents handle the new media and digital end devices. The ongoing professional training course “*Immer und überall – Jugendliche und ihre digitalen Medien*” (Everywhere and all the time – adolescents and their digital media) gives the specialist staff the wherewithal to work with parents and children turning to them with questions about cyber-mobbing, “sexting,” and excessive media use.

Links:

- <http://www.stmas.Bavaria.de/jugend/jugendschutz/erzieherisch.php>
- <http://www.Bavaria.jugendschutz.de>
- <http://materialdienst.aj-Bavaria.de/>
- [http://materialdienst.aj-Bavaria.de/product\\_info.php?products\\_id=1001](http://materialdienst.aj-Bavaria.de/product_info.php?products_id=1001)
- <http://www.jff.de/>
- <http://webhelm.de/>
- [http://www.lag-Bavaria.de/fileadmin/user\\_upload/LAG/Ausschreibung\\_FBImmer\\_und\\_ueberall.pdf](http://www.lag-Bavaria.de/fileadmin/user_upload/LAG/Ausschreibung_FBImmer_und_ueberall.pdf)
- <http://www.elterntalk.net/>
- <http://erziehungsberatung.Bavaria.de>
- <http://www.bke-beratung.de>
- <http://www.stmas.Bavaria.de/jugend/sozialarbeit/schulen.php>
- <https://www.bjr.de/>
- <https://www.jugendschutz.net/>
- <https://www.trau-dich.de/>
- <http://www.elternimnetz.de/kinder/erziehungsfragen/medien/index.php>

## Question 2. Civil society involvement

2.1. How do State authorities encourage the implementation of prevention projects and programmes carried out by civil society with regard to:

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

### Answer:

Improving the protection afforded to children and adolescents against sexual exploitation on the internet requires the prevention work being done to be stepped up, which runs alongside the efforts already being pursued to secure the erasure of data. For example, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) supports the internet portal *SCHAU HIN!* (LOOK

AT WHAT IS HAPPENING!) (<https://www.schau-hin.info/>) and the portal for advice and help “jugend.support” (<https://www.jugend.support/>).

In 2014, said Ministry (BMFSFJ) launched the network “*Keine Grauzonen im Internet*” (No grey areas on the internet) as a means of protecting minors surfing the web in order to combat all forms of sexual exploitation of children while pushing forward the international condemnation of grey-zone type presentation. Said grey zone is defined as depictions of minors that would not be regarded as being liable to punishment under criminal law in every state, but that are being disseminated for sexual purposes. This also includes depictions that are already governed by criminal law in Germany pursuant to section 184b (1) no 1 letter b and letter c of the Criminal Code (*Strafgesetzbuch – StGB*) (child pornography) and section 184c (1) no 1 letter b of the Criminal Code (*StGB*) (juvenile pornography), as well as depictions that are considered impermissible for reasons given in the laws governing the protection of young persons regarding media. As part of the network, the complaints agencies (FSM e. V., jugendschutz.net), the enterprises active in the internet economy (Google) and the network “*Kein Täter werden*” (Don’t become a perpetrator) all lend each other mutual support.

A competence centre at jugendschutz.net systematically generates knowledge, develops counter-strategies, and supports enterprises in combating such depictions. In 2016, the competence centre focused its efforts on developing a set of criteria for everyday depictions in a sexualised context. This set of criteria is intended to facilitate the classification of everyday depictions and the assessment of potential sexualisation. The set of criteria serving to classify the depictions of poses, as well as the criteria for everyday depictions in a sexualising context, are available in German and in English. The German complaints agencies *Verband der Internettwirtschaft e. V.* (eco e. V., association of companies active in the internet economy), *Freiwillige Selbstkontrolle Multimedia e. V.* (FSM e. V., voluntary monitoring association of multi-media companies) and *jugendschutz.net* accept notifications of grey-zone depictions, forward content that is relevant under criminal law and under the laws governing the protection of young persons regarding media to the investigation authorities and to partner hotlines abroad, and contact service providers in order to have them delete these images. These activities were captured in statistics and the results were made available to the competence centre.

The network partner Google implemented an updated list of keywords. The search terms and text phrases indicating a high affinity to the topic of “sexual exploitation of children” will trigger a notice that indicates to the user the possibilities of cases being reported and the therapeutic offer available from the prevention network “*Kein Täter werden*” (Don’t become a perpetrator).

Likewise, there are significant efforts being pursued at the *Land* level as concerns the corresponding prevention projects:

As early as in 1992, **Hesse** instituted the *Landespräventionsrat* (*Land* Prevention Council). This is made up of persons who are active in societal and non-governmental organisations such as faith-based organisations, employer associations, trade unions, economic associations, the *Land* sports association and other institutions. Moreover, employees working in the *Land* Ministries of Justice; Interior Affairs; Education, Religion, and Culture; Social Affairs; and the Ministry responsible for housing construction policy are also involved. First and foremost, the *Land* Prevention Council suggests measures of primary prevention in order to thus modify those conditions in the physical and social environment of people that are conducive to the commission of crimes. This primarily entails educational projects that seek to convey values and standards at an early stage and that facilitate the coexistence among people that is free of violence, in which privacy and the property of others are respected. Another aspect that is taught is that the fundamental values of physical integrity and the respect of other people’s personality are to be taken seriously. The *Land*

Prevention Council regards an essential task to consist of making suggestions for the prevention work done on the ground by the more than 170 municipal committees and projects in **Hesse** and supporting them in their efforts.

In **Lower Saxony**, the focus of the prevention work done by the police has been placed to an increasing degree on “media safety” in order to particularly highlight the dangers entailed by the use of the internet. This topic is addressed both with an adult audience and with minors. In this context, the employees of the prevention teams go to schools to speak to children and adolescents, informing them of the dangers and risks in dealing with the internet. In this context, they will also talk about social networks. While raising the awareness of the target group concerning anonymity on the internet, security in surfing the web, and the use of private information on the web, the speakers will also discuss phenomena like “sexting” and “posing photographs.” In particular, they will address the later use of such images following the end of a relationship, along with people’s inability to control their transmission via networked media. In this context, the danger is also addressed that disseminating these images (also the self-generated images) will constitute the offence of disseminating child pornography, respectively juvenile pornography, respectively of obtaining possession thereof for third parties; in the case of photographs of adults being disseminated showing nudity, they will highlight that this is a violation of the highly personal sphere of life by recording images pursuant to section 201a of the Criminal Code (StGB) and that this may also trigger measures taken under civil law.

Where the **Land of Brandenburg** is concerned, the protection of children is reinforced by support being provided to the association “*Aktion Kinder- und Jugendschutz Brandenburg e. V.*” (Campaign for the protection of children and minors in Brandenburg), which operates, *inter alia*, the project “*Eltern-Medien-Beratung*” (Counselling for parents on the media) (<http://eltern-medien-beratung.de>). The counselling provided as part of this project serves to enhance the parents’ media literacy: Parents can exercise their child-rearing competence in dealing with the media in the context of their family by looking after their children and by being present as conversational partners. The counselling services offered are intended to enable parents to take on that role.

**Bavaria** is planning to institute a “*Zentrum für Medienkompetenz in der Frühpädagogik*” (ZMF, Centre for media literacy in early education) in Amberg. The ZMF is set to commence its work in 2018 once the budget funds have been made available. The objective of the centre is to make available to parents, specialists, and children/adolescents a wide range of information on the topic of digital media in early childhood and youth using such formats as e-learning and blended learning. While the opportunities offered by the digital media are mentioned, the risks and potential dangers are also to be addressed in this context.

2.2. Please provide information on prevention activities (including awareness-raising and educational activities, research etc.) implemented by civil society (including those carried out by civil society at their own initiative) with regard to:

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

**Answer:**

On the part of civil society, the information provided by the association Innocence in Danger e. V. (IID) is the first that should be noted; this association publishes a website under the URL <http://www.innocenceindanger.de/sexting/>. Additionally, the association ECPAT Deutschland e. V. – *Arbeitsgemeinschaft zum Schutz der Kinder vor sexueller Ausbeutung* (Working group for the protection of children against sexual exploitation) (URL <http://www.ecpat.de/index.php?id=18>) and

the information portal operated by the international EU project mentioned above in Item 1.1 “make IT safe” provide information on this topic.

The **Land of Baden-Württemberg** notes that the offers of extra-curricular youth education span the gamut from individual offerings in youth houses (so-called “open”, i.e. state-funded youth work), for example by offering a media and educational workshop in Stuttgart, to media projects run by associations for a fixed period of time for a specific and in some instances closed target group (e.g. *Landesvereinigung kulturelle Jugendbildung LKJ*, *Land* association for cultural youth education), up to media offerings in educational academies organised for youth work information disseminators. **Baden-Württemberg** has formed a coalition for youth with the associations responsible for extra-curricular youth education and youth work. As the parties responsible for child and youth work, they significantly contribute, by their work on the topics of parenting and, to the educational measures regarding the protection of minors, with media literacy constituting a part of their efforts.

Moreover, **Baden-Württemberg** has initiated the initiative “*Kindermedienland Baden-Württemberg*” (Baden-Württemberg: a media *Land* for children) in cooperation with the *Landesanstalt für Kommunikation* (LFK, *Land* institute for communications), the Südwestdeutscher Rundfunk (SWR, radio and television broadcaster), the Media Centre of the *Land* of Baden-Württemberg (LMZ) and the *Medien- und Filmgesellschaft Baden-Württemberg* (media and cinema corporation). This initiative for media literacy, which is being pursued throughout the federal state, is intended to bundle, network, and supplement the numerous projects, activities, and stakeholders already involved in conveying media literacy throughout the *Land*, while also generating broad public attention for the topics of media training and media education. The main focus of the initiative is formed by new projects targeted at enhancing both the media literacy of children and adolescents as well as the media literacy of parents, teachers, and other parties involved with youth work.

### **Question 3. National curriculum**

Does national curriculum (primary and secondary schools, and vocational education) include awareness-raising about the risks of:

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

#### **Answer:**

With its “Handlungsempfehlungen zur Vorbeugung und Aufarbeitung von sexuellen Missbrauchsfällen und Gewalthandlungen in Schulen und schulnahen Einrichtungen” (Recommended actions for the prevention of sexual abuse and acts of violence in schools and school-responsive institutions and for coming to terms with such cases), the Kultusministerkonferenz (Standing Conference of the Ministers of Education and Cultural Affairs of the Länder) developed a catalogue of measures in 2010 that it was possible to immediately implement in the interests of preventing sexual abuse and coming to terms with cases of such abuse. By promulgating these recommendations, the Länder are living up to their responsibility enshrined in the Basic Law: to exercise state supervision over the entire system of public and private schools. In February of 2013, the recommendations were updated with a view to the Act Strengthening the Active Protection of Children and Youth (Gesetz zur Stärkung eines aktiven Schutzes von Kindern und Jugendlichen – BKISchG) and the results of the round table “Sexueller Kindesmissbrauch in Abhängigkeits- und Machtverhältnissen in privaten und öffentlichen Einrichtungen und im familiären Bereich” (Sexual abuse of children in relationships of dependency and power in private and public institutions and in the family environment). They have been published under

[https://www.kmk.org/fileadmin/Dateien/veroeffentlichungen\\_beschluesse/2010/2010\\_04\\_20-Handlungsempfehlungen-Vorbeugung-sexueller-Missbrauch\\_2013.pdf](https://www.kmk.org/fileadmin/Dateien/veroeffentlichungen_beschluesse/2010/2010_04_20-Handlungsempfehlungen-Vorbeugung-sexueller-Missbrauch_2013.pdf)

Tying in with these recommendations for action, the Ministries of Education and Cultural Affairs of the *Länder* joined forces with the Independent Commissioner for Matters of Sexual Abuse of Children (*Unabhängiger Beauftragter zu Fragen des sexuellen Kindesmissbrauchs* – UBSKM) of the Federal Government in 2014 and agreed to conceptualise a real-world implementation plan for the improved prevention of sexual violence in schools and intervention in cases of such sexual violence. The initiative “*Schule gegen sexuelle Gewalt*” (Schools taking a stance against sexual violence) is intended to lend specialist support to the more than 30,000 schools in Germany, encouraging them to further develop prevention measures against sexual violence and to apply such measures on a permanent basis. The objective is to reduce uncertainties and to better protect girls and boys by measures of prevention and intervention, while offering help more quickly. The Committee on Schools of the Standing Conference of the Ministers of Education and Cultural Affairs of the *Länder* recommended in February of 2016 that the initiative “*Schule gegen sexuelle Gewalt*” (Schools taking a stance against sexual violence) be implemented. Thereupon, all 16 Ministers of Education and Cultural Affairs of the *Länder* undertook to cooperate in this regard.

The online portal [www.schule-gegen-sexuelle-gewalt.de](http://www.schule-gegen-sexuelle-gewalt.de) is part of the “*Schule gegen sexuelle Gewalt*” (Schools taking a stance against sexual violence) initiative. It serves as a technically well-founded information platform, and also as a research resource for the development of protection concepts in schools. In collaboration with the Ministries of Education and Cultural Affairs of the *Länder*, the Independent Commissioner for Matters of Sexual Abuse of Children (UBSKM) lends specific support to schools and makes suggestions on how to develop school concepts for the protection against sexual violence. This is a major resource for schools, offering a plethora of information on what shape the development process for a protection concept could take and what the components are that such a concept for the prevention of sexual violence, and for interventions if it does occur, should have. The offering is supplemented by specific information on the situation given in the respective *Länder*.

From the Fall of 2016 until 2018, furthermore, all general schools will receive materials, in cooperation with the respective Ministries of Education and Cultural Affairs, prepared by the “*Schule gegen sexuelle Gewalt*” (Schools taking a stance against sexual violence) initiative from the Independent Commissioner for Matters of Sexual Abuse of Children (UBSKM). The introductory flyer “*Wie gehen wir an, was alle angeht?*” (How do we tackle something that concerns us all?) provides first ideas on how schools could develop, or further develop, the protection afforded against sexual abuse. An overview of the components making up a concept for the protection against sexual violence is provided in the brochure “*Was muss geschehen, damit nichts geschieht?*” (What needs to happen to make sure nothing happens?).

As a general rule, the Ministries of Education and Cultural Affairs of the *Länder* work together with regional partners (child protection centres) and specialist counselling services against sexual abuse active in the respective *Länder*.

By way of supplementation, it should be noted that in some instances, the educational curricula of the *Länder* will pick up on the topic separately. One example is the *Land* of Baden-Württemberg: It has firmly enshrined in the 2016 education plans for its general schools the guiding perspectives “media education” and “consumer education.” This allows the topics referenced in Question 3 to be addressed in all school grades, which will be done in connection with questions dealing with the pupils’ own identity, self-image, personality development, and role models, or by embedding them in units of instruction dealing with social media applications, consumer protection and data protection, as well as personality rights, in each case in a manner appropriate to the age of the pupils. In many cases, this will be tied to the task of imparting values

#### **Question 4. Higher education curriculum and continuous training**

Do higher education curriculum and continuous training for those who will or already work with children include the issues raised by:

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

**Answer:**

In most cases, the field of self-generated sexually explicit images and/or videos will form part of the larger context of sexualised violence against children, respectively the danger posed to the best interests of a child, in the curricula of the relevant courses of study, particularly in teacher training, medicine, psychology respectively psychiatry, social work, the laws governing children and youth, education, and sociology. A number of institutions of higher learning in some *Länder* are pursuing efforts, or are already taking specific measures, to integrate the express treatment of the above issues into the curricula as a binding component.

A variety of institutions of higher learning offer ongoing professional training and professional development courses to persons working with children. Besides those of a more general nature, training courses are also on offer that are specifically tailored to the dangers that children face in coming into contact with digital media.

For students of Psychology focusing on the “psychology of children and adolescents” and related special aspects, many institutions of higher learning offer binding modules dealing with the prevention and therapy of children in the above context.

To cite specific examples from the **Land Brandenburg**, the *Fachhochschule* (University of Applied Sciences) Potsdam has put in place a corresponding curriculum where the general transfer of knowledge and ongoing professional training are concerned. Thus, the faculty of Social and Educational Sciences regularly offers events that include sessions on how to deal with self-generated, sexually explicit images or videos, respectively self-generated, sexually explicit other content. These topics are addressed both in the specialist sciences (Social Work, Child Education) and in the reference disciplines (Sociology, Psychology, Educational Science, Law), particularly in terms of the content taught, which specifically addresses matters of child protection and sexual abuse. In so doing, both analytical and action-oriented aspects are addressed.

Moreover, the police in **Brandenburg** are also taught, as part of their professional training, how to deal in proper fashion with children and with child victim witnesses. Among other aspects, the *Fachhochschule der Polizei* (FHPol, Police University) of the *Land* of Brandenburg provides instruction, in Module 13.2 on Special Criminology, on digital sexual offences. Thus, phenomena such as cyber-grooming, sextortion, and sexting are addressed, as are the possession and dissemination of child pornography. Moreover, the students have the opportunity to voluntarily sign up for the Elective Module 17/7 on Cybercrime. This dedicates around eight course hours to intensively studying digital sexual offences such as sextortion, sexting, cyber-grooming or romance scamming. In particular in dealing with cyber-grooming and with the phenomenon of sexting, pornographic media self-generated by children are addressed.

The Federal *Land* of Saxony reports that the universities offering courses of study in Media Sciences, Communications Sciences, and Social Sciences offer courses on the protection of children against sexual exploitation and sexual abuse as an inter-disciplinary topic. In the courses of study offered in Psychology, these topics are addressed in teaching modules covering a broader thematic range.

## **Question 5. Research**

- 5.1. Have public authorities or other bodies initiated/supported research on the issues raised by:
- self-generated sexually explicit images and/or videos?
  - self-generated sexual content?

### **Answer:**

Since 2011, the *Bundesministerium für Bildung und Forschung* (BMBF, Federal Ministry for Education and Research) has been promoting research projects in a targeted fashion, as part of the research done in the educational and health sciences, that address the causes, consequences, prevention, and therapy of sexualised violence against children and adolescents. In a first round of funding, around EUR 38 million were invested. The second round of funding, which will take place from the end of 2017, research projects will once again be lent support, with around EUR 25 million being disbursed.

Thus, the following project of relevance to the topic at issue here can be cited: A junior professorship in Sexual Sciences and Preventive Internet Research has been instituted at the *Universitätsklinikum* (University Clinic) Hamburg–Eppendorf (with a term from 1 May 2013 – 30 June 2019, amount of the subsidy: EUR 966,186). The work done in this department headed by a junior professor focuses on the role that the internet has to play on the one hand for the sexual socialisation of adolescents, and as the forum for sexual harassment on the other. Based on the findings made, concepts and materials for prevention work will be developed as a further step. The research results are also being used in the courses taught at the university.

There are review programmes in place at the Federal Ministry for Education and Research (BMBF) serving to control all measures of research promotion in terms of their success, which allow the Ministry to become aware of the results obtained in research and the opportunity to transfer them into real-world practice. The expertise gained in the context of the junior professorship referenced above is being used intensively by other agencies, one of them being the Independent Commissioner for Matters of Sexual Abuse of Children (UBSKM).

The Independent Commissioner for Matters of Sexual Abuse of Children (UBSKM) has commissioned the study "*Sexuelle Grenzverletzungen und Gewalt mittels digitaler Medien*" (Transgression of sexual boundaries and violence using digital media) (which addresses the topic of sexting from p. 43 onwards); this is retrievable under the URL: [https://beauftragter-missbrauch.de/fileadmin/Content/pdf/Pressemitteilungen/2017/17\\_January/2a\\_Expertise\\_Sexuelle\\_Gewalt\\_an\\_Kindern\\_mittels\\_digitaler\\_Medien.pdf](https://beauftragter-missbrauch.de/fileadmin/Content/pdf/Pressemitteilungen/2017/17_January/2a_Expertise_Sexuelle_Gewalt_an_Kindern_mittels_digitaler_Medien.pdf). The report offers comprehensive information on the topic, along with a research-based assessment of the matters addressed in the present Questionnaire.

Moreover, the project "*ACT ON! – Aufwachsen zwischen Selbstbestimmung und Schutzbedarf*" (Growing up somewhere between self-determination and the need for protection) promoted by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) includes a monitoring study that addresses the perception of online risks and the way they are dealt with by the 10-to-14-year-old age cohort. Among other risks, the monitoring study also treats the topic of self-generated sexually explicit images/videos and other content. However, as a consequence of the broad range of topics with which it deals, the methods deployed are not specifically tailored to this issue, which was also not a focus of the study's results. The results have been published (under: <http://www.jff.de/act-on/die-monitoring-studie/#sr>).

In **Brandenburg**, research on “Cyber Criminology” is a field on which studies at the *Fachhochschule der Polizei* (FHPol, Police University) place a particular emphasis. This deals primarily with digital offences and digital police work. In this context, a special focus is placed on the phenomenon of cyber-grooming, in the context of which the affected children and adolescents may end up creating self-generated sexual media. A representative of the FHPol (Mr Thomas-Gabriel Rüdiger) has published widely on this matter. He gives lectures on the topic at conferences and is a sought-after contact for the media. To cite but one example, the *Oranienburger Schriften* series published an English-language special edition in 2013 on cyber-grooming (retrievable under: [https://www.fhpolbb.de/sites/default/files/field/dokumente/Ruediger/oranienburger\\_schriften\\_-\\_sonderausgabe\\_2013.pdf](https://www.fhpolbb.de/sites/default/files/field/dokumente/Ruediger/oranienburger_schriften_-_sonderausgabe_2013.pdf)). Another example is a video clip published on 1 August 2017 that uses media presentation aids in transmitting the current insights of the Police University on cyber-grooming (published under: <https://www.youtube.com/watch?v=G3Kyk8K0Y90>).

5.2. Have public authorities or other bodies conducted or supported research in particular on the psychological effects on those persons whose:

- a. self-generated sexually explicit images and/or videos as children have been shared online?
- b. self-generated sexual content as children has been shared online?

→ Please specify whether the public authorities or other bodies having initiated/supported the research above (questions 5.1 and 5.2) are aware of their outcomes.

**Answer:**

The answer provided under Item 5.1 is included by reference.

## Protection

### Question 6. Assistance to victims

6.1. What specific reporting mechanisms, including helplines, are in place to ensure that child victims of exposure online of:

- a. self-generated sexually explicit images and/or videos are provided with the necessary support, assistance and psychological help?
- b. self-generated sexual content are provided with the necessary support, assistance and psychological help?

**Answer:**

As part of the EMPACT Cooperation, the Federal Criminal Police Office (*Bundeskriminalamt* – BKA) in its function as the representative of Germany was the contact, for the Priority Cybercrime, Sub-Priority “Child Sexual Exploitation” (CSE), for the prevention campaign performed by EUROPOL on the phenomenon of “sexual coercion / extortion of children and adolescents on the internet.” In this context, EUROPOL created a prevention video with the objective of raising awareness among minors for the risks they run as victims within this sphere of offences, while reinforcing reporting mechanisms; this shows dramatized extortion scenarios in the form of online chatting between the perpetrator and the victim. The video was translated into all languages of the Member States and was published within the EUROPOL YouTube Channel and on the EUROPOL homepage. The video closes with the words “Get help. Report it. We are here.” and refers viewers to the police of the respective Member State, which is “*Polizei 110*” for Germany. Moreover, depending on the concept pursued by the Member State, it is possible both in the YouTube video and in the media work done in the respective country to refer to NGOs as contacts, for example.

