



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

T-ES(2018)03_bil rev.

01/04/2019

LANZAROTE COMMITTEE / COMITE DE LANZAROTE

Compilation of Replies to Question 8 (Legislation)

of the Thematic Questionnaire on the protection of children against sexual exploitation and sexual abuse facilitated by information and communication technologies (ICTs)

Compilation des réponses à la Question 8 (Législation)

du Questionnaire Thématique sur la protection des enfants contre l'exploitation et les abus sexuels facilités par les technologies de l'information et de la communication (TIC)

Question 8. Legislation

- 8.1. Does national law contain any reference to:
 - a. self-generated sexually explicit images and/or videos in the context of offences covered by the Lanzarote Convention (Art. 18-23)?
 - b. self-generated sexual content in the context of offences covered by the Lanzarote Convention (Art. 18-23)?
 - c. 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)?
- 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?
- 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?

Question 8. Législation

- 8.1. Le droit interne fait-il une quelconque mention :
 - a. des images et/ou des vidéos sexuellement explicites autoproduites dans le contexte des infractions couvertes par la Convention de Lanzarote (articles 18 à 23) ?
 - b. des contenus à caractère sexuel autoproduits dans le contexte des infractions couvertes par la Convention de Lanzarote (articles 18 à 23) ?
 - c. des contenus à caractère sexuel autoproduits par des enfants et non illustrés par des images (par exemple, contenus sonores, textes) dans le contexte des infractions couvertes par la Convention de Lanzarote (articles 18 à 23) ?
- 8.2. Le droit interne traite-t-il de la participation de plusieurs enfants (par exemple, pose consentie) générant :
 - a. des images et/ou des vidéos sexuellement explicites autoproduites ?
 - b. des contenus à caractère sexuel autoproduits ?
- 8.3. Existe-t-il des dispositions particulières concernant les situations où plusieurs enfants apparaissent sur
 - a. des images et/ou vidéos sexuellement explicites autoproduites par ces enfants qui acceptent que leurs images et/ou vidéos soient produites et partagées au moyen des TIC ?
 - b. des contenus à caractère sexuel autoproduits par ces enfants qui acceptent que leurs images et/ou vidéos soient produites et partagées au moyen des TIC ?

TABLE OF CONTENTS / TABLE DES MATIERES

ALBANIA / ALBANIE.....	5
ANDORRA / ANDORRE	6
AUSTRIA / AUTRICHE.....	7
BELGIUM / BELGIQUE.....	8
BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE.....	9
BULGARIA / BULGARIE	11
CROATIA / CROATIE.....	17
CYPRUS / CHYPRE.....	18
CZECH REPUBLIC / REPUBLIQUE TCHEQUE	19
DENMARK / DANEMARK	20
ESTONIA / ESTONIE	21
FINLAND / FINLANDE.....	26
FRANCE.....	27
GEORGIA / GEORGIE.....	29
GERMANY / ALLEMAGNE	31
GREECE / GRECE	32
HUNGARY / HONGRIE.....	32
ICELAND / ISLANDE	35
ITALY / ITALIE.....	35
LATVIA / LETTONIE	36
LIECHTENSTEIN.....	38
LITHUANIA / LITUANIE.....	39
LUXEMBOURG.....	40
MALTA / MALTE	45
REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA	46
MONACO	48
MONTENEGRO	49
NETHERLANDS / PAYS-BAS	50
NORTH MACEDONIA / MACEDOINE DU NORD.....	51
NORWAY / NORVEGE	51

POLAND / POLOGNE.....	52
PORTUGAL	53
ROMANIA / ROUMANIE	54
RUSSIAN FEDERATION / FEDERATION DE RUSSIE	57
SAN MARINO / SAINT-MARIN.....	58
SERBIA / SERBIE	59
SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE	63
SLOVENIA / SLOVENIE	63
SPAIN / ESPAGNE	64
SWEDEN / SUEDE	65
SWITZERLAND / SUISSE	66
TURKEY / TURQUIE.....	69
UKRAINE	70

COMPILATION of replies / des réponses¹

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

ALBANIA / ALBANIE

State replies / Réponses de l'Etat

Question 8.1.a. and b.

The Penal Code of Albania in the section of "Sexual Crimes" does not contain any reference self-generated sexually explicit images.

Article 117 of the Criminal Code criminalizes "production, importing, offering, making available, distribution, transmission, use or possession of child pornography, as well as creating access to it consciously, through any means of form, is punishable with prison from 3 up to 10 years", but in this article, there is no reference to self-generated sexually explicit materials by children. This means that child pornography is criminalized, and there is no provision regulating cases where sexually explicit materials are generated by children themselves.

Question 8.1.c.

The national law does not contain any specific references to the non-pictorial self-generated sexual content in the above mentioned laws.

Question 8.2.

The national law does not contain any reference to the above points.

Question 8.3.a.

The national law does not contain any reference to the above points.

Question 8.3.b.

The national law does not contain any reference to the above points.

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

Question 8.1.

No.

Question 8.2.

No.

Question 8.3.

No.

¹ The full replies submitted by States and other stakeholders are available at / Les réponses intégrales des Etats et autres parties prenantes sont disponibles ici : www.coe.int/lanzarote

ANDORRA / ANDORRE

State replies / Réponses de l'Etat

Question 8.1.a.

Le Code pénal ne fait pas explicitement référence à des images ou des vidéos autoproduites ; ce serait le juge probablement, qui, dans cette hypothèse, jugerait la gravité et la différence de degré de l'infraction entre des images ou des vidéos produites par des adultes sur des mineurs ou des personnes considérées juridiquement incapables, et cette même infraction réalisée par des mineurs eux-mêmes. L'article applicable ici serait l'article 155 du CP concernant l'utilisation de mineurs et de personnes considérées juridiquement incapables pour des délits sexuels :

Article 155 CP

1. Quiconque capture des images d'un mineur ou d'une personne considérée juridiquement incapable dans l'intention de produire du matériel pornographique est puni d'une peine de prison maximale de deux ans. La tentative est punissable.

2. Quiconque recrute, utilise un mineur ou une personne juridiquement incapable à des fins pornographiques ou d'exposition ou favorise la participation et qui produit, acquiert, vend, importe, exporte, distribue, diffuse, cède ou expose par quelque moyen que ce soit du matériel pornographique dans lequel apparaissent des images de mineurs consacrés à des activités sexuelles explicites, réelles ou avec apparence de réalité, ou toute autre représentation des organes sexuels d'un enfant à des fins principalement sexuelles, doivent être punis d'une peine de prison d'un à quatre ans.

La tentative est punissable.

La proposition à travers les technologies de l'information et de la communication d'une réunion avec un mineur âgé de moins de quatorze ans, afin de commettre l'infraction décrite au paragraphe précédent, est considérée comme une tentative si la proposition a été suivie d'actes matériels qui conduisent à cette rencontre.

3. Quiconque offre, possède, cherche pour soi ou pour un tiers, ou y accède, moyennant la technologie de communication ou d'information, un matériel pornographique dans lequel apparaissent des images de mineurs engagés dans des activités sexuelles explicites, réelles ou liées à la réalité, ou toute autre représentation des organes sexuels d'un mineur à des fins principalement sexuelles, sera puni d'une peine de prison maximale de deux ans.

La tentative est punissable.

4. Toute personne ayant participé à des spectacles pornographiques impliquant une personne mineure ou juridiquement incapable, doit être condamnée à une peine de prison maximale de deux ans.

5. Lorsque le coupable de l'une des infractions prévues dans cet article obtient un avantage économique, outre les peines envisagées il sera condamné à une amende maximale de 30.000 euros.

L'article 157 CP complète ce dispositif en punissant la diffusion du matériel pornographique parmi les mineurs, et dans le cas de matériel pornographique diffusé dans lequel apparaissent des images de mineurs, réels ou avec apparence de réalité, la peine de prison imposable va d'un à quatre ans.

Question 8.1.b.

Même réponse que pour a)

Question 8.1.c.

Même réponse que pour a) et b)

Question 8.2.

Pour ce qui est de la question des crimes sexuels, le droit interne andorran est principalement compilé dans le Code pénal. Comme cité au paragraphe 1, il s'agit surtout, pour cette question 8.2. a) et b), de l'article 155 et 157 du CP qui sont cités ci-dessus en 8.1.

Question 8.3.a.

La question de l'utilisation des technologies de l'information et de la communication pour inciter à/tenter de produire ou produire ou diffuser des images/vidéos ou autres contenus de pornographie infantile est prévue au troisième alinéa du paragraphe 2 de l'article 155 et du paragraphe 3 de l'article 155 lorsqu'il est explicitement prévu que :

155.2 (alinéa 3) « La proposition à travers les technologies de l'information et de la communication d'une rencontre avec un mineur de moins de quatorze ans, afin de commettre l'infraction décrite au paragraphe précédent, est considérée comme une tentative si la proposition a été suivie d'actes matériels qui conduisent à cette rencontre. »

155.3 « Quiconque offre, possède, cherche pour soi ou pour un tiers, ou y accède, moyennant la technologie de communication ou d'information à un matériel pornographique dans lequel apparaissent des images de mineurs engagés dans des activités sexuelles explicites, réelles ou liées à la réalité, ou toute autre représentation des parties sexuelles d'un mineur à des fins principalement sexuelles, sera puni d'une peine de prison maximale de deux ans. »

Finalement, nous tenons à citer que la Principauté d'Andorre est devenue Partie contractante à la Convention de Budapest sur la cybercriminalité et que celle-ci est entrée en vigueur le 1^{er} mars 2017, introduisant ainsi dans la législation tout le dispositif de la Convention relatif à la pédopornographie produite ou diffusée grâce aux TIC (article 9 de la Convention).

Question 8.3.b.

Comme cela a été mentionné, il appartiendrait au juge chargé de l'affaire de décider de l'application et des sanctions éventuelles si les images et autres contenus produits sont autoproduits par des enfants qui « acceptent » la production et qui sont partagés au moyen des TIC, car encore faudrait-il évaluer dans quelles conditions ce consentement aurait été donné et à qui : à des mineurs du même âge ? A des mineurs plus âgés ? A des adultes ?

AUSTRIA / AUTRICHE

State replies / Réponses de l'Etat

Question 8.1.

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

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

Question 8.2.

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

Question 8.3.

See answer to question 8.2.

BELGIUM / BELGIQUE

State replies / Réponses de l'Etat

Question 8.1.a.

Il est fait mention de l'expression dans l'article 383bis, § 4, du Code pénal, *modifié en mai 2016*. *Cet article ne fait pas de distinction selon l'origine des images (produites par des majeurs/mineurs) ni le contexte à l'origine de la production des images (contexte d'abus ou d'exploitation, ou non) :*

« Art. 383bis. §4, CP. Pour l'application du présent article, on entend par « matériel pédopornographique » :

1° tout matériel représentant de manière visuelle, par quelque moyen que ce soit, un mineur se livrant à un comportement sexuellement explicite, réel ou simulé, ou représentant les organes sexuels d'un mineur à des fins principalement sexuelles ;

2° tout matériel représentant de manière visuelle, par quelque moyen que ce soit, une personne qui paraît être un mineur se livrant à un comportement sexuellement explicite, réel ou simulé, ou représentant les organes sexuels de cette personne, à des fins principalement sexuelles ;

3° des images réalistes représentant un mineur qui n'existe pas, se livrant à un comportement sexuellement explicite, ou représentant les organes sexuels de ce mineur à des fins principalement sexuelles. »

Question 8.1.b.

Pas de mention spécifique de cette expression dans un tel contexte d'abus ou d'exploitation.

L'art.371/1 CP sur le voyeurisme (inséré par la loi du 1^{er} février 2016 modifiant diverses dispositions en ce qui concerne l'attentat à la pudeur et le voyeurisme 31 mai 2016) se réfère cependant à l'enregistrement visuel ou audio d'une personne dénudée :

Art. 371/1 CP. « Sera puni d'un emprisonnement de six mois à cinq ans quiconque aura :

1° observé ou fait observer une personne ou en aura réalisé ou fait réaliser un enregistrement visuel ou audio,

- directement ou par un moyen technique ou autre,

- sans l'autorisation de cette personne ou à son insu,

- alors que celle-ci était dénudée ou se livrait à une activité sexuelle explicite, et

- alors qu'elle se trouvait dans des circonstances où elle pouvait raisonnablement considérer qu'il ne serait pas porté atteinte à sa vie privée ;

2° montré, rendu accessible ou diffusé l'enregistrement visuel ou audio d'une personne dénudée ou se livrant à une activité sexuelle explicite, sans son accord ou à son insu, même si cette personne a consenti à sa réalisation.

Si ces faits ont été commis sur la personne ou à l'aide de la personne d'un mineur de plus de seize ans accomplis, le coupable subira la réclusion de cinq ans à dix ans.

La peine sera de la réclusion de dix ans à quinze ans, si le mineur était âgé de moins de seize ans accomplis. Le voyeurisme existe dès qu'il y a commencement d'exécution. »

Par ailleurs, l'article 383 CP se réfère à des chansons, pamphlets ou autres écrits ou des figures ou **images** contraires aux bonnes mœurs.

A noter que l'article 383, alinéas 1 à 5, du Code pénal ne fait pas de distinction selon l'origine des contenus (produits par des majeurs/mineurs, dans un contexte d'abus ou d'exploitation ou non), mais il requiert un élément de publicité ou but de commerce ou de distribution :

*« Art. 383 CP. **Quiconque aura exposé, vendu ou distribué des chansons, pamphlets ou autres écrits imprimés ou non, des figures ou des images contraires aux bonnes mœurs, sera condamné à un emprisonnement de huit jours à six mois et à une amende de vingt-six euros à cinq cents euros.***

*Sera puni des mêmes peines quiconque **aura chanté, lu, récité, fait entendre ou proféré des obscénités***

dans les réunions ou lieux publics visés au § 2 de l'article 444.

Sera puni des mêmes peines :

Quiconque aura, en vue du commerce ou de la distribution, fabriqué, détenu, importe ou fait importer, transporte ou fait transporter, remis à un agent de transport ou de distribution, annoncé par un moyen quelconque de publicité, des chansons, pamphlets, écrits, figures ou images contraires aux bonnes mœurs.

Quiconque aura exposé, vendu ou distribué des emblèmes ou objets contraires aux bonnes mœurs, les aura, en vue du commerce ou de la distribution, fabriqués ou détenus, importés ou fait importer, transportés ou fait transporter, remis à un agent de transport ou de distribution, annoncés par un moyen quelconque de publicité.

Question 8.1.c.

Pas de mention spécifique de cette expression dans un tel contexte d'abus ou d'exploitation.

L'art.371/1 du Code pénal se réfère cependant à l'enregistrement *audio* d'une personne dénudée : voir texte au point b).

Par ailleurs, l'article 383 CP se réfère à des chansons, pamphlets ou autres écrits ou des figures. Voir point b).

Question 8.2.

Il n'y a pas de disposition traitant spécifiquement de la participation de plusieurs enfants générant des images ou des contenus visés par cette question.

Question 8.3.

Non. Pour le point a, comme c'est du matériel illégal selon article 383*bis* du Code pénal, des enfants ne peuvent pas consentir à leur production au moyen de TIC et à leur partage.

Comments sent by / Commentaires envoyés par ECPAT and / et CHILD FOCUS

Question 8.1.a

The question is aimed at knowing whether there is a reference in the Belgian Criminal Code to “self-generated sexually explicit images and/or videos”. The current answer to this question mentions “sexually explicit images and/or videos” and not “self-generated sexually explicit images and/or videos”. It seems to be assumed that article 383bis of the Belgian Criminal Code, by forbidding the creation and/or production of child sexually explicit materials, explicitly forbids child self-generated sexually explicit content. ECPAT Belgium considers that this assumption is not based on any jurisprudential basis and, therefore, only reflects a legal vacuum on the matter of self-generated sexually explicit materials in the context of offences covered by the Lanzarote Convention.

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

State replies / Réponses de l'Etat

Question 8.1.

Criminal offenses involving child pornography in Bosnia and Herzegovina are governed by the Entity Criminal Codes and the Criminal Code of the Brčko District of BiH. The BiH legislative framework on the protection of children against sexual exploitation and sexual abuse is still not fully harmonised with the Lanzarote Convention. These acts are criminalised in the FBiH Criminal Code (Articles 189, 211 and 212)², the Republika Srpska Criminal Code (Articles 199 and 200 – this Code was repealed by a new code)³ and the Brcko District of BiH Criminal Code (Articles 186, 208 and 209)⁴. These codes and cited articles are

² FBiH Official Gazette, 36/03, 37/03, 21/04, 69/04,18/05, 42/10, 42/11, 59/14, 76/14, 46/16)

³ RS Official Gazette, 49/03, 108/04, 37/06, 70/06, 73/10, 1/12, 37/13 – this Code was repealed by a new code

⁴ Brcko District of Bosnia and Herzegovina Official Gazette, 10/03, 45/04, 06/05, 52/11

cited in the answers to the questionnaire of the 1st monitoring round of the Lanzarote Convention (General Framework and Sexual Abuse of Children in the Circle of Trust).

Recently, the new Criminal Code of the Republika Srpska was passed⁵ and came into force on 18 July 2017. The new Criminal Code of the Republika Srpska has incorporated numerous international standards, including inter alia standards established by the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. The Code contains a separate chapter (Chapter XV) entitled "Offenses of Sexual Abuse and Exploitation of a Child". This Code implemented the recommendation of the Ombudsman for Children of the Republika Srpska to establish a register of perpetrators of criminal offenses of sexual abuse of children.⁶

The Criminal Codes of the Entities and Brcko District only partially address the issue of protecting children against sexual abuse facilitated by ICT, the Criminal Code of the Republika Srpska doing it to the highest extent regulating the treatment of children having self-generated sexual content in which other children participate in the context of the acts covered by the Lanzarote Convention, while the Codes of the FBiH and Brcko District do not govern it at all.

Child-related pornography definitions are not precise and they look at the concept of child pornography in a different way. The Criminal Codes define the production and screening of child pornography differently. In addition, the aforementioned codes defining child pornography do not set forth the same age of the child as set forth in Article 9 of the Cybercrime Convention, where the minimum child age is set forth at 16 years.

The basic form of protecting children from pornography as an organised criminal activity is contained within the Criminal Codes that apply in BiH. The Criminal Codes are under jurisdiction of the Cantonal and District Prosecutor's Offices in BiH and the Public Prosecutor's Office of the Brčko District of BiH. According to the aforementioned codes, the offenses considered to be "child pornography" include the production, possession, distribution, sale of material of pornographic content of a child or juvenile, with the criminal norms in the entity laws not being consistent, so that they have not fully incorporated the provisions of the Lanzarote Convention, the Optional Protocol to the United Nations Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography and the Convention on Cybercrime.

Newer forms of child abuse facilitated by information and communication technologies, such as sexting, grooming, cyberbullying, are not covered by Criminal Codes in BiH, which is also a problem when receiving reports of such acts through the hotline. Namely, "sexting, grooming, cyberbullying" are quite new forms of "traditional" criminal offenses.

Question 8.2.

Of the above-mentioned Criminal Codes, it is only the newly-passed Criminal Code of the Republika Srpska⁷ that provides that: „The child shall not be punished for production or possession of self-generated sexually explicit images and/or videos involving him personally or him and another child if they self-generated and consensually possessed for their own use exclusively“. The Code defines child pornography in the following wording: „any material that visually or in another way shows a child or realistically presented non-existing child or a face that looks like a child, in a real or simulated (explicit) obvious sexual act or that shows sex organs of children for sexual purposes“.

⁵ RS Official Gazette, 64/17

⁶ Article 92: „A special register for persons who have been imposed final and binding verdict for criminal offences against sexual integrity of a child shall be kept within criminal records. Content, scope of information, their keeping and requirements for revealing information from this register shall be regulated in a separate regulation.“

⁷ Article 175(5)

Question 8.3.

The Criminal Codes in BiH do not contain the specificities cited in the question.

BULGARIA / BULGARIE

State replies / Réponses de l'Etat

Question 8.1.

Ministry of Justice:

Self-generated sexually explicit images and/or videos, self-generated sexual content and non-pictorial self-generated sexual content produced by children are covered under the provisions of the relevant (applicable) offences provided for under Chapter Two „Crimes against the person“, Section VIII „Debauchery“ of the Criminal Code (Art. 149 – Art. 159). It should be pointed out that the abovementioned three categories are not explicitly mentioned under the provisions, as the latter of a general nature without explicitly specifying whether material (images, videos), content are self-generated or not. This kind of so to say „more general provisions“ is typical for the Bulgarian criminal law and tradition, as well as for the legislation technique for drafting the criminal law provisions. The more general character of the provisions makes it possible to encompass within their scope various acts and circumstances without the need of an exhaustive list of the acts, circumstances, ways etc. for the commission of a certain offence.