As coordinated with the counselling centres “*Nummer gegen Kummer e.V.*” (number against sorrow) and “*N.I.N.A. e. V.*”, they were linked in the description of the YouTube video along with an accompanying text. It is in this way that, in the end, the actual message of the overall campaign is transmitted, while making clear that anyone affected can seek help, whether from the police as a contact in situations of imminent danger, or in order to file a report, or from the NGOs in order to obtain counselling anonymously. The video was distributed on the one hand via the social media pages of the Federal Criminal Police Office, and on the other hand on the websites of the two counselling centres, respectively their pages on social media. The Criminal Police Offices of the *Länder* were informed by the Federal Criminal Police Office of the project and the prevention video was made available to them for their further use. Concurrently, it was suggested that a link be placed to the video / campaign as part of the programme *Polizeiliche Kriminalprävention* (ProPK, Police Prevention of Crime).

Moreover, there is Jugendschutz.net, a competence centre serving the protection of young persons regarding media on the internet that is supported by the Federation and the *Länder*, which lends support to children when they file a report with the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ). They will be given pointers on the next steps, and, where content is concerned that was made publicly available, they will be supported in their efforts at having it deleted.

Likewise, the “*Hilfetelefon Sexueller Missbrauch*” telephone hotline for sexual abuse provides advice to children as well as adults on the topic of sexual violence in digital media. The hotline is the point of contact throughout the Federal Republic for persons affected by sexual violence, for their relatives and for persons in the social environment of children, for specialist staff and for all interested parties; it is free of charge and anonymous. The hotline is an offering made available by the Independent Commissioner for Matters of Sexual Abuse of Children (UBSKM). The callers are served by employees of the specialist counselling service N.I.N.A. e. V. (National informational hotline, network, and point of contact concerning sexual violence against girls and boys).

The following offerings should be cited as well:

- *Nummer gegen Kummer e. V.*, further information under URL  
<https://www.nummergegenkummer.de/>
- juuuport e. V., further information under URL <https://www.juuuport.de/main/>
- N.I.N.A. e. V.; the “Save me online” service bears particular mention and is published under <http://www.nina-info.de/save-me-online/>

Moreover, the *Länder* report the following:

In **Baden-Württemberg**, the schools of the *Land*, pupils, and care guardians may avail themselves of the school psychological support system in place. The school psychological counselling centres form part of the *Staatliche Schulämter* (authorities supervising and running the state schools) of the *Land* of Baden-Württemberg and maintain offices at a total of 28 locations. A major aspect of their activities is to provide counselling to teachers, pupils, parents, and principals, as well as to the schools’ administrative services. In this context, the school psychologists are responsible for all types of schools, from elementary schools to vocational training centres. The counselling provided is governed by the principles of confidentiality, voluntary contact, and neutrality.

The *Land* of **Lower Saxony** reports that victims of offences have the opportunity to turn to the foundation “*Opferhilfe Niedersachsen*” (Aid for victims in Lower Saxony), which was established in 2001 and which provides, by its offices and professional victim counsellors, advice and support to

the victims of offences and looks after them in all of Lower Saxony. The foundation is available to people seeking support or information regarding suitable assistance, who may do so directly in person, in writing, by telephone, or via the online counselling service.

In **Saxony**, the following procedure applies once the relevant circumstances become known: It is first reviewed whether the matter should be investigated under criminal law and the Youth Welfare Office will be informed; depending on the circumstances, measures of victim protection will be taken. This includes, for example, the involvement of the *Opferschutzbeauftragter* (commissioner for victim protection) of the police station, who will provide information about available measures of support and assistance and will put victims in touch with the appropriate organisations. Moreover, the Police of Saxony have published a brochure "*Polizeilicher Opferschutz - Information für Betroffene*" (Protection afforded to victims by the Police – information for parties affected); this lists the counselling centres and their contact information and is made available to parties affected by crime.

6.2. What legislative or other measures have been taken to ensure that child victims of online exposure of:

- a. self-generated sexually explicit images and/or videos are provided with the necessary support, assistance and psychological help?
- b. self-generated sexual content are provided with the necessary support, assistance and psychological help?

→ Please provide, if any, information on the number of victims who received support, assistance and psychological help in the above mentioned specific contexts (questions 6.1 and 6.2).

**Answer:**

Generally speaking, parties affected have access – should they require it – to counselling, support, and psychological help if they have fallen victim to a crime. This will be indicated to them by the police officers with whom they file a report, for example. The *Bundesministerium der Justiz und für Verbraucherschutz* (Federal Ministry of Justice and Consumer Protection – BMJV) has prepared an information sheet, together with the *Länder*, for the victims of a crime that provides a first overview of the bodies offering assistance for them and informs them about their rights. At present, the information sheet is available in a total of 23 languages. No numbers are available on how many victims have been provided with counselling, support, or psychological help under the circumstances listed above.

Inasmuch as the question addresses legislative measures, it is to be noted that the task of jugendschutz.net addressed under Item 6.1 above, to provide counselling and training courses, has been enshrined in the law by section 18 (3) of the *Jugendmedienschutz-Staatsvertrag* (JMStV, State Treaty on the protection of young persons regarding media). No statistics are available on how many victims have been provided with counselling, support, or psychological help under the circumstances listed above.

Moreover, it is to be noted that since 1 January 2017, victims requiring a particular degree of protection – this being, first and foremost, children and adolescents who have become victims of crimes of violence and sexual offences – are entitled to professional counselling and to being looked after during the entire course of the criminal proceedings pursued against the perpetrator. This legal right is termed "psycho-social counselling during court proceedings" (section 406g of the Code of Criminal Procedure (*Strafprozessordnung* – StPO)).

Psycho-social counselling during court proceedings is a particularly intensive form of looking after victims of offences before, during, and after the main hearing before the court. It comprises the qualified counselling, provision of information, and support during the criminal proceedings. In this way, it is intended to alleviate the strain placed on the victims. This process of looking after the victims does not constitute legal counselling and thus is an additional offering available to victims requiring a particular degree of protection. In other words, this psycho-social counselling during court proceedings does not replace an attorney. The provision of legal advice is the remit solely of attorneys, this remains the case unchanged.

The persons looking after victims in this way must meet high requirements in terms of their competencies. The Act on Psycho-social Counselling during Criminal Proceedings (*Gesetz über die psychosoziale Prozessbegleitung im Strafverfahren* – PsychPbG) provides for the minimum requirements that they must meet in terms of their qualifications. The *Prozessbegleiter* (victim counsellor for proceedings) must be qualified in terms of his or her expertise, personality, and range of inter-disciplinary abilities. The *Länder* are responsible for executing the psycho-social counselling during court proceedings and also for deciding on which persons will be recognised as victim counsellors for proceedings.

In order to assert whether an entitlement is given to psycho-social counselling during court proceedings, an application must be filed with the court, which will then assign the victim counsellor for the proceedings, provided the pre-requisites therefor are met. In the event of such a counsellor being assigned by the court, this will be free of charge for the victim.

In those cases in which children and adolescents are afforded with psycho-social counselling during court proceedings, they will be concurrently entitled to having assigned to them, at the cost of the state, a so-called "*Opferanwalt*" (victim lawyer), regardless of their situation in terms of income or assets. Accordingly, they are provided with comprehensive support.

In **Lower Saxony**, the interministerial homepage <http://www.opferschutz-niedersachsen.de/> was instituted; this is maintained and updated by *Fachstelle Opferschutz* (Victim protection services). Via this website, victims of crimes can easily obtain access to valid information about first contacts for their needs, counselling centres, the claims to which they are entitled, and opportunities for support, as well as the allocation of tasks between the different professions involved in the various proceedings. This information is made available without any special obstacles needing to be overcome and has been written in an easily understood language.

## **Question 7. Cooperation with civil society**

Please describe cooperation with non-governmental organisations, other relevant organisations and other representatives of civil society engaged in assistance to victims of the offences covered by the present questionnaire (see questions 9-11) through e.g. child helplines, victim support organisations.

### **Answer:**

To begin with, the response to Question 6.1 regarding collaboration with EUROPOL is noted here.

Moreover, it should be stated that the homepage operated by the Independent Commissioner for Matters of Sexual Abuse of Children (UBSKM) ([www.hilfeportal-missbrauch.de](http://www.hilfeportal-missbrauch.de)) provides users with the opportunity to retrieve the entirety of all relevant organisations. Guidelines, service instructions or brochures published by the Ministries of Education and Cultural Affairs of the *Länder* provide information to the schools of the respective *Land* about the predominantly regional contacts available to them. Persons affected have the opportunity to obtain assistance from institutions of

the *Länder* (such as the sexual abuse hotline operated by the Independent Commissioner for Matters of Sexual Abuse of Children (UBSKM), crisis hotline for children and adolescents, the hotline operated by klicksafe, etc.), along with the support provided by volunteer organisations such as the association Weisser Ring e. V. or organisations looking after victims in other ways.

In many cases, the contacts of institutions of higher learning and other public institutions to stakeholders in civil society and non-governmental organisations are assured via the gender equality commissioners or commissioners for matters of addiction. Besides recruiting volunteers among the people working in the relevant institutes and faculties, the non-governmental organisations are tied to the institutions in this structural form as well and have the means to avail themselves of these contacts when they need advice or in case of an emergency. In some cases, municipal / regional working groups have been established in which representatives of the municipalities and cities work side by side with the representatives of the institutions of higher learning and the stakeholders in civil society active in this field. Moreover, specialist research institutes or research professorships dealing with sexual violence against children work together closely with the existing non-governmental organisations and support their work by their scientific expertise.

Finally, there are the services provided by jugend.support, which bundles the assistance available to children and operates a website under <https://www.jugend.support/>.

In all other regards, *Länder* as the parties responsible within the federal organisation of the Federal Republic of Germany are responsible on their own cognisance for looking after the task so important to society: The task of providing assistance to victims. The *Länder* are committed in a variety of ways, pursuing numerous suitable measures in order to improve the situation of the victims of crime and to offer them the assistance they need. This is done, for example, by offering special training courses to police officers; by instituting commissioners for victim protection at the police stations; by establishing agencies looking after witnesses; providing temporary lodgements for women, children and adolescents who are the victims of abuse; and by providing informational material to the victims of crime along with financial support. In several *Länder*, dedicated foundations have been established for the purpose of providing assistance to victims. Above and beyond these forms of support, there is a large number of institutions serving victims independently, whether throughout the entire Federal Republic, regionally, or locally, who dedicate themselves either professionally or as volunteers to looking after and counselling the victims of crimes. This diversity to be found in victim assistance services does justice to the specific situations of victims, since each respective organisation will be better able to address the individual needs of the victim.

Numerous assistance services have specialised on looking after women and children who have become victims of sexual offences or violent crimes. Furthermore, there are victim assistance services that specifically support persons who have fallen victim to the offences covered by the present Questionnaire. These persons may avail themselves of counselling services, both face-to-face and by telephone.

As a general rule, the victim assistance services provide assistance across a broad spectrum of offerings, which generally will be networking in inter-disciplinary fashion with the services provided by others. Most of the support provided is available to the victims of offences over a long period of time, also beyond the conclusion of the criminal proceedings against the perpetrator. For the most part, the non-governmental institutions providing victim assistance are co-financed by governmental subsidies provided by the Federal *Länder*, *inter alia* by allocating the fines levied from convicted perpetrators in criminal proceedings to these services.

In this context, the “*Online Datenbank für Betroffene von Straftaten*” (ODABS, online database for the parties affected by crimes)/<http://www.odabs.org/index.html>) is to be noted as well. This is a database operating throughout the Federal Republic that is freely accessible; it is run by the victim assistance services. With no more than a few clicks of the mouse, users have the opportunity to obtain information about the substance addressed by the various victim assistance services in their work and their locations throughout the country, which allows users to find an assistance service suited to their need. All services are eligible for inclusion in the ODABS database that, in their own perception, place the focus of their work on looking after the victims of crime and providing them with support, independently of which organisation is responsible for them in financial or administrative terms, of their target group, or the manner in which they work.

That having been said, the Federal *Land of Hesse* has reported on the network of its victim counselling centres spanning its entire territory, which is a role model for all others in the Federal Republic of Germany in that the victims and witnesses of crimes, as well as those persons indirectly affected by such crimes, have the opportunity to obtain counselling from specially trained social workers at no charge. This support is provided regardless of the delinquency on which the counselling is to be based and is available as a matter of course to children and adolescents who have fallen victim to a sexual offence. Counselling is provided free of charge and on an absolutely confidential basis. Besides assisting with practical matters (such as meetings with authorities and accompanying the victims to court hearings) and providing psychological counselling, the focus is placed first and foremost on assuring the victims that they are not being abandoned. The general victim counselling centres were founded as network associations and work together closely with the specialist counselling services present locally. In **Hesse**, numerous specialist counselling services exist that are geared to certain groups of victims or types of offences, among them services for victims of sexual abuse or victims of human trafficking. Part of the financing for the services comes from funding allocated by the *Land* government to the municipalities for their use. Moreover, there is a collaboration in place in **Hesse** with organisations that are not funded by public funds, such as the Weisser Ring e. V. or the *Kinderschutzbund* (Federation for the protection of children).

Besides the above initiatives, the *Zentralstelle zur Bekämpfung der Internet- und Computerkriminalität* (ZIT, central agency combating internet and computer crime) forms part of the **Hesse** chief public prosecutor's office and works together, in its efforts at combating child pornography on the internet, on an institutional basis with the “National Center for Missing and Exploited Children (NCMEC),” a privately funded organisation from the United States. In this context, ZIT serves as the central point of contact within Germany, together with the Federal Criminal Police Office (BKA), that takes receipt of notifications from internet services providers from the United States as to child pornography being given with German users; based on these reports received from civil society, criminal investigations are launched. Moreover, independently of any specific investigation proceedings and criminal proceedings, the public prosecutor's offices of Frankfurt am Main and Hanau and the ZIT regularly exchange views and experiences with various regional and supra-regional institutions providing assistance to victims. They include, first and foremost, the associations “Dunkelziffer e. V.” “Kinderhilfe e. V.” and “Innocence in danger e. V.”

The foundation “*Stiftung Opferhilfe*” in **Lower Saxony** (on this, see also Item 6.1) cooperates with a range of diverse network partners, such as the parties responsible for out-patient psychological care, the courts and public prosecutor's offices, women's shelters, and various counselling centres. The police in Lower Saxony likewise maintain a tightly knit network with other institutions such as the *Landespräventionsrat* (prevention council of the *Land*), Weisser Ring e. V., and *Deutsche Vereinigung für Jugendgerichte und Jugendgerichtshilfen* (German Association for youth courts and youth court assistance services). Moreover, the police are a permanent member of a range of round tables, for example regarding the topic of media literacy. Furthermore, there are cooperation projects

throughout Lower Saxony (e.g. White IT or “Mediensicherheit/Medienkompetenz” (media safety/media literacy) operated together with the *Landesmedienanstalt* (media supervisory authority) of the *Land* of Lower Saxony), as well as regional cooperation projects with schools and other institutions.

The Länder of **Brandenburg, Saarland, Saxony, Hamburg, North Rhine-Westphalia, Mecklenburg-Western Pomerania, Berlin, and Baden-Württemberg** all report comparable victim assistance offerings and cooperations throughout their respective territories. Thus, there is a *Land* working group in **Saxony** on “*Sexualisierte Gewalt – Prävention und Intervention in Sachsen*” (Sexualised violence – prevention and options for intervention in Saxony) as a conglomeration of the large number of associations and federations dealing with the topic. The *Land* working group intends to promote the exchange of views and experiences among experts and the coordination of prevention and intervention measures at the *Land* level. **Hamburg** as well reports that the police maintain intensive and close contacts with counselling centres such as Opferhilfe Hamburg e. V. or Dunkelziffer e. V. etc. The counselling centre in **North Rhine-Westphalia** dealing with sexualised violence in a digital context is the programme instituted by the *Mädchenhaus* (girls’ house) Herford “@ *Cybermobbing – Mädchen sagen NEIN*” (@ cyber-mobbing – girls say NO). Additionally, counselling is available from the *Land* prevention agency against violence and cyber violence at schools in **North Rhine-Westphalia**. Teachers, pupils and other parties affected have the opportunity to obtain targeted information and assistance.

## Prosecution

### Question 8. Legislation

- 8.1. Does national law contain any reference to:
- self-generated sexually explicit images and/or videos in the context of offences covered by the Lanzarote Convention (Art. 18-23)?
  - self-generated sexual content in the context of offences covered by the Lanzarote Convention (Art. 18-23)?
  - non-pictorial self-generated sexual content produced by children (e.g. sound, text) in the context of offences covered by the Lanzarote Convention (Art. 18-23)?

#### Answer to Question 8.1. letters a to c:

Images and videos showing pictorial representations of persons under the age of 18 years in real or simulated sexually explicit acts, or any depiction of the sexual organ of such a person (self-generated sexually explicit images and/or videos), respectively showing some other depiction of a person under the age of 18 years in a lascivious manner (self-generated sexual contents) are governed particularly by sections 184b and 184c of the Criminal Code (StGB) (distribution, acquisition, and possession of child pornography, respectively of juvenile pornography – Criminal Code (StGB)). The same applies, pursuant to section 11 (3) of the Criminal Code (StGB) (definitions), to the corresponding audiovisual media, data storage media, illustrations, and other depictions. (For further details in this regard, see the answer provided to Question 9.1).

Where someone makes available to a third person an image that was recorded with the consent of the person shown who is in a dwelling or in some other space that is especially protected from view (e.g. self-generated sexually explicit images and/or videos), in the knowledge that making it available has not been authorised, thereby violating the highly personal sphere of life of the person shown in the image, this is covered by section 201a (1) no 4 of the Criminal Code (StGB).

Moreover, in the context of self-generated sexual images, videos and other content, the general regulations of civil law are applicable that protect general personal freedoms, i.e. in particular the provisions on the protection of the rights of people relating to images of themselves (Art Copyright Act – KunstUrhG): The publication of sexual images and videos without the consent of the person depicted in them as a general rule will result in claims to their deletion and claims to having the person publishing them cease and desist from that practice; depending on the circumstances, the party infringing the rights of the depicted person may also be obligated to pay compensation in the form of compensation for pain and suffering. Above and beyond these provisions, the Art Copyright Act (KunstUrhG) stipulates a fine or a term of imprisonment not longer than one year for anyone disseminating or publicly displaying an image without the consent of the person depicted in it.

8.2. Does national law tackle the involvement of more than one child (i.e. consensual posing) in generating the:

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

**Answer to Question 8.2 letters a and b:**

For the criteria defining a criminal offence pursuant to sections 184b and 184c of the Criminal Code (StGB), it is fundamentally irrelevant whether the actors depicted have performed the sexual acts being depicted consensually or non-consensually, respectively whether or not lascivious poses were taken consensually or non-consensually. It is also irrelevant whether one or more children were involved in such depiction.

Sexual activity involving persons under the age of fourteen years moreover will constitute child abuse pursuant to sections 176 et seqq. of the Criminal Code (StGB), independently of whether or not a consensus existed. Inasmuch as the sexual act was not consensual, it is conceivable that further criteria defining a criminal offence will determine the liability to punishment under criminal law. Thus, section 177 (1) of the Criminal Code (StGB) stipulates that whosoever performs, against the recognisable will of a person, a sexual act on another person will be liable to punishment under law.

8.3. Are there specificities related to the fact that more children appear on the:

- a. self-generated sexually explicit images and/or videos when these children accept that their image and/or video are produced and shared through ICTs?
- b. self-generated sexual content when these children accept that their image and/or video are produced and shared through ICTs?

**Answer to 8.3 letters a and b:**

The answer to Question 8.2 is included by reference.

**Question 9. Criminalisation**

9.1. Does national law criminalise cases when adults:<sup>1</sup>

- a. possess child self-generated sexually explicit images and/or videos?
- b. distribute or transmit child self-generated sexually explicit images and/or videos to other adults?

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<sup>1</sup> If the replies of Parties to the General Overview Questionnaire as regards the implementation of Article 20 of the Lanzarote Convention (see replies to question 16) are still valid, please refer to them. Otherwise, please up-date such replies in the context of this question.

- c. distribute or transmit child self-generated sexually explicit images and/or videos to other children than those depicted on such images and/or videos?

**Answer to Question 9.1 letters a, b, and c:**

Item 11 letter a of the preliminary remarks of the Questionnaire states that “self-generated sexually explicit images and/or videos” refer to any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child’s sexual organs made or apparently made by the children themselves on their own initiative.

By the sections 184b and 184c of the Criminal Code (StGB) (distribution, acquisition, and possession of child pornography, respectively of juvenile pornography), German criminal law distinguishes between child pornography (this being the depiction of persons under fourteen years of age) and juvenile pornography (this being the depiction of persons between the ages of fourteen and under eighteen years).

Section 184b of the Criminal Code (StGB) (distribution, acquisition, and possession of child pornography)

Pursuant to section 184b (1) no 1 of the Criminal Code (StGB), pornographic written materials shall be deemed to be child pornography if they relate to a) sexual activities performed by, on or in the presence of a person under the age of fourteen years (child), or b) the reproduction of a child in a state of full or partial undress in a posture unnaturally displaying sexual characteristics, or c) the lascivious reproduction of the unclothed genitalia or the unclothed buttocks of a child. In this context, it is irrelevant whether the child himself or herself has generated the child pornography or some other person. Pursuant to section 11 (3) of the Criminal Code (StGB), audiovisual media, data storage media, illustrations, and other depictions shall be equivalent to written material.

Pursuant to section 184b (1) of the Criminal Code (StGB), whosoever disseminates child pornography or makes it accessible to the general public (no 1), or whosoever undertakes to obtain possession for another of child pornography reproducing an actual or realistic activity (no 2), shall be liable to imprisonment from three months to five years. The liability to punishment shall be given regardless of whether the child pornography is disseminated to children or adults, respectively of whether possession is obtained for children or adults.

Pursuant to section 184b (3) of the Criminal Code (StGB), whosoever undertakes to obtain possession of child pornography reproducing an actual or realistic activity, or whosoever possesses such material, shall be liable to imprisonment not exceeding three years or a fine.

Section 184c of the Criminal Code (StGB) (distribution, acquisition, and possession of juvenile pornography)

The regulations governing the distribution, acquisition, and possession of juvenile pornography pursuant to section 184c of the Criminal Code (StGB) are comparable: Pursuant to section 184c (1) no 1 of the Criminal Code (StGB), pornographic written materials shall be deemed to be juvenile pornography if they relate to a) sexual activities performed by, on or in the presence of a person who has reached the age of fourteen but is not yet eighteen years of age, or b) the reproduction of a person fourteen years of age but not yet eighteen years of age in a state of full or partial undress in a posture unnaturally displaying sexual characteristics. Section 184c (1) no 1 of the Criminal Code (StGB) also covers the display to the public for commercial purposes (*Zurschaustellung*) of unclothed genitalia (cf. Official Records of the German Parliament (BT-Drs.) 18/2601, page 30; Federal Court of Justice (*Bundesgerichtshof* – BGH), order of 7 December 1997 – 3 StR 567/97, at margin number 7, quoted in juris). As concerns the concept of written materials, the principle applies here, as it does in

the case of section 184b of the Criminal Code (StGB), that audiovisual media, data storage media, illustrations, and other depictions are equivalent to written material as stipulated by section 11 (3) of the Criminal Code (StGB).

Pursuant to section 184c (1) of the Criminal Code (StGB), whosoever disseminates juvenile pornography or makes it accessible to the general public (no 1), or whosoever undertakes to obtain possession for another of juvenile pornography reproducing an actual or realistic activity (no 2), shall be liable to imprisonment not exceeding three years or to a fine. The act shall be liable to punishment under law independently of whether the juvenile pornography is disseminated to children or adults, respectively of whether possession is obtained for children or adults.

Pursuant to section 184c (3) of the Criminal Code (StGB), whosoever undertakes to obtain possession of juvenile pornography reproducing an actual activity, or whosoever possesses such material, shall be liable to imprisonment not exceeding two years or a fine.

Fundamentally, it is irrelevant whether the adolescent himself or herself or some other person produced the juvenile pornography. However, the regulations governing the production and possession of juvenile pornography, respectively governing the act of obtaining possession of juvenile pornography, pursuant to section 184c (4) of the Criminal Code (StGB) are not to be applied to acts taken by persons that relate to such juvenile pornography where they have produced it exclusively for their personal use with the consent of the persons depicted. Moreover, the depicted actors themselves will also be exempt from punishment under criminal law where they are found to possess the juvenile pornography.

Inasmuch as the self-generated sexually explicit images and/or videos are described in the introduction to the present Questionnaire as material depicting a child performing *real* or *simulated* sexually explicit acts, this requirement fundamentally is implemented by sections 184b and 184c of the Criminal Code (StGB). In general, the regulations cover *real*, *simulated* and *fictitious* child pornography and juvenile pornography. Where the possession of juvenile pornography is concerned, which is governed by section 184c (3) of the Criminal Code (StGB), Germany has availed itself of the reservation made in Article 20 paragraph 3 read in conjunction with paragraph 1 letter e of the Lanzarote Convention. Accordingly, section 184c (3) of the Criminal Code (StGB) refers solely to real juvenile pornography. In order to protect the legal interests given in this regard, it is not necessary to also include simulated juvenile pornography. Section 184c of the Criminal Code (StGB) serves the protection of minors and of adolescent actors against their commercial involvement in the pornography industry. Where the act of obtaining possession and the possession relate solely to simulated or fictitious juvenile pornography, no real actors exist who would need to be protected against gradually sliding into the pornography industry.

#### Section 176 of the Criminal Code (StGB) (child abuse)

With a view to Question 9.1 letter c, it should be added that forwarding or transmitting child pornography, respectively juvenile pornography, to persons under 14 years of age may constitute sexual abuse of children. Pursuant to section 176 (4) no 4 of the Criminal Code (StGB), whosoever influences a child by showing pornographic illustrations or images, by playing audio recordings with pornographic content, by making pornographic content accessible by way of information and communication technology, or by corresponding speech, shall be liable to imprisonment from three months to five years.

9.2. Are there special circumstances (including alternative interventions) under which the above cases (9.1.a-c), although established in fact and in law, are not prosecuted and/or do not lead to conviction?

**Answer:**

Even if the criminal investigations have resulted in establishing sufficient suspicion of an offence having been committed, the public prosecutor's office may refrain, for reasons entailed by the principle of discretionary prosecution, from prosecuting the offence or individual parts of the offence and may discontinue the criminal investigation if special pre-requisites are met in the specific individual case. Namely, the (partial) discontinuation of the investigation may be conceivable subject to the following pre-requisites as stipulated by the Code of Criminal Procedure (StPO):

- Section 153 of the Code of Criminal Procedure (StPO): Discontinuation if the perpetrator's guilt is considered to be of a minor nature and there is no public interest in the prosecution;
- Section 153a of the Code of Criminal Procedure (StPO): Discontinuation, while imposing conditions and instructions, if these are of such a nature as to eliminate the interest in criminal prosecution and if the degree of guilt does not present an obstacle;
- Section 154 of the Code of Criminal Procedure (StPO): Dispensing with the prosecution of an offence if the penalty to be imposed therefor is not particularly significant when compared to a penalty which has been imposed upon the accused for another offence;
- Section 154a of the Code of Criminal Procedure (StPO): Limitation of prosecution to parts of an offence or other violations of the law through an offence if the penalty to be imposed for other parts of the offence or violations of law is not particularly significant in comparison
- Section 153c of the Code of Criminal Procedure (StPO): Dispensing with the prosecution of offences committed abroad, in particular in cases in which the prosecution under criminal law would result in inequitable hardship or if there is no public interest in obtaining punishment, or such public interest has ceased to exist.

In the cases governed by sections 153, 153a, 154, and 154a of the Code of Criminal Procedure (StPO), the court may also terminate the proceedings after charges have already been preferred, subject to the same pre-requisites.

I have attached for your information the regulations governing the discretionary withdrawal of prosecution set out in sections 153 to 154e of the Code of Criminal Procedure (StPO) in English.

9.3. What are the legal consequences of the above behaviours (9.1.a-c)?

**Answer:**

As a rule, the law stipulates a term of imprisonment, and in some cases also a fine, for offences meeting the criteria described under Item 9.1: In this context, section 184b of the Criminal Code (StGB) (distribution, acquisition, and possession of child pornography) fundamentally stipulates a higher range of punishment than does section 184c of the Criminal Code (StGB) (distribution, possession, and acquisition of juvenile pornography). This is due to the fact that children (persons under fourteen years of age) merit a greater degree of protection than do juveniles (persons of fourteen years of age and under eighteen years of age); the reason being that adolescents are already able to exercise their sexual self-determination to a greater degree than children are.

The range of punishment is as follows for the individual offences:

Section 184b of the Criminal Code (StGB) (distribution, acquisition, and possession of child pornography)

Pursuant to section 184b (1) of the Criminal Code (StGB), whosoever meets the basic criteria defining the criminal offence shall be liable to imprisonment from three months to five years (dissemination and making accessible [no 1], obtaining possession regarding child pornography

reproducing an actual or realistic activity [no 2], production without the intent to disseminate [no 3], producing, obtaining, supplying, stocking, offering, commending etc. with the intent to use [no 4]).

In the cases under subsection (1), the penalty pursuant to section 184b (2) of the Criminal Code (StGB) shall be imprisonment of six months to ten years if the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences and if, in the cases of subsection (1) nos. 1, 2, and 4, the written material containing child pornography reproduces an actual or realistic activity.

Whosoever undertakes to obtain possession of child pornography reproducing an actual or realistic activity, or whosoever possesses such material, shall be liable, pursuant to section 184b (3) of the Criminal Code (StGB), to imprisonment not exceeding three years or a fine.

#### Section 184c of the Criminal Code (StGB) (distribution, acquisition, and possession of juvenile pornography)

Pursuant to section 184c (1) of the Criminal Code (StGB), whosoever meets the basic criteria defining the criminal offence shall be liable to imprisonment not exceeding three years or to a fine (dissemination and making accessible [no 1], obtaining possession regarding juvenile pornography reproducing an actual or realistic activity [no 2], production of juvenile pornography reproducing an actual activity without the intent to disseminate [no 3], producing, obtaining, supplying, stocking, offering, commending etc. with the intent to use [no 4]).

In the cases under subsection (1) above, the penalty pursuant to section 184c (2) of the Criminal Code (StGB) shall be imprisonment of three months to five years if the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences and if, in the cases of subsection (1) numbers 1, 2, and 4, the written material containing juvenile pornography reproduces an actual or realistic activity.

Whosoever undertakes to obtain possession of juvenile pornography reproducing an actual activity, or whosoever possesses such material, shall be liable pursuant to section 184c (3) of the Criminal Code (StGB) to imprisonment not exceeding two years or a fine.

Besides imposing a penalty, respectively instead of imposing a penalty, the court also has the option of ordering measures of reform and prevention, provided the respective pre-requisites therefor are given. In this context, a mental hospital order pursuant to section 63 of the Criminal Code (StGB), a custodial addiction treatment order pursuant to section 64 of the Criminal Code (StGB), as well as an order for detention for the purpose of incapacitation pursuant to section 66 of the Criminal Code (StGB), are all conceivable.

From the perspective of family law, the following legal consequences are to be listed: The role of the state as an institution watching over parents, as this has been enshrined in constitutional law in Article 6 paragraph 2 of the Basic Law (*Grundgesetz – GG*), places the state under the obligation to protect children against any dangers to their best interests. Pursuant to section 1666 of the Civil Code (*Bürgerliches Gesetzbuch – BGB*), where the physical, mental or psychological best interests of the child or its property are endangered and the parents do not wish to avert the danger or are incapable of doing so, the family court must, *ex officio*, take the measures necessary to avert such danger. Where matters of care for the person of the child are concerned, the court may, pursuant to section 1666 (4) of the Civil Code (BGB), also undertake measures with effect against a third party for this purpose. Where necessary, therefore, the family court may also issue prohibitions to a third party pursuant to section 1666 (4) of the Civil Code (BGB) that are typical for the protection against violence, such as bans from certain public places and no-contact orders. In cases in which the

measures imposed against the third party are not sufficient in order to alleviate the danger to the best interests of the child, then it may become necessary to additionally intervene with the right of custody if circumstances require.

Where the parents having the right of custody themselves pose the danger to the best interests of the child but are not willing to avert such danger or incapable of doing so, the family court is to take those measures *ex officio* against the parents having the right of custody that are necessary pursuant to section 1666 of the Civil Code (BGB). In this regard, the family court may be entitled and obligated in an individual case to remove custody from the parents as a whole or in part (for example as concerns the right to decide where the child should live) and to transfer custody to a legal guardian or curator.

Moreover, the Youth Welfare Office is under obligation, pursuant to section 42 (1) of Book VIII of the Social Code (*Sozialgesetzbuch* – SGB), to take a child or an adolescent into its care in one of the following cases, among others: if a) the child or the adolescent requests to be taken into care or b) the best interests of the child or of the adolescent are in imminent danger and require that the child or adolescent be taken into care and the persons entitled to care and custody of the child do not object to this being done or it is not possible to obtain a decision from a family court in due time.

Where the child no longer lives in a domestic community with the parent posing the danger to the best interests of the child, another conceivable measure may be to restrict or rule out parental rights of access. Pursuant to section 1684 (4), first sentence, of the Civil Code (BGB), the family court may restrict or rule out the right of contact or the enforcement of earlier decisions on the right of contact, to the extent that doing so is necessary for the best interests of the child. A decision restricting or ruling out the right of contact or the enforcement of such decision for a long period or permanently may only be made if the best interests of the child otherwise would be endangered (section 1684 (4), second sentence, of the Civil Code (BGB)). In this context, the family court in particular may order that contact is to take place only if a third party who is prepared to cooperate is present (so-called "*begleiteter Umgang*" (access to the child in the company of others), section 1684 (4), third and fourth sentences, of the Civil Code (BGB)). The independent court shall decide on a case-by-case basis whether the offences set out under Item 9.1 are an occasion to take the measures set out above.

From the perspective of the laws governing the criminal register, the following legal consequences are to be listed: Fundamentally, all convictions will be included in the certificate of good conduct (*Führungszeugnis*). However, the efforts pursued by the legislature to facilitate convicts' re-entry into working life and their reintegration into society is to be taken into account. While, according to the letter of the law, the certificate of good conduct is supposed to reflect "the content of the register as it concerns him/her" (this being the person filing the application for such a certificate), the certificate in actual fact will set out only a part of the entries that have been included in the register. Since previously convicted persons experience great difficulty in finding employment, especially in a tight labour market, and since the submission of a certificate of good conduct is increasingly becoming the rule as a condition for hiring, the legislature has sought to fundamentally assist convicts by having certain (first-time and/or minor) punishments not included in the certificate at all, while deleting others from the certificate after certain periods have lapsed (sections 32 to 38 of the Federal Central Criminal Register Act (*Bundeszentralregistergesetz* – BZRG)).

In this regard, however, certain sexual crimes constitute an exception, which, pursuant to section 32 (1) of the Federal Central Criminal Register Act (BZRG), are to be included in a certificate of good conduct **in all cases**, in other words also in those cases in which the conviction is non-recurrent and minor in nature. This concerns in particular section 174 of the Criminal Code (StGB)

(abuse of position of trust), section 176 of the Criminal Code (StGB) (child abuse), section 177 of the Criminal Code (StGB) (sexual assault by use of force or threats; rape), section 180 of the Criminal Code (StGB) (causing minors to engage in sexual activity) and section 182 of the Criminal Code (StGB) (abuse of juveniles).

This exception was signed into law in 1998 against the backdrop of a series of lust murders of children that had been committed by repeat offenders. Similar considerations pursued in 2009 against the backdrop of the protection of minors then led to the introduction of the new format of an “expanded certificate of good conduct” (*erweitertes Führungszeugnis*). In addition to the convictions to be included in a certificate of good conduct, this expanded certificate sets out certain sexual offences and violent crimes (strictly defined offences listed in a catalogue of criminal acts (*Katalogstrafarten*)); this will be the case also if the entry for one of the listed criminal acts is non-recurrent and minor. This also concerns offences covered by the regulations relevant to the present Questionnaire, such as section 184 of the Criminal Code (StGB) (distribution of pornography), sections 184a, 184b and 184c of the Criminal Code (StGB) (distribution of pornography depicting violence or sodomy as well as distribution, acquisition, and possession of child pornography, respectively juvenile pornography), section 184d of the Criminal Code (StGB) (distribution of pornographic performances by broadcasting, media services or telecommunications services) and section 201a (3) of the Criminal Code (StGB) (production and making accessible of images depicting the nudity of minors).

For the strictly defined offences listed in a catalogue of criminal acts (*Katalogstrafarten*) that entail terms of imprisonment longer than one year, the periods for which they will be included in the expanded certificate of good conduct (*erweitertes Führungszeugnis*) have been extended.

An expanded certificate of good conduct will be issued pursuant to section 30a of the Federal Central Criminal Register Act (BZRG) if

- This is required by a provision of the law, or if
- The certificate is to be submitted for purposes of activities (also volunteer activities) having to do with children and adolescents (supervising them, caring for them, rearing or educating them), or for activities entailing comparable opportunities to enter into contact with minors.

For such a certificate to be issued, a written request from the employer must be submitted to the Registry in which the employer confirms that the conditions for requiring such a certificate have been met. In this way, it is ensured that the rights of the parties affected are restricted only to an extent that is proportionate, i.e. that the restriction applies to certain fields that are relevant in terms of the protection of children and minors, even if this may mean, in certain individual circumstances, that it will be more difficult or impossible for a convict to find employment as a consequence of the information being provided on the certificate, or that an existing employment is jeopardised or terminated.

#### 9.4. Does national law criminalise cases when adults:<sup>2</sup>

- a. possess child self-generated sexual content?
- b. distribute or transmit child self-generated sexual content to other adults?
- c. distribute or transmit child self-generated sexual content to other children than those depicted such sexual content?

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<sup>2</sup> If the replies of Parties to the General Overview Questionnaire as regards the implementation of Article 20 of the Lanzarote Convention (see replies to question 16) are still valid, please refer to them. Otherwise, please up-date such replies in the context of this question.

**Answer to Question 9.4 letters a, b and c:**

Item 11 letter b of the preliminary remarks of the Questionnaire states that “self-generated sexual content” refers to images, videos, and other material depicting a child in a sexual suggestive way (e.g. naked or semi-naked posing in order to provoke some sexual arousal”) made or apparently made by the children themselves on their own initiative.

By sections 184b and 184c of the Criminal Code (StGB) (distribution, acquisition, and possession of child pornography, respectively of juvenile pornography), German criminal law distinguishes between child pornography (this being the depiction of persons under fourteen years of age) and juvenile pornography (this being the depiction of persons fourteen years of age and under eighteen years of age). The dissemination of child pornography and juvenile pornography, making it publicly accessible, undertaking to obtain possession for oneself or for another of child pornography and juvenile pornography and its possession are liable to punishment under criminal law pursuant to sections 184b, 184c of the Criminal Code (StGB) (for further details in this regard, see the answer provided to Question 9.1). Like the self-generated sexually explicit images and/or videos, other self-generated sexual content is also covered by sections 184b, 184c since it meets the criteria defining a criminal offence:

Section 184b of the Criminal Code (StGB) (distribution, acquisition, and possession of child pornography)

Pursuant to section 184b (1) no 1 of the Criminal Code (StGB), pornographic written materials shall be deemed to be child pornography if they relate to a) sexual activities performed by, on or in the presence of a person under the age of fourteen years (child), or b) the reproduction of a child in a state of full or partial undress in a posture unnaturally displaying sexual characteristics, or c) the lascivious reproduction of the unclothed genitalia or the unclothed buttocks of a child. Pursuant to section 11 (3) of the Criminal Code (StGB), audio-visual media, data storage media, illustrations and other depictions shall be equivalent to written material.

To begin with, the depiction of a child in a lascivious manner is covered by section 184b (1) no 1 letter a of the Criminal Code (StGB). According to the past decisions of the Federal Court of Justice (BGH), the child is considered to be performing a sexual activity if it is taking a posture that is consciously sexualised, for example by spreading its legs (cf. Official Records of the German Parliament (BT-Drs.) 18/2601, p. 30; Federal Court of Justice (BGH), order of 7 December 1997 – 3 StR 567/97, at margin number 7, quoted in juris). Above and beyond this, section 184b (1) no 1 letter b of the Criminal Code (StGB) covers depictions of children who have not consciously taken the posture displaying sexual characteristics, for example because they are sleeping (cf. Official Records of the German Parliament (BT-Drs.) 18/2601, p. 30). Accordingly, the posture as such is the decisive aspect. Furthermore, conduct that is manifestly inappropriate for a child of the age concerned, in that it is sexually enticing, is likewise covered (cf. MüKo-Renzikowski, Munich Commentary on the Criminal Code (StGB), 3<sup>rd</sup> edition, section 184b at margin number 19). This means that in terms of the criteria defining a criminal offence, so-called model series, in which children are clothed in lingerie, for example, and assume a posture unnaturally displaying sexual characteristics, are also covered.

According to section 184b of the Criminal Code (StGB), it is irrelevant, where the liability of an act to punishment under law is concerned, whether the child himself or herself generated the child pornography or some other person did. Furthermore, it is irrelevant whether the perpetrator transmits the child pornography to other adults or to another child who has not been perpetuated in the self-generated sexual content.

Section 184c of the Criminal Code (StGB) (distribution, acquisition, and possession of juvenile pornography)

Pursuant to section 184c (1) no 1 of the Criminal Code (StGB), pornographic written materials shall be deemed to be juvenile pornography if they relate to a) sexual activities performed by, on or in the presence of a person who has reached the age of fourteen but is not yet eighteen years of age, or b) the reproduction of a person fourteen years of age but not yet eighteen years of age in a state of full or partial undress in a posture unnaturally displaying sexual characteristics. Just as is the case in section 184b (1) no 1 letters a and b of the Criminal Code (StGB), this covers cases in which a sexualised posture is taken, whether intentionally or unintentionally, that displays sexual characteristics. The same applies to conduct that is manifestly inappropriate for a child of the age concerned, in that it is sexually enticing (e.g. model series).

According to section 184c of the Criminal Code (StGB), it is irrelevant, where the liability of an act to punishment under law is concerned, whether the child himself or herself generated the child pornography or some other person did. Furthermore, it is irrelevant whether the perpetrator transmits the child pornography to other adults or to another child who has not been perpetuated in the self-generated sexual content.

9.5. Are there special circumstances (including alternative interventions) under which the above cases (9.4.a-c), although established in fact and in law, are not prosecuted and/or do not lead to conviction?

**Answer:**

The answer to Question 9.2. is included by reference.

9.6. What are the legal consequences of the above behaviours (9.4.a-c)?

**Answer:**

Reference is made to the answer to Question 9.3.

- 9.7. Does national law criminalise cases when children:<sup>3</sup>
- produce self-generated sexually explicit images and/or videos?
  - possess self-generated sexually explicit images and/or videos?
  - distribute or transmit self-generated sexually explicit images and/or videos of themselves to peers?
  - distribute or transmit self-generated sexually explicit images and/or videos of themselves to adults?
  - distribute or transmit self-generated sexually explicit images and/or videos of other children to peers?
  - distribute or transmit self-generated sexually explicit images and/or videos of other children to adults?

**Answer to Item 9.7. letters a and b:**

German law distinguishes between child pornography and juvenile pornography (for further details in this regard, see the answer provided to Question 9.1):

Section 184b of the Criminal Code (StGB) (distribution, acquisition, and possession of child pornography)

Pursuant to section 184b (1) no 3 of the Criminal Code (StGB), whosoever produces child pornography reproducing an actual activity shall be liable to imprisonment from three months to

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<sup>3</sup> This question does not in any way suggest that these behaviours should be criminalised.

five years. Likewise, anyone will be liable to punishment under law pursuant to section 184b (1) no 4 of the Criminal Code (StGB) who produces child pornography in order to use such child pornography or copies made from such material, within the meaning of no 1 (disseminating or making accessible to the general public) or no 2 (obtaining possession) or of section 184d (1), first sentence, of the Criminal Code (StGB), or to facilitate such use by another, inasmuch as the offence is not liable to punishment pursuant to no 3. Whosoever undertakes to obtain possession of child pornography reproducing an actual or realistic activity, or whosoever possesses such material, shall be liable, pursuant to section 184b (3) of the Criminal Code (StGB), to imprisonment not exceeding three years or a fine.

#### Section 184c of the Criminal Code (StGB) (distribution, acquisition, and possession of juvenile pornography)

Pursuant to section 184c (1) no 3 of the Criminal Code (StGB), whosoever produces juvenile pornography reproducing an actual activity shall be liable to imprisonment not exceeding three years or to a fine. Likewise, anyone will be liable to punishment under law pursuant to section 184b (1) no 4 of the Criminal Code (StGB) who produces juvenile pornography in order to use such juvenile pornography, or copies made thereof, within the meaning of no 1 (disseminating or making accessible to the general public) or no 2 (obtaining possession) or of section 184d (1), first sentence, of the Criminal Code (StGB), or to facilitate such use by another, unless the offence is liable to punishment pursuant to no 3. Whosoever undertakes to obtain possession of juvenile pornography reproducing an actual activity, or whosoever possesses such material, shall be liable, pursuant to section 184c (3) of the Criminal Code (StGB), to imprisonment not exceeding two years or a fine.

#### Liability to punishment under law of children and adolescents pursuant to sections 184b, 184c of the Criminal Code (StGB)

Under German criminal law, persons under the age of fourteen years (children) cannot be liable to punishment. The reason is given in section 19 of the Criminal Code (StGB), which stipulates that the criminal responsibility of children is ruled out since they are incapable of appreciating the wrongfulness of their act or of acting in accordance with this insight (*schuldunfähig*). The consequence is that children cannot be liable to punishment under sections 184b, 184c of the Criminal Code (StGB) if they create or possess self-generated sexually explicit images and/or videos. However, the fact that children have committed an offence may give rise to the question being investigated of whether there are deficits in their child-rearing, which deficits would require the authorities to take action and the court to take measures pursuant to section 1666 of the Civil Code (BGB).

Adolescents are persons who have reached the age of fourteen and are under the age of eighteen. Other than children, they fundamentally are criminally responsible (*strafmündig*). As a consequence, adolescents creating or possessing self-generated sexually explicit images and/or videos fundamentally may be liable to punishment under law.