Please, see below extract of Section VIII „Debauchery“, Chapter Two „Crimes against the person“ of the Criminal Code (*please note that not all of the offences are applicable as for the commission of some of the corpora delicti self-generated sexually explicit images, sexual content, etc. are not applicable*):

“Criminal Code
Chapter Two “Crimes against the person”
Section VIII “Debauchery”

Article 149

(Supplemented, SG No. 28/1982, amended, SG No. 89/1986)

(1) (Amended, SG No. 107/1996, SG No. 75/2006) A person who performs an act for the purpose of arousing or satisfying sexual desire, without copulation, with a person under 14 years of age, shall be punished for lewdness by imprisonment for up one to six years.

(2) (Amended, SG No. 107/1996, supplemented, SG No. 27/2009, amended, SG No. 74/2015) The punishment for molestation shall be imprisonment from two to eight years, where the molestation has been performed:

1. through the use of force or threat;
2. through bringing the victim into a helpless condition;
3. through taking advantage of the helpless condition of the victim;
4. through taking advantage of a state of dependence or supervision;
5. in respect of a person engaged in prostitution.

(3) (Amended, SG No. 107/1996, SG No. 38/2007) Where the act under the preceding paragraphs has been done for a second time, the punishment shall be imprisonment from three (3) to ten (10) years.

(4) (New, SG No. 107/1996) Lewdness shall be penalised by deprivation of liberty from three (3) to fifteen (15) years:

1. if committed by two or more persons;
2. (repealed, SG No. 62/1997, new, SG No. 74/2015) if committed in respect of a person who does not understand the nature or meaning of the act;
3. (repealed, SG No. 62/1997);
4. (repealed, SG No. 62/1997).

- (5) (New, SG No. 62/1997) Lewdness shall be penalised by imprisonment from five to twenty years:
1. if committed with two or more minors;
 2. if a severe bodily injury has been inflicted or a suicide has been attempted.
 3. if it constitutes a dangerous recidivism;
 4. (new, SG No. 38/2007) if it constitutes a particularly grave case.

Article 150

(Supplemented, SG No. 28/1982, amended, SG No. 89/1986, SG No. 107/1996, SG No. 75/2006)

(1) (Previous text of Article 150, amended and supplemented, SG No. 27/2009, amended, SG No. 26/2010) A person who performs an act for the purpose of arousing or satisfying sexual desire, without copulation, with regard to a person who has completed 14 years of age, by using force or threat, by taking advantage of the helpless condition of that person or by reducing the person to such condition or by taking advantage of a state of dependence or supervision, shall be punished by imprisonment from two to eight years.

(2) (New, SG No. 74/2015) The punishment under Article 1 shall also be imposed on any person who commits the crime under Paragraph 1 in respect of a minor who is engaged in prostitution.

(3) (New, SG No. 27/2009, amended, SG No. 26/2010, renumbered from Paragraph 2, amended, SG No. 74/2015) When the crime under Paragraph 1 was committed in respect of a person who does not understand the nature or meaning of the act, or when the criminal act constitutes a particularly grave case, the punishment shall be imprisonment from three to ten years.

Article 151

(1) (Amended, SG No. 75/2006) A person who has sexual intercourse with a person who has not completed the age of 14 years, insofar as the act does not constitute a crime under Article 152, shall be punished by imprisonment for two to six years.

(2) (New, SG No. 74/2015) Where the act under paragraph 1 was committed:

1. through taking advantage of a state of dependence or supervision,
2. in respect of a person who has not reached 14 years of age and who is engaged in prostitution;
3. by two or more persons,

the punishment shall be imprisonment from two to eight years.

(3) (New, SG No. 27/2009, amended, SG No. 26/2010, renumbered from Paragraph 2, SG No. 74/2015) Where the crime under Paragraph 1 was committed in respect of an underage person by taking advantage of a state of dependence or supervision, the punishment shall be imprisonment from one to five years.

(4) (Renumbered from Paragraph 2, SG No. 27 of 2009, amended, SG No. 26/2010, renumbered from Paragraph 3, SG No. 74/2015) Anyone who has sexual intercourse with a person who has reached 14 years of age and who does not understand the nature or meaning of the act, shall be punished by imprisonment for up to five years.

Article 152

(1) A person who has sexual intercourse with a person of the female sex:

1. who is deprived of the possibility of self-defence, and without her consent;
2. by compelling her thereto by force or threat;
3. by reducing her to a state of helplessness shall be punished for rape by imprisonment for two to eight years.

to eight years.

shall be punished for rape by imprisonment for two to eight years.

(2) For rape the punishment shall be imprisonment for three to ten years:

1. (amended, SG No. 92/2002) if the raped woman has not completed eighteen years of age;
2. if she is a relative of descending line;
3. (new, SG No. 28/1982) if it was committed for a second time.

(3) (Amended, SG No. 28/1982) For rape the punishment shall be imprisonment for three to fifteen years:

1. if it has been performed by two or more persons;
 2. if medium bodily injury has been caused;
 3. if an attempt at suicide has followed;
 4. (new, SG No. 92/2002) if it has been committed in view of forceful involvement in further acts of debauchery or prostitution;
 5. (renumbered from Item 4, SG No. 92/2002) if it constitutes a case of dangerous recidivism.
- (4) (Amended, SG No. 28/1982, SG No. 92/2002) The punishment for rape shall be of ten to twenty years, where:
1. the victim has not turned fourteen years of age;
 2. severe bodily injury has been caused;
 3. suicide has ensued;
 4. it qualifies as a particularly serious case.

Article 153

(Amended, SG No. 75/2006)

A person who copulates with another, by compulsion using the other's material or official dependency upon him, shall be punished by imprisonment for up to three years.

Article 154

Sexual intercourse between relatives in ascending and descending line, between brothers and sisters, and between adopters and adopted persons shall be punished by imprisonment for up to three years.

Article 154a

(New, SG No. 27/2009)

(1) (Previous text of Article 154a, amended, SG No. 74/2015) Anyone who performs acts of molestation or copulation with an underage person who is engaged in prostitution shall be punished by imprisonment for up to three years.

(2) (New, SG No. 74/2015) When the crime under Paragraph 1 was committed repeatedly or by two or more persons, the punishment shall be imprisonment from one to five years.

Article 155

(1) (Amended, SG No. 28/1982, SG No. 10/1993, SG No. 62/1997, SG No. 92/2002, SG No. 26/2004, SG No. 75/2006) A person who persuades an individual to practise prostitution or acts as procurer or procuress for the performance of indecent touching or copulation, shall be punished by imprisonment of up to three years and by a fine from BGN 1,000 to 3,000.

(2) (Amended, SG No. 10/1993, SG No. 62/1997, SG No. 75/2006) A person who systematically places at the disposal of different persons premises for sexual intercourse or for acts of lewdness shall be punished by deprivation of liberty for up to five years and by a fine from BGN 1,000 to 5,000.

(3) (New, SG No. 62/1997, amended, SG No. 92/2002, SG No. 75/2006) Where acts under Paragraphs 1 and 2 above have been committed with a venal goal in mind, punishment shall be imprisonment from one to six years and a fine from BGN 5,000 to 15,000.

(4) (New, SG No. 21/2000, amended, SG No. 75/2006) A person who persuades or forces another person to using drugs or analogues thereof for the purposes of practising prostitution, to performing copulation, indecent assault, intercourse or any other acts of sexual gratification with a person of the same sex, shall be punished by imprisonment for five to fifteen years and by a fine from BGN 10,000 to 50,000.

(5) (New, SG No. 21/2000, amended, SG No. 92/2002, supplemented, SG No. 75/2006, amended, SG No. 38/2007) Where the act under Paragraphs 1 - 4 has been committed:

1. by an individual acting at the orders or in implementing a decision of an organized criminal group;
2. with regard to a person under 18 years of age or insane person;
3. with regard to two or more persons;

4. repeatedly;

5. at the conditions of a dangerous recidivism,

the punishment under pars. 1 and 2 shall be imprisonment from two to eight years and a fine from BGN five thousand to fifteen thousand, under Paragraph 3 - imprisonment from three to ten years and a fine from BGN ten thousand to twenty five thousand, and under Paragraph 4 - imprisonment from ten to twenty years and a fine from BGN hundred thousand to three thousand.

(6) (Renumbered from Paragraph 3, SG No. 62/1997, renumbered from Paragraph 4, SG No. 21/2000, repealed, SG No. 75/2006).

(7) (Renumbered from Paragraph 4, SG No. 62/1997, renumbered from Paragraph 5, SG No. 21/2000, amended, SG No. 92/2002, effective 1.01.2005 in respect of the punishment of probation - amended, SG No. 26/2004, effective 1.01.2004, repealed, SG No. 103/2004).

Article 155a

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

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

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

Article 155b

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

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

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

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

the punishment shall be from two to ten years.

Article 155c

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

Article 156

(Amended, SG No. 10/1993)

(1) (Previous Article 156, amended, SG No. 62/1997, SG No. 75/2006) A person who abducts another person for the purpose of her being placed at the disposal for acts of debauchery shall be punished by imprisonment for three to ten years and by a fine of up to BGN 1,000.

(2) (New, SG No. 62/1997, amended, SG No. 75/2006) The punishment shall be imprisonment for

five to twelve years, if:

1. the abducted person is under 18 years of age;
2. the abducted person has been placed at disposal for acts of debauchery, or
3. the abduction has been carried out for the purpose of placing the person at disposal for acts of debauchery beyond the borders of this country.

(3) (New, SG No. 75/2006) The punishment shall be imprisonment from five to fifteen years and a fine from BGN 5,000 to 20,000 where:

1. the act was committed by an individual acting on the orders or in execution of a decision of an organised criminal group;
2. the abducted person was handed over for sexual activities outside the borders of the country;
3. the act constitutes dangerous recidivism.

Article 157

(Amended and supplemented, SG No. 28/1982, SG No. 89/1986, amended, SG No. 10/1993, SG No. 62/1997, SG No. 92/2002, SG No. 26/2004, SG No. 103/2004, amended and supplemented, SG No. 75/2006, amended, SG No. 74/2015)

(1) Anyone who performs sexual intercourse or acts of sexual satisfaction with a person of the same sex, by using force or threat to that end, or by taking advantage of a position of dependency or supervision, as well as with a person deprived of the possibility for self-defence, shall be punished by imprisonment for two to eight years.

(2) Where the act under Paragraph 1 was committed in respect of an underage person engaged in prostitution, the punishment shall be imprisonment from three to ten years.

(3) When the act under Paragraph 1 was committed in respect of a person under the age of 14, the punishment shall be imprisonment from three to twelve years.

(4) Anyone who performs sexual intercourse or acts of sexual gratification with a person of the same sex under the age of 14 shall be punished by imprisonment from two to six years.

(5) When the act under Paragraph 4 was committed in respect of a person under the age of 14 who is engaged in prostitution, the punishment shall be from two to eight years.

(6) Anyone who performs sexual intercourse or acts of sexual gratification with a person of the same sex under who is under the age of 14 and who does not understand the nature or meaning of the act shall be punished by imprisonment from two to six years.

(7) When the criminal act under Paragraphs 1 – 6 constitutes a particularly grave case, the punishment shall be imprisonment from five to twenty years.

Article 158

(Amended, SG No. 28/1982, repealed, SG No. 74/2015).

Article 158a

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

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

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

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

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

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

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

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

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

Article 159

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

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

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

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

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

1. a person who has not reached 18 years of age (or anyone who looks like such a person) has been used for the production of the pornographic material;

2. a person who does not understand the nature or meaning of the act has been used for the creation of the pornographic material;

3. the act has been committed by two or more persons;

4. the act has been committed repeatedly.

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

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

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

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

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

Question 8.2.

No answer to this question / Pas de réponse à cette question

Question 8.3.

No answer to this question / Pas de réponse à cette question

CROATIA / CROATIE

State replies / Réponses de l'Etat

Question 8.1.a.

The Criminal Code prescribes using a child for pornography as a separate criminal offence in the Article 163. Paragraph 6 of the offence concerned defines child pornography as any material that visually or otherwise depicts a real child or a realistic image of a non-existent child or a person appearing to be a child, involved or engaged in real or simulated sexually explicit conduct, or any depiction of a child's sexual organs for sexual purposes. Furthermore, the abovementioned paragraph explicitly stipulates that any material that is artistic, medical or scientific in character shall not be deemed pornography within the meaning of Article 163 of the Criminal Code. In the context of violations covered by the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (hereinafter "Convention"), we are pointing out that the Article 20 of the Convention is transposed into the national criminal legislation through Article 163 of the Criminal Code and as such incriminates overall exploitation of children for pornography, including the one done through information and communication technologies.

Question 8.1.b. and c.

With regards to the definition of child pornography from Article 163 para 6 of the Criminal Code that explicitly defines material considered as child pornography (cited in the answer 8.1.a), self-generated images of a child of sexual nature (e.g. parts of body that do not include sexual organs, etc.) and non-image content (e.g. sound, text) of sexual nature are not punishable according to the Croatian criminal legislation.

Question 8.2.a.

The provision of Article 163 para 5 of the Criminal Code prescribes that a child shall not be punished for producing and possessing pornographic material depicting him and another child, where this material is produced and possessed by them with their consent and solely for their own private use. An expression "shall not be punished" presents a reason for excluding culpability because the act is still unlawful. It means that, in procedural terms, the act the defendant is charged with "is not a criminal offence according to law so the court shall render a judgment of acquittal according to Article 453 point 1 of the Criminal Procedure Code.

Question 8.2.b.

Self-generated images of a child of sexual nature (e.g. music, parts of bodies that do not include sexual organs, etc.) are not punishable according to the Croatian criminal legislation which explicitly defines child pornography and all modalities of its perpetration according to the provision of Article 163 para 6 of the Criminal Code cited in the answer 8.1. a).

Question 8.3.a.

A provision of the Criminal Code, Article 163 prescribes that whoever films child pornography or produces, offers, makes available, distributes, transmits, imports, exports, procures for himself or herself or for another person, sells, gives, presents or possesses child pornography or knowingly obtains access, through information and communication technologies, to child pornography shall be punished by imprisonment from one to eight years. The child's consent that his or her image or video be shared through information and communication technologies is irrelevant to the existence of perpetrator's criminal liability. A child (pursuant to the provision of the Criminal Code Article 87 para 7, a child shall mean a person who has not attained the age of eighteen years) cannot give consent for his or her image and/or video record to be shared through information and communication technologies. A perpetrator

who shares through information and communication technologies self-generated images and/or videos of a child or a video in which multiple children appear shall, pursuant to a provision of Article 52 of the Criminal Code, answer for a concurrence of offences. This means that the court shall for each criminal offence committed against a concrete specified child determine a punishment, and then impose an aggregate punishment, given that the provision of Article 52 para 2 of the Criminal Code expressly prescribes that Criminal offences which represent an attack on sexual freedom of a person cannot be legally denoted as continuing. If the perpetrator of a criminal offence is a child, the proceedings shall be conducted in accordance with the Juvenile Courts Act. An exception to the aforesaid is a situation where children independently, consensually and for personal use produce self-generated images or videos of explicit sexual content. Namely, the provision of Criminal Code Article 163 para 5 prescribes that a child shall not be punished for producing and possessing pornographic material depicting him or her alone or him or her and another child, where this material is produced and possessed by them with their consent and solely for their own private use.

Question 8.3.b.

Self-generated images of a child containing sexual character (e.g. music, body parts not including sexual organs etc.), pursuant to the quoted provision of Criminal Code Article 163 para 6, are not punishable.

CYPRUS / CHYPRE

State replies / Réponses de l'Etat

Question 8.1.a.

YES

Question 8.1.b.

YES

Question 8.1.c.

NO

Question 8.2.a.

YES

Question 8.2.b.

YES

Question 8.3.a.

YES

Question 8.3.b.

YES

Comments sent by / Commentaires envoyés par the Commissioner for children's rights

Question 8.1.c.

National law does not contain any reference to 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).

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

State replies / Réponses de l'Etat

Question 8.1.a.

The Criminal Code does not contain explicit reference “self-generated sexually explicit images and/or videos” in relation to offences covered by Art. 18 – 23 of the Lanzarote Convention. Nevertheless, this term is covered by the term “child pornography” which is defined as “photographic, film, computer, electronic or other pornographic works, displaying or otherwise using a child or a person that appears to be a child” [Section 192(1) of the Criminal Code]. In regard to social harmfulness of such behaviour, the mere possession of sexually explicit images and videos in any form is punishable. It is not required that the offender has materials containing child pornography directly with him/her, it is sufficient when he/she has access to it. The child, which produces his/her self-generated sexually explicit images and/or videos (even sexual content) is not criminally liable. The relevant offences covered by Article 18-23 of the Lanzarote Convention in Section 187, 192-193b and 202 of the Criminal Code.

Section 187 Sexual Abuse

- (1) Whoever performs a sexual intercourse with a child under the age of fifteen, or whoever otherwise sexually abuses a child, shall be sentenced to imprisonment for one to eight years.
- (2) An offender shall be sentenced to imprisonment for two to ten years, if he/she commits the act referred to in Sub-section (1) on a child under fifteen years of age entrusted to his/her supervision, while abusing their addiction or the offender’s position and, their credibility or influence derived therefrom.
- (3) An offender shall be sentenced to imprisonment for five to twelve years, if he/she causes grievous bodily harm by the act referred to in Sub-section (1).
- (4) An offender shall be sentenced to imprisonment for ten to eighteen years, if he/she causes death by the act referred to in Sub-section (1).
- (5) Preparation is criminal.

Section 192 Production and other Disposal with Child Pornography

- (1) Whoever handles photographic, film, computer, electronic or other pornographic works, displaying or otherwise using a child, shall be sentenced to imprisonment for up to two years.
- (2) The same sentence shall be imposed to anyone, who using information or communication technologies get the access to child pornography.
- (3) Whoever produces, imports, exports, transports, offers, makes publicly available, provides, puts into circulation, sells or otherwise procures photographic, film, computer, electronic or other pornographic works that display or otherwise use a child or a person, who appears to be a child or whoever profits from such pornographic works, shall be sentenced to imprisonment for six months to three years, to prohibition of activity or to confiscation of a thing.
- (4) An offender shall be sentenced to imprisonment for two to six years or to confiscation of property, if he/she commits the act referred to in Sub-section (3)
 - a) as a member of an organised group,
 - b) by press, film, radio, television, publicly accessible computer network, or in other similarly effective way, or
 - c) with the intention to gain substantial profit for him-/herself or for another.
- (5) An offender shall be sentenced to imprisonment for three to eight years or to confiscation of property, if he/she commits the act referred to in Sub-section (3)
 - a) as a member of an organised group operating in more states, or
 - b) with the intention to gain extensive profit for him-/herself or for another.

Section 193 Abuse of a Child for Production of Pornography

- (1) Whoever persuades, arranges, hires, allures, entices or exploits a child for production of pornographic works and profits the child's participation in such pornographic works, shall be sentenced to imprisonment for one year to five years.

(2) An offender shall be sentenced to imprisonment for two to six years, if he/she commits the act referred to in Sub-section (1)

a) as a member of an organised group, or

b) with the intention to gain substantial profit for him-/herself or for another.

(3) An offender shall be sentenced to imprisonment for two three to eight years, if he/she commits the act referred to in Sub-section (1)

a) as a member of an organised group operating in several states, or

b) with the intention to gain extensive profit for him-/herself or for another.

Section 193a Participation in Pornographic Performance

Whoever participates in a pornographic or any other similar performance in which a child performs shall be sentenced to imprisonment for up to two years.

Section 193b Establishment of Unauthorised Contacts with a Child

Whoever proposes a meeting to a child under fifteen years of age with the intention to commit a criminal offence referred to in Section 187 (1), Section 192, 193, Section 202 (2) or any other sexually motivated criminal offence shall be sentenced to imprisonment for up to two years.

Question 8.1.b.

See the answer to question 8.1.a

Question 8.1.c.

See the answer to question 8.1.a

Question 8.2.

The offender commits an offence even when there is just one child. The involvement of more than one child can be evaluated as an aggravating circumstance. Such behaviour could also be assessed as intention to gain substantial profit. In that case the offender can be sentenced to imprisonment for two to six years.

Question 8.3.a.

This can be seen as offences under the Sections 192-193a of the Criminal Code in connection with Section 6 of the Act on Juvenile Justice which states: “...The Criminal Code shall apply to the assessment of the offences committed by juveniles, except this act states otherwise.” (the full text of the Sections 192-193a of the Criminal Code see in answer to question 8.1.a).