This is an aspect to be considered in particular where adolescents create or possess child pornography, respectively juvenile pornography depicting not the creators or possessors themselves, and instead other children or adolescents.

That having been said, a person will not be liable to punishment under law for the possession of child pornography if the possession concerns child pornography depicting that person himself or herself as a child. The reason is that in this case, the adolescent himself or herself is the victim who has kept the documentation of the offence in his or her possession (cf. MüKo-Hörnle, Munich Commentary on the Criminal Code (StGB), 3<sup>rd</sup> edition, section 184b at margin number 49).

Where juvenile pornography is concerned, furthermore, exemption from punishment under law may arise pursuant to section 184c (4) of the Criminal Code (StGB). According to this stipulation of the law, section 184c (1) no 3 of the Criminal Code (StGB) (production of juvenile pornography) and section 184c (3) of the Criminal Code (StGB) (obtaining possession or possession of juvenile pornography) have no application to acts by persons relating to such juvenile pornography that they have produced exclusively for their personal use with the consent of the persons depicted. Moreover, an adolescent will be exempt from punishment under law in those cases in which the juvenile pornography depicting him or her was not generated by himself or herself, but is in his or her possession (cf. MüKo-Hörnle, Munich Commentary on the Criminal Code (StGB), 3<sup>rd</sup> edition, section 184c at margin number 20 with further references; Fischer, Commentary on the Criminal Code (StGB), 64<sup>th</sup> edition, section 184c at margin number 9, with different reasons being provided).

**Answer to Question 9.7. letters c to f:**

While, pursuant to section 184b (1) no 1 and no 2 of the Criminal Code (StGB) respectively pursuant to section 184c (1) no 1 and no 2 of the Criminal Code (StGB), read in conjunction, as the case may be, with section 184d of the Criminal Code (StGB), forwarding or transmitting child pornography, respectively juvenile pornography, is liable to punishment under criminal law as a general rule (for further details, see the answer provided to Question 9.1). However, section 19 of the Criminal Code (StGB) stipulates that the criminal responsibility of persons under fourteen years of age is ruled out as they are incapable of appreciating the wrongfulness of their act or of acting in accordance with this insight (*schuldunfähig*). Accordingly, acts by which they forward and transmit self-generated child pornography showing themselves will be exempt from punishment just as the forwarding or transmission of child pornography, respectively juvenile pornography, will be that depicts other children, respectively adolescents. This applies both to the forwarding and transmission of such material to fellow adolescents and to adults.

Inasmuch as adolescents (persons who have reached the age of fourteen and under the age of eighteen) forward or transmit juvenile pornography depicting themselves or other children or adolescents to fellow adolescents or to adults, the following applies:

Since adolescents are persons who have reached the age of fourteen and are under the age of eighteen, they, other than are children, fundamentally are criminally responsible (*strafmündig*), which means that the acts constituting the offence of forwarding and transmitting depictions of child pornography, respectively juvenile pornography, fundamentally will lead to their being punished under law. The liability to punishment under law will arise independently of whether the self-generated child pornography, respectively juvenile pornography, depicts the adolescents themselves who have forwarded or transmitted the pornography or some other person. It is also irrelevant whether the juvenile pornography is disseminated to children, adolescents or adults, respectively whether the possession is obtained correspondingly.

The reason for which the adolescents may also be making themselves liable to punishment under law by disseminating a depiction of themselves that is classified as child pornography or juvenile pornography is to be seen in the legal interests protected by sections 184b and 184c of the Criminal Code (StGB): Section 184b (1) no 1 and no 2 of the Criminal Code (StGB) are intended to combat the market for products of child pornography. The protection afforded to the depicted actors accordingly does not relate to the individual child that is shown. Rather, the intention is to prevent new “goods” from being produced and children being sexually abused once again in order to obtain such goods. Moreover, the abstract danger cannot be ruled out that child pornography will incite consumers to themselves sexually abuse children (cf. MüKo-Hörnle, Munich Commentary on the Criminal Code (StGB), section 184b at margin number 1 et seqq.). By contrast, section 184c of the Criminal Code (StGB) focuses primarily on the protection of minors. This regulation is intended to

prevent adolescent actors from assisting with the production of pornography and to prevent the resulting images from being disseminated. This applies also in those cases in which the production and dissemination correspond to what the adolescent actor intends to achieve. While it is true that adolescents are able to exercise their sexual self-determination to a greater degree than children are, they nonetheless merit protection in order to ensure that they do not slide into the pornography industry and in order to protect them against the consequences of juvenile pornography depicting them being disseminated (cf. MüKo-Hörnle, Munich Commentary on the Criminal Code (StGB), 3<sup>rd</sup> edition, section 184c at margin number 5).

Where child pornography, respectively juvenile pornography, is forwarded or transmitted to a person under fourteen years of age, this may correspond to the criteria for an offence as set out in section 176 (4) no 4 of the Criminal Code (StGB) (child abuse). According to section 176 (4) no 4 of the Criminal Code (StGB), whosoever influences a child by showing pornographic illustrations or images, by playing audio recordings with pornographic content, by making pornographic content accessible by way of information and communication technology, or by corresponding speech will be liable to punishment under criminal law.

9.8. Are there special circumstances (including alternative interventions) under which the above cases (9.7.a-f), although established in fact and in law, are not prosecuted and/or do not lead to conviction?

**Answer:**

There are no “special” circumstances allowing prosecution to be refrained from in the cases listed under Item 9.7 inasmuch as the adolescents are liable to punishment under law for the conduct affected. However, it is generally possible to dispense with further formal criminal prosecution and conviction in the case of adolescents if supervisory measures have already been initiated or enforced otherwise and this is considered to be sufficient (sections 45, 47 Youth Courts Act (*Jugendgerichtsgesetz – JGG*)).

9.9. What are the legal consequences of the above behaviours (9.7.a-f)?

**Answer:**

For a discussion of the matter from the perspective of criminal law and of the laws governing the criminal register, reference is made to the answer provided under Item 9.3.

From the perspective of family law, the following is to be noted: Where the physical, mental or psychological best interests of the child or its property are endangered and the parents do not wish to avert the danger or are incapable to do so, the family court must, pursuant to section 1666 of the Civil Code (BGB), take the measures necessary to avert the danger. Should no other aids and assistance be suitable, this may constitute, in an extreme case, the removal of custody from the parents as a whole or in part. However, in cases in which children or adolescents perpetrate deeds that are governed by criminal law, it will be necessary in each individual case to weigh the causes underlying this conduct and to determine the competencies and resources that are available to the parents to counteract it. Accordingly, it is not a concept of punishing the conduct by the minor that is being pursued in this context – it is the need to safeguard the best interests of the child, in particular maintaining the opportunities for development that the minor has with a view to the overriding objective of child-rearing, which is to ensure that the child develops a responsible personality and is able to live in a community.

Placing a child in an accommodation that is associated with the deprivation of liberty is, pursuant to section 1631b of the Civil Code (BGB), permissible only with the consent of the legal representative of the child and with the approval of the family court, if this measure is required in order to protect the child's best interests, in particular in order to avert a danger to the child himself/herself or to a third-party and if the danger cannot be remedied by other means, including by other public assistance. However, such a placement under civil law is not an instrument supplementing juvenile criminal law. Rightly, in these cases the focus is not placed on the prevention of crime or on the punishment of the minor for a wrongful act – which, as the case may be, will not be prosecutable under criminal law in light of the perpetrator not being criminally responsible (*strafunmündig*). Instead, the focus is placed on preventing dangers that may also be given in connection with the role as a perpetrator or victim. The approval by the family court requires a strict review of whether a placement in accommodations depriving the child of his or her liberty is proportionate.

9.10. Does national law criminalise cases when children:<sup>4</sup>

- a. produce self-generated sexual content?
- b. possess self-generated sexual content?
- c. distribute or transmit self-generated sexual content to peers?
- d. distribute or transmit self-generated sexual content to adults?
- e. distribute or transmit self-generated sexual content of other children to peers?
- f. distribute or transmit self-generated sexual content of other children to adults?

**Answer:**

As concerns the question of to what extent sections 184b and 184c of the Criminal Code (StGB) also cover self-generated sexual content, reference is made to the answer provided to Question 9.4. Where the liability to punishment under criminal law for the production, possession, the forwarding and transmission of self-generated sexual content is concerned, reference is made to the answer provided to Question 9.7.

9.11. Are there special circumstances or alternative interventions under which the above cases (9.10.a-f), although established in fact and in law, are not prosecuted and/ or do not lead to conviction?

**Answer:**

The answer to Item 9.8 is included by reference.

9.12. What are the legal consequences of the above behaviours (9.10.a-f)?

**Answer:**

As concerns the consequences under criminal law and the laws governing the criminal register, reference is made to the answer provided under Item 9.3. As concerns the potential consequences under the laws governing parent and child matters, reference is made to the statements under Item 9.9.

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<sup>4</sup> This question does not in any way suggest that these behaviours should be criminalised.

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

**10.1. For Parties having made a reservation in accordance with Article 20(3) indent 2<sup>5</sup>**

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

**Answer:**

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

**10.2. For Parties that have not made a reservation in accordance with Article 20(3) indent 2<sup>6</sup>**

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

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

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

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

**Answer:**

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

Inasmuch as the threat is used in order to obtain a sexual favour, section 177 (2) no 5 of the Criminal Code (StGB) is the stipulation relevant to such an act. According to this stipulation of the law, whosoever engages in sexual activity with another person or causes that person to engage in sexual activity, or induces that person to perform sexual acts on a third person or to suffer sexual acts by a third person, and has coerced the person to perform or suffer the sexual acts by threatening serious harm, shall be punished by a term of imprisonment of six months to no more than five years. Depending on the individual case involved, this would cover instances in which the perpetrator

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<sup>5</sup> Denmark, Germany, Liechtenstein, the Russian Federation, Sweden, Switzerland.

<sup>6</sup> Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Georgia, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Monaco, Montenegro, Netherlands, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, “The former Yugoslav Republic of Macedonia”, Turkey and Ukraine.

threatens the victim, should he or she refuse to perform sexual acts on himself or herself before the perpetrator, for example using an internet camera, that the perpetrator will publish data files on the internet showing the victim performing sexual acts, which the victim – acting on his or her own volition – had previously sent to the perpetrator.

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

### **Question 12. Jurisdiction rules<sup>7</sup>**

Please indicate which jurisdiction rules apply under which conditions to the offences described above (questions 9-11) when the victim is not present in the Party when the offence is committed or when the offender is not present in the Party when the offence is committed.

#### **Answer:**

In the case of offences in which solely the victim is present in Germany, but not the perpetrator, or conversely, in which only the perpetrator is present in Germany, but not the victim, it is likely that German criminal law fundamentally will apply pursuant to section 3 of the Criminal Code (StGB). According to this stipulation of the law, German criminal law applies to acts committed on German territory. Pursuant to section 9 (1) of the Criminal Code (StGB), the place of the offence (*Tatort*) is both the place at which an action was taken (*Handlungsort*) and the place at which the objectives intended by the deed were achieved (*Erfolgsort*). The place at which the action was taken is considered to be wherever the perpetrator pursues, during the stage in which the deed is being committed, activities directed at realising the constituent elements of the offence. The place at which the objectives intended by the deed were achieved is the place at which the result occurs, or should have occurred according to the intention of the offender, such result being part of the constituent elements of the offence. In a scenario in which the perpetrator is in Germany and the victim is outside of Germany, at the very least the activities directed at realising the constituent elements of the offence will have been pursued in Germany. In the scenario in which the perpetrator is outside of Germany and the victim is in Germany, the result that is part of the constituent elements of the offence as a rule will have occurred in Germany, respectively were intended to occur in Germany according to the intention of the offender.

Should, as an exception, domestic criminal law not be applicable pursuant to section 3 of the Criminal Code (StGB), the following shall apply:

German criminal law shall apply, pursuant to section 7 (2) no 1 of the Criminal Code (StGB), to offences committed abroad by a perpetrator who is a German citizen. According to this stipulation, German criminal law shall apply to offences committed abroad by a perpetrator who is a German citizen subject to the pre-requisite that the act is a criminal offence at the locality of its commission or subject to the pre-requisite that the locality is not subject to any criminal law jurisdiction. German criminal law shall apply, pursuant to section 7 (1) of the Criminal Code (StGB), to offences committed abroad against a victim who is a German citizen. According to this stipulation, German criminal law

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<sup>7</sup> Please answer this question taking into account the requirements of Article 25 of the Lanzarote Convention.

shall apply to offences committed abroad against a victim who is a German citizen subject to the pre-requisite that the act is a criminal offence at the locality of its commission or that the locality is not subject to any criminal law jurisdiction.

Independently of the laws governing at the place of the offence, German criminal law shall apply to offences committed abroad by a perpetrator who is a German citizen in the case of the offences having been committed that are listed in section 5 no 8 of the Criminal Code (StGB) (among others, sexual assault by use of force or threats pursuant to section 177 of the Criminal Code (StGB)) and for all perpetrators of offences listed in section 6 no 6 of the Criminal Code (StGB) (principle of universal jurisdiction) (in particular dissemination of child pornography and juvenile pornography pursuant to sections 184b, 184c of the Criminal Code (StGB)).

### **Question 13. Specialised units/departments/sections**

13.1. Are there specialised units/departments/sections in charge of dealing with ICT facilitated sexual offences against children, such as those referred to in this questionnaire (see questions 9-11):

- a. in law enforcement?
- b. in prosecution?
- c. in courts?

#### **Answer to Question 13.1 letter a:**

Both the Federal Criminal Police Office (BKA) and the sixteen Federal *Länder* operate specialised units and bodies in charge of combating sexual abuse of children and child pornography. As early as in the year 1995, the Federal Criminal Police Office (BKA) instituted a “*Zentralstelle Kinderpornografie*” (central agency responsible for child pornography) in order to evaluate the content of child pornography in centralised fashion for the entire Federal Republic.

Since 2009, the fields of criminal activity “sexual abuse of children” and “possession, dissemination, and production of child pornography” have become the focus of the work done at the Federal Criminal Police Office (BKA) in order to develop a phenomenology of the offences; as a consequence, the central agency responsible for child pornography has since evolved, based on its expanded portfolio of tasks, to become the “*Zentralstelle zur Bekämpfung von Sexualdelikten zum Nachteil von Kindern und Jugendlichen*” (central agency responsible for combating sexual crimes to the detriment of children and adolescents), and an increased number of specialists has been recruited. Moreover, the Federal Criminal Police Office (BKA) has available (besides the specialists deployed at the central agency responsible for combating sexual crimes to the detriment of children and adolescents) specialist forensic units that may be involved on an as-needed basis for purposes of seizing and evaluating evidence.

In parallel with the institution of the above-referenced central agency within the Federal Criminal Police Office (BKA), the Federal *Länder* instituted what are termed “*Ansprechstellen Kinderpornografie*” (contact points for child pornography) with the respective Criminal Police Offices of the *Länder* (*Landeskriminalämter* – LKA); they deal with the fact of technical progress exacerbating the prevalence of this type of offence by themselves developing specialist capacities, while on the other hand enabling the direct and comprehensive exchange of information at the national level. At the level below the “contact points for child pornography” within the Criminal Police Offices of the *Länder* (LKA), the respective specialist service units operate within the local police stations, which likewise are specialised for pursuing the corresponding investigations.

Regarding the organisational units in the *Länder* that work to combat child pornography and juvenile pornography, a number of examples shall serve:

In **Lower Saxony**, preliminary investigations in the field of child pornography are processed decentrally in specialist departments within the respective police district offices. The number of employees will vary. Besides the specialists assigned to the respective field of criminal activity, the tasks may also be dealt with in inter-disciplinary fashion. In individual cases, the "*Ansprechstelle Kinderpornografie*" (contact point for child pornography) operated by the *Land* Criminal Police Office of Lower Saxony (*Landeskriminalamt Niedersachsen – LKA NI*) likewise will pursue investigations in the field of possession and/or dissemination of child pornography and juvenile pornography. The unit for "*Anlassunabhängige Recherche in Datennetzen*" (AuR, research in data network performed without being occasioned by specific requirements) within the *Land* Criminal Police Office of Lower Saxony (LKA NI) will proactively perform searches using, *inter alia*, special technical means in order to determine the prevalence of child pornography and/or juvenile pornography on the internet. Generally, the prevention of crime is pursued within the *Land* Criminal Police Office of Lower Saxony (LKA NI) by Department 32. Particular mention should be made of the *Ratgeber Internetkriminalität* website (<https://www.polizei-praevention.de/home.html>) that the Department has launched. This online portal has served in the past as another means of establishing contact with persons who had the suspicion that sexual abuse was being committed by someone in their environment, or who had discovered child pornography on the internet.

In the *Land* of **Brandenburg**, the relevant offences are being processed decentrally in the specialist departments for crime within the district offices at the level of the *Landkreis* (rural district), with specially trained experts being assigned to the task. As concerns the media and devices used, support is provided by the service units of the district offices of the police and within the *Land* Criminal Police Office (LKA) for the task of seizing and evaluating evidence. Data are secured by the central forensics departments within the district offices and by the *Land* Criminal Police Office (LKA). The evaluation of the data so secured is performed as a service by the *Land* Criminal Police Office (LKA) or by the specialist staff responsible within the district offices, to the extent this is possible in terms of their expertise and the technical resources available.

In the **Saarland**, the offences relevant to the best interests of the child generally are processed within the *Landespolizeipräsidium* (LPP, *Land* police headquarters) by police experts specially trained in working with children and adolescents (*Jugendsachbearbeiter*) employed in the nine regional criminal offices. Inasmuch as offences against the sexual self-determination of a person are concerned, however, these are processed by specially trained expert staff who work centrally in Saarbrücken in the department "*Straftaten gegen die sexuelle Selbstbestimmung*" (offences against sexual self-determination"). The department SG LPP 213.2 is comprised of a total of 12 members of staff, of which three have undergone specialist training for investigations in the field of child pornography and juvenile pornography. Moreover, they have been specifically taught in matters of interview psychology. Furthermore, there are experts within the authority who have been trained in IT forensics; they are responsible, *inter alia*, for collecting and seizing IT-based evidence, for maintaining the central IT systems supporting police investigations, for evaluating mobile telecommunications devices, and for preparing intra-departmental reports and opinion on matters pertaining to the above fields. Moreover, it is possible in the **Saarland** to award contracts to external experts; however, this may be done only in the field of dissemination and possession of child pornography and juvenile pornography.

In **Saxony**, the police as a rule will process and pursue investigations for sexual offences committed to the detriment of children and adolescents using information and communications technology in the district offices having local competence; with the task having been assigned to the respective

investigations department for sexual offences. By way of supplementation, the *Koordinierungsstelle Kinderpornographie* (child pornography coordination centre) in Department 31/1 of the Cybercrime Competence Centre run by the *Land* Criminal Police Office (LKA) of **Saxony** is to be cited here, which performs a large number of tasks such as the evaluation of digital and analogue data carriers in terms of their relevance under criminal law, the review of previously unknown series of images that have been discovered in order to investigate cases of sexual abuse, and processing reports filed online that relate to child pornography and juvenile pornography. The Cybercrime Competence Centre has two employees working for it.

In **Hesse**, any sexual offences against children and adolescents generally will be processed by specially trained expert staff in the organisational units responsible for sexual offences within the criminal police departments. These units exist within each regional crime investigations division (at the level of the rural district); one further such unit exists within the *Polizeipräsidium* (police headquarters) of Frankfurt. The *Land* Criminal Police Office (LKA) evaluates child pornography in targeted fashion in its Department 3 – *IuK-Einsatz und Cybercrime* (deployment of internet and communications technology and cybercrime). In light of the technical requirements they entail, large investigations of the dissemination of child pornography via public networks regularly will be performed by specialist departments responsible for combating cybercrime. This manner of proceedings has proven to be the most effective method in light of the regularly recurring need to evaluate large amounts of digital data and to pursue internet-specific investigations. The requisite technical competencies as well as those required for working with children and adolescents form part of the general education afforded to police officers as well as of the subsequent, ongoing professional training on more specific topics provided by the *Polizeiakademie Hessen* (Police Academy), and the supplementary work conferences organised by the *Land* Criminal Police Office (LKA) of Hesse.

At the *Land* Criminal Police Office (LKA) **Baden-Württemberg**, the “*Ansprechstelle Kinderpornografie*” (contact point for child pornography) forms part of Department 5, *Cybercrime und Digitale Spuren* (cybercrime and digital traces). Its core tasks include:

- Serve as central contact point of the *Land* for citizens and specialist staff concerning the field of offences surrounding child pornography;
- Inspect, review, evaluate, determine parties responsible, and forward child pornography reports filed with the internet precinct operated via the website (*Internetwache*) to the competent specialist department;
- Initiate and perform investigations as part of the police responsibility in terms of the substance of the matter concerned;
- Coordinate, look after, and forward operations / large investigation procedures, provide advice to the *Land* offices, perform registration and quality management tasks, control and coordinate deployments.

The contact point for child pornography is manned by two officers. In Baden-Württemberg, the offences committed in connection with sexual offences against children and adolescents are processed by the *Kriminalinspektionen* 1 (crime investigations divisions) of the regional *Polizeipräsidium* (police headquarters). The number of employees will vary from one region to the next. No units/departments/sections are known that specialise in investigating ICT facilitated sexual offences against children.

The **Länder** **Bavaria**, **Hamburg** and **Mecklenburg-Western Pomerania** report structures that are comparable to those set out above. With a view to the employee structure, **Hamburg** has stated that the offences in the sense of the above question are processed, without any distinction being made

between a juvenile offender and an adult offender, both by the specialist department “Cybercrime” of the *Land* Criminal Police Office (LKA 54) and by the specialist department “Sexual Offences” within the *Land* Criminal Police Office (LKA 42). As concerns the field of criminal activity “ICT facilitated (child) pornography,” the “Investigations” unit LKA 541 currently has seven employees while the units LKA 421-423 have a total of 24 employees working for them. The *Land* of **Mecklenburg-Western Pomerania** has supplemented its report by stating that in the past five years, the *Land* police offices have been able to gain greater expertise in evaluating data carriers and pursuing perpetrators on the internet by hiring computer specialists. External experts in computer forensics are involved on an as-needed basis where required to process the case.

**Answer to Question 13.1 letter b:**

The public prosecutor’s offices having local competence, or the respective chief public prosecutor’s offices of the Federal *Länder*, likewise have instituted specialised departments/units who will cooperate with the respective investigation proceedings being pursued.

The public prosecutor’s offices of the *Länder* are organised as follows, with the remarks below addressing examples:

In **Lower Saxony**, the public prosecutor’s office of Hanover maintains a specialist department, in which six full-time and one half-time members of staff (1 departmental head, 5 full-time staff, one member of staff working half-time) work on sexual offences against children and adults. The entirety of all members of staff deal, using at least half of their working time, with investigations performed for the *Zentralstelle zur Bekämpfung gewaltdarstellender, pornographischer oder sonst jugendgefährdender Schriften* (central agency for combating written material depicting violence, pornography, or written material otherwise likely to corrupt juveniles). This central agency, which deals for the most part with offences governed by sections 184b and 184c of the Criminal Code (StGB) (dissemination, acquisition, and possession of child pornography, respectively juvenile pornography), has 3.55 FTEs working for it; sexual offences are processed by 2.5 FTEs. The remaining FTEs are dedicated to administrative tasks and to running the *Koordinierungsstelle der Zentralen Fallkonferenz* (coordination unit for the general conference of all parties dealing with a case) (electronic monitoring of persons to keep abreast of their whereabouts).

Inasmuch as acts may have been committed that may meet the criteria defining a criminal offence nach den sections 184b or 184c des of the Criminal Code (StGB) (dissemination, acquisition, and possession of child pornography or juvenile pornography – Criminal Code (StGB)), these are processed by the above-cited central agency, which is responsible for all of Lower Saxony. If, furthermore, it is conceivable that crimes have been committed that are governed by sections 176 et seqq. of the Criminal Code (StGB) (child abuse), they will generally be processed by the local public prosecutor’s offices.

In **Brandenburg**, every single one of the four public prosecutor’s offices of the *Land* has established special departments responsible for dealing with sexual offences; which include sexual offences to the detriment of children and adolescents. However, if sexual offences against children and adolescents are committed using information and communications technology in the sense of pornography or other written material likely to corrupt juveniles having been disseminated, this will be processed centrally by the public prosecutor’s office of Cottbus. This public prosecutor’s office is responsible for combating computer crime and data network crime and is manned by one department head and 6 members of staff.

In the **Saarland**, the public prosecutor's office has two departments dedicated to minors, which are responsible, *inter alia*, for matters entailing the protection of minors within the meaning of section 26 of the Courts Constitution Act (*Gerichtsverfassungsgesetz* – GVG) and thus also for proceedings of the type addressed in the present Questionnaire, inasmuch as the offences were committed by adults. Investigation proceedings for the dissemination, acquisition, and possession of child pornography and juvenile pornography as well as other material likely to corrupt juveniles (sections 184b, 184c of the Criminal Code (StGB)) will be processed in concentrated fashion by the specialist department. It should be noted that a specialisation exclusively for proceedings dealing with self-generated content of children and adolescents in the sense of the present Questionnaire does not exist, neither in the Saarland nor in the other *Länder*.

The offences listed in the present Questionnaire are processed, in the **Saarland**, by the departments competent for matters concerning minors within the public prosecutor's office. In each case, the departments are supervised by a head public prosecutor (*Oberstaatsanwalt*) as the department head. The department competent for matters concerning minors "*Jugendabteilung VI*" is made up of four public prosecutors, "*Jugendabteilung VII*" of five public prosecutors, and the special department (*Abteilung IX*) of five public prosecutors.

In **Saxony**, specialist departments and divisions responsible for investigating sexual offences against children and adolescents have been put in place with all public prosecutor's offices. For the most part, these departments also have particular competence for prosecuting offences in the field of child pornography and juvenile pornography. This applies also to the ICT facilitated sexual offences committed by adolescents. The number of specialist divisions depends on the size of the office and the number of offences that it must process. In cases in which information or communication technology were used as a means for committing the offence, the proceedings for pornography offences and concerning the protection of young persons regarding media that have a particular significance may be assigned to the *Sächsische Zentralstelle zur Bekämpfung von Cybercrime* (central agency of Saxony for combating cybercrime), which forms part of the chief public prosecutor's office of Dresden.

In **Mecklenburg-Western Pomerania**, all public prosecutor's offices have in place specialist divisions processing sexual offences against children. In cases in which the offences were committed using ICT, every public prosecutor's office moreover has specialist divisions for combating computer crime, which lend support to the investigations in terms of information technology. Where there are indications that the perpetrator structures are organised such that the child pornography is obtained and disseminated in a large scope, or that they intend to do so, the focus department (*Schwerpunktabteilung*) at the public prosecutor's office of Rostock has competence throughout the *Land*. Concurrently, this focus department will prosecute the dissemination of child pornography upwards of a certain scope.

The public prosecutor's offices in **Bavaria** process sexual offences committed using ICT to the detriment of children and adolescents by deploying specially trained and experienced public prosecutors (competent for matters concerning children and youth). The chief public prosecutor's office of Bamberg is where the *Zentralstelle Cybercrime Bayern* (ZCB, central agency in Bavaria for cybercrime) operates, which is competent, *inter alia*, for processing particularly significant proceedings in the field of cybercrime. This is the case in particular where information or communication technology were used as a means for committing the offence and the investigations require a high degree of evidentiary material.

The public prosecutor's office of **Berlin** maintains, as part of its main division "Hauptabteilung 8" the specialist department "Spezialabteilung 284," where all sexual offences and offences relating to depictions of abuse are processed in bundled fashion. This includes, in terms of the allocation of tasks, the offences of (aggravated) child abuse and abuse of juveniles as well as the dissemination, acquisition, and possession of child pornography. Furthermore, violations of the *Jugendmedienschutz-Staatsvertrag* (JMStV, State Treaty on the protection of young persons regarding media) and of the Law on the Protection of Youth in Public Places (*Jugendschutzgesetz* – JuSchG) will be processed by this department inasmuch as the case concerned entails pornographic or sexual content. Moreover, Department 284 includes the *Zentralstelle zur Bekämpfung gewaltdarstellender, pornographischer oder sonst jugendgefährdender Schriften* (central agency for combating written material depicting violence, pornography, or written material otherwise likely to corrupt juveniles). The specialist department is competent also for proceedings pursued against adolescents and young adults (*Heranwachsende*). Department 284 currently consists of one department head and eight members of staff. Prior to joining the department, each one of them had at least three years of experience working as a public prosecutor; they pursue regular ongoing professional training courses offered by external partners, while also taking part in events organised within the department, e.g. by presentations given by experts or such like.

All public prosecutor's offices in **Hesse** include both specialist divisions for dealing with the sexual abuse of minors as well as specialist divisions for the protection of young persons regarding media. ICT facilitated sexual offences against children thus will be processed, independently of the respective scenario given within the authorities, in each case by a qualified member of staff. Any specialisation for certain fields of ICT is given, within the public prosecutor's offices of Hesse, solely in the *Zentralstelle zur Bekämpfung der Internet- und Computerkriminalität* (ZIT, central agency combating internet and computer crime). In this agency, two members of staff pursue investigations in combating the organised dissemination of child pornography via public internet and darknet platforms and in closed groups, while three further members of staff pursue investigations of cases in which child pornography is obtained and transmitted using means of individual communications on the internet such as email, messenger services, or chats.

In the vast majority of cases, ICT facilitated sexual offences committed against children by adolescents will be processed in **Hesse** by the above-referenced specialist divisions. Solely the public prosecutor's office of Darmstadt has in place specialist divisions for "*Straftaten gegen die sexuelle Selbstbestimmung, begangen durch Jugendliche und Heranwachsende*" (Offences against sexual self-determination, committed by adolescents and young adults).

As concerns the employee structure (cf. Item 13.2), the situation in the *Land* of **Hesse** is that the public prosecutor's offices entrust the processing of ICT facilitated sexual offences committed to the detriment of children to specialist staff:

- Darmstadt (including the Offenbach branch office): 7 employees
- Frankfurt: 4 employees
- Giessen: 4 employees
- Hanau: 3 employees
- Kassel: 5 employees
- Limburg (including the Wetzlar branch office): 4 employees
- Marburg: 4 employees
- Wiesbaden: 2 employees
- *Zentralstelle zur Bekämpfung der Internet- und Computerkriminalität* (ZIT, central agency combating internet and computer crime): 5 employees

The public prosecutor's offices of the *Land* of **North Rhine-Westphalia** generally will process ICT facilitated sexual offences committed to the detriment of children and adolescents by adults or adolescents either in specialist departments competent for sexual offences, respectively for pornography, or will entrust them to specialist staff.

The above-referenced specialist departments, respectively the above-referenced specialists, work together closely and in a spirit of trust with the *Zentrale Auswertungs- und Sammelstelle* (ZAST, central evidence evaluation and collection body) with the *Land* Criminal Police Office (LKA) of **North Rhine-Westphalia**, the objective of which is to identify and monitor the channels by which incriminated media and data carriers are distributed in order to identify the parties producing and disseminating them and – in connection with the production and dissemination of child pornography – to identify the parties involved in perpetrating the crime and the victims of the sexual abuse.

In order to ensure uniform standards and for purposes of exchanging information and experiences across the boundaries of the *Länder* in combating written material glorifying violence, pornography, and other written material likely to corrupt juveniles – in particular also using ICT means – a central body (*Zentralstelle*) has been instituted with the chief public prosecutor in Düsseldorf which serves the *Land* of North Rhine-Westphalia.

The public prosecutor's office of **Hamburg** has specialist departments dealing with children and adolescents as the victims of sexual offences. The specialist department competent for prosecuting offences against sexual self-determination will deal, *inter alia*, with offences pursuant to section 176 of the Criminal Code (StGB) (child abuse) and pursuant to section 182 of the Criminal Code (StGB) (abuse of juveniles). The specialist department competent for prosecuting computer crime and child pornography as well as juvenile pornography processes, *inter alia*, offences pursuant to sections 184b and 184c of the Criminal Code (StGB) (dissemination, acquisition, and possession of child pornography and juvenile pornography). The two specialist departments each consist of a department head, his deputy, and between 4 to 6 members of staff.

In **Baden-Württemberg** as well, specialist divisions as a general rule will be responsible for processing the subject offences with the public prosecutor's offices. For the most part, these will be divisions that deal with sexual offences against children and adolescents, including child pornography and juvenile pornography overall, inasmuch as these offences were committed by adults. Insofar as the accused parties are adolescents, the investigations will be pursued by the divisions competent for offences committed by adolescents. In some instances, however, the sexual offences committed to the detriment of children will be processed by the specialist *Jugendabteilung* (youth department) as the department responsible for the protection of minors. In terms of their structure, it should be noted that the public prosecutor's offices in **Baden-Württemberg** have different structural organisations and that they are quite different in terms of their size. This means that in a small public prosecutor's office, the proceedings will be pursued by only one or two members of staff, whereas the largest public prosecutor's office of the *Land* has a department competent for adult accused parties that is manned by a department head and 6.5 members of staff and operates another two departments competent for adolescent accused parties headed by two department heads and totalling ten 10 members of staff.

In all public prosecutor's offices in the **Rhineland-Palatinate**, divisions have created that are specifically competent for processing sexual offences. The number of the staff members dealing with sexual offences varies depending on the size of the public prosecutor's office. This means that each public prosecutor's office thus has several public prosecutors working for it who are specialised in this field. In a number of public prosecutor's offices, these members of staff will also be assigned proceedings concerning the dissemination of pornography and written material likely to corrupt

juveniles. Other public prosecutor's offices have created a separate field of competence in this regard. All public prosecutors in **Rhineland-Palatinate** prosecuting sexual offences will come together, as a rule once a year, at the *Land* Ministry of Justice in order to exchange their views and in order to ensure the uniform application of the law within the *Land*. Proceedings that are being pursued against adolescents will be assigned to public prosecutors specialised in juvenile law. In some instances, criminal cases involving juveniles that are based on sexual offences may also be processed by the public prosecutors responsible for sexual offences.

Furthermore, the **Rhineland-Palatinate** has instituted with the chief public prosecutor's office of Koblenz the *Landeszentralstelle Cybercrime* (LZC, central agency for cybercrime of the *Land*), which has been in place since 1 October 2014. This agency is specialised on investigations in the field of ICT crime; it pursues these investigations itself or lends support to the investigations pursued by the public prosecutor's offices, also in the case of ICT facilitated sexual offences committed by adolescents or adults against children, for example in cases involving cyber-grooming. In cases of internet crime that are particularly difficult, significant, or comprehensive in terms of their scope, the central agency moreover has the authority to itself pursue investigations. Furthermore, the central agency will organise information events for the public prosecutor's offices throughout the Rhineland-Palatinate. At present, the LZC is staffed by 3 public prosecutors for its tasks. Additionally, the head of the IT department at the chief public prosecutor's office of Koblenz also has the task of serving, at one half of his position, as the head of the central agency. In technical terms, the central agency relies first and foremost on support provided by the *Polizeipräsidium* (police headquarters) and the "Cybercrime" division instituted within the *Land* Criminal Police Office (LKA).

Finally, there is the *Landeszentralstelle zur Bekämpfung jugendgefährdender Medieninhalte* (central agency combating media content likely to corrupt juveniles) of the **Rhineland-Palatinate**. In light of the plethora of distribution forms in which media content likely to corrupt juveniles and glorifying violence is disseminated, of the increasing significance of the internet and of the difficulties encountered in controlling the dissemination, combating this media content is becoming increasingly important. The *Zentralstelle des Landes Rheinland-Pfalz zur Bekämpfung jugendgefährdender Schriften und Medieninhalte* (central agency combating written material and media content likely to corrupt juveniles), which forms part of the chief public prosecutor's office of Koblenz and which is headed by an experienced head public prosecutor, has been tasked with ensuring that, in the field of media content likely to corrupt juveniles and glorifying violence, the offences and misdemeanours are prosecuted based on uniform principles; concurrently, it offers technical advice and assistance to the public prosecutor's offices and to the police for finding practical ways of dealing with legal issues in the field. To cite but one example, the central agency regularly organises meetings for all public prosecutors to whom the corresponding offences have been assigned.

#### **Answer to Question 13.1 letter c:**

Pursuant to section 26 (1) of the Courts Constitution Act (*Gerichtsverfassungsgesetz* – GVG), the youth courts will also be competent, alongside the courts having jurisdiction for general offences, for offences committed by adults that injure a child or adolescent or place a child or adolescent at immediate risk, as well as for violations committed by adults of regulations serving the protection of minors or the education of young people. Pursuant to section 26 (2) of the Courts Constitution Act (GVG), the public prosecutor's office is to file criminal charges in matters concerning the protection of minors before the youth courts if this is suited to better protect the interests meriting protection of children of adolescents who will be required to testify in the proceedings as witnesses. In keeping with this provision, criminal proceedings brought for ICT facilitated sexual offences committed to the detriment of children and adolescents are to be pursued at the local courts (*Amtsgerichte* – AG) before youth court judges and youth courts, and at the regional courts (*Landgerichte* – LG) before

the youth divisions (on this, see section 74b of the Courts Constitution Act (GVG) with reference to section 26 (2) of the Courts Constitution Act (GVG) as well as the answer provided to Question 13.2).

13.2. Please specify if there are specialised units/departments/sections in charge of dealing with ICT facilitated sexual offences against children committed by juvenile offenders.

→ Please specify how the specialised units/departments/sections referred to above (questions 13.1 and 13.2) are organised (number of staff, structure, specialised in which areas within ICTs, etc.)?

**Answer:**

On the organisational structures of the police departments and public prosecutor's offices, please see the observations made above under Item 13.1.

Inasmuch as the question addresses the organisation of the courts, it is to be stated that as a general rule, special youth courts will have jurisdiction for criminal proceedings pursued against adolescents (cf. sections 33 et seqq. of the Youth Courts Act (JGG)). The judges of these youth courts are to have child-rearing competence and experience in educating youth (cf. Section 37 of the Youth Courts Act (JGG)). No further specialisation within the sense of the question posed here is required by law, but it is possible to take this into account in allocating duties among the judges. In proceedings for which the youth courts have jurisdiction, youth public prosecutors will be appointed to the case (cf. Section 36 (1), first sentence, of the Youth Courts Act (JGG)), who likewise are to have child-rearing competence and experience in educating youth (cf. Section 37 of the Youth Courts Act (JGG)). Moreover, it is possible to take account, in allocating the duties among the youth public prosecutors, of further specialisation within the sense of the question posed here. Finally, specially trained police officers (youth staffers) are to be called in to the case when matters involving adolescents are being dealt with (cf. no 1.2 of the Police Service Instructions (*Polizeidienstvorschrift* – PDV) 382).

→ As regards law enforcement, please indicate if:

- a. there is a victim identification function?
- b. there is an active contribution to the INTERPOL's International Child Sexual Exploitation (ICSE) image database? If not, why?

**Answer to Item 13.2 letters a and b:**

The "Zentralstelle zur Bekämpfung von Sexualdelikten zum Nachteil von Kindern und Jugendlichen" (central agency combating sexual offences to the detriment of children and adolescents) works nationwide to assess contents of child pornography and juvenile pornography. Besides identifying the parties disseminating and possessing depictions of child pornography, respectively juvenile pornography, the primary task of this special agency consists of identifying perpetrators and victims of the sexual abuse based on the materials of child pornography that have been seized. For this purpose, intensive use is made of the international image database (International Child Sexual Exploitation Database – ICSE DB), which has been funded by a G8 project and has been operated since March of 2009 by the General Secretariat of Interpol; this database forms an inalienable aspect in processing fundamentally all cases in which materials of child pornography have been seized. The Interpol database is accessed online via the respective National Central Bureaus for the International Criminal Police Organization (ICPO), who are also responsible for uploading material. For Germany, this is the Federal Criminal Police Office (BKA), respectively the above-cited central agency combating sexual offences to the detriment of children and adolescents.

Accordingly, the *Länder* report that the identification of victims fundamentally will be performed in cooperation with the Federal Criminal Police Office (BKA). As regards the proceedings, they have filed essentially congruent reports as to the collaboration with the Federal Criminal Police Office

(BKA) being modelled on the following standardised procedure: As soon as a new series of images / videos is determined that is not included in the comparison databases available nationwide from the Federal Criminal Police Office (BKA), and that is also not included in the International Child Sexual Exploitation Database (ICSE) or in the hash database “*Pornografische Schriften*” (pornographic written materials), the series of images, respectively the video series is transmitted by the *Land* Criminal Police Office (LKA) to the Federal Criminal Police Office (BKA). Thereupon, the Federal Criminal Police Office (BKA) will take on the investigations and will initiate the corresponding proceedings via the chief public prosecutor’s office of Frankfurt. The pre-requisite in this regards is that it is possible to determine that the place of the offence (*Tatort*) is located in Germany. In this context, the Federal Criminal Police Office (BKA) asks all specialist divisions, respectively specialist departments at the federal level, to review whether the series or parts thereof already has been seized in some other investigation. All the information obtained in this regard is controlled by the *Ansprechstellen* (contact points) for child pornography operated by the *Länder*. These contact points are also the ones giving binding feedback to the Federal Criminal Police Office (BKA). Where this manner of proceeding does not lead to success, all police stations of the Federal Republic and of the *Länder* will be involved in a second step by way of issuing an EXTRAPOL search (intranet of the police) in the effort to identify the perpetrator(s) and victim(s). Moreover, the Federal Criminal Police Office (BKA) has at its disposal another, special form of performing a search in the public domain, this being searches at schools on the basis of a court order. Furthermore, the police district offices of the *Länder* will send images and videos of identified victims and perpetrators, via the Criminal Police Offices of the *Länder*, to the Federal Criminal Police Office (BKA) for inclusion in the respective databases.

#### **Question 14. Challenges in the prosecution phase**

What challenges do law enforcement, prosecution and courts face during the prosecution of ICT facilitated sexual offences against children involving the sharing of:

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

#### **Answer:**

The Federal *Länder* report that the dissemination of self-generated sexually explicit images and/or videos by children and adolescents using the internet and mobile telephones is a widespread phenomenon. In this context, the images or videos will be generated on the children’s or adolescents’ own initiative, who fail to consider the risk of these files being forwarded or disseminated via social networks. In **Saxony**, the impression is that neither children nor adolescents are sufficiently aware of the dangers and consequences of using and forwarding sexual content. In the view taken by the Federal *Länder*, many adolescents are not aware that sending images and/or videos constituting child pornography or juvenile pornography is an act liable to punishment under criminal law.

**Lower Saxony, Bavaria, and Saxony** all take the view that the willingness of children, respectively adolescents and adults, to file a report concerning the corresponding acts needs to be improved. To this end, the parties affected must be made aware that the authorities will be able to provide assistance and support. Besides stepping up efforts at awareness-raising and prevention, the cases involving the corresponding facts and circumstances that are brought to the attention of the law enforcement authorities must be processed consistently. As reported by the above *Länder*, the police, respectively the public prosecutor’s offices, face the following challenges occasioned by the dissemination of images and/or videos of child pornography, respectively juvenile pornography, using ICT.

The increasing number of new files containing child pornography and juvenile pornography often will require comprehensive and time-consuming investigations in order to identify the victims. Thus, **Hesse**, **Saarland**, and the **Rhineland-Palatinate** all state that the identification of the corresponding perpetrators who use ICT in order to commit the offence represents a significant challenge since it is not possible to trace back the usage data obtained from the internet communications services (so-called IP addresses) to the contractual partners of the parties providing access to the internet, since the latter do not store such data; accordingly, it is not possible to trace the data back to the potential suspects. At present, it is impossible to assess whether the obligation to store traffic data, which the telecommunications enterprises are to comply with since 1 July 2017, will lead to an improvement in this regard. **Lower Saxony**, **Bavaria**, **North Rhine-Westphalia**, and **Saxony** already would want to see the providers of telecommunications services be obligated to store such data for a longer period of time.

By way of supplementation, the **Rhineland-Palatinate** has stated that the internet increasingly is being used by mobile end devices and mobile telecommunications. However, the technology used in mobile communications is such that a large number of users (which may be as large as 64,000) share one and the same IP. Drawing conclusions from the IP to the actual user will be possible in these cases only if, in addition to the IP and the time stamp, the corresponding port has also been stored. However, the law currently does not provide for a corresponding obligation to store such information.

As concerns the work done in their investigations, **Saxony** and **Hamburg** see a problem in that data are fleeting and in many cases must be restored, a process requiring significant amounts of time and effort. Often, perpetrators delete the relevant chat records. In many cases, the victims themselves also will delete them out of fear or shame. Another aspect is that the hash values of data will be changed in order to make the task of identifying the digital material more difficult.

**Lower Saxony**, **Hamburg**, **Bavaria**, and **Saarland** have highlighted the issue, moreover, that in many cases, it is impossible to prove that the perpetrators intentionally obtained or disseminated the images and/or videos constituting child pornography, respectively juvenile pornography. This is the result in particular of the darknet being used. In increasing numbers, perpetrators sharing self-generated images and/or videos will use a TOR browser or some other anonymization service in order to obfuscate their identity. Once a range of different TOR servers are involved, from the starting point of a message up to its end point, the physical connection (IP address) of the sender will be impossible to ascertain, as a general rule, or would be possible to ascertain only by means that are contravened by legal obstacles.

The Federal *Länder* all agree that the amounts of data that must be dealt with in these investigations are immense. In many cases, because the image and video files have been shared and disseminated in several instances, the investigations are very comprehensive and require significant manpower (and sometimes need to be done repetitiously). **Baden-Württemberg** regards offences to be particularly problematic that are committed in the context of group chats (e.g. via WhatsApp). Often, these groups will count large numbers of members who live outside the jurisdiction of the respective investigating authority; furthermore, because it is possible to use these services anonymously, the groups are very difficult to investigate and identify. **Hesse** reports that in many cases, the parties involved live abroad. This makes the collection of physical evidence, in particular storage media of all types, all the more difficult while on the other hand increasing the amount of data that need to be dealt with. **Hesse**, **Lower Saxony**, **Saarland**, and the **Rhineland-Palatinate** mention “literally terabytes” of images and/or videos needing to be analysed. The increasing amounts of data stored on web-enabled computers and mobile telephones mean that it is well-nigh impossible for the technical and staffing resources of the specialised police stations to clear up the

facts and circumstances promptly. Also in cases in which private service providers are involved because the police lack the corresponding capacities, it is to be noted that because of the increased amounts of data, the analysis takes longer and entails higher costs. **Lower Saxony** has reported that the long analysis periods will lead to delays (which may be quite significant in some instances) in processing the cases. In spite of significant organisational measures having been taken in order to accelerate processing by the police authorities, the analysis performed in complex proceedings entailing a large amount of data to be analysed may take between 1.5 and 2 years; in some proceedings, it may even last for 2 years. As a consequence, it is not a rare occurrence to see the sentences reduced due to the excessively long duration of the proceedings.