Question 8.3.b.

This can be seen as offences under the Sections 192-193a of the Criminal Code in connection with Section 6 of the Act on Juvenile Justice which states: “...The Criminal Code shall apply to the assessment of the offences committed by juveniles, except this act states otherwise.” (the full text of the Sections 192-193a of the Criminal Code see in answer to question 8.1.a).

DENMARK / DANEMARK

State replies / Réponses de l’Etat

Question 8.1.

The intentional conducts referred to in Articles 18-23 of the Lanzarote Convention are criminal offences in Denmark.

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

consent and solely for their own private use. Thus, the possession for personal use of child pornography involving a child over the age of consent (15 years of age), who has consented to such possession, is not criminalised.

Question 8.2.

Please see answer to question 8.1.

Question 8.3.

Please see answer to question 8.1.

ESTONIA / ESTONIE

State replies / Réponses de l'Etat

Question 8.1.a.

No specific reference.

Question 8.1.b.

No specific reference.

Although there is no specific reference to self-generated sexually explicit images and/or videos and to self-generated sexual content, in the context of offences covered by the Lanzarote Convention (Art. 18-23), it all depends still on the factual circumstances of a case. For example, if the child has been groomed (PC § 178¹) to produce/self-generate such images/videos/other content, then it is not relevant, that the child has produced/generated these herself/himself.

Also, if the child is under 10 years of age, he/she is considered incapable to comprehend (PC § 147) the meaning/consequences etc. of the sexual activities and therefore the child cannot consent to any these activities; also it is irrelevant whether or not a person under 10 years of age self-generated something by their own initiative, which all in all means that any person older than 14 years of age cannot engage into any kind of sexual activities with a person under 10 years of age.

In addition, it is punishable to offer a person of less than eighteen years of age money or any other benefits to commit any act of sexual nature (PC § 145¹). In this case it also does not matter who initiated these acts and self-generated images/videos/other content can be considered as an act of sexual nature in that context.

Further, if any type of force, violence, deceit, threatening, coercion etc. appears or if there are elements of human trafficking, then once again, it is irrelevant whether or not the child has generated any images/videos/other content of a sexual nature herself/himself.

Also, it is punishable to sexually entice/lure children in any manner (PC § 179).

In a nutshell, if we have such a case where a child has apparently made any images/videos/other content of a sexual nature herself/himself on their own initiative, we look further and investigate it very thoroughly in order to understand all the relevant details.

xx

Penal Code of Estonia⁸:

§ 133. Trafficking in human beings

- (1) Placing a person in a situation where he or she is forced to marry, work under unusual conditions, engage in prostitution, beg, commit a criminal offence or perform other

⁸ <https://www.riigiteataja.ee/en/eli/524072017009/consolide>

disagreeable duties, and keeping a person in such situation, if such act is performed through deprivation of liberty, violence, deceit, threatening to cause damage, by taking advantage of dependence on another person, helpless or vulnerable situation of the person,

(2) is punishable by one to seven years' imprisonment.

[RT I, 26.06.2017, 69 - entry into force 06.07.2017]

(2) The same act if:

- 1) committed against two or more persons;
- 2) committed against a person of less than eighteen years of age;
- 3) committed against a person in a helpless situation;
- 4) committed in a torturous or cruel manner;
- 5) serious health damage is caused thereby;
- 6) danger to life is caused thereby;
- 7) committed by a group;

[RT I, 12.07.2014, 1 - entry into force 01.01.2015]

8) committed by taking advantage of official position,

9) serious consequences are caused thereby;

10) committed by a person who has previously committed a criminal offence provided for in this section or §§ 133¹, 133², 133³ or 175;

is punishable by three to fifteen years' imprisonment.

[RT I, 13.12.2013, 5 - entry into force 23.12.2013]

(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

[RT I, 12.07.2014, 1 - entry into force 01.01.2015]

(4) For the criminal offence provided for in this section, the court may impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83² of this Code.

(5) For the purposes of this section, vulnerable situation is a situation where a person lacks an actual or acceptable opportunity not to commit any of the acts specified in subsection (1) of this section.

[RT I, 04.04.2012, 1 - entry into force 14.04.2012]

§ 133¹. Support to human trafficking

(1) Transportation, delivery, escorting, acceptance, concealment or accommodation without prior authorisation of a person placed in a situation specified in subsection 133 (1) of this Code, buying sex from him or her or aiding, without prior authorisation, his or her forced acts in any other way, is punishable by up to five years' imprisonment.

[RT I, 26.06.2017, 69 - entry into force 06.07.2017]

(2) The same act if:

- 1) committed against two or more persons;
- 2) committed against a person of less than eighteen years of age;
- 3) committed against a person in a helpless situation;
- 4) committed by taking advantage of official position,

is punishable by two to ten years' imprisonment.

(3) An act provided for in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

[RT I, 12.07.2014, 1 - entry into force 01.01.2015]

(4) For the criminal offence provided for in this section, the court may impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83² of this Code.

[RT I, 04.04.2012, 1 - entry into force 14.04.2012]

§ 141. Rape

(1) Sexual intercourse or commission of another act of sexual nature with a person against his or her will by using force or taking advantage of a situation in which the person is not capable of initiating resistance or comprehending the situation is punishable by one to five years' imprisonment.

[RT I, 13.12.2013, 5 - entry into force 23.12.2013]

(2) The same act:

- 1) if committed against a person of less than eighteen years of age;
- 2) if committed by a group;

[RT I, 12.07.2014, 1 - entry into force 01.01.2015]

3) serious damage is thereby caused to the health of the victim;

4) it causes the death of the victim;

5) it leads the victim to suicide or a suicide attempt; or

6) it was committed by a person who has previously committed a criminal offence provided in this Division, is punishable by six to fifteen years' imprisonment.

[RT I 2006, 31, 233 - entry into force 16.07.2006]

[RT I, 25.09.2015, 6 - entry into force 23.09.2015 – To declare the sanction of subsection 141 (2) of the Penal Code to be in conflict with the Constitution and repealed to the extent that it prescribes 6 years' imprisonment as minimum term of punishment for commission of an act of sexual nature without using force with a child younger than ten years of age.

(3) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

[RT I, 13.12.2013, 5 - entry into force 23.12.2013]

(4) For criminal offence provided for in clause (2) 1) of this section, the court may impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83² of this Code.

[RT I, 31.12.2016, 2 - entry into force 10.01.2017]

§ 143. Compelling person to engage in sexual intercourse or other act of sexual nature

[RT I, 13.12.2013, 5 - entry into force 23.12.2013]

(1) Sexual intercourse or commission of another act of sexual nature with a person against his or her will by taking advantage of the dependency of the victim on the offender but without using force or outside a situation where the person was not capable of initiating resistance or comprehending the situation as provided for in § 141 of this Code, is punishable by up to three years' imprisonment.

(2) The same act, if committed by a person who has previously committed a criminal offence provided for in this Division, is punishable by up to five years' imprisonment.

(3) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

[RT I, 13.12.2013, 5 - entry into force 23.12.2013]

§ 143². Sexual intercourse or other act of sexual nature using influence

(1) Engagement in sexual intercourse or commission of another act of sexual nature by an adult person with a person of less than eighteen years of age by taking advantage of the dependency of the victim on the offender or with abuse of influence or confidence but without using force or outside a situation where the person was not capable of initiating resistance or comprehending the situation as provided for in § 141 of this Code, is punishable by two to eight years' imprisonment.

(2) The same act, if committed by a person who has previously committed a criminal offence provided for in this Division, is punishable by three to eight years' imprisonment.

(3) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

[RT I, 13.12.2013, 5 - entry into force 23.12.2013]

(3) For the criminal offence provided for in this section, the court may impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83² of this Code.

[RT I, 31.12.2016, 2 - entry into force 10.01.2017]

§ 144. Sexual intercourse with descendant

[RT I, 13.12.2013, 5 - entry into force 23.12.2013]

(1) Sexual intercourse or commission of another act of sexual nature by a parent, person holding parental rights or grandparent with a child or grandchild is punishable by two to eight years' imprisonment.

[RT I, 13.12.2013, 5 - entry into force 23.12.2013]

(2) The same act, if committed by a person who has previously committed a criminal offence provided for in this Division, is punishable by three to eight years' imprisonment.

[RT I, 13.12.2013, 5 - entry into force 23.12.2013]

§ 145. Sexual intercourse or other act of sexual nature with child

[RT I, 13.12.2013, 5 - entry into force 23.12.2013]

(1) Engagement in sexual intercourse or commission of another act of sexual nature by an adult person with a person of less than fourteen years of age is punishable by up to five years' imprisonment.

(2) The same act, if committed by a person who has previously committed a criminal offence provided for in this Division, is punishable by two to eight years' imprisonment.

(3) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

[RT I, 13.12.2013, 5 - entry into force 23.12.2013]

(4) For the criminal offence provided for in this section, the court may impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83² of this Code.

[RT I, 31.12.2016, 2 - entry into force 10.01.2017]

§ 145¹. Buying sex from minors

(1) Engaging in sexual intercourse or committing another act of sexual nature with a person of less than eighteen years of age for monetary payment or any other benefit is punishable by up to three years' imprisonment.

(2) An act specified in subsection (1) of this section, if committed against a person of less than fourteen years of age, is punishable by up to five years' imprisonment.

(3) The act specified in subsections (1) and (2) of this section, if it was committed by a person who has previously committed a criminal offence provided for in this Division, is punishable by two to eight years' imprisonment.

(4) An act specified in subsection (1) or (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

[RT I, 13.12.2013, 5 - entry into force 23.12.2013]

(5) For criminal offence provided for in subsections (2) and (3) of this section, the court may impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83² of this Code.

[RT I, 31.12.2016, 2 - entry into force 10.01.2017]

§ 147. Inability of person of less than ten years to comprehend

Within the meaning of the offences provided for in this Division, a person is deemed to be incapable to comprehend if he or she is less than ten years of age.

§ 175. Human trafficking in order to take advantage of minors

(1) Influencing of a person of less than eighteen years of age in order to cause him or her to commence or continue commission of a criminal offence, begging, engagement in prostitution or working under unusual conditions or to marry against his or her will or to appear as a model or actor in a pornographic or erotic performance or work, if it does not contain the necessary elements of an offence provided for in § 133 of this Code, and aiding a person of less than eighteen years of age in another manner in the activities specified in this section, is punishable by two to ten years' imprisonment.

[RT I, 26.06.2017, 69 - entry into force 06.07.2017]

(11) The same act if committed by a person who has previously committed a criminal offence provided for in this section or §§ 133-1333, § 1751 or §§ 178-179, is punishable by three to ten years' imprisonment.

(2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

(3) For the criminal offence provided for in this section, the court may impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83² of this Code.

[RT I, 13.12.2013, 5 - entry into force 23.12.2013]

§ 175¹. Requesting access to child pornography and watching thereof

(1) Knowingly requesting access to child pornography or knowingly watching a pornographic performance involving a person younger than eighteen years of age or of a pornographic or erotic performance involving a person younger than fourteen years of age is punishable by a pecuniary punishment or up to two years' imprisonment.

[RT I, 23.12.2014, 14 - entry into force 01.01.2015]

(2) The same act, if committed by a person who has previously committed a criminal offence provided for in this section or §§ 175 or 178-179, is punishable by up to three years' imprisonment.

[RT I, 23.12.2014, 14 - entry into force 01.01.2015]

(3) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

[RT I, 13.12.2013, 5 - entry into force 23.12.2013]

§ 178. Manufacture of works involving child pornography or making child pornography available

(1) Manufacture, acquisition or storing, handing over, displaying or making available to another person in any other manner of pictures, writings or other works or reproductions of works depicting a person of less than eighteen years of age in a pornographic situation, or a person of less than fourteen years of age in a pornographic or erotic situation, is punishable by a pecuniary punishment or up to three years' imprisonment.

(1¹) The same act if committed by a person who has previously committed a criminal offence provided for in this section or §§ 175, 175¹, 178¹ or 179 is punishable by one to three years' imprisonment.

(2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

[RT I, 13.12.2013, 5 - entry into force 23.12.2013]

(3) For the criminal offence provided for in this section, the court may impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83² of this Code.

[RT I, 31.12.2016, 2 - entry into force 10.01.2017]

§ 178¹. Agreement of sexual purpose for meeting with child

(1) Making a proposal for meeting a person of less than eighteen years of age who was not capable of comprehending the situation, or a person of less than fourteen years of age, or concluding an agreement to meet him or her, and performance of an act preparing the meeting, if the aim of the meeting is to commit an offence of sexual nature provided for in §§ 133, 133¹, 141-145¹, 175, 175¹, 178 or 179 of this Code with respect to the specified person, is punishable by a pecuniary punishment or up to three years' imprisonment.

[RT I, 13.12.2013, 5 - entry into force 23.12.2013]

(1¹) The same act if committed by a person who has previously committed a criminal offence provided for in this section or §§ 175, 175¹, 178 or 179 is punishable by one to three years' imprisonment.

[RT I, 13.12.2013, 5 - entry into force 23.12.2013]

(2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

[RT I 2010, 10, 44 - entry into force 15.03.2010]

§ 179. Sexual enticement of children

(1) Handing over, displaying or making otherwise pornographic works or reproductions thereof knowingly available to a person of less than fourteen years of age, or showing sexual abuse to such person or engaging in sexual intercourse in the presence of such person or knowingly sexually enticing such person in any other manner is punishable by a pecuniary punishment or up to three years' imprisonment.

[RT I, 13.12.2013, 5 - entry into force 23.12.2013]

(11) The same act if committed by a person who has previously committed a criminal offence provided for in this section or §§ 175, 175¹, 178 or 178¹ is punishable by one to three years' imprisonment.

[RT I, 13.12.2013, 5 - entry into force 23.12.2013]

(2) The same act, if committed by a legal person, is punishable by a pecuniary punishment.

Question 8.1.c.

Please see the articles of the Penal Code under previous point – in our national law, the sexual/pornographic materials are not limited to visual materials (images, videos etc.), but also text, sound and any other kind. We do not have a closed/exhaustive list (e.g. in PC § 178).

Question 8.2.

No specific reference, but also no substantive difference. Please see also explanations under 8.1 (b).

Question 8.3.

In Estonia, we have web-constables (police officers working in the social media platforms, being present there with their own real name/face/identity), who help both children and adults with all sorts of problems and give also advise online/in real time. Web-constables are very popular and well known among children and young people, who are not afraid to turn to them with their questions and concerns. Web-constables often notice themselves or receive information about inappropriate (violent, sexual etc.) images/videos/other materials online and can react: ask the ISPs/platforms to take such materials down, or in case of self-generated materials, web-constables can explain (what could be the consequences of posting/sharing/distributing self-generated materials in the internet) and to advise children to remove the materials. Web-constables also advise parents how to educate their children on cyber hygiene and security and how to keep an eye on the web-activities of their children. Police has close cooperation with ISPs encouraging them to take more responsibility and to act proactively to prevent making available/posting/distribution etc. of any kind of sexual materials depicting children.

In general, more children are aware of risks and danger in internet and about the consequences of uploading indecent images or videos of themselves to the internet.

FINLAND / FINLANDE

State replies / Réponses de l'Etat

Question 8.1.a.

No.

Question 8.1.b.

No.

Question 8.1.c.

No.

Question 8.2.a.

No.

Question 8.2.b.

No.

Question 8.3.

Not applicable (see replies to Questions 8.1. to 8.2.).

Comments sent by / Commentaires envoyés par Save the Children Finland and / et Central Union for Child Welfare

Question 8.

Save the Children Finland and Central Union for Child Welfare recommends that the state of Finland makes proceedings to make necessary legislative changes to effectively tackle sexual abuse and exploitation against children online, especially website connected to CSAM and everyday depictions of children used for sexual purposes.

FRANCE

State replies / Réponses de l'Etat

Question 8.1.a.

La législation française ne distingue pas les images et/ou les vidéos sexuellement explicites autoproduites de celles qui sont produites par un tiers. Toutes les infractions définies et réprimées par la législation française et qui correspondent aux infractions couvertes par la Convention de Lanzarote aux articles 18 à 23 sont incriminées sans faire de distinction entre les images autoproduites et celles produites par un tiers.

Question 8.1.b.

La législation française ne distingue pas les contenus à caractère sexuel autoproduits des autres contenus non « autoproduits » dans le contexte des infractions couvertes par la Convention de Lanzarote, ce que la Convention de Lanzarote, au demeurant, ne prévoit pas.

Question 8.1.c.

Les contenus à caractère sexuel autoproduits par des enfants et non illustrés par des images notamment les contenus sonores ou les textes ne font pas l'objet de dispositions particulières dans la législation française selon qu'ils sont autoproduits ou non.

Le terme « pédopornographie » n'est pas défini par la Convention de Lanzarote, mais la directive 2011/93/UE du Parlement européen et du Conseil du 13 décembre 2011 relative à la lutte contre les abus sexuels et l'exploitation sexuelle des enfants, ainsi que la pédopornographie et remplaçant la décision-cadre 2004/68/JAI du Conseil donne une définition en son article 2, paragraphe c relatif aux définitions qui mentionne : « [Aux fins de la présente directive, on entend par] .../... : c) «*pédopornographie*»: i) *tout matériel représentant de manière visuelle un enfant se livrant à un comportement sexuellement explicite, réel ou simulé; »*

Les contenus sonores et les textes ne semblent pas relever de la pédopornographie qui vise exclusivement des contenus visuels.

Toutefois, la législation française incrimine les textes constituant des messages à destination d'un public non déterminé, d'un réseau de communications électroniques permettant à un majeur d'entrer en contact avec un mineur : L'article 227-22, premier alinéa du code pénal dispose : « *Le fait de favoriser ou de tenter de favoriser la corruption d'un mineur est puni de cinq ans d'emprisonnement et de 75 000 euros d'amende. Ces peines sont portées à sept ans d'emprisonnement et 100 000 euros d'amende lorsque le mineur a été mis en contact avec l'auteur des faits grâce à l'utilisation, pour la diffusion de messages à destination d'un public non déterminé, d'un réseau de communications électroniques ou que les faits sont commis dans les établissements d'enseignement ou d'éducation ou dans les locaux de l'administration, ainsi que, lors des entrées ou sorties des élèves ou du public ou dans un temps très voisin de celles-ci, aux abords de ces établissements ou locaux.*

En outre, la diffusion de texte ou de messages sonores « parlés » serait éventuellement susceptible de recevoir une qualification pénale :

Si des contenus à caractère sexuel autoproduits par des enfants et non illustrés par des images constituent une provocation à la commission de certaines infractions à caractère sexuel à l'encontre d'un mineur ou une apologie de ces faits, ils pourraient relever de la loi du 29 juillet 1881 sur la liberté de la presse qui dispose en son article 23 au deux premiers alinéas : « *Seront punis de cinq ans d'emprisonnement et de 45 000 euros d'amende ceux qui, par l'un des moyens énoncés à l'article précédent, auront directement provoqué, dans le cas où cette provocation n'aurait pas été suivie d'effet, à commettre l'une des infractions suivantes :*

1° Les atteintes volontaires à la vie, les atteintes volontaires à l'intégrité de la personne et les agressions sexuelles, définies par le livre II du code pénal ;

Et en son cinquième alinéa : « Seront punis de la même peine ceux qui, par l'un des moyens énoncés en l'article 23, auront fait l'apologie des crimes visés au premier alinéa, des crimes de guerre, des crimes contre l'humanité ou des crimes et délits de collaboration avec l'ennemi.

Par ailleurs si le message à caractère sexuel autoproduit par des enfants et non illustré par des images a pour objet d'obtenir un acte de nature sexuelle en usant de pressions graves (l'envoi de SMS est souvent cité par les victimes), ces faits seraient susceptibles de relever du harcèlement sexuel, en particulier du II de l'article 222-33 du code pénal qui dispose : « *II. - Est assimilé au harcèlement sexuel le fait, même non répété, d'user de toute forme de pression grave dans le but réel ou apparent d'obtenir un acte de nature sexuelle, que celui-ci soit recherché au profit de l'auteur des faits ou au profit d'un tiers.* »

Question 8.2.a.

Le droit interne ne traite pas de manière distincte de la participation de plusieurs enfants notamment les poses « consenties ») générant des images ou des vidéos sexuellement explicites autoproduites : la législation française incrimine le fait « *en vue de sa diffusion d'enregistrer ou de transmettre l'image ou la représentation d'un mineur* » que ces images soient produites avec ou sans le « consentement » d'un mineur. La définition de l'infraction ne distingue pas selon que l'auteur de ces faits est mineur ou majeur.