Furthermore, many Federal *Länder* highlight the fact that storage media, and in particular mobile phones, are password-protected and data carriers encrypted. Finding solutions for decoding passwords or encryptions, respectively for accessing the media/mobile telephones prior to protection is difficult or even impossible in light of data protection exigencies. As a rule, modern means of encryption can be unlocked only by the person creating the password or encryption; at any rate, they make the analysis of mobile end devices, tablets, etc. significantly more difficult.

**Lower Saxony** has underscored the fact that the speed at which digital media evolve and the ephemeral nature of the offerings and services for receiving and sending data often make the task of identifying perpetrators a difficult one. This view is supplemented by **Brandenburg** by the note that the law enforcement authorities must continually ensure that the technology and the investigation processes they use are abreast of the dynamic developments in digital technology.

**Hesse**, **Bavaria**, and the **Rhineland-Palatinate** all report that the locations of the servers on which the data are stored, respectively that are used to process the data flows, often will be selected such that access by German law enforcement authorities is obstructed to the greatest possible degree or in fact rendered impossible. In some cases, **Mecklenburg-Western Pomerania** has stated, the perpetrators will intentionally select providers who are located in countries that do not react to requests for legal assistance. Moreover, the work to identify the parties is complicated by the fact that in many cases, both the perpetrator and the victim will use internet communications services whose operators have their registered seat outside of Europe, meaning that investigative starting points such as current usage data can be obtained only by way of formal judicial assistance – because this process is lengthy, the data obtained can then no longer be assigned to the customer of the telecommunications provider because the mandatory storage period that this enterprise must comply with has lapsed. In this context, **Lower Saxony** notes that many foreign providers are unwilling to provide information.

A further challenge, according to the Federal *Länder* **Baden-Württemberg**, **Saarland**, and **Saxony**, is to be seen in the interviews held with children and adolescents, especially since in some cases, they will be injured parties and accused parties all at the same time. In light of the sensitive topic, it is not a rare occurrence for children and adolescents to deny that they have generated the corresponding images, or to remain entirely silent, in each case out of fear or shame. **Hamburg** notes that resorting to video interviews with these children, involving criminal psychologists, and obtaining reports from credibility experts requires the expenditure of significant amounts of time and effort.

As concerns the main trial before the court, **Hesse** addresses the problem that the children or adolescents who are the victims of such offences are supposed to appear as witnesses in the proceedings on the one hand, while on the other hand, certain scenarios may require them to begin therapy at the earliest possible opportunity. This leads to the conundrum of the witnesses being influenced as part of the approach taken in their therapy, while the defence of the perpetrator raises the concern that the testimony by the witness is being influenced. The decisive factor in this regard

is that the first interview with the child or adolescent meets high standards in terms of its quality and that it has been documented well.

Finally, **Hesse**, **Bavaria**, and **Lower Saxony** highlight the special strain that the officers are under who must inspect the contents shown in the images and/or videos. Where this is concerned, the officers affected are given the opportunity in **Hesse** to avail themselves of assistance by seeking supervision.

### **Question 15. Training of professionals**

Are the offences referred to in this questionnaire (questions 9-11) addressed in training for professionals such as:

- a. law enforcement agents (in particular for front desk officers)?
- b. prosecutors?
- c. judges?

→ If so, please share the details of the training offered, specifying whether the training is mandatory.

#### **Answer to Question 15 letter a:**

The Federal Criminal Police Office (BKA) offers numerous training courses. Specifically, they include, *inter alia*, the special course of instruction offered twice a year “*Menschenhandel zum Zweck der sexuellen Ausbeutung/ Kinderhandel*” (human trafficking for purposes of sexual exploitation / trafficking in children” and, on an as-needed basis but at least once a year, a 14-day special course of instruction on “*Kinderpornografie im Internet*” (child pornography on the internet). These special courses are not only available to police officers of the Federal Criminal Police Office (BKA) and of the Federal *Länder*, they are also accessible to members of the public prosecutor’s offices and of courts who are active in the corresponding field.

Alongside these measures, the Federal *Länder* provide similar ongoing professional training courses for the employees of their respective *Land* who work in the field of combating sexual offences to the detriment of children and adolescents. For this purpose, the Federal Criminal Police Office (BKA) provides speakers on request. Additionally, the Federal Criminal Police Office (BKA) provides speakers for the ongoing professional training on the topic “*Kinderpornografie / sexueller Missbrauch von Kindern*” (child pornography / child abuse) offered several times a year by the *Deutsche Richterakademie* (German Judicial Academy) as well as, on request, speakers for ongoing professional training offered by private aid organisations.

Besides the events constituting ongoing professional training, the Federal Criminal Police Office (BKA) has been organising so-called “*Expertentreffen*” (get-togethers among experts), which include the “*Expertentagung Sexualdelikte – Kinderpornografie*” (expert symposium on sexual offences – child pornography); this has been a fixture since 1997. Experienced employees of the Federal Criminal Police Office (BKA) and of the *Land* Criminal Police Offices (LKA) attend these symposia and get-togethers, who have in common that they are all involved in combating child abuse respectively child pornography. This is a forum for sharing the current information available nationally and internationally as concerns the *modus operandi*, technical developments, along with best practices for the work done.

The fundamental professional training is provided in the above-referenced special courses of instruction by the Federal Criminal Police Office (BKA), respectively by the Criminal Police Offices of the Federal *Länder*, which are obligatory as part of the vocational training as a police officer and as part of their ongoing professional training.

Additionally, the *Länder* report on the following ongoing professional training measures:

The *Hochschule für Polizei* (Police Academy) of **Baden-Württemberg** regularly offers the seminar “*Sexualdelikte*” (sexual offences) for officers of the criminal police who are assigned to processing sexual offences or will take on that task in future. Furthermore, the district office 510 – *Ansprechstelle Kinderpornografie* (contact point child pornography) – of the *Land Criminal Police Office* (LKA) organises an annual conference for the expert staff as part of the working group “*Kinderpornografie im Internet*” (child pornography on the internet). This serves to exchange views and experiences and to provide ongoing professional training to the officers of all regional *Polizeipräsidium* (police headquarters) who are responsible for dealing with the corresponding offences.

In **Bavaria**, a large variety of training courses is available to the police officers active in the field addressed by the present Questionnaire. Besides the relevant offerings for network investigators, the two seminars meriting particular mention are the “*Kriminal-Basis-Seminar*” (basic seminar on crime) and the technical seminar “*Sexualdelikte/Misshandlung Kinder und Jugendliche*” (sexual offences/abuse of children and adolescents), which are both offered at the *Fortschreibungsinstitut* (institute for ongoing professional training) operated by the Bavarian police in Ainring. Additionally, individual members of the specialist staff of the Bavarian police attend the special course of instruction on “*Kinderpornografie im Internet*” (child pornography on the internet) offered by the Federal Criminal Police Office (BKA). All officers of the Bavarian police have the opportunity to use the electronic learning programme “*Erster Angriff bei Sexualdelikten*” (dealing with sexual offences as the first attending officer) to pursue their professional education on their own cognisance. This programme imparts information about the first measures to be taken at the place at which a sexual offence has been committed, and also teaches how to deal with the victim. Moreover, the subject topics are also addressed in suitable fashion already in the professional training, respectively during the university studies, pursued by the officers of the Bavarian police, with the courses of instruction being coordinated to the tasks performed at their respective qualification level. The basic seminar on crime and the special course of instruction “sexual offences/abuse of children and adolescents” impart knowledge on the respective specific fields of responsibility. When the officers take on a new role, enrolment in these courses is mandatory. Otherwise, the attendance of seminars is oriented by the individual demand for ongoing professional training that the respective officers may have.

The *Polizeiakademie* (Police Academy) of **Hesse** offers ongoing professional training regarding the subject offences to those officers of the criminal police force within the police of Hesse who are deployed as technical staff in the field of sexual offences to the detriment of children and adolescents. There is no obligation to attend these seminars, which are open to public prosecutors and judges as well. In a more specific context, the Police Academy organises a seminar, together with the *Ansprechstelle für Kinderpornographie* (contact point for child pornography) within the *Land Criminal Police Office* (LKA) of Hesse, the *Zentralstelle für Internetkriminalität* (central agency for internet crime) operated by the chief public prosecutor's office in Frankfurt am Main, and the Federal Criminal Police Office (BKA) (SO 12), on the topic of: “*Kinderpornografie und Jugendpornografie in Deutschland, Zielgruppe der Geschädigten zwischen 14 – 18 Jahren im Internet*” (child pornography and juvenile pornography in Germany on the internet, target group of the injured parties between fourteen and eighteen years of age). In terms of the seminar's content, which lasts for one week, the attendees will concentrate exclusively on the phenomena of production, possession, procurement, and further dissemination of (data or) material constituting child pornography, respectively juvenile pornography, and the respective criteria defining a criminal offence as set out in the Criminal Code (StGB). Likewise, section 201a of the Criminal Code (StGB) (violation of the highly personal sphere of life by recording images) and the process called cyber-grooming are addressed. Besides aspects of legal certainty and the manner in which the police deal

with these internet offences perpetrated against children and adolescents, the instructors also address the consequence that victims face, the typologies of perpetrators, and their relapse. Moreover, the topics addressed include search measures by the police, opportunities for analysing the hardware and the software of incriminated data files that have been seized, research opportunities in the so-called darknet, encryption of data and the expiry of over-regional proceedings, and large child-pornography sting operations. Overall, the participants in the seminar are trained both in terms of their expertise and in technical terms. Additionally, the Police Academy of **Hesse** provides a one-week seminar as part of the ongoing professional training opportunities on offer, "*Sexueller Missbrauch und Kindesmisshandlung*" (sexual abuse and child abuse), which is likewise geared to the technical staff working in the field of sexual offences to the detriment of children and adolescents; this also reflects the above thematic range, albeit in a reduced form.

In **Lower Saxony**, the education and ongoing professional training provided at the level of the police fundamentally is available from the Police Academy of Lower Saxony. The technical staff working on investigations in the context of child/juvenile pornography have the opportunity to attend specialised ongoing professional training courses serving the education of new employees, as well as courses serving to reactivate the capabilities of employees who have been absent from the workplace for longer periods of time. The *Ansprechstelle für Kinderpornographie* (contact point for child pornography) within the *Land* Criminal Police Office (LKA) lends support to these course offerings in terms of their substance and also organises ongoing professional training events itself (also for public prosecutors and judges), as well as conferences for technical staff.

In **Brandenburg**, some of the professional development opportunities are obligatory for police officers. They cover a wide range of topics, among them sexual crimes, combating child pornography and child pornography on the internet, as well as a course of instruction on cybercrime, social media, and juvenile delinquency.

In the constabulary and criminal police (*Vollzugspolizei*) of the **Saarland**, the offences addressed by the present Questionnaire are imparted to the technical staff of the police in special training courses, *inter alia* as follows:

The seminar "*IuK-Ersteinschreiter*" (first attending officers for ICT matters) available from the *Fachhochschule für Verwaltung* (University of Applied Administrative Sciences) of the Saarland (duration: 5 days) familiarises participants with the phenomenon of ICT crimes. The requisite basic knowledge for dealing with the devices used to perpetrate offences: "personal computer" and "internet" is taught, as are imperative measures and the process of accepting a report in a qualified manner. Among other things, courses will address questions of the law, competencies, and rights of interference; the basics of the internet; DNS; IP research; email documentation; accepting a report in a qualified manner; as well as the implementation of imperative measures. Above and beyond this, ongoing professional training courses are offered at IT companies, who also serve as external experts for the police of the Saarland in cases involving the dissemination and possession of child pornography and juvenile pornography. The ongoing professional training courses comprise, *inter alia*, the capture, analysis, and evaluation of digital traces in computer systems. Furthermore, the special course of instruction "*Kinderpornografie im Internet*" (child pornography on the internet) offered by the Federal Criminal Police Office (BKA) is attended by employees of the specialist divisions dealing with sexual offences. The course lasts for 14 days. Among other things, the course of instruction addresses topics such as "*Internet-Wissen*" (internet knowledge), "*Internes aus der Szene*" (insider news from those in the scene), presentation of the work done by probation officers, dealing with sexual offenders after they have been released from prison, observations on the law, investigations, and contacting children in chat forums.

In **Saxony**, sexual offences likewise form part of the training afforded to police officers. Within the two-and-a-half year training for police officers of career track "1", second career level, this field of offences is addressed particularly in the subjects of criminal law, civil law, and the laws governing misdemeanours. The course units taught on the sexual offences selected, which include units on the dissemination, acquisition, and possession of child pornography and juvenile pornography, comprise a total of 6 units of instruction, whereby each unit has a duration of 45 minutes. Knowledge is transferred in summary fashion since the main focus is placed on ensuring that people starting out in the service are given training that is as broad and general as possible, with in-depth knowledge being provided in ongoing professional training courses. For police constable candidates, participation in these classes is mandatory.

Further knowledge important in the context of the present Questionnaire is imparted in the subjects of professional ethics (including training in dealing with the victims of such offences, approximately 10 units of instruction, and further 10 units of instruction by clerics), special laws governing the police (protection of minors, 10 units of instruction) and criminology (traces, interviews – approximately 30 units of instruction; special aspects of dealing with offences against sexual self-determination as the first attending officer – 4 units of instruction). The relevant, practical action by the police is taught in the subjects of psychology and communications training (exercises for interviews, dealing with victims, assisting victims) and training for the proper reaction in patrol duty (exercises for different fields of offences).

At the *Hochschule der Sächsischen Polizei* (Police Academy of Saxony), candidates for career track "2", first career level are instructed on the subject offences as part of module 12 (Special Criminalistics and Criminology) in the complex of topics 12.2 (sexual offences).

Content taught in the complex of topics includes

- Methodological fundamentals
- Relationships between perpetrators and victims
- Selected criteria constituting offences / distinction from insults
- Special aspects of criminological investigations
- Dealing with a case as the first attending officer and criminalistic collection of evidence
- Interviewing a victim and interrogating an accused party
- Interviewing / questioning child victims
- Phenomenology of the sexual abuse of children
- Typical pretexts used by suspects
- Feigned offences
- Criminological aspects and research
- Police prevention
- Sexual deviations

Workload in classes (total): 48 units of instruction

- Classroom work (lectures, exercises, interview training): 30 units of instruction
- Private study (accompanying exercises, studies with homework, case processing): 18 units of instruction

As part of the ongoing professional training offered to the police of the Free State of **Saxony**, the following seminars are available that refer to the subject topics of the present Questionnaire:

- Processing by criminal police
- Criminal services and investigations services
- Dealing with sexual offences as the first attending officer – patrol duty

- Sexual offences
- Right of intervention with children and adolescents
- Prevention pf sexual abuse against girls and boys

**Answer to Question 15 letters b and c:**

Where ongoing professional training is concerned, the *Deutsche Richterakademie* (German Judicial Academy) is the first point of reference. This academy is an institution providing ongoing professional training on a supra-regional level to judges, regardless of the type of court or level of the court at which they are active, and public prosecutors; the academy is sponsored by the Federation and the *Länder*. Conferences are organised there on a regular basis that address the protection of children and adolescents against sexual violence and exploitation, also on an interdisciplinary basis. Finally, the international collaboration in matters of criminal law – for which combating the sexual abuse and sexual exploitation of children as well as child pornography are major aspects – is a frequent and regular part of the conference programme. While judges and public prosecutors basically are not obligated to attend any specific event of ongoing professional training, the conferences offered are popular among judges as well as public prosecutors.

The *Länder* offer a wide range of ongoing professional training courses to public prosecutors as well as judges, which courses also address the subject offences of the present Questionnaire. At the level of the *Land*, **Baden-Württemberg** regularly offers an ongoing professional training event on the topic of “*Jugendschutzdelikte*” (offences involving the protection of minors.) The course begins by providing a short summary of the legislative changes in the field of substantive offences involving the protection of minors and of procedural law where it concerns proceedings involving the protection of minors. Subsequently, the specific workflows of investigations are addressed and discussed, with the focus being placed on video interviewing, competencies in matters involving the protection of minors, and the planning and sequence of the main trial; for the latter topic, the matter is addressed that the main trial is to serve as a forum enabling the protection of witnesses while also allowing the facts of the matter to be cleared up, with special consideration being given to the task of interviewing children.

The **Hessische Justizakademie** (Judicial Academy of the *Land* of Hesse) offers conferences on topics such as “*Internetermittlungen / Internetkriminalität*” (internet investigations / internet crime). This also addresses matters of proceedings involving the protection of young persons regarding media, including child pornography and juvenile pornography.

The annual programme for ongoing professional training courses available to the judiciary of the **Rhineland-Palatinate and the Saarland** generally will include between one and three seminars on the topics “*Gewalt in engen sozialen Beziehungen*” (violence in close social relationships), respectively “*Internetkriminalität*” (internet crime). The target groups are judges, public prosecutors, and the employees of the social services of the judiciary.

In 2016/2017, the following events were implemented:

- Trauma conference on 13 April 2016
- Internet crime on 2 June 2016
- Violence in close social relationships on 15 November 2016
- Violence in close social relationships from 2 to 4 May 2017

For 2018, the following conferences are in planning:

- 14 June 2018: Internet and telecommunications crimes
- 14 August 2018: Psycho-social counselling during court proceedings

- 24 October 2018: Violence in close social relationships with a focus on child abuse

For the judiciary, the Ministry of Justice of **Lower Saxony** has conceptualised and offered, in cooperation with the *Fachstelle Opferschutz* (expert department for the protection of victims), one-day, voluntary events providing ongoing professional training in the districts of the higher regional courts (*Oberlandesgerichte* – OLG) and, recurring every two years, a one-week seminar providing ongoing professional training at the *Deutsche Richterakademie* (German Judicial Academy) in Wustrau that each address the protection of victims. These courses are ongoing professional training programmes imparting basic knowledge on the framework conditions of the protection accorded to victims and on the particularities of various groups of victims.

In **Lower Saxony**, judges as well as public prosecutors are under obligation to participate in ongoing professional training and, moreover, to themselves acquire new professional skills to ensure they are continually informed of the requirements given in their sphere of work and able to meet the increasing demands of their office.

Furthermore, the ongoing professional training available to the judiciary of **Lower Saxony** is divided up into regional and supra-regional offerings of such training. The Ministry of Justice of Lower Saxony is responsible for providing supra-regional ongoing professional training. The regional offerings are organised and implemented by the intermediate authorities; in the field of criminal law, the higher regional courts (OLG) and chief public prosecutor's offices are responsible. Thus, the chief public prosecutor's office of Celle regularly provides the ongoing professional training "*Erfahrungsaustausch in Bezug auf die Verfolgung von Straftaten gegen die sexuelle Selbstbestimmung*" (exchange of views and experiences with regard to the prosecution of offences against sexual self-determination).

At the supra-regional level, the Ministry of Justice of Lower Saxony regularly organises the conference "*Strafrecht und Internet*" (criminal law and the internet) at the *Deutsche Richterakademie* (German Judicial Academy). The event is targeted at criminal court judges and public prosecutors and will include, *inter alia*, a presentation on the topic of "*Verbreitung von Kinderpornographie in Datennetzen*" (dissemination of child pornography in data networks).

The "*gemeinsames Juristisches Prüfungsamt*" (GJPA, joint examinations authority for the legal profession), operated jointly by the *Länder* of **Brandenburg** and of **Berlin**, is responsible for training judges as well as public prosecutors in **Brandenburg** and also looks after their ongoing professional training. Where a corresponding demand is given, the authority also offers special training courses at the *Justizakademie* (Academy of the Judiciary) of the *Land* on the topic of sexual offences to the detriment of children and adolescents. Moreover, the Academy of the Judiciary offers a long-term course over ten months in juvenile criminal law addressing the topic of "*Psychiatrische Symptome und deren Behandlung bei Opfer von Straftaten im Kindes- und Jugendalter*" (psychiatric symptoms and their treatment in child and adolescent victims of offences).

Judges are not obligated to attend the ongoing professional training courses offered by the Academy of the Judiciary, the Judicial Academy, respectively by third party providers. Where the public prosecutor's offices are concerned, the practice as given in the *Land* of Brandenburg will differ on a case-by-case basis. In some cases, public prosecutors who are newly being deployed in the corresponding specialist divisions in combating juvenile delinquency, respectively cybercrime, will be obligated to attend ongoing professional training events that are of significance for their activities. In other cases, the public prosecutors will not be obligated to attend. However, where courses address the further development of abuse phenomena and legislative changes, the ongoing professional

training events offered by the Academy of the Judiciary count large numbers of judges and public prosecutors among the attendees.

**Saxony** offers ongoing professional training courses on IT crime, on sexual offences, and on child pornography and juvenile pornography, as well as on questions of interviewing witnesses. Thus, the Land Ministry of Justice of Saxony has been cooperating with the Mittweida University of Applied Sciences (Faculty Applied Computer Sciences & Biosciences) since 2015 in regularly offering ongoing professional training events that address crimes committed on the internet and on social networks, as well as digital forensics. The cooperation is being further expanded. In this regard, the Ministry of the Free State of Saxony of Justice and the Ministry of the Interior have concluded an agreement with Mittweida University of Applied Sciences which comprises, *inter alia*, the development and application of digital forensic investigation methods and the offering of ongoing professional training events. In **Saxony**, judges and public prosecutors are not obligated to attend ongoing professional training courses.

In **Hamburg**, a comprehensive range of ongoing professional training courses in criminal law is available from the justice authority, which courses are available both at the *Land* level and from the *Deutsche Richterakademie* (German Judicial Academy), along with ongoing professional training courses on offer from European organisations. Specialised ongoing professional training courses addressing the topics of sexual exploitation and sexual abuse using information and communications technologies are not known to have been offered, at least not recently. However, the ongoing professional training courses on family law include numerous events that deal with the (potential) danger to the best interests of the child and also address the suspicion of sexual abuse. There is no statutory obligation for judges to participate in ongoing professional training.

In **Mecklenburg-Western Pomerania**, the offerings available from the *Deutsche Richterakademie* (German Judicial Academy) are means of providing ongoing professional training to judges and public prosecutors both in the field of criminal law governing sexual offences and in the field of ICT. Additionally, there are the ongoing professional training courses available within the Land as provided the *Fachhochschule für öffentliche Verwaltung, Polizei und Rechtspflege* (University of Applied Sciences for Public Administration, Police, and the Administration of Justice) in Güstrow, which are prepared and implemented jointly by representatives of the *Land* judiciary and the *Land* police. In particular in the wake of comprehensive legislative changes, special ongoing professional training courses are offered.

In **Berlin**, criminal court judges and public prosecutors have the opportunity to attend ongoing professional training courses at the Academy of the Judiciary in Königs Wusterhausen depending on the demand they have communicated; accordingly, if the corresponding demand has been registered, they will have the opportunity to attend training courses on sexual offences committed to the detriment of children and adolescents. As regards the subject offences of dissemination, acquisition, and possession of child pornography or juvenile pornography as well as of coercion and extortion using ICT means and using sexual images, videos or such like of children and adolescents, no ongoing professional training courses have been offered that dealt exclusively with these offences or placed a focus on them. Nonetheless, several ongoing professional training courses were offered in the field of sexual offences (to the detriment of children and adolescents). Thus, for example, the ongoing professional training “Sexualkriminalität” (sexual crime) was offered from 22 to 23 August 2013. The event addressed, *inter alia*, questions concerning the criteria used by experts in their reports and the quality of such reports in the case of offences against sexual self-determination, as well as interview and assessment methods in the case of suspected sexual abuse. As concerns the question of dealing with children and adolescents as the injured parties of offences, a training course was offered from 17 to 18 March 2016 on “Vernehmung kindlicher und jugendlicher

*Zeugen im Strafrecht*" (interviewing child and juvenile witnesses in criminal law matters). Moreover, papers were given, as part of a long-term course extending over ten months in juvenile criminal law, on the topics of "*Traumatisierte Gewaltpflege und psychosoziale Prozessbegleitung*" (traumatised victims of violence psycho-social counselling during court proceedings) as well as "*Psychiatrische Symptome und deren Behandlung bei Opfern von Straftaten im Kindes- und Jugendalter*" (psychiatric symptoms and their treatment in child and adolescent victims of offences) on 3 June 2013. In addition to addressing the topics planned, the ongoing professional training courses such as the ones listed above are intended to also allow for questions to be addressed from the entire field of criminal activity, thus also offering the opportunity to discuss matters concerning the offences addressed in the Questionnaire of the Lanzarote Committee.

**Bavaria** organises the conference "*Erscheinungsformen der Internetkriminalität und deren Bekämpfung*" (forms in which internet crime presents itself and ways to combat it) at the *Deutsche Richterakademie* (German Judicial Academy); the search for and investigation of child pornography is a topic. Moreover, a one-day event of ongoing professional training is offered annually in **Bavaria** on sexual criminal law, which also discusses abuse offences and child pornography. Attendance at said conferences is not mandatory.

## Partnerships

### Question 16. International co-operation

16.1. What measures have been taken to co-operate with other Parties to the Lanzarote Convention for:

- a. preventing and combatting sexual coercion and/or extortion resulting from the sharing of self-generated sexually explicit images and/or videos?
- b. protecting and providing assistance to the victims of sexual coercion and/or extortion resulting from the sharing of self-generated sexually explicit images and/or videos?
- c. investigating and prosecuting sexual coercion and/or extortion resulting from the sharing of self-generated sexually explicit images and/or videos?

#### Answer:

The police tasks in the field of prosecution fundamentally are within the remit of the locally competent police authorities of the Federal *Länder*. The focus of the activities pursued by the Federal Criminal Police Office (BKA) in this field of criminal activity is placed particularly on processing reports, respectively charges brought abroad, up to the point at which it is determined that the authorities in Germany have local competence, as well as in particular the identification of perpetrators and victims of sexual abuse, along with the analysis of the content of the image / video material obtained as part of its duties as a *Zentralstelle* (central agency) (e.g. via written communications, seizure by the *Länder*, own investigations, research performed independently of any specific occasion in data networks etc.).

Moreover, the Federal Criminal Police Office (BKA) lends support to the police stations of the Federal *Länder* processing the matter by procuring information from abroad that may be needed, respectively by transmitting to counterparties abroad relevant information regarding persons possessing child pornography, disseminating and generating it. For this purpose, the Federal Criminal Police Office (BKA) in its capacity as the National Central Bureau of the Federal Republic of Germany for the International Criminal Police Organization (ICPO) forwards the findings made by the police stations of the Federal *Länder* and transmitted to it about the perpetrators, respectively circumstances playing out abroad, to the competent Interpol units abroad.

In addition, there is the opportunity to forward information via EUROPOL. In particularly urgent cases, the liaison officers of the Federal Criminal Police Office (BKA) abroad, respectively the liaison officers of foreign agencies with the Federal Criminal Police Office (BKA), will be involved. This will occur regularly, for example, in connection with combating child abuse committed abroad by German perpetrators who are traveling. Conversely, findings reported by foreign police stations, German diplomatic or consular missions or non-governmental organisations abroad regarding perpetrators or relevant circumstances in Germany will be augmented with further information and forwarded to the competent *Land* Criminal Police Offices (LKA) for the initiation of further prosecution measures.

Due to the fact that the phenomenon is becoming increasingly international in nature (not least as a result of the fact that the internet allows global networking), the Federal Criminal Police Office (BKA) has been actively contributing since 1994 to a range of international cooperation projects, for example by regularly attending the annual conference of the ICPO<sup>8</sup> Specialists Group "Crimes against children," the expert meetings at Europol, as well as by participating in the context of EMPACT projects.

No further activities were pursued to intensify cooperation with the Parties to the Lanzarote Convention besides the established and smoothly functioning communications channels at the police level, since this would have achieved no more than doubling the communications opportunities available in the police sphere.

Essentially, the Federal *Länder* concur that, on the part of the public prosecutor's offices, the international cooperation with other states is pursued exclusively in the context of prosecuting offences by way of legal assistance as part of the regulations applying thereto (e.g. European Convention on Mutual Assistance in Criminal Matters, European Convention on Extradition, legal acts of the European Union on the European arrest warrant, respectively on the European investigation order).

16.2. What measures have been taken to co-operate with other Parties to the Lanzarote Convention for:

- a. preventing and combatting sexual coercion and/or extortion resulting from the sharing of self-generated sexual content?
- b. protecting and providing assistance to the victims of sexual coercion and/or extortion resulting from the sharing of self-generated sexual content?
- c. investigating and prosecuting sexual coercion and/or extortion resulting from the sharing of self-generated sexual content?

**Answer:**

National and international stakeholders from the spheres of politics, the protection of children, prosecution, the economy, and academia came together at the end of the year for a specialist Conference on the International Condemnation and Combat of the Grey Areas of Child Sexual Exploitation on the Internet. At this conference, it was possible to intensify the insights gained and put combating strategies into more specific terms. On the occasion of the conference, a brochure was created with the involvement of all network partners that is dedicated to combating the grey zones of the sexual exploitation of children on the internet and addresses the topic from a range of perspectives.

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<sup>8</sup> "ICPO" stands for the "International Criminal Police Organisation," in other words, "INTERPOL".

As part of the programme “Connecting Europe Facility,” the European Commission is promoting, *inter alia*, what are known as Safer Internet Centres. As part of the Safer Internet Centre in Germany, the German complaints agencies *Verband der Internettwirtschaft e. V.* (eco e. V., association of companies active in the internet economy), *Freiwillige Selbstkontrolle Multimedia e. V.* (FSM e. V., voluntary monitoring association of multi-media companies) and *Jugendschutz.net* benefited from this support. Moreover, the work done by the complaints agencies in combating depictions of the sexual exploitation of children is supported by funding from the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. They act as preliminary filters, assess the depictions, and forward any content relevant under criminal law to the investigation authorities, INHOPE partners, and services providers.

## APPENDIX

### Relevant regulations<sup>9</sup>

#### I. German Criminal Code

##### **Chapter 13 of the Special Part of the German Criminal Code**

###### **Offences against sexual self-determination**

###### **Section 174 Abuse of position of trust**

(1) Whosoever engages in sexual activity

1. with a person under sixteen years of age who is entrusted to him for upbringing, education or care;
  2. with a person under eighteen years of age who is entrusted to him for upbringing, education or care or who is his subordinate within an employment or a work relationship, by abusing the dependence associated with the upbringing, educational, care, employment or work relationship; or
  3. with a person under eighteen years of age who is his biological or adopted child, or that of his spouse, his life partner, or a person living with him in a relationship akin to marriage or life partnership,
- or allows the ward to engage in sexual activity with himself, shall be liable to imprisonment from three months to five years.

(2) Whosoever is entrusted with the upbringing, education or care of persons under eighteen years of age in an institution specified for this purpose, and who

1. engages in sexual activity with a person under sixteen years of age whose legal relationship with the institution serves the person's upbringing, education, or care, or who allows the person to engage in sexual activity with himself; or
  2. by exploiting his position, engages in sexual activity with a person under eighteen years of age whose legal relationship with the institution serves the person's upbringing, education, or care, or who allows the person to engage in sexual activity with himself,
- shall be liable to imprisonment from three months to five years.

(3) Whosoever, under the conditions of subsections (1) or (2),

1. engages in sexual activity in the presence of the ward; or
  2. induces the ward to engage in sexual activity in his presence,
- in order to obtain sexual gratification for himself or for the ward shall be liable to imprisonment of not more than three years or a fine.

(4) The attempt shall be punishable.

(5) In cases under subsection (1) no. 1, or subsection (2) no. 1, or subsection (3) in conjunction with subsection (1) no. 1 or subsection (2) no. 1, the court may order a discharge under this provision if, taking into consideration the conduct of the offender, the harm of the offence is of a minor nature.

###### **Section 176 Child abuse**

(1) Whosoever engages in sexual activity with a person under fourteen years of age (child) or allows the child to engage in sexual activity with himself shall be liable to imprisonment from six months to ten years.

(2) Whosoever induces a child to engage in sexual activity with a third person or to allow third persons to engage in sexual activity with the child shall incur the same penalty.

(3) In especially serious cases the penalty shall be imprisonment of not less than one year.

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<sup>9</sup> The convenience translations cited here are not official.

(4) Whosoever

1. engages in sexual activity in the presence of a child;
  2. induces the child to engage in sexual activity, unless the act is punishable under subsection (1) or subsection (2) above;
  3. influences a child with by way of written materials (section 11 subsection (3)<sup>10</sup>) or information or communication technology in order to
    - a) induce the child to engage in sexual activity with or in the presence of the offender or a third person, or to allow the offender or a third person to engage in sexual activity with the child; or
    - b) commit an offence pursuant to section 184b subsection (1) no. 3 or pursuant to section 184b subsection (3), or
  4. influences a child by showing pornographic illustrations or images, by playing audio recordings with pornographic content, by making pornographic content accessible by way of information and communication technology, or by corresponding speech, shall be liable to imprisonment from three months to five years.
- (5) Whosoever supplies or promises to supply a child for an offence under subsections (1) to (4) above or who agrees with another to commit such an offence shall be liable to imprisonment from three months to five years.
- (6) The attempt shall be punishable; this shall not apply to offences under subsection (4) Nos 3 and 4 and subsection (5) above.

**Section 176a Aggravated child abuse**

- (1) The sexual abuse of children under section 176 (1) and (2) shall entail a sentence of imprisonment of not less than one year if the offender was convicted of such an offence by final judgment within the previous five years.
- (2) The sexual abuse of children under section 176 (1) and (2) shall entail a sentence of imprisonment of not less than two years if
  1. a person over eighteen years of age performs sexual intercourse or similar sexual acts with the child which include a penetration of the body, or allows them to be performed on himself by the child;
  2. the offence is committed jointly by more than one person; or
  3. the offender by the offence places the child in danger of serious injury or substantial impairment of his physical or emotional development.
- (3) Whosoever under section 176 (1) to (3), (4) Nos 1 or 2 or section 176 (6) acts as a principal or secondary participant with the intent of making the act the object of a pornographic medium (section 11(3)) which is to be disseminated pursuant to section 184b (1) or (2) shall be liable to imprisonment of not less than two years.
- (4) In less serious cases under subsection (1) above the penalty shall be imprisonment from three months to five years, in less serious cases under subsection (2) above imprisonment from one to ten years.
- (5) Whosoever under section 176 (1) to (3) seriously physically abuses the child or places the child in danger of death shall be liable to imprisonment of not less than five years.
- (6) Any period during which the offender was detained in an institution pursuant to an order of a public authority shall not be credited to the term indicated in subsection (1) above. An offence resulting in a conviction abroad shall be equivalent, under subsection (1) above, to an offence resulting in a domestic conviction if under German criminal law it would have been an offence under section 176 (1) or (2).

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<sup>10</sup> Section 11 (3): "Audiovisual media, data storage media, illustrations and other depictions shall be equivalent to written material in the provisions which refer to this subsection."

### **Section 176b Child abuse causing death**

If the offender in cases under section 176 and section 176a causes the death of the child at least by gross negligence the penalty shall be imprisonment for life or not less than ten years.

### **Section 177 (Sexual assault; sexual assault by use of force or threat of force; rape)**

(1) Whosoever, against the discernible will of another person, engages in sexual activity with that person or causes that person to engage in sexual activity, or induces that person to perform sexual acts on a third person or to suffer sexual acts by a third person, shall be liable to imprisonment from six months to five years.

(2) Whosoever engages in sexual activity with another person or causes that person to engage in sexual activity, or induces that person to perform sexual acts on a third person or to suffer sexual acts by a third person, shall incur the same penalty if

1. the offender exploits the fact that the person is not able to form or express an opposing will;
2. the offender exploits the fact that the person is significantly impaired in his ability to form or express a will due to a physical or mental condition, unless the offender has assured himself of the consent of this person;
3. the offender exploits an element of surprise;
4. the offender exploits a situation in which the victim is threatened with serious harm in case of resistance; or
5. the offender has coerced the person to perform or suffer the sexual acts by threatening serious harm.

(3) The attempt shall be punishable.

(4) The penalty shall be imprisonment of not less than one year if the inability to form or express a will is due to an illness or disability of the victim.

(5) The penalty shall be imprisonment of not less than one year if the offender

1. uses force against the victim;
2. threatens the victim with imminent danger to life or limb; or
3. exploits a situation in which the victim is unprotected and at the mercy of the offender's influence.

(6) In especially serious cases the penalty shall be imprisonment of not less than two years.

An especially serious case typically occurs if

1. the offender performs sexual intercourse with the victim or causes the victim to perform sexual intercourse, or performs similar sexual acts with the victim or causes them to be performed by the victim, which particularly degrade the victim, especially if they involve penetration of the body (rape); or

2. the offence is committed jointly by more than one person.

(7) The penalty shall be imprisonment of not less than three years if the offender

1. carries a weapon or other dangerous instrument;
2. otherwise carries an instrument or other means for the purpose of preventing or overcoming the resistance of another person through force or threat of force; or
3. places the victim in danger of serious injury.

(8) The penalty shall be imprisonment of not less than five years if

1. the offender uses a weapon or other dangerous instrument during the commission of the offence; or

2. the offender

- (a) seriously physically abuses the victim during the offence; or
- (b) by the offence, places the victim in danger of death.

(9) In less serious cases under subsections (1) and (2) above the penalty shall be imprisonment from three months to three years, in less serious cases under subsections (4) and (5) above the penalty

shall be imprisonment from six months to ten years, and in less serious cases under subsections (7) and (8) above the penalty shall be imprisonment from one year to ten years.

**Section 178 (Sexual assault, sexual assault by use of force or threat of force and rape causing death)**

If the offender through sexual assault, sexual assault by use of force or threat of force, or rape (section 177) causes the death of the victim by gross negligence at least, the penalty shall be imprisonment for life or not less than ten years.

**Section 180 Causing minors to engage in sexual activity**

(1) Whosoever encourages a person under sixteen years of age to engage in sexual activity with or in the presence of a third person or whosoever encourages sexual acts of a third person on a person under sixteen years of age

1. by acting as an intermediary; or
2. by creating an opportunity,

shall be liable to imprisonment not exceeding three years or a fine. The 1st sentence No 2 above shall not apply if the offender is the person responsible for the care of the minor unless the offender, if responsible for the care of the minor, grossly violates his duty of education.

(2) Whosoever induces a person under eighteen years of age to engage in sexual activity with or in the presence of a third person or to suffer sexual acts by a third person for a financial reward, or whosoever encourages such acts by acting as an intermediary, shall be liable to imprisonment not exceeding five years or a fine.

(3) Whosoever induces a person under eighteen years of age who is entrusted to him for upbringing, education or care or who is his subordinate within an employment or a work relationship, by abusing the dependence associated with the upbringing, educational, care, employment or work relationship to engage in sexual activity with or in the presence of a third person or to suffer sexual acts by a third person shall be liable to imprisonment not exceeding five years or a fine.

(4) In cases under subsections (2) and (3) above the attempt shall be punishable.

**Section 180a Exploitation of prostitutes**

(1) Whosoever on a commercial basis maintains or manages an operation in which persons engage in prostitution and in which they are held in personal or financial dependency shall be liable to imprisonment not exceeding three years or a fine.

(2) Whosoever

1. provides a dwelling or on a commercial basis an abode or a residence to a person under eighteen years of age for the exercise of prostitution; or
2. urges another person to whom he has furnished a dwelling for the exercise of prostitution to engage in prostitution or exploits the person in that respect,  
shall incur the same penalty.

**Section 182 Abuse of juveniles**

(1) Whosoever abuses a person under eighteen years of age by taking advantage of an exploitative situation by

1. engaging in sexual activity with the person or suffering the person to engage actively in sexual activity with him or
2. inducing the person to engage in sexual activity with a third person or to suffer sexual acts committed on their own body by a third person,  
shall be liable to imprisonment not exceeding five years.

(2) The same penalty shall apply to a person over eighteen years of age who abuses a person under eighteen years of age by engaging in sexual activity with him or to by inducing the person to suffer sexual acts committed by him on their own body for a financial reward.

(3) A person over twenty-one years of age who abuses a person under sixteen years of age by

1. engaging in sexual activity with the juvenile person or allowing the juvenile person to engage in sexual activity with himself; or
2. inducing the juvenile person to engage in sexual activity with a third person or to suffer sexual activity performed by a third person,

and thereby exploits the juvenile victim's lack of capacity for sexual self-determination shall be liable to imprisonment of not more than three years or a fine or a fine.

(4) The attempt shall be punishable.

(5) In cases under subsection (3) above the offence may only be prosecuted upon request unless the prosecuting authority considers *proprio motu* that prosecution is required out of special public interest.

(6) In cases under subsections (1) to (3) above the court may order a discharge under these provisions if in consideration of the conduct of the person against whom the offence was committed the harm of the offence is of a minor nature.

#### **Section 184 Distribution of pornography**

(1) Whosoever with regard to pornographic written materials (section 11(3))

1. offers, gives or makes them accessible to a person under eighteen years of age;
2. makes them accessible at a place accessible to persons under eighteen years of age, or which can be viewed by them;
3. offers or gives them to another in retail trade outside the business premises, in kiosks or other sales areas which the customer usually does not enter, through a mail-order business or in commercial lending libraries or reading circles;
- 3a. offers or gives them to another by means of commercial rental or comparable commercial supply for use, except for shops which are not accessible to persons under eighteen years of age and which cannot be viewed by them;
4. undertakes to import them by means of a mail-order business;
5. publicly offers or promotes them at a place accessible to persons under eighteen years of age or which can be viewed by them, or through dissemination of written materials outside business transactions through the usual trade outlets;
6. allows another to obtain them without having been requested to do so;
7. shows them at a public film showing for an entry fee intended entirely or predominantly for this showing;
8. produces, obtains, supplies, stocks, or undertakes to import them in order to use them or copies made from them within the meaning of Nos 1 to 7 above or to facilitate such use by another person; or
9. undertakes to export them in order to disseminate them or copies made from them abroad in violation of foreign penal provisions or to make them accessible to public or to facilitate such use, shall be liable to imprisonment not exceeding one year or a fine.

(2) Subsection (1) No 1 above shall not apply if the offender is the person in charge of the care of the person, unless that person grossly violates his duty of education by offering, giving, or making them available. Subsection (1) No 3a above shall not apply if the act takes place in business transactions with commercial borrowers.

#### **Section 184a Distribution of pornography depicting violence or bestiality**

Whosoever

1. distributes pornography (section 11, subsection (3)) with subject matter that depicts violent acts or people engaging in sexual activity with animals, or makes such pornography accessible to the public, or

2. produces, obtains, supplies, stocks, offers, advertises or undertakes to import or export such pornography in order to use it or copies made therefrom within the meaning of no. 1 above or section 184d subsection (1) 1st sentence, or in order to facilitate such use by another person, shall be liable to imprisonment not exceeding three years or a fine.

In cases under the 1st sentence no. 1 above, the attempt shall be punishable.

### **Section 184b Distribution, acquisition, and possession of child pornography**

#### **(1) Whosoever**

1. disseminates child pornography or makes it accessible to the general public; whereby pornographic written materials (section 11 (3)) shall be deemed to be child pornography if they relate to:

a) sexual activities performed by, on or in the presence of a person under the age of fourteen years (child),

b) the reproduction of a child in a state of full or partial undress in a posture unnaturally displaying sexual characteristics, or

c) the lascivious reproduction of the unclothed genitalia or the unclothed buttocks of a child,

2. undertakes to obtain possession for another of child pornography reproducing an actual or realistic activity,

3. produces child pornography reproducing an actual activity, or

4. produces, obtains, supplies, stocks, offers, commends, or undertakes to import or export child pornography in order to use such child pornography, or copies made from such material, within the meaning of numbers 1 or 2 above or of section 184d (1), first sentence, or to facilitate such use by another, inasmuch as the offence is not liable to punishment pursuant to number 3, shall be liable to imprisonment from three months to five years.

(2) In the cases under subsection (1) above, the penalty shall be imprisonment of six months to ten years if the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences and if, in the cases of subsection (1) numbers 1, 2, and 4, the written material reproduces an actual or realistic activity.

(3) Whosoever undertakes to obtain possession of child pornography reproducing an actual or realistic activity, or whosoever possesses such material, shall be liable to imprisonment not exceeding three years or a fine.

(4) The attempt shall be punishable; this shall not apply to offences pursuant to subsection (1) numbers 2 and 4 as well as offences pursuant to subsection (3).

(5) Subsection (1) number 2 and subsection (3) above shall not apply to acts that exclusively serve the fulfilment of the following:

1. state functions,

2. tasks resulting from agreements with a governmental agency having competence, or

3. official or professional duties.

(6) Objects to which an offence under subsection (1) numbers 2 or 3 or subsection (3) above relates shall be subject to a deprivation order. Section 74a shall apply.

### **Section 184c Distribution, acquisition, and possession of juvenile pornography**

#### **(1) Whosoever**

1. disseminates juvenile pornography or makes it accessible to the general public; whereby pornographic written materials (section 11 (3)) shall be deemed to be juvenile pornography if they relate to:

a) sexual activities performed by, on or in the presence of a person who has reached the age of fourteen but is not yet eighteen years of age, or

b) the reproduction of a person fourteen years of age but not yet eighteen years of age in a state of full or partial undress in a posture unnaturally displaying sexual characteristics,

2. undertakes to obtain possession for another of juvenile pornography reproducing an actual or realistic activity,
  3. produces juvenile pornography reproducing an actual activity or
  4. produces, obtains, supplies, stocks, offers, commends, or undertakes to import or export juvenile pornography in order to use such juvenile pornography, or copies made thereof, within the meaning of numbers 1 or 2 above or of section 184d (1), first sentence, or to facilitate such use by another, unless the offence is liable to punishment pursuant to number 3,  
shall be liable to imprisonment not exceeding three years or to a fine.
- (2) In the cases under subsection (1) above, the penalty shall be imprisonment of three months to five years if the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences and if, in the cases of subsection (1) numbers 1, 2, and 4, the written material reproduces an actual or realistic activity.
- (3) Whosoever undertakes to obtain possession of juvenile pornography reproducing an actual activity, or whosoever possesses such material, shall be liable to imprisonment not exceeding two years or a fine.
- (4) Subsection (1) number 3, also in conjunction with subsection (5), and subsection (3), are not to be applied to acts by persons relating to such juvenile pornography that they have produced exclusively for their personal use with the consent of the persons depicted.
- (5) The attempt shall be punishable; this shall not apply to offences pursuant to subsection (1) numbers 2 and 4 as well as pursuant to subsection (3).
- (6) Section 184b subsections (5) and (6) shall apply mutatis mutandis.