L'article 227-23 du code pénal dispose : « *Le fait, en vue de sa diffusion, de fixer, d'enregistrer ou de transmettre l'image ou la représentation d'un mineur lorsque cette image ou cette représentation présente un caractère pornographique est puni de cinq ans d'emprisonnement et de 75 000 euros d'amende. Lorsque l'image ou la représentation concerne un mineur de quinze ans, ces faits sont punis même s'ils n'ont pas été commis en vue de la diffusion de cette image ou représentation.*

Le fait d'offrir, de rendre disponible ou de diffuser une telle image ou représentation, par quelque moyen que ce soit, de l'importer ou de l'exporter, de la faire importer ou de la faire exporter, est puni des mêmes peines.

Les peines sont portées à sept ans d'emprisonnement et à 100 000 euros d'amende lorsqu'il a été utilisé, pour la diffusion de l'image ou de la représentation du mineur à destination d'un public non déterminé, un réseau de communications électroniques.

Le fait de consulter habituellement ou en contrepartie d'un paiement un service de communication au public en ligne mettant à disposition une telle image ou représentation, d'acquérir ou de détenir une telle image ou représentation par quelque moyen que ce soit est puni de deux ans d'emprisonnement et 30 000 euros d'amende.

Les infractions prévues au présent article sont punies de dix ans d'emprisonnement et de 500 000 euros d'amende lorsqu'elles sont commises en bande organisée.

La tentative des délits prévus au présent article est punie des mêmes peines.

Les dispositions du présent article sont également applicables aux images pornographiques d'une personne dont l'aspect physique est celui d'un mineur, sauf s'il est établi que cette personne était âgée de dix-huit ans au jour de la fixation ou de l'enregistrement de son image. »

Question 8.2.b.

En dehors des cas déjà cités (provocation ou apologie des agressions sexuelles, définies par le livre II du code pénal et harcèlement sexuel) la législation française ne fait une distinction qu'en ce qui concerne les messages à caractère sexuel (sans image ni vidéo) et seulement en ce qui concerne l'aggravation des peines pour la corruption de mineur (cf. article 227-22 du code pénal déjà cité).

Question 8.3.a.

Non. Il n'existe pas de disposition particulière concernant des images ou des vidéos sexuellement explicites autoproduites par ces enfants qui acceptent que leurs images et/ou vidéos soient produites et partagées au moyen des TIC. Ces situations sont incriminées comme elles le sont si ces images ou vidéos sont produites par des adultes ou avec la participation d'adultes et de mineurs.

Question 8.3.b.

Non, il n'existe pas de disposition particulière. La définition des infractions ne fait pas de différence en fonction de l'âge de la personne qui autoproduit ou partage ces images au moyen des TIC.

Comments sent by / Commentaires envoyés par Stop aux violences sexuelles

Question 8.1.a.

Non

Question 8.1.b.

Non

Question 8.1.c.

Non

Question 8.2.a.

Non

Question 8.2.b.

Non

Question 8.3.a.

Non

Question 8.3.b.

Non

GEORGIA / GEORGIE

State replies / Réponses de l'Etat

Question 8.1.

According to Article 255 of the Criminal Code of Georgia purchase, storage, attendance on the demonstration, proposal, proliferation, transferring, advertising, making accessible of or using of a child pornographic work is criminalized and sanctioned by imprisonment up to three years. The production or sale of a child pornographic work is also punishable by imprisonment for five years (as a maximum sanction).

The present article also clarifies what should be considered as a child pornographic work and what does not fall within the scope of the present Article:

“A pornographic work containing images of minors shall mean a visual or audio-visual material produced by any method, also a staged performance which, by using various means, depicts the participation of minors or of characters with the appearance of a minor in the actual, simulated or computer-generated sexual scenes or displays genitalia of a minor for the gratification of a consumer's sexual needs. A work shall not be considered to be pornography if it has medical, scientific, educational or artistic value.”

Article 255¹ of Criminal Code of Georgia prohibits engaging of minor in illegal production of pornographic piece or other object, as well as in proliferation or advertising of such item or receiving benefit from such activities. Distributing, advertising of pornographic materials, making any commercial deals related to such materials or receiving any kind of benefit from this activity is also criminalized under Article 255¹ of CCG. Maximum sanction applied for these offences is also five years of imprisonment.

It should be noted that the above-mentioned crimes do not require any coercive means to be used against a minor for committing offences concerning child pornography. Therefore, the self-generated sexually explicit images and/or videos, sexual content and non-pictorial sexual contents fall under the definition of a pornographic work and committing any act determined under articles 255 and 255¹ of CCG by an adult or a minor from 14 years⁹ is criminally sanctioned.

Apart from it, the Government of Georgia respectfully clarifies that the CCG criminalizes the distribution and transmit of a child pornographic work to both adults and minors.

Apart from this, Article 255² of CCG imposes criminal liability for proposing meeting to underage person through any means of communication for any sexual purposes (purpose of commission of crime stipulated by Article 140 (Sexual Intercourse with a child under Sixteen) or Article 255, paragraph 3 CCG (Knowingly making or selling pornographic work containing images of minors)). Maximum sanction applied for these offences is three years of imprisonment.

Georgian legislation does not envisage any special circumstances to release a person from criminal liability for committing a crime under articles 255, 255¹ and 255².

Question 8.2.

The CCG does not foresee the involvement of more than one child in pornographic work as an aggravated circumstance, however, if a person illegally makes or sales a pornographic work or other items with regard to a minor (article 255) or engages minors in illegal production and sale of pornographic works or other similar items (article 255¹), he/she will be prosecuted for both episodes of crime and will be liable under the relevant provision.

Question 8.3.

There are no specificities related to the appearance of children on self-generated sexually explicit images and/or videos and/or sexual content when these children accept that their image and/or video are produced and shared through ICTs.

⁹ Under article 33 of CCG a person who has not attained the age of 14 at the time of the commission of an unlawful act provided for by the CCG shall be considered to act without guilt.

GERMANY / ALLEMAGNE

State replies / Réponses de l'Etat

Question 8.1.

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.

Question 8.2.

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.

Question 8.3.

The answer to Question 8.2 is included by reference.

GREECE / GRECE

State replies / Réponses de l'Etat

Articles of the Penal Code

337 par. 3&4 of the PC, **Insult of sexual dignity**

339 par. 4 of the PC, **Seduction of Children**

342 par. 3 of the PC, **Abuse of minors in lewdness**

348 of the PC, **Facilitation of the licentiousness of others**

348A of the PC, **Child Pornography** (Article 348A of the PC is replaced as follows:

“1. Every person who deliberately makes, distributes, publishes, exhibits, imports in the Territory or exports from the Territory, offers, sells or distributes in any other manner, buys, is supplied with, obtains or possesses child pornography material, or disseminates or offers information in connection with the commitment of the above acts, will be punished by imprisonment not exceeding one year and pecuniary penalty of ten thousand up to one hundred thousand Euros.

2. Every person who deliberately makes, offers, sells or distributes in any other manner, transmits, buys, is supplied with, or possesses child pornography material or disseminates information regarding the commitment of the above acts through a computer system or on the internet will be punished by a imprisonment of at least two years and pecuniary penalty of fifty thousand up to three hundred thousand Euros.

3. Child pornography material will be considered, in the sense of the previous paragraphs, the representation or the actual or visual depiction in an electronic or other means, of the body or part of the body of a child in a manner that expressly causes sexual arousal, and the actual or visual abusive act performed by or with a child.

4. The acts of the first and second paragraph will be punished by incarceration for a term not exceeding ten years and pecuniary penalty of fifty thousand up to one hundred thousand Euros: a) if committed by profession or habitually b) if the production of the child pornography material is connected with the exploitation of the need, mental or intellectual disease or physical dysfunction due to an organic disease of the minor or by exercising force or by threatening to exercise force on the minor or by using a child who is under ten years of age. If the act of case b) resulted into to causing severe physical damage of the sufferer, incarceration of at least ten years is imposed and pecuniary penalty of one hundred thousand up to five hundred thousand Euros, and if it resulted into causing death, life incarceration is imposed.”

348B of the PC, **Attract children for sexual purposes**

348C of the PC, **Pornographic representations of minors**

349 par. 2 of the PC, **Pimping**

351 par. 6 of the PPC, **Trafficking**

HUNGARY / HONGRIE

State replies / Réponses de l'Etat

Question 8.1.

Due to the proposal of NMHH, the Act C of 2003 on Electronic Communications is completed with Section 159/D. It came into force on 2nd June 2017.

Cooperation Between the Authority and Providers of Electronic Communications Services With a View to Blocking Access to Websites Containing Child Pornography¹⁰

Section 159/D¹¹

(1) Electronic communications service providers of access and providers of browsing and caching services shall be entitled to render electronic information containing images of child pornography contained in

¹⁰ Enacted by Section 10 of Act XLVI of 2017, effective as of 2 June 2017.

¹¹ Enacted by Section 10 of Act XLVI of 2017, effective as of 2 June 2017.

the list maintained by the International Criminal Police Organization (INTERPOL) inaccessible.

(2) At the request of electronic communications service providers of access and providers of browsing and caching services who joined the technical support system referred to in Subsection (5) of Section 159/C, the Authority shall render the electronic information contained in the list mentioned in Subsection (1) hereof inaccessible via the technical support system, by way of the methods and under conditions set out in an administrative agreement provided for in Subsection (5) of Section 159/C.

According to the explanatory provisions of Act C of 2012 on the Criminal Code (hereinafter: CC) provided regarding the criminal offence of child pornography (section 204):

“a) 'pornographic material' shall mean any video, movie, photograph or other visual recording that depict sexuality in a gravely indecent open manner, designed specifically to arouse sexual desire;
b) 'pornographic show' shall mean an act or performance that depicts sexuality in a gravely indecent open manner, designed specifically to arouse sexual desire.”

The video, movie and photograph do need further explanation. Taking into account the continuous technical developments, the “other visual recording” shall mean any kind of pictographic recording captured in any kind of manner. However, this shall not include capturing a child under 18 y.o.a. by drawing or painting, in this regard, recording shall mean such a technical method for capturing a person which is independent from perception, thus it is more like documentary.

There are two concurrent conditions to be met in order to declare a recording “pornographic”:

- the recording must be depict sexuality in a seriously indecent straightforward manner, and
- it shall be made in a manner that aims at arousing sexual desire.

Sexual freedom, and as part thereof, one’s sense of sexual decency is part of one’s human dignity. The quintessence of one’s sense of sexual decency is the need for protection, mainly protection from exposure and exploitation, which in practice should mean being covered/concealed from others. The owner of the protection deriving from one’s sense of sexual decency is the person who has the right to uphold or give up this, and as such, it is the gist of one’s sexual freedom and autonomy.

One’s sense of sexual decency can not only be violated by having others present when one uncovers their genitalia, but even when the action is objectively capable of resulting in such violation. This is one reason behind due to which the act of granting access is punishable in case of child pornography.

According to the Commentary of the CC, grave/serious indecent exposure shall not mean only the naked genitalia, but when it is shown in a provocative, ostentatious and revealing manner.

It becomes pornographic when it is done in manner that aims at arousing sexual desires.

Children must be protected from participating in such pornographic actions, due to their age-related incapability of effective protection of their own dignity. A more common interest is to not to have pornographic materials depicting children because such materials and contents provide market, and as such it generates supply and demand.

It does not matter whether the person depicted is real, or is alive, or even reached 18 y.o.a., or even that the person is under aged but wearing a makeup suggesting them to be of age. What matters is that the person at the time of making the recording was under the age of 18 years, thus the recording depicts a person under the age of 18 years in a pornographic manner.

The Hungarian CC does not differentiate between pornographic contents made by others or by oneself, and does not have any explicit verbis reference to “self-generated” sexual materials.

In Hungary, the simulated representation or realistic imaged of a non-existent child cannot be regarded as child pornography; the criminal offence of defamation might be possible taking into consideration all circumstances of a given case.

In Hungary, sexual non-pictorial sexual content cannot be regarded as child pornography; the criminal offence of defamation might be possible taking into consideration all circumstances of a given case.

Regarding further criminal legislation, see Questions 9-11.

Questions 8.2.-8.3.

The aspect that the under aged victims accept the making and sharing of pornographic materials depicting them, does not matter, thus does not interfere with establishing and legally classifying the criminal offence of child pornography.

It does not matter either, if at the time of making or sharing of pornographic materials the children depicted accepted this action, but later withdrawn or changed their statements on acceptance. The child actually making the material (e.g. pushing the button down on the camera) is liable for the action of producing such material under section 204 (1) b) of the CC, the child who made this material accessible for the public (actually shares the material) is liable for the action of forwarding or making available (to a certain person(s)) under 204 (1) b) of the CC or of making available to the general public under 204. (1) c) of the CC:

Any of the criminalised behaviours/acts regarding sexually explicit images/videos/contents count as one criminal offence if it is committed on one piece of recording depicting one child.

Any of the criminalised behaviours/acts regarding sexually explicit images/videos/contents count as one criminal offence if it is committed on one piece of recording depicting more the one child (several children on one photo/video). This is due to the fact that the CC uses the term '*person or persons*' regarding the certain criminalised behaviours/acts.

Any of the criminalised behaviours/acts regarding sexually explicit images/videos/contents, as a main rule, count as one criminal offence if it is committed on more than one piece of recording depicting one child. Any of the criminalised behaviours/acts regarding sexually explicit images/videos/contents, as a main rule, count as one criminal offence if it is committed on one piece of recording depicting more the one child (several children on one photo/video). However, in certain cases, as prescribed in section 6 (2) of the CC, acts of the same type motivated by a single objective and committed against the same victim in brief intervals form a 'continuously committed offence', and as thus count as one criminal offence. According to Section III. 6. of Opinion No. 56. of the Criminal Chamber of the Supreme Court on factors to be considered during imposition of punishment, continuous commission of crimes shall be considered as aggravating circumstance, and the more acts it involves the more aggravating effect it should have.

'Multiple offences' shall mean when one or more acts committed by the same person result in more than one crime, which are adjudicated in the same proceeding. Regarding child pornography this can only be established if the acts adjudicated in the same proceeding were committed at precisely determinable different times and locations, for example, if the perpetrator produces pornographic material depicting the same child at age 10 and then at age 13, or depicting different children at different times. Also, according to Section III. 6. of Opinion No. 56. of the Criminal Chamber of the Supreme Court on factors to be considered during imposition of punishment, if the acts cannot be considered as multiple offences, the act which was not established independently can be considered as aggravating circumstance.

Nevertheless, even if the perpetrator is under criminal proceedings for one count of child pornography, the CC provides specific rules among the sentencing principles as well. Punishment, with due consideration of its intended objective, shall be imposed within the framework provided for by this Act, in a manner consistent with the severity of the crime, the degree of culpability, the danger to society represented by the offender and with other aggravating and mitigating circumstances (section 80 of the CC). The number of children depicted on the pornographic materials shall always be considered to be an aggravating circumstance.

It can also be mentioned, that according to Section III. 11. of Opinion No. 56. of the Criminal Chamber of the Supreme Court on factors to be considered during imposition of punishment, it can be considered an aggravating circumstance, if the number of the relevant criminal offence, in this case child pornography, has increased.

ICELAND / ISLANDE

State replies / Réponses de l'Etat

Icelandic law does not criminalise self-generated sexually explicit material or content mentioned in questions 8.1 to 8.3 explicitly. However, it is considered that those acts are punishable under Articles 209, 210 and 210A of the Icelandic General Penal Code no. 19/1940 (Penal Code). There has been a criminal case where obtaining self-generated sexually explicit material and coercion by using that material has been found in breach of Articles 194 and 209 of the Penal Code and Article 99 parag. 3 of the Child Protection Act (see answer 11 for more details).

Moreover, in both 2014 and 2015 members of parliament put forward proposals to amend the Penal Code to especially include self-generated sexual material. However, those proposals did not pass through the parliament.

ITALY / ITALIE

State replies / Réponses de l'Etat

In the Italian criminal system at present there is no specific reference to self-generated sexually explicit images/contents/materials produced by children, neither are there specific provisions on the participation by more children in self-generated pedopornographic material, nor does legislation predetermine the extent of the validity of any consent given by the child who has produced self-generated sexually explicit or evocative images to sharing them through ICTs.

The matter of child pornography, as influenced by the indications contained in the Lanzarote Convention, is ruled by the provisions of the Criminal Code, articles 600-ter and 600-quater (for details see the answer to Question 20 of the General Overview Questionnaire and the answer to Q.9 below). Literally these provisions, as interpreted by the jurisprudence on the substance and by the consolidated case-law of the Supreme Court, do not expressly punish the production of self-generated child pornographic material by children and punish only cases in which such material is produced (or marketed, distributed, spread, transmitted, advertised, transferred, even electronically) "*using minors under the age of eighteen*".

The case law has pronounced itself very recently in this regard, with reference to the phenomenon of sexting, in particular in a case of sexually explicit material produced by a girl under eighteen, which she had then transmitted to other children who, in turn, have sent it to other children without her knowledge. In fact, the holders of the self-generated material who had sent it to others were acquitted of the charges based on art. 600 ter of the Criminal Code (production and dissemination of

pedopornographic material) since the Court declared that this provision punishes the transfer of pedopornographic material only when the material has been produced with third parties (adults or minors) using the minor, whereas in this case the material had been self-generated by the girl herself. In this sense, the notion of "pedopornographic material" to which the article refers to, is only the one produced by a person other than the minor being depicted, since the law makes a clear distinction between the user of the material and the minor depicted in the images [3rd Criminal Section of the Supreme Court ("Corte di Cassazione"), judgment of 21 March 2016, No. 11675]. Differently, the case of pedopornographic material which was self-produced and disseminated via ICTs with the participation of an adult or a minor who "uses" a child or more children can fall under the above-mentioned offenses.

Regarding the production of self-generated child pornographic content representing sexual acts among children, it should also be reminded that, in Italy, cases of sexual acts with children fall under different regulations based on the age groups, and that normally sexual consent requires at least the age of fourteen. The Italian law allows to have sexual intercourse with children who have reached the age of 14 if they are consenting to it and if they are not subject to a dominant position. In case of dominant positions (such as those of parents, guardians, teachers, caregivers, physicians, public officials or even partners) the child must be at least 16 years old for the consent to be valid, otherwise there is a criminal offence (art. 609quater of the Criminal Code: sexual acts with children). The age of consent to sexual acts reaches 18 years if the act involves the parent, even adoptive, or a guardian or a partner, and a child who is at least 16 years old, and there is an abuse of powers connected to his/her role. The age of consent validly granted to sexual acts goes down, on the other hand, to 13 years if both partners are underage, provided the age difference is less than 3 years. If the child is less than 10 years old, the offence is considered aggravated (art. 609-quater). Under the age of 14, there is "sexual intangibility" (with the above-mentioned exception of the child who has reached the age of 13): his/her consent is always considered invalid and therefore any sexual activity involving him/her is considered and punished as sexual violence. Therefore, the production of sexually explicit material with the involvement of a child (or more children) being 14 years old and committing sexual acts with other children, could possibly be considered as the above-mentioned criminal offense of **sexual acts with children**.

As regards the self-production and the transmission of child pornographic material by children, it should also be noted that the Italian Criminal Code punishes the "incitement to paedophilic practices and child pornography" (art. 414-bis of the Criminal Code), a crime that takes place whenever anyone (adult or underage), by any means and with any form of expression, publicly incites to commit, against children, one or more crimes of child prostitution, child pornography, possession of pornographic material (even if related to virtual pornography), sexual tourism, sexual violence, sexual acts with children and corruption of children. Those who publicly condones one or more of the above-mentioned crimes are also subject to the same sanction. That law also specifies that, with regard to such offences, it is not possible to invoke, as justification, artistic, literary, historical or social reasons or purposes, precisely to allow for the widest possible protection of children from behaviours that, disguised as artistic/cultural expressions, put them in danger of being sexually abused or exploited.

LATVIA / LETTONIE

State replies / Réponses de l'Etat

Question 8.1.

To reply to questions 8.1.a., 8.1.b., 8.1.c., we point out that, Latvian national law does not contain any reference to self-generated sexually explicit images, videos, self-generated sexual content or non-pictorial self-generated sexual content produced by children. Thus, the materials of child pornography can be produced by anyone and, if the age of criminal liability (14 years of age) has been reached, criminal liability shall apply

Part 2 of Section 166 of the Criminal Law stipulates, that person who commits visiting or demonstration of such pornographic performance or handling of such materials of pornographic nature which contain child pornography shall be held criminally liable.

The term child pornography is defined in a special law. According to Point 2 of Section 1 of the Law on Pornography Restrictions, child pornography is a pornographic performance where the child is involved, or material of a pornographic nature, in which a child is depicted or described. Child pornography is also regarded as any other performance or material which:

- a) demonstrates, depicts or describes a child engaged in sexual activities or in a sexual pose or in clothing of an obscene nature, or for sexual purposes depicts or describes a child totally or partially without clothing,
- b) completely or partially depicts a person's having the appearance of the child genitals or depicts or describes a person having the appearance of a child to be involved in sexual acts or sexual acts of gratification in unnatural way, sexual acts of gratification by masturbation or other sexual activities, as well as imitation of the specified activities, sexual acts of gratification in a violent manner, brutality in sexual activities (sadistic and masochistic activities), sexual acts of gratification with animals or necrophilia, or conduct mentioned or depicted in the form mentioned in this paragraph "a",
- c) has realistic images of a real non-existent child's genitals or a non-existent child involved in sexual acts or sexual acts of gratification in unnatural way, sexual acts of gratification by masturbation or other sexual activities, as well as imitation of the specified activities, sexual acts of gratification in a violent manner, brutality in sexual activities (sadistic and masochistic activities), sexual acts of gratification with animals or necrophilia, or conduct mentioned or depicted in the form mentioned in this paragraph "a".

According to Point 1 of Section 1 of the Law on Pornography Restrictions, material of a pornographic nature is composition, printed matter, image, computer program, film, video or sound recording, television program, or radio program, other material in any form or type, that does not have publicly educational or informative, scientific or artistic value and in which directly, specifically and openly naturalistically:

- a) genitals are completely or partially depicted;
- b) sexual acts or sexual acts of gratification in an unnatural way, sexual acts of gratification by masturbation or sexual acts are depicted or described, or other sexual activities, as well as imitation of the specified activities are depicted or described;
- c) sexual acts of gratification in a violent manner, brutality in sexual activities (sadistic and masochistic activities), sexual acts of gratification with animals or necrophilia are depicted or described.

In addition, Point 3 of Section 1 of the Law in Pornography Restriction establish, that handling of pornographic nature which contain child pornography is:

- a) purchasing (acquiring into ownership, possession or use),
- b) manufacture (creation, production, reproduction in any way with any technical resources),
- c) importation (physical movement in any way across the borders of Latvia from foreign countries),
- d) distribution (trade, the putting into service for a fee or without a fee, demonstration in a public place or ensuring of access in a different manner),
- e) dissemination in an electronic environment (the trade of material of a pornographic nature prepared in an electronic way, the transmission of the material itself or information prepared thereof, including downloading, communicating to the public, also uploading, utilizing electronic communication networks or automated data processing systems or making material accessible in a different manner in any information circulation phase),
- f) advertising (any form or any type of communication or event with an aim to promote the

- popularity of material of a pornographic nature or demand thereof, associated with economic activities performed with the purpose of acquiring profit),
- g) propagation, distributing information regarding these materials (forwarding, transmission or offer of information independent of the type of device for the transmission of information or the ensuring of accessibility to information in any other way); or,
 - h) storage.

Question 8.2.

To reply to questions 8.2.a., 8.2.b., we inform that Latvian national law does not tackle the involvement of more than one child (i.e. consensual posing) in generating the self-generated sexually explicit images, videos or self-generated sexual content. Thus, the materials of child pornography can be produced by anyone, therefore, children who have photographed themselves, as well as parents of children who have photographed their children, should be considered as producers of child pornography, if the age of criminal liability (14 years of age) has been reached.

Question 8.3.

To reply to questions 8.3.a., 8.3.b., we point out that Latvian national law does not have specificities related to the fact that more children appear on self-generated sexually explicit images, videos or self-generated sexual content, when these children accept that their image and video are produced and shared through ICTs. Thus, the materials of child pornography can be produced by anyone and, therefore, if one or more children have photographed, filmed themselves or self-generated sexual content and even have accepted that their image and/or video and self-generated sexual content are produced and shared through ICTs, these actions, if the age of criminal liability (14 years of age) has been reached should be considered as criminal offence according with the Latvian Criminal Law.

LIECHTENSTEIN

State replies / Réponses de l'Etat

Question 8.1.

§ 219(1) and (2) StGB (LGBI. 1988 No. 37) set out an absolute prohibition on circulating pornographic depictions of minors: Under paragraph 1, the offence consists in producing, procuring, or possessing pornographic depictions of a minor or in offering, procuring, passing on, presenting, or making accessible in any other manner a pornographic depiction of a minor to another person. Under paragraph 2, any person who produces, imports, transports, or exports a pornographic depiction of a minor for the purpose of dissemination or who commits an act referred to in paragraph 1 on a commercial basis is criminally liable. Similarly, under § 219(4) StGB, any person who by means of information or communications technologies knowingly accesses a pornographic depiction of minors is criminally liable. This means that already the viewing of certain internet content by knowingly accessing relevant internet sites is criminalised, even without additionally saving that content on data carriers.

The definition of pornographic depictions of minors set out in § 219(5) StGB makes no distinction between real pornography, the appearance of pornography, and virtual pornography, and the criterion of realism likewise does not have to be met, so that all real depictions or entirely artificial forms of depiction generated on a computer, such as photographs, slides, other images and films, comics, animated films, CD-ROMs, DVDs, computer games, and the like are covered by the offence of pornographic depiction of minors.

The criterion for distinguishing pornographic from non-pornographic images or depictions is set out in § 215a(3) StGB. Accordingly, persons are deemed to participate in a pornographic performance who perform a sexual act on themselves, on another person, or on an animal, where that act is reduced to the act itself, separated from other expressions of life, and serves to sexually arouse a spectator, or who have such an act performed on themselves, or in that manner display their genitalia or pubic region.

Criminalisation of the production or possession of non-pictorial self-generated sexual content as referred to in question 8.1.c is not covered by the Liechtenstein Criminal Code.

Question 8.2.

The Liechtenstein Criminal Code does not distinguish whether one or more children are involved in the production of child pornography material.

Question 8.3.

No, see the response to question 8.2.

LITHUANIA / LITUANIE

State replies / Réponses de l'Etat

Question 8.1.

The Law on Provision of Information to the Public of the Republic of Lithuania establishes the statutory obligation of the public information producers and (or) providers to ensure that minors are protected from public information which might have detrimental effect on their physical, mental or moral development, in particular public information that involves the dissemination of information of pornographic and/or violent nature and information encouraging addictions (Article 17(1)). It should be noted that the concept of a minor is enshrined in the applicable legislation of Lithuania (Article 2(3) of the Law on the Protection of Minors Against the Detrimental Effect of Public Information of the Republic of Lithuania, Article 2.5(1) of the Civil Code, etc.) and is identical to definition of a child provided in Article 3 of the Convention.

Article 2 (42) of The Law on Provision of Information to the Public of the Republic of Lithuania establishes **Information of pornographic nature** - information where an actual or simulated sexual intercourse, genitalia, defecation, masturbation or paraphilias (paedophilia, sadism, masochism, zoophilia, necrophilia, etc.) are shown explicitly and in detail, this being the main purpose of such information.

Question 8.2.

Article 28 of the CCP. Victim

1. The victim shall be a natural person to whom the criminal act has caused physical, property or non-pecuniary damage, or a family member or a close relative of a natural person deceased because of the criminal act, suffering physical, property or non-pecuniary damage due to the death of the person. A person is recognized as a victim by a decision of the pre-trial investigating officer, the prosecutor or the court.

Under Article 54 of the CC, this shall be taken into account each time when imposing a punishment and criminal liability shall be tightened appropriately.

“Article 54 of the CC. Basic Principles of Imposition of a Penalty

1. A court shall impose a penalty according to the sanction of an article of the Special Part of this Code providing for liability for a committed criminal act and in compliance with provisions of the General Part of this Code.

2. When imposing a penalty, a court shall take into consideration:

- 1) the degree of dangerousness of a committed criminal act;
- 2) the form and type of guilt;
- 3) the motives and objectives of the committed criminal act;
- 4) the stage of the criminal act;
- 5) the personality of the offender;

- 6) the form and type of participation of the person as an accomplice in the commission of the criminal act;
 - 7) mitigating and aggravating circumstances.
3. Where imposition of the penalty provided for in the sanction of an article is evidently in contravention to the principle of justice, a court may, taking into consideration the purpose of the penalty, impose a commuted penalty subject to a reasoned decision.”

Question 8.3.

Please see the answer to question 8.2.

LUXEMBOURG

State replies / Réponses de l'Etat

Questions 8.1.-8.2.

Dans le contexte des infractions couvertes par la Convention de Lanzarote (articles 18 à 23), le droit luxembourgeois mentionne et traite les comportements décrits et les érige en infraction pénale. Pour une étude plus approfondie, il est renvoyé à la réponse 16 du questionnaire « *Aperçu général* » :

a.

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

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

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

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

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

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

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

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

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

Prostitution enfantine : Art 19.1, 19.2 et 19.3 de la Convention.

Les comportements décrits au présent article sont érigés en infraction par l'article 379 du Code pénal.

L'article 379 du Code pénal dispose ce qui suit :

« Art. 379. (L. 21 février 2013) Sera puni d'un emprisonnement d'un à cinq ans et d'une amende de 251 à

50.000 euros:

1° quiconque aura excité, facilité ou favorisé la débauche, la corruption ou la prostitution d'un mineur âgé de moins de dix-huit ans;

2° quiconque aura recruté, exploité, contraint, forcé, menacé ou eu recours à un mineur âgé de moins de dix-huit ans à des fins de prostitution, aux fins de la production de spectacles ou de matériel à caractère pornographique ou aux fins de participation à de tels spectacles, aura favorisé une telle action ou en aura tiré profit;

3° quiconque aura assisté à des spectacles pornographiques impliquant la participation d'un mineur âgé de moins de dix-huit ans;

4° quiconque aura contraint ou forcé un mineur âgé de moins de dix-huit ans à se livrer à des activités sexuelles avec un tiers ou de le menacer à de telles fins.

La tentative sera punie d'un emprisonnement de six mois à trois ans.

Le fait sera puni de la réclusion de cinq à dix ans s'il a été commis envers un mineur âgé de moins de seize ans, et de la réclusion de dix à quinze ans s'il a été commis envers un mineur de moins de onze ans.

La tentative sera punie d'un emprisonnement de six mois à quatre ans, si le fait a été commis envers un mineur âgé de moins de seize ans et d'un emprisonnement de six mois à cinq ans s'il a été commis envers un mineur de moins de onze ans. »

Pornographie infantine : Art. 20.1, 20.2, 20.3, 20.4, 20.5 et 20.6. de la Convention.

Les comportements décrits au présent article sont érigés en infraction par les articles 383bis, 383ter, 384 du Code pénal.

Les articles 383bis, 383ter, 384 du Code pénal disposent ce qui suit :

« Art. 383bis. (L. 16 juillet 2011) Les faits énoncés à l'article 383 seront punis d'un emprisonnement d'un à cinq ans et d'une amende de 251 à 75 000 euros, s'ils impliquent ou présentent des mineurs ou une personne particulièrement vulnérable, notamment en raison de sa situation administrative illégale ou précaire, d'un état de grossesse, d'une maladie, d'une infirmité ou d'une déficience physique ou mentale.

La confiscation des objets prévus à l'article 383 sera toujours prononcée en cas de condamnation, même si la propriété n'en appartient pas au condamné ou si la condamnation est prononcée par le juge de police par l'admission de circonstances atténuantes.

Art. 383ter. (L. 16 juillet 2011) Le fait, en vue de sa diffusion, de fixer, d'enregistrer ou de transmettre l'image ou la représentation d'un mineur lorsque cette image ou cette représentation présente un caractère pornographique est puni d'un d'emprisonnement d'un mois à trois ans et d'une amende de 251 à 50 000 euros.

Le fait d'offrir, de rendre disponible ou de diffuser une telle image ou représentation, par quelque moyen que ce soit, de l'importer ou de l'exporter, de la faire importer ou de la faire exporter, est puni des mêmes peines.

Les faits seront punis d'un emprisonnement d'un à cinq ans et d'une amende de 251 à 100 000 euros lorsqu'il a été utilisé, pour la diffusion de l'image ou de la représentation du mineur à destination d'un public non déterminé, un réseau de communications électroniques.

La tentative des délits prévus aux alinéas précédents est punie des mêmes peines.

Art. 384. (L. 21 février 2013) Sera puni d'un emprisonnement d'un mois à trois ans et d'une amende de 251 à 50 000 euros, quiconque aura sciemment acquis, détenu ou consulté des écrits, imprimés, images, photographies, films ou autres objets à caractère pornographique impliquant ou présentant des mineurs.

(L. 16 juillet 2011) La confiscation de ces objets sera toujours prononcée en cas de condamnation, même si la propriété n'en appartient pas au condamné ou si la condamnation est prononcée par le juge de police par l'admission de circonstances atténuantes. »

Participation d'un enfant à des spectacles pornographiques : Art. 21.1, 21.2, 21.3 de la Convention.
Les comportements décrits au présent article sont érigés en infraction par l'article 379 du Code pénal.

L'article 379 du Code pénal dispose ce qui suit :

« Art. 379. (L. 21 février 2013) Sera puni d'un emprisonnement d'un à cinq ans et d'une amende de 251 à 50 000 euros :

1° quiconque aura excité, facilité ou favorisé la débauche, la corruption ou la prostitution d'un mineur âgé de moins de dix-huit ans;

2° quiconque aura recruté, exploité, contraint, forcé, menacé ou eu recours à un mineur âgé de moins de dix-huit ans à des fins de prostitution, aux fins de la production de spectacles ou de matériel à caractère pornographique ou aux fins de participation à de tels spectacles, aura favorisé une telle action ou en aura tiré profit;

3° quiconque aura assisté à des spectacles pornographiques impliquant la participation d'un mineur âgé de moins de dix-huit ans;

4° quiconque aura contraint ou forcé un mineur âgé de moins de dix-huit ans à se livrer à des activités sexuelles avec un tiers ou de le menacer à de telles fins.

La tentative sera punie d'un emprisonnement de six mois à trois ans.

Le fait sera puni de la réclusion de cinq à dix ans s'il a été commis envers un mineur âgé de moins de seize ans, et de la réclusion de dix à quinze ans s'il a été commis envers un mineur de moins de onze ans.

La tentative sera punie d'un emprisonnement de six mois à quatre ans, si le fait a été commis envers un mineur âgé de moins de seize ans et d'un emprisonnement de six mois à cinq ans s'il a été commis envers un mineur de moins de onze ans.

Corruption d'enfant : Art. 22 de la Convention.

Les comportements décrits au présent article sont couverts par les dispositions de l'article 372 du Code pénal.

L'article 372 du Code pénal dispose que :

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

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

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

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

Par ailleurs, l'article 379 du Code pénal dispose que « sera puni d'un emprisonnement d'un à cinq ans et d'une amende de 251 à 50.000 euros:

1° quiconque aura excité, facilité ou favorisé la débauche, la corruption ou la prostitution d'un mineur âgé

de moins de dix-huit ans;... . »

Sollicitation d'enfants à des fins sexuelles : Art. 23 de la Convention.

Les comportements décrits au présent article sont érigés en infraction par l'article 385-2 du Code pénal.

L'article 385-2 du Code pénal dispose ce qui suit :

« Art. 385-2. (L. 16 juillet 2011) Le fait pour un majeur de faire des propositions sexuelles à un mineur de moins de seize ans ou à une personne se présentant comme telle en utilisant un moyen de communication électronique est puni d'un emprisonnement d'un mois à trois ans et d'une amende de 251 à 50 000 euros.

Il sera puni d'un emprisonnement d'un à cinq ans et d'une amende de 251 à 75 000 euros lorsque les propositions ont été suivies d'une rencontre. »

Complicité et tentative :

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

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

Ceux qui auront donné des instructions pour le commettre ;

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

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

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

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

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

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

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

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

Est considérée comme immédiatement inférieure :

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

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

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

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

En ce qui concerne les infractions prévues à l'article 20 paragraphe 1. e) et f) de la Convention (possession de pornographie infantine et accès à de la pornographie infantine) ainsi qu'à l'article 23 de la Convention. (Sollicitation d'enfants à des fins sexuelles), une réserve est faite, alors qu'il y a impossibilité matérielle de prouver les tentatives de ces infractions.

En ce qui concerne la prostitution infantine, l'article 379 du Code pénal dispose que :

« La tentative sera punie d'un emprisonnement de six mois à trois ans.

La tentative sera punie d'un emprisonnement de six mois à quatre ans, si le fait a été commis envers un mineur âgé de moins de seize ans et d'un emprisonnement de six mois à cinq ans s'il a été commis envers un mineur de moins de onze ans »

En ce qui concerne la pornographie infantine, l'article 383ter du Code pénal dispose que « La tentative des délits prévus aux alinéas précédents est punie des mêmes peines. »

En ce qui concerne la participation d'un enfant à des spectacles pornographiques, l'article 379 du Code pénal dispose que :

« La tentative sera punie d'un emprisonnement de six mois à trois ans. La tentative sera punie d'un emprisonnement de six mois à quatre ans, si le fait a été commis envers un mineur âgé de moins de seize ans et d'un emprisonnement de six mois à cinq ans s'il a été commis envers un mineur de moins de onze ans ».

b.

En ce qui concerne **la pornographie infantine**, l'article 384 du Code pénal vise tout type de consultation et ne se limite pas à incriminer, le fait d'accéder, en connaissance de cause et par le biais des technologies de communication et d'information, à de la pornographie infantine.

En ce qui concerne **la sollicitation d'enfants à des fins sexuelles** : Le champ d'application de cette infraction va plus loin que le texte de la Convention en ce que le simple fait de faire des propositions à un mineur de moins de seize ans, constitue en lui seul une infraction pénale, indépendamment de la question de savoir si lesdites propositions sexuelles ont été suivies d'une rencontre ou non. La loi pénale prévoit une aggravation des peines lorsque les propositions ont été suivies d'une rencontre.

Cette extension est justifiée par le fait que l'enfant peut également être impliqué avant même qu'il y ait une rencontre dans la production de pornographie infantine, par exemple en envoyant des photos personnelles compromettantes prises à l'aide d'un appareil photo numérique, une webcam ou une caméra de téléphone mobile, ce qui offre à la personne sollicitant l'enfant un moyen de le contrôler en le menaçant.

Cette disposition luxembourgeoise va encore plus loin que le texte de la Convention, en ce qu'elle incrimine également « la sollicitation » à l'égard d'une personne qui se présente comme mineur de 16 ans, alors qu'en réalité elle ne l'est pas.

c.

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

d.

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

Quant au terme « *autoproduit* », le droit luxembourgeois ne fait pas à proprement parler de référence à cette notion dans les dispositions du Code pénal luxembourgeois.

Question 8.3.

Internet est un espace public. Par ce fait, chacun est libre de s'y rendre et par la même occasion, d'y apporter sa contribution en mettant en ligne des contenus. Néanmoins, il existe un certain nombre d'actes, de propos et de contenus en ligne pouvant contrevenir aux textes de lois en vigueur au Luxembourg ou aux bonnes mœurs de la société, au rang desquels figurent les contenus à caractère pédopornographique ou contenus à caractère pornographique impliquant ou présentant des mineurs.

La loi du 10 juillet 2011 portant incrimination des entraves à l'exercice de la justice érige en infraction pénale le fait de ne pas dénoncer aux autorités compétentes un crime dont il est encore possible de prévenir ou de limiter les effets, ou dont les auteurs sont susceptibles de commettre de nouveaux crimes (article 140 Code pénal luxembourgeois). Cette obligation de dénonciation s'applique sans exception à toute personne, y compris l'entourage proche de l'auteur et du complice, qui a connaissance d'un crime à l'égard d'un mineur de moins de 18 ans.

En outre, l'article 384 du Code pénal luxembourgeois, permet de mettre en examen quiconque qui aura sciemment acquis, détenu ou consulté des écrits, imprimés, images, photographies, films ou autres objets à caractère pornographique impliquant ou présentant des mineurs. L'article vise tout type de consultation et ne se limite pas seulement à incriminer, le fait d'accéder, en connaissance de cause et par le biais de l'utilisation des technologies d'information et de communication, à de la pornographie enfantine.

De même, la plateforme BEE SECURE Stopleveline est un point de contact auquel quiconque, sous le couvert de l'anonymat, peut s'adresser pour signaler un contenu illégal ou préjudiciable découvert sur Internet à travers un formulaire web interactif.

MALTA / MALTE

State replies / Réponses de l'Etat

Question 8.1.