#### **Section 184d Making pornographic content accessible via broadcasting or telemedia; accessing child or juvenile pornographic content via telemedia**

- (1) Whosoever makes pornographic content accessible to another person or the public via broadcasting or telemedia shall incur the penalty under sections 184 to 184c. In cases under section 184 subsection (1), the 1st sentence shall not apply to distribution via telemedia if technical or other measures are in place to ensure that the pornographic content is not accessible to persons under eighteen years of age. Section 184b subsections (5) and (6) shall apply mutatis mutandis.
- (2) Whosoever undertakes to access child pornography via telemedia shall incur the penalty under section 184b subsection (3). Whosoever undertakes to access juvenile pornography via telemedia shall incur the penalty under section 184c subsection (3); section 184c subsection (4) shall apply mutatis mutandis. Section 184b subsection (5) and subsection (6) 2nd sentence shall apply mutatis mutandis.

#### **Section 184h Definitions**

Within the meaning of this law

1. sexual acts and activities shall only be those which are of some relevance in relation to the protected legal interest in question;
2. sexual acts and activities in the presence of another shall be those which are committed in the presence of another who observes them.

## **Chapter 15**

### **Violation of the personal sphere of life and of privacy**

#### **Section 201a of the German Criminal Code**

##### **Violation of the highly personal sphere of life by recording images**

- (1) Whosoever

1. records or transmits, without having been authorised to do so, an image of another person who is in a dwelling or in some other space that is especially protected from view, thereby violating the highly personal sphere of life of the person shown in the image,
2. records or transmits, without having been authorised to do so, an image exposing the state of helplessness of another person, thereby violating the highly personal sphere of life of the person shown in the image,
3. uses or makes accessible to a third person an image recorded by an offence under numbers 1 or 2, or
4. makes accessible to a third person an image of the type designated in numbers 1 or 2, which was recorded with the consent of the person shown, in the knowledge that so making it available has not been authorised, thereby violating the highly personal sphere of life of the person shown in the image.

shall be liable to imprisonment not exceeding two years or a fine.

(2) Whosoever makes available to a third person an image of another person that is suited to significantly damage the reputation of the person shown in the image without having been authorised to do so likewise shall be liable to punishment.

(3) Whosoever

1. records or offers an image depicting the nudity of another person under the age of eighteen years in order to obtain possession of it, against remuneration, for a third person, or
  2. obtains possession, against remuneration, of an image depicting the nudity of another person under the age of eighteen years for himself or for a third person
- shall be liable to imprisonment not exceeding two years or a fine.

(4) Subsection (1) number 2, also read in conjunction with subsection (1) number 3 or number 4, subsections (2) and (3) shall not apply to acts performed in observance of preponderant, justified interests, namely the interests of art or science, of research or instruction, of reporting on current affairs or history, or interests serving similar purposes.

(5) The visual media as well as the visual recording devices or other technical means that the principal or secondary participant used may be subject to a deprivation order. Section 74a shall apply.

## **Chapter eighteen**

### **Offences against personal freedom**

#### **Section 240 Using threats or force to cause a person to do, suffer or omit an act**

(1) Whosoever unlawfully with force or threat of serious harm causes a person to commit, suffer or omit an act shall be liable to imprisonment not exceeding three years or a fine.

(2) The act shall be unlawful if the use of force or the threat of harm is deemed inappropriate for the purpose of achieving the desired outcome.

(3) The attempt shall be punishable.

(4) In especially serious cases the penalty shall be imprisonment from six months to five years. An especially serious case typically occurs if the offender

1. causes a pregnant woman to terminate the pregnancy; or
2. abuses his powers or position as a public official.

## **Chapter twenty**

### **Robbery and Blackmail**

#### **Section 253 Blackmail**

(1) Whosoever unlawfully with force or threat of serious harm causes a person to commit, suffer or omit an act and thereby causes damage to the assets of that person or of another in order to enrich

himself or a third person unlawfully shall be liable to imprisonment not exceeding five years or a fine.

(2) The act shall be unlawful if the use of force or the threat of harm is deemed inappropriate to the purpose of achieving the desired outcome.

(3) The attempt shall be punishable.

(4) In especially serious cases the penalty shall be imprisonment of not less than one year. An especially serious case typically occurs if the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of blackmail.

## **II. The German Code of Criminal Procedure**

### **Section 153 Non-Prosecution of Petty Offences**

(1) If a misdemeanour is the subject of the proceedings, the public prosecution office may dispense with prosecution with the approval of the court competent to open the main proceedings if the perpetrator's guilt is considered to be of a minor nature and there is no public interest in the prosecution. The approval of the court shall not be required in the case of a misdemeanour which is not subject to an increased minimum penalty and where the consequences ensuing from the offence are minimal.

(2) If charges have already been preferred, the court, with the consent of the public prosecution office and the indicted accused, may terminate the proceedings at any stage thereof under the conditions in subsection (1). The consent of the indicted accused shall not be required if the main hearing cannot be conducted for the reasons stated in Section 205, or is conducted in his absence in the cases referred to in Section 231 subsection (2) and Sections 232 and 233. The decision shall be given in a ruling. The ruling shall not be contestable.

### **Section 153a Provisional Dispensing with Court Action; Provisional Termination of Proceedings**

(1) In a case involving a misdemeanour, the public prosecution office may, with the consent of the accused and of the court competent to order the opening of the main proceedings, dispense with preferment of public charges and concurrently impose conditions and instructions upon the accused if these are of such a nature as to eliminate the public interest in criminal prosecution and if the degree of guilt does not present an obstacle. In particular, the following conditions and instructions may be applied:

1. to perform a specified service in order to make reparations for damage caused by the offence;
2. to pay a sum of money to a non-profit-making institution or to the Treasury;
3. to perform some other service of a non-profit-making nature;
4. to comply with duties to pay a specified amount in maintenance;
5. to make a serious attempt to reach a mediated agreement with the aggrieved person (perpetrator-victim mediation) thereby trying to make reparation for his offence, in full or to a predominant extent, or to strive therefor;
6. to participate in a social skills training course; or
7. to participate in a course pursuant to section 2b subsection (2), second sentence, or a driver's competence course pursuant to section 4a of the Road Traffic Act.

The public prosecution office shall set a time limit within which the accused is to comply with the conditions and instructions, and which, in the cases referred to in numbers 1 to 3, 5 and 7 of the second sentence, shall be a maximum of six months and, in the cases referred to in numbers 4 and 6 of the second sentence, a maximum of one year. The public prosecution office may subsequently revoke the conditions and instructions and may extend the time limit once for a period of three months; with the consent of the accused it may subsequently impose or change conditions and instructions. If the accused complies with the conditions and instructions, the offence can no longer be prosecuted as a misdemeanour. If the accused fails to comply with the conditions and

instructions, no compensation shall be given for any contribution made towards compliance. Section 153 subsection (1), second sentence, shall apply mutatis mutandis in the cases referred to in numbers 1 to 6 of the second sentence. Section 246a subsection (2) shall apply mutatis mutandis.

(2) If public charges have already been preferred, the court may, with the approval of the public prosecution office and of the indicted accused, provisionally terminate the proceedings up until the end of the main hearing in which the findings of fact can last be examined, and concurrently impose the conditions and instructions referred to in subsection (1), first and second sentences, on the indicted accused. Subsection (1), third to sixth and eighth sentences, shall apply mutatis mutandis.

The decision pursuant to the first sentence shall be given in a ruling. The ruling shall not be contestable. The fourth sentence shall also apply to a finding that conditions and instructions imposed pursuant to the first sentence have been met.

(3) The running of the period of limitation shall be suspended for the duration of the time limit set for compliance with the conditions and instructions.

(4) In the case referred to in subsection (1), second sentence, number 6, also in conjunction with subsection (2), Section 155b shall apply mutatis mutandis, subject to the proviso that personal data from the criminal proceedings that do not concern the accused may only be transmitted to the agency in charge of conducting the social skills training course insofar as the affected persons have consented to such transmission. The first sentence shall apply mutatis mutandis if an instruction to participate in a social skills training course is given pursuant to other criminal law provisions.

### **Section 153c Non-Prosecution of Offences Committed Abroad**

(1) The public prosecution office may dispense with prosecuting criminal offences

1. which have been committed outside the territorial scope of this statute, or which an in-citer or an accessory before the fact to an act committed outside the territorial scope of this statute has committed within the territorial scope thereof;

2. which a foreigner committed in Germany on a foreign ship or aircraft;

3. if in the cases referred to in sections 129 and 129a, in each case also in conjunction with section 129b subsection (1) of the Criminal Code, the group does not, or does not mainly, exist in Germany and the participatory acts committed in Germany are of lesser importance or are limited to mere membership.

Offences for which there is criminal liability pursuant to the Code of Crimes against International Law shall be subject to Section 153f.

(2) The public prosecution office may dispense with prosecuting a criminal offence if a sentence for the offence has already been executed against the accused abroad, and the sentence which is to be expected in Germany would be negligible after taking the foreign sentence into account or if the accused has already been acquitted abroad by a final judgment in respect of the offence.

(3) The public prosecution office may also dispense with prosecuting criminal offences committed within, but through an act committed outside, the territorial scope of this statute, if the conduct of proceedings poses the risk of serious detriment to the Federal Republic of Germany or if other public interests of overriding importance present an obstacle to prosecution.

(4) If charges have already been preferred, the public prosecution office may, in the cases referred to in subsection (1), numbers 1 and 2, and in subsection (3), withdraw the charges at any stage of the proceedings and terminate the proceedings if the conduct of proceedings poses the risk of serious detriment to the Federal Republic of Germany, or if other public interests of overriding importance present an obstacle to prosecution.

(5) If criminal offences of the nature designated under section 74a subsection (1), numbers 2 to 6, and under section 120 subsection (1), numbers 2 to 7, of the Courts Constitution Act are the subject of the proceedings, such powers shall be vested in the Federal Public Prosecutor General.

## **Section 154 Insignificant Secondary Penalties**

- (1) The public prosecution office may dispense with prosecuting an offence
1. if the penalty or the measure of reform and prevention in which the prosecution might result is not particularly significant in addition to a penalty or measure of reform and prevention which has been imposed with binding effect upon the accused for another offence, or which he may expect for another offence, or
  2. beyond that, if a judgment is not to be expected for such offence within a reasonable time, and if a penalty or measure of reform and prevention which was imposed with binding effect upon the accused, or which he may expect for another offence, appears sufficient to have an influence on the perpetrator and to defend the legal order.
- (2) If public charges have already been preferred, the court may, upon the application of the public prosecution office, provisionally terminate the proceedings at any stage.
- (3) If the proceedings were provisionally terminated on account of a penalty or measure of reform and prevention already imposed with binding effect for another offence, the proceedings may be resumed, unless barred by limitation in the meantime, if the penalty or measure of reform and prevention imposed with binding effect is subsequently not executed.
- (4) If the proceedings were provisionally terminated on account of a penalty or measure of reform and prevention which is to be expected for another offence, the proceedings may be resumed, unless barred by limitation in the meantime, within three months after the judgment imposed for the other offence has entered into force.
- (5) If the court has provisionally terminated the proceedings, a court order shall be required for their resumption.

## **Section 154a [Limitation of Prosecution]**

- (1) If individual severable parts of an offence or some of several violations of law committed as a result of the same offence are not particularly significant
1. for the penalty or measure of reform and prevention to be expected, or
  2. in addition to a penalty or measure of reform and prevention which has been imposed with binding effect upon the accused for another offence or which he may expect to be imposed for another offence,
- prosecution may be limited to the other parts of the offence or the other violations of law. Section 154 subsection (1), number 2, shall apply mutatis mutandis. The limitation shall be included in the records.
- (2) After the bill of indictment has been filed, the court, with the consent of the public prosecution office, may introduce this limitation at any stage of the proceedings.
- (3) At any stage of the proceedings the court may reintroduce into the proceedings those parts of the offence or violations of law which were not considered. An application by the public prosecution office for reintroduction shall be granted. If parts of an offence which were not considered are reintroduced, Section 265 subsection (4) shall apply mutatis mutandis.

## **Section 154b Extradition and Expulsion**

- (1) Preferment of public charges may be dispensed with if the accused is extradited to a foreign government because of the offence.
- (2) The same shall apply if he is to be extradited to a foreign government or transferred to an international criminal court of justice because of another offence and the penalty or the measure of reform and prevention which might be the result of the domestic prosecution is negligible in comparison to the penalty or measure of reform and prevention which has been imposed on him with binding effect abroad or which he may expect to be imposed abroad.
- (3) Preferment of public charges may also be dispensed with if the accused is expelled from the territorial scope of this Federal statute.
- (4) If in the cases referred to in subsections (1) to (3) public charges have already been preferred, the court, upon application by the public prosecution office, shall provisionally terminate the

proceedings. Section 154 subsections (3) to (5) shall apply mutatis mutandis, subject to the proviso that the time limit in subsection (4) shall be one year.

#### **Section 154c Victim of Coercion or Extortion**

(1) If coercion or extortion (sections 240 and 253 of the Criminal Code) was committed by threats to reveal a criminal offence, the public prosecution office may dispense with prosecuting the offence, the disclosure of which was threatened, unless expiation is imperative because of the seriousness of the offence.

(2) If the victim of coercion or extortion (sections 240 and 253 of the Criminal Code) files charges in respect thereof (Section 158) and if as a result a misdemeanour committed by the victim comes to light, the public prosecution office may dispense with prosecution of the misdemeanour unless expiation is imperative because of the seriousness of the offence.

#### **Section 406g Psychosocial assistance in the proceedings**

(1) Aggrieved persons may avail themselves of psychosocial assistance in the proceedings. The person providing psychosocial assistance shall be permitted to be present during the aggrieved person's examination and, accompanying the aggrieved person, during the main hearing.

(2) The principles of psychosocial assistance in criminal proceedings as well as the standards of qualification and the remuneration of individuals providing psychosocial assistance shall be based upon the Act on Psychosocial Assistance in Criminal Proceedings of 21 December 2015 (Federal Law Gazette p. 2525, 2529) in the respectively valid version.

(3) Pursuant to the conditions stated in section 397a (1), numbers 4 and 5, a person shall be appointed to provide psychosocial assistance upon application by the aggrieved person. Given the conditions stated in section 397a (1), numbers 1 to 3, a person may be appointed to provide psychosocial assistance upon application by the aggrieved person if the particular vulnerability of the aggrieved person so requires. Such appointment shall be free of charge for the aggrieved person. Section 142 (1) shall apply mutatis mutandis for the appointment. In preliminary proceedings, the court competent pursuant to section 162 shall decide.

(4) A person providing psychosocial assistance in criminal proceedings who has not been appointed may be prohibited from being present during the examination of the aggrieved person if his presence might endanger the purpose of the investigation. Such decision shall be made by the person conducting the examination; the decision shall not be contestable. The grounds for denial shall be documented.

### **III. German Civil Code**

#### **Section 823 Liability in damages**

(1) A person who, intentionally or negligently, unlawfully injures the life, body, health, freedom, property or another right of another person is liable to make compensation to the other party for the damage arising from this.

(2) The same duty is held by a person who commits a breach of a statute that is intended to protect another person. If, according to the contents of the statute, it may also be breached without fault, then liability to compensation only exists in the case of fault.

#### **Section 1004 Claim for removal and injunction**

(1) If the ownership is interfered with by means other than removal or retention of possession, the owner may require the disturber to remove the interference. If further interferences are to be feared, the owner may seek a prohibitory injunction.

(2) The claim is excluded if the owner is obliged to tolerate the interference.

#### **Section 1666 Court measures in the case of endangerment of the best interests of the child**

(1) Where the physical, mental or psychological best interests of the child or its property are endangered and the parents do not wish or are not able to avert the danger, the family court must take the measures necessary to avert the danger.

(2) In general it is to be presumed that the property of the child is endangered if the person with care for the property of the child violates his maintenance obligation towards the child or his duties connected with the care for the property of the child or fails to comply with orders of the court that relate to the care for the property of the child.

(3) The court measures in accordance with subsection (1) include in particular

1. instructions to seek public assistance, such as benefits of child and youth welfare and healthcare,
2. instructions to ensure that the obligation to attend school is complied with,
3. prohibitions to use the family home or another dwelling temporarily or for an indefinite period, to be within a certain radius of the home or to visit certain other places where the child regularly spends time,
4. prohibitions to establish contact with the child or to bring about a meeting with the child,
5. substitution of declarations of the person with parental custody,
6. part or complete removal of parental custody.

(4) In matters of care for the person of the child, the court may also undertake measures with effect against a third party.

#### **Section 1684 Contact of the child with its parents**

(1) The child has the right to contact with each parent; each parent has a duty and a right of contact with the child.

(2) The parents must refrain from everything that renders more difficult the relationship of the child to the other parent or the upbringing. Similar provisions apply if the child is in the charge of another person.

(3) The family court may decide on the scope of the right of contact and make more detailed provisions on its exercise, including provisions affecting third parties. It may enjoin the parties by orders to fulfil the duty defined in subsection (2). If the obligation in accordance with subsection (2) is considerably violated permanently or repeatedly, the family court may also order custodianship for the implementation of access (access custodianship). Access custodianship includes the right to demand surrender of the child to implement access and to determine where the child is to be for the duration of access. The order is to be time-limited. Section 277 of the Act on the Procedure in Family Matters and in Matters of Non-contentious Jurisdiction applies with the necessary modifications to compensation for expenditure and remuneration of the access custodian.

(4) The family court may restrict or exclude the right of contact or the enforcement of earlier decisions on the right of contact, to the extent that this is necessary for the best interests of the child. A decision that restricts the right of contact or its enforcement for a long period or permanently may only be made if otherwise the best interests of the child would be endangered. The family court may in particular order that contact may take place only if a third party who is prepared to cooperate is present. The third party may also be an agency of the youth welfare service or an association; the latter then determines in each case which individual carries out the task.

**IV. German Welfare Act – Book Eight (VIII) – Child and youth services – (Article 1 of the Act of 26 June 1990, Bundesgesetzblatt (BGBl, Federal Law Gazette) I p. 1163)**

**Section 42 Taking children and youth into care**

- (1) The Youth Welfare Office is authorised and obliged to take a child or an adolescent into its care, if
1. The child or the adolescent requests to be taken into care, or
  2. The best interests of the child or of the adolescent are in imminent danger and this requires that the child or adolescent be taken into care, and
    - a) the persons entitled to care and custody of the child do not object to this being done, or
    - b) it is not possible to obtain a decision from a family court in due time, or
  3. an unaccompanied foreign child or an unaccompanied foreign adolescent arrives in Germany, and no persons entitled to care and custody of the child or adolescent and no care guardians are in Germany.

Taking a child or adolescent into care includes the authorisation to place the child or adolescent with a suitable person, in a suitable institution or in some other form of residence on a temporary basis; in the case of number 2 of the first sentence, taking a child or adolescent into care includes taking that child or adolescent away from another person.

(2) While the child or adolescent has been taken into care, the Youth Welfare Office is to clear up the situation that has given rise to the child or adolescent being taken into care together with said child or adolescent and shall indicate to him or her means of obtaining assistance and support. The child or adolescent is to be given the opportunity, immediately, to notify a person in whom the child or adolescent places his or her trust. While the child or adolescent has been taken into care, the Youth Welfare Office is to look after the best interests of the child or adolescent and is to ensure that the child or adolescent receives the necessary maintenance and the assistance during sickness; section 39 (4), second sentence, shall apply *mutatis mutandis*. While the child or adolescent has been taken into care, the Youth Welfare Office is entitled to take all legal acts that are necessary to ensure the welfare of the child or adolescent; in this context, reasonable account is to be taken of the putative intent of the persons entitled to care and custody of the child or adolescent or of the putative intent of the care guardians. In the case of subsection (1), first sentence, number 3, the legal acts pursuant to the fourth sentence that the Youth Welfare Office is obliged to perform include immediately filing an application for asylum for the child or adolescent in those cases in which the facts justify the assumption that the child or adolescent requires international protection within the meaning of section 1 (1) number 2 of the Asylum Act; in this context, the child or adolescent is to be involved.

(3) In the cases of subsection (1), first sentence, numbers 1 and 2, the Youth Welfare Office is to inform the persons entitled to care and custody of the child or adolescent or the care guardians of the fact that the child or adolescent has been taken into custody, and shall do so without undue delay; the Youth Welfare Office is to assess with these persons the risk potential for the child or adolescent. Should the persons entitled to care and custody of the child or adolescent or the care guardians object to the child or adolescent being taken into custody, the Youth Welfare Office shall take either of the following actions without undue delay:

1. return the child or adolescent to the persons entitled to care and custody of the child or adolescent or to the care guardians, if, according to the assessment by the Youth Welfare Office, the best interests of the child or adolescent are not at risk or if the persons entitled to care and custody of the child or adolescent or the care guardians are willing and able to avert the risk, or
2. obtain a decision from the family court as to the necessary measures serving the best interests of the child or adolescent.

If it is not possible to contact the persons entitled to care and custody of the child or adolescent or the care guardians, number 2 of the second sentence shall apply *mutatis mutandis*. In the case of subsection (1), first sentence, number 3, the appointment of a legal guardian or curator is to be initiated without undue delay. Should the persons entitled to care and custody of the child or

adolescent not object to the child or adolescent being taken into custody, an assistance planning procedure is to be initiated without undue delay in order to provide assistance.

(4) The custody into which a child or adolescent has been taken shall end

1. upon the child or adolescent being returned to the persons entitled to care and custody of the child or adolescent or to the care guardians,

2. upon a decision being taken to grant assistance pursuant to the German Welfare Act.

(5) It shall be permissible to take measures depriving a person of their liberty in connection with taking a child or adolescent into custody only if and insofar as such measures are required in order to avert a danger to life or limb of the child or adolescent or a danger to life or limb of third persons. The deprivation of liberty shall be terminated, without this requiring a decision by a court, no later than midnight of the day following the day on which such deprivation was commenced.

(6) If the use of direct force is necessary in the course of taking a child or adolescent into custody, the corresponding authorities are to be involved.

## **V. German Act on the Protection of Copyright in Works of Art and Photographs (Art Copyright Act)**

### **Section 22**

Images of persons may be disseminated or publicly displayed only with the consent of the person depicted. In cases of doubt, such consent shall be considered granted if the person depicted received compensation for having allowed himself or herself to be depicted. For a period of ten years following the death of the person depicted, such consent shall be required to be granted by the relatives of the person depicted. Relatives within the meaning of the present Act are the surviving spouse or life partner and the children of the person depicted and, in cases in which neither a spouse nor a life partner nor children survive, the parents of the person depicted.

### **Section 33**

(1) Whosoever disseminates or publicly displays an image of a person contrary to the stipulations of sections 22 and 23 shall be liable to imprisonment of not more than one year or a fine.

(2) The offence shall be prosecuted only upon a corresponding application being filed.