Maltese law (The Criminal Code, Chapter 9 of the Laws of Malta) deals with the offence of possession of indecent material of a child. Under the same article, namely article 208 A1B, the possession of indecent material through ICTs is deemed illegal and subject to prosecution. The wider term "indecent material" is used and could be interpreted to include sound and text. The article itself does not specify who produced the content.

Furthermore, article 208 A 1 deals with the production, distribution, dissemination, import, export and sale of indecent material in a wide sense.

Question 8.2.

Maltese law does not distinguish the involvement of more than one child involved in consensual posing as it is general in character.

Question 8.3.

Stakeholders in the area of children's rights are quite aware of this phenomenon. This has in fact generated a public debate which in turn gave rise to the awareness raising programmes mentioned above and others which are in the pipeline, such as the awareness programmes which the Ministry for the Family, Children Rights and Social Solidarity sponsors from time to time.

REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA

State replies / Réponses de l'Etat

Question 8.1.a.

The provisions of the Lanzarote Convention included in its Articles 18-23 are contained in the Criminal Law of the Republic of Moldova.

Thus, the Criminal Code of the Republic of Moldova, approved by the **Law no. 985 of 18.04.2002**, criminalizes the illegal actions in the following crimes:

1. **Article 175** Criminal Code of the Republic of Moldova, "Pervert Actions";
2. **Article 175¹** Criminal Code of the Republic of Moldova, "Minor enticement for sexual purposes";
3. **Article 208¹** Criminal Code of the Republic of Moldova "Pornography";
4. **Article 208²** Criminal Code of the Republic of Moldova, "Recourse to children prostitution"
5. **Article 206** Criminal Code of the Republic of Moldova, "Trafficking in Children";
6. **Article 174** Criminal Code of the Republic of Moldova "Sexual Intercourse with a person under the age of 16";
7. **Article 171** (*paragraph 2, b, 3b*) Criminal Code of the Republic of Moldova "Rape" (knowingly committed against a minor);
8. **Article 172** (*paragraph 2b, 3b*) Criminal Code of the Republic of Moldova, "Rape" (of a person under the age of 14).
9. **Article 173**, "Sexual harassment".

Law no. 30 of 7 March 2013 „On the protection of children from the negative impact of information", establishes the basic principles regarding the protection and fulfilling of the best interests of the child in the field of public accessible information, including the interests of parents (guardian, curator) public interests and state interests in relation to children, self-control, coordination of the obligations and responsibilities of the state, public authorities, entities preparing publicly available information.

The above-mentioned law distinguishes between "pornography" and "erotic" notions.

In this context, **the Law no. 20-XVI of 3 February 2009 „on the Prevention and fight against cybercrime"**, regulates the legal framework regarding the prevention and fight against cybercrime, in the protection and assistance of the service providers and the users of computer systems, the collaboration of the public administration authorities with non-governmental organizations and with other representatives of civil society in the prevention and fight against cybercrime, cooperation with other states, international and regional organizations with competences in the field.

Question 8.1.b.

We mention that the meaning of the terms or expressions "self-generated sexual explicit images / videos" or "self-generated sexual content" as defined in this Questionnaire (**in Remarks section II**), is not expressly stipulated by the Criminal Code of the Republic of Moldova, so practitioners resort to doctrinal interpretation.

Question 8.1.c.

We mention that the meaning of the terms or expressions "non-pictorial self-generated sexual content produced by children" as defined in this Questionnaire (**in Remarks section II**), is not expressly stipulated by the Criminal Code of the Republic of Moldova, so practitioners resort to doctrinal interpretation.

Question 8.2.a.

Article 208¹ Criminal Code of the Republic of Moldova "Child Pornography" expressly states in its content "Producing, distributing, spreading, importing, exporting, offering, selling, procuring, changing, using or holding ***images or other representations of one or more children*** involved in ***explicit, real or simulated sexual activities***, or images or other representations of a child's sexual organs represented by lascivious or obscene manner, ***including in electronic form.***"

Question 8.2.b.

Article 208¹ Criminal Code of the Republic of Moldova "Child Pornography" expressly states in its content "Producing, distributing, spreading, importing, exporting, offering, selling, procuring, changing, using or holding ***images or other representations of one or more children*** involved in explicit, real or simulated sexual activities, or ***images or other representations of a child's sexual organs represented by lascivious or obscene manner, including in electronic form.***"

Question 8.3.a.

Article 208¹ Criminal Code of the Republic of Moldova "Child Pornography" expressly states in its content "Producing, distributing, spreading, importing, exporting, offering, selling, procuring, changing, using or holding ***images or other representations of one or more children*** involved in explicit, real or simulated sexual activities, or ***images or other representations of a child's sexual organs represented by lascivious or obscene manner, including in electronic form.***"

Question 8.3.b.

Article 208¹ Criminal Code of the Republic of Moldova "Child Pornography" expressly states in its content "Producing, distributing, spreading, importing, exporting, offering, selling, procuring, changing, using or holding ***images or other representations of one or more children*** involved in explicit, real or simulated sexual activities, or ***images or other representations of a child's sexual organs represented by lascivious or obscene manner, including in electronic form.***"

Replies sent by / Réponses envoyées par La Strada

Question 8.1.a.

The national law contains no reference to self-generated sexually explicit images and/or videos in the context of offences covered by the Lanzarote Convention.

Question 8.1.b.

The national law contains no reference to the self-generated sexual content in the context of offences covered by the Lanzarote Convention.

Question 8.1.c.

The national law contains no reference to the non-pictorial self-generates sexual content produced by children (e.g. sound, text) in the context of offences covered by the Lanzarote Convention.

Question 8.2.a.

The national law does not tackle the issue of involvement of more than one child in generating the self-generated sexually explicit images, video. The national law remains unclear about cases when a child of age 16 produces by himself pornographic content or images and by himself distributes them in Internet.

Question 8.2.b.

Similarly as the answer to question 8.2 a).

Question 8.3.a.

There are no any specificities.

Question 8.3.b.

There are no any specificities.

MONACO

State replies / Réponses de l'Etat

Question 8.1.a.

Ainsi que le Gouvernement Princier a déjà pu le faire valoir exhaustivement dans le cadre des réponses apportées au questionnaire de suivi général concernant la mise en œuvre de l'article 20 de la Convention (Cf. document référencé T-ES(2014)GEN-MC, Question 16, pp.31 à 36), le Code pénal monégasque incrimine chacun des aspects de la production, de la possession et de la diffusion de pornographie enfantine afin de protéger les mineurs contre toute forme d'exploitation sexuelle, ceux-ci devant être préservés aussi bien en tant qu'acteurs qu'en tant que spectateurs de ce processus.

Le droit interne ne fait pas référence aux thématiques d'autoproductions de contenu pornographique par un enfant.

Cependant les personnes, adultes ou mineurs, se procurant par quelques moyens que ce soit ou conservant ce type de contenu peuvent être poursuivies selon les dispositions d'ordre générale (cf réponse question 9. Incrimination).

Quels que soient les comportements infractionnels appréhendés (fixation, enregistrement, production, diffusion, transmission), le droit pénal monégasque consacre la notion d'« images à caractère pornographique », comme objet de ces infractions.

Au sens de l'article 294-3 du Code pénal, sont considérées comme des **images à caractère pornographique** :

« 1°) l'image ou la représentation d'un mineur subissant ou se livrant à un comportement sexuellement explicite ;

2°) l'image ou la représentation d'une personne qui apparaît comme un mineur subissant ou se livrant à un comportement sexuellement explicite ;

3°) l'image réaliste représentant un mineur se livrant à un comportement sexuellement explicite.

L'expression "image réaliste" désigne, notamment, l'image altérée d'une personne physique, en tout ou partie créée par des méthodes numériques. [...] »

Les dispositions du présent article ne s'appliquent pas si les images ou représentations d'images ont été collectées pour la constatation, la recherche ou la poursuite des infractions pénales. »

Bien que non expressément visées par les dispositions codifiées précitées, les « images et/ou des vidéos sexuellement explicites autoproduites », ainsi que les « contenus à caractère sexuel autoproduits », dans le contexte des infractions couvertes par la Convention, pourraient relever du champ d'application de l'article 294-3 du Code pénal.

Question 8.1.b.

A l'aune des éléments de réponses apportées au la question 8.1,a), bien que non expressément visées par les dispositions codifiées précitées, les « *contenus à caractère sexuel autoproduits* », dans le contexte des infractions couvertes par la Convention, pourraient relever du champ d'application de l'article 294-3 du Code pénal, précité.

Question 8.1.c.

Pour ce qui relève des « *contenus à caractère sexuel autoproduits par des enfants et non illustrés par des images* » (correspondant à des contenus sonores et/ou textes) (question 8.1, c) ceux-ci ne relèveraient pas de la définition donnée par l'article 294-3 du Code pénal, précité, mais pourraient relever des dispositions de l'article 294-7 du Code pénal, qui sanctionne la fabrication, la production, le transport et la diffusion de message à caractère pornographique « *quel qu'en soit le support* » :

« Article 294-7 du Code pénal. - Le fait soit de fabriquer, de produire, de transporter, de diffuser par quelque moyen que ce soit et quel qu'en soit le support un message à caractère violent ou pornographique ou de nature à porter gravement atteinte à la dignité humaine, soit de faire commerce d'un tel message, est puni d'un emprisonnement de six mois à deux ans et de l'amende prévue au chiffre 3 de l'article 26 lorsque ce message est adressé à des mineurs. La tentative est punie des mêmes peines. »

En outre, les contenus visés à la question 8.1.c) pourraient également, *in concreto*, relever de la loi n° 1.299 du 15 juillet 2005 sur la liberté d'expression publique.

L'article 19 de cette loi sanctionne « *le délit d'outrage aux bonnes mœurs, par l'exposition, l'affichage ou la distribution sur la voie publique ou dans les lieux publics, d'enregistrements sonores, visuels ou audiovisuels, d'écrits, d'imprimés, (...) obscènes ou contraires aux bonnes mœurs ; par la vente ou l'offre, même non publique, à un mineur des mêmes enregistrements, écrits, imprimés, affiches, dessins, gravures, peintures, objets ou images ; par leur remise sous bande ou sous enveloppe non fermée à la poste ou à tout agent de distribution ou de transport ; par des annonces ou correspondances publiques contraires aux bonnes mœurs* ».

Par renvoi, ces faits sont punis d'un emprisonnement d'un mois à trois ans et de l'amende prévue au chiffre 2 de l'article 26 du Code pénal (soit, de 2 250 à 9 000 euros), ou de l'une de ces deux peines seulement, quiconque a soustrait ou dégradé volontairement des signes publics de l'autorité (article 17 de la loi n° 1.299 du 15 juillet 2005, précitée)

Question 8.2.

Le droit interne ne comporte pas de disposition sanctionnant spécifiquement la pluralité d'enfants impliqués dans des images ou vidéos sexuellement explicites autoproduites, ni dans des contenus à caractère sexuel autoproduits.

Question 8.3.

Le droit interne ne comporte pas de disposition appréhendant spécifiquement la pluralité d'enfants apparaissant sur des images et/ou vidéos sexuellement explicites autoproduites ou des contenus à caractère sexuel autoproduits visés par la question 8.3.

MONTENEGRO

State replies / Réponses de l'Etat

Question 8.1.

The Criminal Code of Montenegro ("Official Gazette of the Republic of Montenegro", No 70/03, 13/04, 47/06 and "Official Gazette of Montenegro", No. 40/08, 25/10, 32/11, 64/11, 40/13, 56/13, 14/15 42/15 and 58/15), Chapter XVIII in Article 211 contains references which are in conjunction with Art. 18-23 of

the Lanzarote Convention. In particular, Article 211 paragraph 1 of the Criminal Code of Montenegro (CCMNE) prescribes that anyone who sells, shows or publicly exhibits or otherwise makes accessible to a child the texts, pictures, audio-visual material or other objects of pornographic content or shows the child a pornographic performance shall be punished by a fine or a prison term up to six months. Paragraph 2 of the same article stipulates that anyone who exploits a juvenile to produce pictures, audio-visual material or other objects of pornographic content or for a pornographic performance shall be punished by a prison term from six months to eight years. When determining the imprisonment for the aforementioned criminal offenses in the criminal legislation of Montenegro, there is a difference in determining the sentence for a perpetrator, depending on whether the offense was committed against a child (a person under the age of 14) or a minor (person from 14 to 18 age), so in paragraph 4 of the aforementioned Article a lighter punishment (from three months to three years) is prescribed if the victim is a minor. Also, paragraph 3 of the aforementioned Article of the Criminal Code prescribes the criminal offense of unauthorized recording, production, offering, making available, distributing, importing, exporting, obtaining for themselves or others, selling, giving, displaying, publicly displaying or owning images, audio-visual or other articles of pornographic content.

The Law on Amendments to the Criminal Code of Montenegro, adopted on 26 June 2017, harmonized with the Lanzarote Convention and the Council of Europe Convention on Cybercrime. The compliance was made in Article 211 of the CCMNE in which the definition of child pornography was introduced in such a way that child pornography is regarded as any material that visually depicts a child concerned with actual or simulated sexually explicit conduct and any display of his or her sexual organs for the user's the full organs of a child for primary of sex.

Question 8.2.

The Criminal Code of Montenegro does not prescribe a special criminal offense nor a severe punishment in the case of involving more than one child in the generation of self-generated sexually explicit images and/or videos and other self-generated sexual content.

Question 8.3.

Since the Criminal Code of Montenegro does not prescribe a special criminal offense nor a severe punishment in the case of involving more than one child in the generation of self-generated sexually explicit images and/or videos and other self-generated sexual content, therefore, there are no specificities related to the circumstances stated in the questions a and b of this point of the Questionnaire.

NETHERLANDS / PAYS-BAS

State replies / Réponses de l'Etat

Question 8.1.a. and b.

Article 20 of the Lanzarote Convention, offences concerning child pornography, is criminalized in article 240b of the Dutch Criminal Code (in the Title on sexual offences).

Producing, distributing, procuring (for oneself or another), possessing and obtaining (including downloading or watching the material real time) access to child pornography is criminalized in article 240b. Child pornography is defined as an image or data carrier containing an image of a minor (not reached the age of 18) involved or seemingly involved in sexual behavior. It's an offence, even if it's self-generated images and/or videos whether there is consent or not.

Case law of the Dutch Supreme Court has provide insight how to determine if an image is child pornography. An image – as mentioned above – is in any case child pornography if it depicts behavior that is explicit of a sexual nature, like the behavior that is criminalized as a sex offence in the Title on sexual offences of the Dutch Criminal Code (that includes the offences covered by the Lanzarote

Convention (article 18-23). Furthermore if an image or video will be seen as child pornography depends on the specific character of the picture (the pose or position, emphasis on the genitals) of the involved child and the context (clothes, attributes, environment, creation process), whether it must be seen as an normal image of a minor (naked or semi-naked) in family setting or not. Besides the explicit sexual images, also will those images that are produce in a way that generates sexual stimuli, that have an unmistakable sexual bearing, be seen as child pornography.

Question 8.1.c.

No.

Question 8.2.

Yes. That is it, it doesn't make a distinction how many minors are involved.

Question 8.3.

The criminalization of child pornography in article 240b of the Dutch Criminal Code also includes self-generated material of minors who have consented with the production (even if that's only self-used) and sharing through ICT's.

NORTH MACEDONIA / MACEDOINE DU NORD

State replies / Réponses de l'Etat

Question 8.1.

Article 193 of the Criminal Code of the Republic of Macedonia lays down the criminal act of 'displaying pornographic materials to a child' corresponding to Article 21 of the Convention. Article 193-a lays down the criminal act of 'production and distribution of child pornography' corresponding to Article 20 of the Convention. Simultaneously, Article 122 item 24 lays down a definition of the term child pornography: 'child pornography shall mean pornographic material visually depicting obvious sexual acts involving a minor or an adult resembling a minor, or depicting the minor or the adult resembling a minor in an obvious sexual posing, or real images depicting obvious sexual acts with a minor or depicting the minor or the adult resembling a minor in an obvious sexual posing.'

Question 8.2.

The Criminal Code does not regulate consensual posing amongst the aforementioned criminal acts (Answer to 8.1). Also, the issue regarding the involvement of more than one child is not explicitly regulated in Articles 193, 193-a and 193-b. Implicitly, Article 122 item 28 of the Criminal Code defines the term - group: 'A group, gang or another criminal association or organisation shall mean at least three persons, including the organiser of the group, associated for the purpose of committing criminal acts.'

Question 8.3.

In regard to items a) and b), Articles 193, 193 -a and 193-b of the Criminal Code the involvement of several children has not been explicitly regulated.

NORWAY / NORVEGE

State replies / Réponses de l'Etat

Question 8.1.

Section 311 of the Norwegian Penal Code criminalizes various forms of dealing with depiction of sexual abuse of children and depiction which sexualizes children. The term depiction covers both images and videos. The Norwegian Supreme court has held that also nonpictorial self-generated sexual content such as text and chats are covered by the provision.

Section 311 on Depiction of sexual abuse of children or depiction which sexualises children reads as follows:

A penalty of a fine or imprisonment for a term not exceeding three years shall be applied to any person who

- a. produces a depiction of sexual abuse of children or a depiction which sexualises children,
- b. publishes, offers, sells, supplies to another person, makes available or otherwise seeks to disseminate depictions as specified in a),
- c. acquires, imports or possesses depictions as specified in a), or intentionally acquires access to such material,
- d. gives a public presentation or arranges a public performance or exhibition of depictions as specified in a), or
- e. induces a person under 18 years of age to allow himself/herself to be depicted as part of commercial production of moving or still pictures with sexual content.

In this section “children” means persons who are or appear to be under 18 years of age.

A person who negligently commits an act specified in the first paragraph shall be subject to a fine or imprisonment for a term not exceeding six months. The same penalty shall apply to any proprietor or superior who intentionally or negligently fails to prevent the commission of an act as specified in the first paragraph within an enterprise.

The penalty may be waived for a person who takes and possesses a picture of a person between 16 and 18 years of age if this person consented and the two are approximately equal in age and development.

This provision does not apply to depictions that must be regarded as justifiable for artistic, scientific, informational or similar purposes. Nor does this provision apply to any film or videogram that the Norwegian Media Authority has by prior review approved for commercial screening or sale.”

Question 8.2.

Any minor above the age of 15 years involved in any of the forms of conduct described in Section 311 of the Norwegian penal code may be held criminally responsible. It follows from Section 311 paragraph 4, however, that the penalty may be waived for a person who takes and possesses a picture of a person between 16 and 18 years of age if this person consented and the two are approximately equal in age and development.

Question 8.3.

Section 311 of the Criminal Code applies to cases where a child accepts that such images are produced and shared through ICTs.

POLAND / POLOGNE

State replies / Réponses de l'Etat

Question 8.1.

According to the provisions of Polish Penal Code (hereinafter “the PC”) penalisation of acts against sexual liberty and decency (implementing Art. 20 of the Lanzarote Convention) depends on pornographic character of the content of the material involved.

The PC does not provide any legal definition of “pornographic content”. This is done by jurisprudence. According to the well-established line of reasoning of the Supreme Court the key elements of such definition are: (1) the content being contained in a fixed form (eg. film, photographs, magazines, books, images) or not (eg. live shows), (2) the content presents human sexual acts (especially showing the sexual organs of a person in their sexual functions), both in non-contradictory aspects of their biological orientation and human sexual behaviour contrary to the patterns of sexual behaviour approved in society, (3) the nature of pornography manifests in the transmission of a particular idea (the content), rather than merely a documented record of a particular factual event. Those criteria allow to differentiate the “pornography” (acts related to which are penalised) from other types of behaviours and materials.

Question 8.2.

There is no direct reference in the PC to the number of minors involved (in any manner) in generation of pornographic content. Nevertheless, this circumstance shall be taken into account by the prosecutor/court when assessing the social gravity (social harm) of the offence committed. According to the PC social gravity of the offence is one of the key factors taken into account by the court when deciding upon the severity of the criminal sanction for a given offence.

The child’s acceptance for being involved in generation of pornographic content cannot be taken as any form of mitigating circumstance.

Question 8.3.

See above.

PORTUGAL

State replies / Réponses de l’Etat

Question 8.1.a.

No.

Question 8.1.b.

No.

Question 8.1.c.

No.

Question 8.2.a.

No (see replies to questions 9.7. and 9.10.).

Question 8.2.b.

No (see replies to questions 9.7. and 9.10.).

Question 8.3.a.

No.

Question 8.3.b.

No.

ROMANIA / ROUMANIE

State replies / Réponses de l'Etat

Question 8.1.a.

**Mention: Our national legislation (Law no 286/2009 – the Criminal code), was recently amended by Emergency Ordinance no 18/2016, which ensured the fully transposition in national legislation of the Directive 2011/93 of the European Parliament and of the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JAI and also ensured the complete alignment to the Convention.*

Therefore, a number of legal provisions regarding the incriminations of art. 18-23 of the Convention¹²

12

Article 182

Exploitation of a person

By exploiting a person is meant:

- a) Obligation to perform a job or to perform services;
- b) keeping in slavery or other similar procedures of deprivation of liberty or servitude;
- c) Forcing porn to be pornographic or pornographic or other forms of sexual exploitation;
- d) the obligation to practice begging;
- e) the procurement of organs, tissues or cells of human origin, unlawfully.

Article 210

Trafficking in human beings

(1) The recruitment, transportation, transfer, housing or reception of a person for the purpose of its exploitation, committed:

- a) by constraint, kidnapping, misleading or abusive authority;
- b) taking advantage of the impossibility of defending or expressing the will or the apparent vulnerability of that person;
- c) by offering, giving, accepting or receiving money or other benefits in exchange for the consent of the person having

authority over that person,

shall be punished by imprisonment from 3 to 10 years and the prohibition of the exercise of certain rights.

(2) Trafficking in persons by a civil servant in the performance of his duties shall be punished by imprisonment from 5 to 12 years.

(3) The consent of the victim of trafficking is not a justifiable cause.

Article 211

Trafficking of minors

(1) The recruitment, transportation, transfer, housing or reception of a minor for the purpose of exploitation shall be punished by imprisonment of 3 to 10 years and the prohibition of the exercise of certain rights.

(2) The punishment shall be imprisonment from 5 to 12 years and the prohibition of the exercise of rights when:

- a) the deed was committed under the conditions of art. 210 para. (1);
- b) the offense was committed by a civil servant in the performance of his / her duties;
- c) the deed threatened the minor's life;
- d) the deed was committed by a minor's family member;
- e) the offense was committed by a person in whose care, protection, education, guard or treatment the minors are or a

person who has abused his or her position of trust or authority over the minor.

(3) The consent of the trafficked person is not a justifiable cause.

Article 213 Pimping

(1) Determining or facilitating the practice of prostitution or gaining patrimonial benefits from the practice of prostitution by one or more persons shall be punished by imprisonment from 2 to 7 years and a ban on the exercise of certain rights.

(2) If the determination to start or continue practicing prostitution is made by coercion, the punishment shall be imprisonment from 3 to 10 years and the prohibition of the exercise of certain rights.

(3) If the deeds are committed against a minor, the special limits of the punishment shall be increased by half.

(4) The practice of prostitution means the maintenance of sexual acts with different persons in order to obtain property benefits for oneself or for another.

Article 216

Using the services of an exploited person

The act of using the services provided in art. 182, provided by a person about whom the beneficiary knows that he / she is a victim of trafficking in human beings or of the trafficking of minors, shall be punished by imprisonment from 6 months to 3 years or by a fine if the deed is not a more serious offense.

Article 216 ^ 1

Use of child prostitution

The practice of any act of a sexual nature with a minor practicing prostitution shall be punished by imprisonment from

3 months to 2 years or by a fine if the act does not constitute a more serious crime.

Article 217

Penalizing the attempt

Attempts to the offenses provided in art. 209-211, art. 213 par. (2), art. 216 and 216 ^ 1 shall be punished.

CHAPTER VIII

Crimes against sexual freedom and integrity

Article 218 Rape

(1) Sexual intercourse, oral or anal intercourse with a person, committed through coercion, impossibility to defend himself or to express his or her will or benefit from this state shall be punished by imprisonment from 3 to 10 years, and prohibiting the exercise of certain rights.

(2) The same punishment shall be sanctioned by any other acts of vaginal or anal penetration committed under para. (1).

(3) The punishment shall be imprisonment from 5 to 12 years and the prohibition of the exercise of rights when:

a) the victim is in the care, protection, education, guard or treatment of the perpetrator;

b) the victim is a direct relative, brother or sister;

c) the victim is a minor;

d) the act was committed for the purpose of producing pornographic material;

e) the deed has resulted in bodily injury;

f) The act was committed by two or more people together.

(4) If the deed has resulted in the death of the victim, the punishment shall be imprisonment from 7 to 18 years and the prohibition of the exercise of certain rights.

(5) The criminal action for the deed stipulated in par. (1) and par. (2) moves to the prior complaint of the injured party.

(6) The attempt to the offenses provided in paragraph (1) - (3) shall be punished.

Article 219

Sexual aggression

(1) The act of sexual nature, other than those stipulated in art. 218, with a person, committed through coercion, impossibility to defend himself or to express his will or to take advantage of this state, shall be punished by imprisonment from 2 to 7 years and the prohibition of exercising certain rights.

(2) The punishment shall be imprisonment of 3 to 10 years and the prohibition of the exercise of rights when:

a) the victim is in the care, protection, education, guard or treatment of the perpetrator;

b) the victim is a direct relative, brother or sister;

c) the victim is a minor;

d) the act was committed for the purpose of producing pornographic material;

e) the deed has resulted in bodily injury;

f) the act was committed by two or more people together.

(3) If the deed has resulted in the death of the victim, the punishment shall be imprisonment from 7 to 15 years and the prohibition of the exercise of certain rights.

(4) If acts of sexual assault were preceded or followed by the sexual acts referred to in art. 218 par. (1) and par. (2), deed constitutes rape.

(5) The criminal action for the deed stipulated in par. (1) moves to the prior complaint of the injured person.

(6) The attempt to the offenses provided in paragraph (1) and par. (2) is punishable.

Article 220

Sexual act with a minor

(1) Sexual intercourse, oral or anal intercourse and any other vaginal or anal penalty committed with a minor between the ages of 13 and 15 shall be punishable by imprisonment from one to five years.

(2) The offense referred to in paragraph (1) committed against a minor who has not reached the age of 13 shall be punished by imprisonment from 2 to 7 years and the prohibition of the exercise of certain rights.

(3) The act provided for in paragraph (1) committed by a major with a minor between the ages of 15 and 18 shall be punished by imprisonment from 2 to 7 years and the prohibition of the exercise of rights if:

a) the minor is a family member of the major;

b) the minor is in the care, protection, education, guard or treatment of the perpetrator, or has abused his or her recognized trust or authority position on the minor or his particularly vulnerable situation as a result of psychological or physical disability, or due to a situation of addiction;

c) the deed threatened the minor's life;

d) was committed for the purpose of producing pornographic material.

(4) The offense referred to in paragraph (1) and (2) shall be punished by imprisonment from 3 to 10 years and the prohibition of the exercise of rights when:

a) the minor is a family member;

b) the minor is in the care, protection, education, guard or treatment of the perpetrator or has abused his or her position of

were amended and updated to the standards of the convention and those of the directive.

The national provisions that provide the offences covered by Lanzarote Convention (art. 18-23)

trust or authority over the minor;

c) the deed threatened the minor's life;

d) was committed for the purpose of producing pornographic material.

(5) The facts provided in paragraph (1) and par. (2) shall not be sanctioned if the age difference does not exceed 3 years.

(6) The attempt to the offenses provided in paragraph (1) - (4) shall be punished.

Article 221

Sexual abuse of minors

(1) The commission of an act of a sexual nature, other than that stipulated in art. 220 against a minor who has not reached the age of 13 and the determination of the minor to bear or to perform such an act shall be punished by imprisonment from one to five years.

(2) The punishment shall be imprisonment from 2 to 7 years and the prohibition of the exercise of rights when:

a) the minor is a relative in a direct line, brother or sister;

b) the minor is in the care, protection, education, guard or treatment of the perpetrator;

c) the act was committed for the purpose of producing pornographic material;

d) the deed threatened the life of the minor.

(3) The sexual act of any kind committed by a major in the presence of a minor who has not reached the age of 13 shall be punished by imprisonment from 6 months to 2 years or by fine.

(4) The determination by a major of a minor who has not reached the age of thirteen is to assist in the commission of acts of exhibitionism or performances or performances in which sexual acts of any nature are committed and made available to him of pornographic material shall be punished by imprisonment from 3 months to one year or a fine.

(5) The facts provided in paragraph (1) shall not be sanctioned if the age difference does not exceed 3 years.

(6) The attempt to the offenses provided in paragraph (1) and (2) shall be punished.

Article 222

Conjugation of minors for sexual purposes

The deed of the major person to propose to a minor who has not reached the age of 13 to meet with the purpose of committing an act outlined in art. 220 or art. 221, including when the proposal was made by means of distance transmission, shall be punished by imprisonment from one month to one year or by a fine.

Article 223

Sexual harassment

(1) Reproving sexual favors repeatedly in a working relationship or similar relationship, if the victim has been intimidated or in a humiliating condition, is punished by imprisonment from 3 months to one year or with a fine.

(2) The criminal proceedings shall be initiated upon the preliminary complaint of the injured party.

(...)

Art. 374 Child pornography

(1) Producing, owning, procuring, storing, displaying, promoting, distributing, and making available in any manner pornographic material with children shall be punishable by imprisonment from one to five years.

(1 ^ 1) With the punishment stipulated in par. (1) the punishment or recruitment of a minor is also punished for the purpose of his participation in a pornographic performance, the use of such a performance in which minors participate or the exploitation of a minor in any other way for the purpose of performing pornographic performances.

(1 ^ 2) Watching pornographic performances involving juveniles are punishable by imprisonment from 3 months to 3 years or by fine.

(2) If the facts provided in paragraph (1) have been committed through a computer system or other means of storing computer data, the penalty shall be imprisonment from 2 to 7 years.

(3) The right to access pornographic material with minors through computer systems or other means of electronic communication shall be punished by imprisonment from 3 months to 3 years or by fine.

(3 ^ 1) If the facts provided in paragraph (1), (1), (1) and (2) have been committed in the following circumstances:

a) by a family member;

b) by a person in whose care, protection, education, guard or treatment the minor is or a person who has abused his or her position of trust or authority over the minor;

c) the deed threatens the minor's life, the special limits of the punishments increase by one third.

(4) Pornographic materials with minors means any material that presents a juvenile or a major person as a juvenile, having sexually explicit behavior or who, while not presenting a real person, credibly simulates a minor having such a behavior, as well as any representation of the genital organs of a child for sexual purposes.

(4 ^ 1) Pornographic performance is the direct exposure to a public, including information and communication technology, of a child engaged in sexually explicit sexual behavior or of a sexual organ of a child.

criminalise the illegal use of sexually explicit images or videos of children, with no distinction if they were self-produced or not.

For example, according to art. 374 of the Criminal code, child pornography is the act of producing, owning, procuring, storing, displaying, promoting, distributing or making available in any manner of pornographic material with children and is punishable by imprisonment from one to five years. If the acts mentioned above have been committed through a computer system or other means of storing computer data, the penalty shall be imprisonment from 2 to 7 years.

Question 8.1.b.

The national provisions that provide the offences covered by Lanzarote Convention (art. 18-23) criminalise the illegal use of sexually explicit content with children, with no distinction if it was self-produced or not.

For example, according to art. 374 of the Criminal code, child pornography is the act of producing, owning, procuring, storing, displaying, promoting, distributing or making available in any manner of pornographic material with children and is punishable by imprisonment from one to five years. If the acts mentioned above have been committed through a computer system or other means of storing computer data, the penalty shall be imprisonment from 2 to 7 years.

Question 8.1.c.

The national provisions that provide the offences covered by Lanzarote Convention (art. 18-23) criminalise the illegal use of non-pictorial self-generated sexual content with children, with no distinction if it was self-produced or not.

For example, according to art. 374 of the Criminal code, child pornography is the act of producing, owning, procuring, storing, displaying, promoting, distributing or making available in any manner of pornographic material with children and is punishable by imprisonment from one to five years. If the acts mentioned above have been committed through a computer system or other means of storing computer data, the penalty shall be imprisonment from 2 to 7 years.

Question 8.2.

There are no special provisions for these specific crimes in what regards multiple victims.

So, in case there are more one child victim of the offences mentioned above, the general rules of multiple offenses may become incident, resulting in a more severe punishment for the perpetrator.

Question 8.3.

There are no special provisions for these specific crimes in what regards multiple victims.

So, in case there are more one child victim of the offences mentioned above, the general rules of multiple offenses may become incident.

Consent of the child/children does not de-criminalise the act.

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

State replies / Réponses de l'Etat

Question 8.1.

In the current Russian legislation, there is no a separate provision on the criminal responsibility related to the situations of a) self-generated sexually explicit images and/or videos, self-generated sexual, non-pictorial self-generated sexual content produced by children.

The Russian criminal legislation does not consider mentioned actions as evidence of the crime or independent characteristics of a crime.

However, with respect to the use of the mentioned materials, a general rule according to art. 241, 242, 240, 127, 131-135 of the Criminal Code of the Russian Federation can be applied.

It is worth drawing the attention to the fact that in the text of the Lanzarote Convention there is no special mention of the situations indicated in the question either; these situations can be considered in the context of articles 18-23 of the Convention.

Moreover, according to paragraph 3. Art. 18 of the Lanzarote Convention, the provisions of paragraph 1 (a) of this article are not intended to govern consensual sexual activities between minors.

On the other hand, there are a number of state orders (order of Roskomnadzor No. 84, the order of the Ministry of Interior No. 292, the order by Rospotrebnadzor No. 351, the order by the Federal Tax Service of Russia MMV-7-2 / 461 dated May 18, 2017) which provide detailed criteria for assessing the materials and / or information and identifying Internet sites containing prohibited information, the above information is accumulated into a single automated information system.

Question 8.2.

Yes, for instance, provisions of the following documents:

The concept of information security of children (Government decree of the Russian Federation on December 2, 2015, No. 2471-r

Federal Law No. 466-FZ of December 29, 2010 "On the protection of children from information that is harmful to their health and development"

Question 8.3.

There is no separate norm for these situations in the Russian Legislation. The rule stipulated in art. 241 of the Criminal Code can be applied for the consideration of the situations described in the Question.

Moreover, according to paragraph 3. Art. 18 of the Lanzarote Convention, the provisions of paragraph 1 (a) of this article are not intended to govern consensual sexual activities between minors.

SAN MARINO / SAINT-MARIN

State replies / Réponses de l'Etat

In the Republic of San Marino this issue is regulated by Art. 177 ter of the Criminal Code, introduced by Law no. 61 of 30 April 2002 "Law on the repression of the sexual exploitation of children".

Under this article child pornography consists in the production of "performances, works or material" (therefore including through ICTs) "visually showing a child in sexually explicit conduct for purposes of sexual incitement."

The law punishes with third-degree imprisonment (i.e. from two to six years) and disqualification of the same degree (i.e. one to three years) anyone who produces and trades in child pornographic works.

Punishments are increased by one degree (fourth-degree imprisonment, i.e. from four to ten years and fourth-degree disqualification, i.e. from two to five years) if the act is committed to the detriment of a minor under 14, or under 18 if affected by physical or mental disability (aggravating circumstances).

Anyone who provides another person, at any title, with child pornographic material is punished with first-degree imprisonment (from three months to one year), or with second-degree arrest (from fifteen days to two months) and in any case with first-degree disqualification (from fifteen days to one year).

If the dissemination, disclosure or publication of such material takes place through the Internet and in any case through the ICTs (e.g. virtual pornography), the punishment envisaged by the law is third-degree imprisonment (from two to six years) and third-degree disqualification (from two to three years).

The same punishments apply if ICTs are used for the dissemination of information aimed at soliciting minors under 18.

The sentence for such offence entails (Art. 147 of the Criminal Code) confiscation, preceded in the pre-trial stage by seizure for the purpose of confiscation.

Law no. 61/2002 mentioned above has extended San Marino territorial jurisdiction to include offences committed abroad by or to the detriment of a San Marino citizen, without prejudice to Art. 7 of the Criminal Code.

In the light of the above, a positive answer can be given to questions 8.1.a) (the definition of "performances, works or materials" undoubtedly include images and/or video); 8.2.b) (the sentence beginning with "anyone" in Art. 177-ter of the Criminal Code does not distinguish between generated and self-generated material, clearly including both, and 8.1.c) (the definition of "performances, works or materials" includes sound material or texts).

Positive answers can also be given to questions 8.2.a and b. The word "anyone" in Art. 177 ter of the Criminal Code includes both the singular and the plural, as clearly established with regard to many articles of the Criminal Code using the same expression and which have been the subject of extensive case-law.

On the contrary, questions 8.3.a and b. cannot be answered positively, since the scope of the above mentioned Art. 177 ter of the Criminal Code is necessarily broad, in order to cover the widest possible range of sanctioned behaviours on child pornography. The intention of San Marino legislator was not to specify individual behaviours, so as not to run the risk of neglecting some or not include criminal behaviours unforeseeable at that time (in consideration of the natural evolution of IT systems, progress in technology, new behaviours, conducts or attitudes, etc.).

SERBIA / SERBIE

State replies / Réponses de l'Etat

Question 8.1.a. and b.

Public Prosecutor Answer:

Under Article 185, paragraph 6 of the Criminal Code, any material visually presenting a minor involved in an actual or simulated sexually explicit behaviour shall be regarded as an object of pornographic content generated through an abuse of a minor (child pornography), as shall any presentation of genital organs of a child for sexual purposes. Thus, there is no difference under national legislation whether the material is generated by a child or any other person if an abuse of a minor is in question.

It should be noted here that, in accordance with the national legislation, a child is a person who has not completed fourteen years of age, and a minor is a person who has completed fourteen years of age, but has not completed eighteen years of age.

Question 8.1.c.

Ministry of Justice Answer:

Serbian Criminal code contains definition of child pornography in line with Lanzarote convention ((6) The items of pornographic content resulting from the abuse of a minor (child pornography) shall be considered to include each material that is visually representing a minor involved in actual or simulated sexually explicit behavior, as well as each instance of displaying of a child's genitals for sexual purposes.) Beside, Criminal code, Special protocol on acting of judicial authorities in the protection of juveniles from abuse and neglecting, states that: "It is not considered sexual abuse behavior in the form of a research of one's own body that corresponds to the age of a minor when, especially in adolescents, they investigate their own body and sexuality in a way that does not involve activities between a minor and an adult."

Public Prosecutor Answer:

Under Article 185, paragraph 1 of the Criminal Code whoever selling, showing or public displays or otherwise making available texts, pictures, audio-visual or other items of pornographic content to a minor or showing to a child a pornographic performance is classified as a criminal offence under criminal code.

NGO Astra Answers:

Law on special measures for the prevention of crimes against sexual freedom against minors ("Off. Gazette of the RS", no. 32/2013), is applicable on offenders who performed the following crimes on minors:

- 1) rape (Article 178 paragraph 3 and 4 of the Criminal Code);
- 2) sexual intercourse with a helpless person (Article 179 paragraph 2 and 3 of the Criminal Code);
- 3) sexual intercourse with a child (Article 180 of the Criminal Code);
- 4) sexual intercourse through abuse of position (Article 181 of the Criminal Code);
- 5) prohibited sexual acts (Article 182 of the Criminal Code);
- 6) pimping and procuring (Article 183 of the Criminal Code);
- 7) mediation in prostitution (Article 184, paragraph 2 of the Criminal Code);
- 8) Showing, obtaining and possessing pornographic materials and the abuse of minors in pornography (Article 185 of the Criminal Code);
- 9) Incitement of a minor to be present during the sexual acts (Article 185a of the Criminal Code);
- 10) Abuse of a computer network or communication with other technical devices for committing sexual offences against a minor (Article 185b of the Criminal Code).

The Criminal Code in Article 185 introduces the crime of "Display, acquisition and possession of pornographic material and exploitation of a minor for pornography" and in Article 185b "Utilization of a computer network, or other means of communication to commit offences against sexual freedom of a minor." The following behaviours are declared as prohibited: Display, acquisition and possession of pornographic material and exploitation of a minor in pornography (Article 185), taking advantage of computer network, or other means of communication to commit offences of sexual abuse of a minor (Article 185b).

Question 8.2.

Public Prosecutor Answer:

The exploitation of a minor and/or children for the production of pictures, audio and visual, or other objects of pornographic content or for pornographic performance shall be regarded of as a criminal offence, (Art. 185, paras. 2 and 3 of the CC). Participation of more than one child in generation of such a material, if an exploitation of a minor is in question, may be treated as an aggravating circumstance when sanction is weighted and pronounced.

NGO Astra Answers:

Presentation, acquisition and possession of pornographic material and the exploitation of a minor for pornography Article 185

(1) Who sells, displays, or publicly presents or otherwise makes available texts, images, audio-visual or other objects of pornographic content to the juvenile, or portrays a pornographic performance, shall be punished by a fine or imprisonment for up to six months.

(2) Whoever uses a child to produce pictures, audio-visual or other pornographic content or pornographic performances shall be punished by imprisonment for a term between six months and five years.

(3) If the act referred to in paragraph 1. and 2. of this Article are performed against the child, the offender shall be punished for the offense referred to in paragraph 1 by imprisonment of six months to three years, and for the offense referred to in paragraph 2 by imprisonment of one to eight years.

(4) Whoever acquires for himself or another, owns, sells, displays, publicly exhibits or electronically or otherwise makes available images, audio-visual or other objects of pornographic content created by the exploitation of a minor shall be punished by imprisonment of three months to three years.

(5) Who, through the use of information technology means, consciously accesses images, audio-visual or other objects of pornographic content created by the exploitation of a minor, shall be punished by a fine or imprisonment for up to six months.

(6) Items of pornographic content created by the exploitation of a minor (child pornography) shall be any material that visually depicts a minor person dealing with real or simulated sexually explicit behavior, as well as any display of the child's sexual organs for sexual purposes.

(7) Items referred to in Paragraphs 1 to 4 of this Article shall be confiscated.

Incitement of a minor to be present during the sexual acts Article 185a

(1) Whoever persuade a child to attend rape, intercourse or other sexual action, shall be punished by imprisonment for one to eight years.

(2) If the offense referred to in paragraph 1 of this Article has been committed by the use of force or threat, the offender shall be punished by imprisonment of two to ten years.

Utilizing a computer network or communication with other technical means for the commission of criminal offenses against sexual freedom against a minor Article 185b

(1) Who in the intention of committing the criminal offense referred to in Art. 178 (4), 179 (3), (180), 1st and 2nd, 181st, 2 and 3, 182, paragraph 1, 183, paragraph 2, 184, paragraph 3, 185, paragraphs 2 and 185a of this Code, using a computer network or communication by other technical means, arrange with a minor meeting and appear at the agreed place for the meeting, shall be punished by imprisonment of six months to five years and a fine.

(2) Whoever commits the act referred to in paragraph 1 of this Article to the child, shall be punished by imprisonment for one to eight years.

Question 8.3.

Public Prosecutor Answer:

The consent of a child for the generation of such a material and to make it available via ITC technologies does not have an impact to the existence of a criminal offence. The elements of the criminal offence shall not exist only if the material is made available via the ICT by a person who is not criminally responsible (has not yet completed 14 years of age).

Comments sent by / Commentaires envoyés par Coalition for monitoring child rights

The Republic of Serbia has taken a number of important steps with a view to prevent and protect children from child pornography in particular by amending its Criminal Code (Law on amendments to the Criminal Code, "Official Gazette" of the Republic of Serbia, No. 94/16) and adopting the Law on Special Measures for the Prevention of Crimes against Sexual Freedoms Involving Minors (Official Gazette RS, No.32/2013) – the so called "Marija's Law".

Serbian criminal legislation in this area largely responds to the relevant international standards. Adopted amendments to the Criminal Code have made punishable not only the abuse of children for pornography, but also obtaining or possession of child pornography, as well as production, selling or otherwise making available child pornography arising from abuse of minors or children (article 185 paras. 2, 3 and 4 of the Criminal Code).

The latest amendments to the Serbian criminal legislation go one step further and explicitly define the meaning of the term "child pornography", as well as punishment of anyone: "who by means of information technology knowingly accesses images, audio-visual or other objects of pornographic content created by an exploitation of a minor". 'Child pornography' (objects of pornographic content made by exploitation of a minor), in accordance with the latest amendments, "shall be any material that visually depicts a minor who is engaged in real or simulated sexually explicit conduct, as well as any representation of the genitals of a child for sexual purposes" (art. 185 paras. 5 and 6).

In addition, the Criminal Code criminalises online grooming of children in its article 185b para. 1 which is punishable with imprisonment of up to five years and a fine. Article 185b para. 2 provides that the penalty is imprisonment of up to eight years in case the victim is under 14 years of age. In addition, internet service providers are required by law to report these cases to national authorities.

Article 7 of the Law on Special Measures for the Prevention of Crime against Sexual Freedom Involving Minors imposes additional sanctions, including: "(a) mandatory reporting to the police and the Department for the Execution of Criminal Sanctions, (b) a prohibition on visiting places where children are, such as kindergardens and schools, (c) mandatory professional treatment, (d) mandatory reporting of any change in residence, (e) mandatory reporting of any trips abroad".

A unique registry provided by this Law has recently become active. According to the information that is currently at our disposal, in 2016 four offenders were registered in this database. However, the registry should undergo certain changes in order to become more transparent and consistent.

SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE

State replies / Réponses de l'Etat

Question 8.1.a.

There is no explicit reference to “self-generated sexually explicit images and/or videos” related to the pertinent offences in the legal order of the Slovak Republic. The Criminal Code does not regulate neither closely specify the term “self-generated sexually explicit images or videos”. However, it is possible to subsume this term under the term “child pornography” defined in Article 132 para. 4 of the Act No. 300/2005 Coll. the Criminal Code, as amended (hereinafter as “Criminal Code”), particularly the first part of the definition (see below the underlined part of the legal definition): **“Child pornography visually depicts sexual intercourse, pretense sexual intercourse, different act of sexual intercourse, or other conduct similar to sexual intercourse with a child or person who looks like a child, or visually depicts naked parts of the child’s body or body of person who looks like a child designed to gratify sexual desire of another.”** The pertinent legal regulation defines the term “child pornography” without any further specification of person who creates the depiction.

Question 8.1.b.

There is no explicit reference to “self-generated sexual content” related to the pertinent offences in the legal order of the Slovak Republic. The Criminal Code does not regulate neither closely specify the term “self-generated sexual content”. However, it is possible to subsume this term under the term “child pornography” defined in Article 132 para. 4 of the Criminal Code, particularly the second part of the definition (see below the underlined part of the legal definition): **“Child pornography visually depicts sexual intercourse, pretense sexual intercourse, different act of sexual intercourse, or other conduct similar to sexual intercourse with a child or person who looks like a child, or visually depicts naked parts of the child’s body or body of person who looks like a child designed to gratify sexual desire of another.”** The pertinent legal regulation defines the term “child pornography” without any further specification of person who creates the depiction. Regarding “self-generated sexual content”, it shall be considered thoroughly whether it is possible to classify such material as “child pornography”.

Question 8.1.c.

National law does not comprise regulations concerning with non-pictorial sexual content. In line with Article 132 para. 4 of the Criminal Code, “Child pornography visually depicts sexual intercourse, pretense sexual intercourse, different act of sexual intercourse, or other conduct similar to sexual intercourse with a child or person who looks like a child, or visually depicts naked parts of the child’s body or body of person who looks like a child designed to gratify sexual desire of another.”. Definition of child pornography embraces only pictorial sexual content (only if possible to subsume such material under the term “child pornography” as stated in reply to question 8.1.b.) and does not include non-pictorial sexual content (for example voice or text).

Question 8.2.-8.3.

Article 138 letter j) of the Criminal Code regulates commission of criminal offence by acting in a more serious manner against several persons (for the purposes of this Act, there shall be minimum three persons affected). When criminal offence related to the above mentioned action is committed by acting in a more serious manner (e.g. against more than two children), there is a higher statutory penalty set out for commission of such offence.

SLOVENIA / SLOVENIE

State replies / Réponses de l'Etat

Question 8.1.a.

No direct reference. Any kind of threats or extortions using such material is incriminated.

Question 8.1.b.

No direct reference. Any kind of threats or extortions using such material is incriminated.

Question 8.1.c.

No direct reference. Any kind of threats or extortions using such material is incriminated.

Question 8.2.

Yes, in that case a provision that provides for exemption from unlawfulness could be applied. The Criminal Code provides for exemption of unlawfulness in cases when two children under 15 of comparable age and maturity have been engaged in sexual activity with each other.

As above (8.1) no direct reference to such material is made in the Criminal Code. Any kind of threats or extortions with reference to such material is incriminated.

Question 8.3.a.

No.

Question 8.3.b.

No.

Comments sent by / Commentaires envoyés par Association against sexual abuse

Question 8.

All such actions are properly incriminated.

Question 8.2.

Our criminal law criminalises the actions they commit, including among those over the age of 14. Until this age, children are not criminally responsible. A sexual assault on a child, which includes Internet abuse, is an act that is incriminated by the age of 15. So, if the act of showing, producing, possessing, and distributing pornographic material would be committed against a person under the age of 15, it is punishable even if it is done by over 14 years old child, that means also a 15 year old child.

SPAIN / ESPAGNE

State replies / Réponses de l'Etat

Question 8.1.a.

The Spanish legislation does not contain any specific reference to this kind of material. When tackling child pornography, the Spanish law makes no reference based on the way the images have been obtained (self-generated or not).

Question 8.1.b.

The Spanish legislation does not contain any specific reference to this kind of material. When tackling child pornography, the Spanish law makes no reference based on the way the content has been obtained (self-generated or not).

Question 8.1.c.

Non pictorial sexual material is not covered under the Spanish legislation.

Question 8.2.a.

No, it does not.

Question 8.2.b.

No, it does not.

Question 8.3.

No, there are not. If the material is intended for sole personal use (not distribution) and it involves children who have reached the age of 16 (legal age for sexual activities) if these images are possessed by anyone with the consent of the children appearing in the material and solely for his/her own private use, this conduct would not be punishable according to General Prosecution Office Instruction 2/2015 on Child Pornography Crimes after Act 1/2015 amending Spanish Penal Code (page 26).

Though this conduct would be formally a crime, it would not be unlawful as the legal interest protected by the law (sexual integrity/indemnity of the child) would not be damaged.

SWEDEN / SUEDE

State replies / Réponses de l'Etat

Question 8.2.a.

Yes, see the answers below (9.1 a and 11 a)

9.1.a.

Yes, Sweden has very far-reaching criminalisation of all conceivable forms of engagement with child pornography pictures. According to Chapter 16, Section 10a of the Swedish Penal Code it is criminal to portray a child in a pornographic picture, to make such a picture available to some other person, to acquire or offer such a picture, to facilitate in any way dealing in such pictures, or to possess such a picture. Since 1 July 2010, viewing child pornographic pictures that the viewer has acquired access to is also a crime of child pornography. This includes, of course, so called web-viewing without possession. All kinds of pictures are covered by the regulation, for example pictures in printed publications, pictures in video recordings and pictures that are communicated on the Internet.

11.a.

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

Question 8.2.b.

See the answers 9.1 a and 11 a

Question 8.2.c.

No, there are no such references.

Question 8.2.

There are no specific rules in regard to the number of children. Please see the answers below concerning national law.

Question 8.3.

There are no specific rules in regard to the number of children. Please see the answers below concerning national law.

SWITZERLAND / SUISSE

State replies / Réponses de l'Etat

Remarques préliminaires :

1) Le droit pénal suisse donne une définition large des termes de pornographie enfantine et de représentations pornographiques de mineurs :

Les images d'enfants (nus) sont pornographiques dès lors qu'elles visent, par une *exhibition des parties génitales*, à provoquer l'excitation sexuelle chez celui qui les regarde. Dans la jurisprudence du Tribunal fédéral, il arrive toutefois que des images d'enfants nus soient considérées comme pornographiques alors qu'elles ne présentent pas ce caractère d'exhibition : le Tribunal fédéral a ainsi jugé que celui qui fait poser et photographier un enfant aux parties génitales visibles dans une *position objectivement excitante* réunit dans tous les cas les éléments constitutifs de l'infraction de pornographie dure au sens de l'art. 197, al. 4, du code pénal (CP), qu'il ressente lui-même une excitation sexuelle en le faisant ou que l'enfant soit conscient du caractère sexuel de l'acte ou non (ATF 131 IV 64).

Dans la jurisprudence récente, les images d'enfants partiellement nus peuvent aussi présenter un caractère pédopornographique lorsqu'elles paraissent avoir un caractère sexuel évident et être socialement déplacées en raison de la pose, de la représentation, de l'angle de vue, du cadrage ou d'autres éléments. Il s'agit toutefois de donner nettement plus de poids au caractère sexuel de la prise de vue découlant de ces éléments, par comparaison avec les images d'enfants entièrement nus ou aux parties génitales découvertes. Le caractère pornographique des représentations d'enfants nus ou partiellement nus ne peut être pris à la légère et ne doit être reconnu que dans les cas évidents (ATF 6B.180/2015 du 18 février 2016).

Il découle de ces délimitations qu'aussi bien les « images et/ou vidéos sexuellement explicites autoproduites » au sens du ch. II. 11.a. du questionnaire que les représentations au « contenu à caractère sexuel autoproduit » au sens du point. II. 11. b. du questionnaire sont considérées comme pornographiques par le droit pénal suisse et tombent sous le coup de l'art. 197 CP. En conséquence, les réponses concernant les représentations au « contenu à caractère sexuel autoproduit » ne contiennent qu'un renvoi.

2) Selon le droit pénal suisse, les infractions peuvent toutes être commises aussi bien par des adultes que par des mineurs. Tel est aussi le cas pour les art. 187 (actes d'ordre sexuel avec des enfants) et 197 CP (pornographie). Font exception les art. 187, al. 2, CP (« L'acte n'est pas punissable si la différence d'âge entre les participants ne dépasse pas trois ans. ») et 197, al. 8, CP (« N'est punissable le mineur âgé de 16 ans ou plus qui produit, possède ou consomme, avec le consentement d'un autre mineur âgé de 16 ans ou plus, des objets ou des représentations au sens de l'al. 1 qui les impliquent », mise en œuvre de la réserve faite par la Suisse à l'art. 20, par. 3, tiret deux, de la Convention).

Si l'auteur de l'infraction est mineur, c'est le droit pénal des mineurs (DPMIn) qui s'applique, une loi qui prévoit des mesures protectrices, peines et motifs d'exemption de peine spécifiques pour les mineurs. Dès l'âge de 18 ans, l'auteur est majeur et soumis au droit pénal des adultes (CP).

Question 8.1.a.

Le droit pénal suisse règle la question des représentations pornographiques de mineurs à l'art. 197 CP. La fabrication des représentations pornographiques avec des mineurs relève de l'art. 197, al. 4, CP.

N'importe qui peut en être l'auteur ; la loi est formulée de telle manière que les enfants peuvent aussi être punissables. L'art. 197, al. 4, CP ne contient aucune indication concrète sur le fait que les représentations de mineurs sont fabriquées par eux-mêmes ou par des tiers.

Seul l'art. 197, al. 8, CP, qui met en œuvre la réserve que la Suisse a apportée à l'art 20, par. 3, 2^e tiret, de la Convention, fait référence (indirectement) aux représentations pornographiques de mineurs dont ils sont l'auteur. Selon cette disposition, les mineurs âgés de 16 ans ou plus ne sont pas punissables lorsqu'ils produisent, possèdent ou consomment, avec le consentement d'un autre mineur âgé de 16 ans ou plus, des objets ou des représentations pornographiques.

Cf. réponse à la question 9.7. a.)

La réponse à cette question dépend de l'âge de l'enfant : il faut distinguer entre les enfants de 10 à 15 ans et ceux qui ont 16 ou 17 ans.

L'art. 197, al. 8, CP prévoit que le *mineur âgé de 16 ans ou plus* qui produit, possède ou consomme des objets ou des représentations, avec le consentement d'un autre mineur âgé de 16 ans ou plus, n'est pas punissable. En d'autres termes, si A, 16 ans, fabrique une image ou vidéo pornographique de B, 17 ans, avec son consentement, A n'est pas punissable.

Même si la chose ne ressort pas expressément de la formulation de l'art. 197, al. 8, CP, il doit en aller de même, à notre avis, lorsque B fabrique une image pornographique de lui-même : le selfie pornographique est moins grave que la fabrication d'une image de même nature d'une personne tierce. Dans ce cas, le risque est également moins grand que l'image soit diffusée sans le consentement de l'intéressé et lui soit dommageable. Si la première situation n'est pas punissable, la seconde – celle du selfie – ne devrait pas l'être non plus.

Lorsque, en revanche, des *enfants de 10 à 15 ans* fabriquent des images et/ou des vidéos pornographiques d'eux-mêmes, l'art. 197, al. 8, CP n'est pas applicable ; ces enfants se rendent donc punissables. Ils ne sont pas encore majeurs au plan sexuel. On suppose par conséquent qu'ils ne sont pas en mesure, de par leur âge, d'évaluer les risques et les dangers (diffusion involontaire) que la fabrication d'une image ou d'une vidéo pornographique peut receler.

Art. 197 CP Pornographie

¹ Quiconque offre, montre, rend accessibles à une personne de moins de 16 ans ou met à sa disposition des écrits, enregistrements sonores ou visuels, images ou autres objets pornographiques ou des représentations pornographiques, ou les diffuse à la radio ou à la télévision, est puni d'une peine privative de liberté de trois ans au plus ou d'une peine pécuniaire.

² Quiconque expose ou montre en public des objets ou des représentations visés à l'al. 1, ou les offre à une personne sans y avoir été invité, est puni de l'amende. Quiconque, lors d'expositions ou de représentations dans des locaux fermés, attire d'avance l'attention des spectateurs sur le caractère pornographique de celles-ci n'est pas punissable.

³ Quiconque recrute un mineur pour qu'il participe à une représentation pornographique ou favorise sa participation à une telle représentation est puni d'une peine privative de liberté de trois ans au plus ou d'une peine pécuniaire.

⁴ Quiconque fabrique, importe, prend en dépôt, met en circulation, promeut, expose, offre, montre, rend accessible, met à disposition, acquiert, obtient par voie électronique ou d'une autre manière ou possède des objets ou représentations visés à l'al. 1, ayant comme contenu des actes d'ordre sexuel avec des animaux, des actes de violence entre adultes ou des actes d'ordre sexuel non effectifs avec des mineurs, est puni d'une peine privative de liberté de trois ans au plus ou d'une peine pécuniaire. Si les objets ou représentations ont pour contenu des actes d'ordre sexuel effectifs avec des mineurs, la sanction est une peine privative de liberté de cinq ans au plus ou une peine pécuniaire.

⁵ Quiconque consomme ou, pour sa propre consommation, fabrique, importe, prend en dépôt, acquiert, obtient par voie électronique ou d'une autre manière ou possède des objets ou représentations visés à

l'al. 1, ayant comme contenu des actes d'ordre sexuel avec des animaux, des actes de violence entre adultes ou des actes d'ordre sexuel non effectifs avec des mineurs, est puni d'une peine privative de liberté d'un an au plus ou d'une peine pécuniaire. Si les objets ou représentations ont pour contenu des actes d'ordre sexuel effectifs avec des mineurs, la sanction est une peine privative de liberté de trois ans au plus ou une peine pécuniaire.

⁶ En cas d'infraction au sens des al. 4 et 5, les objets sont confisqués.

⁷ Si l'auteur agit dans un dessein d'enrichissement, le juge prononce une peine pécuniaire en plus de la peine privative de liberté.

⁸ N'est pas punissable le mineur âgé de 16 ans ou plus qui produit, possède ou consomme, avec le consentement d'un autre mineur âgé de 16 ans ou plus, des objets ou des représentations au sens de l'al. 1 qui les impliquent.

⁹ Les objets et représentations visés aux al. 1 à 5 qui présentent une valeur culturelle ou scientifique digne de protection ne sont pas de nature pornographique.

Question 8.1.b.

Cf. réponse à la question 8.1. a.)

Question 8.1.c.

Les représentations non visuelles telles que des sons ou des textes peuvent tomber sous le coup de l'art. 187, al. 1, CP (actes d'ordre sexuel avec des enfants / mêler un enfant à un acte d'ordre sexuel) ou de l'art. 197, al. 4, CP (pornographie). L'art. 187, al. 2, CP et l'art. 197, al. 8, CP sont réservés.

Résumé de la situation juridique sur le site de la PSC :

<https://www.skppsc.ch/fr/wp-content/uploads/sites/5/2016/12/droitpornographie.pdf>

<https://www.skppsc.ch/fr/wp-content/uploads/sites/5/2016/12/droitcyberharcèlement.pdf>

<https://www.skppsc.ch/fr/wp-content/uploads/sites/5/2016/12/droitmonimage.pdf>

Question 8.2.a.

L'art. 197, al. 8, CP prévoit que le mineur âgé de 16 ans ou plus qui produit, possède ou consomme des objets ou des représentations, avec le consentement d'un autre mineur âgé de 16 ans ou plus, n'est pas punissable.

Question 8.2.b.

L'art. 197, al. 8, CP prévoit que le mineur âgé de 16 ans ou plus qui produit, possède ou consomme des objets ou des représentations, avec le consentement d'un autre mineur âgé de 16 ans ou plus, n'est pas punissable.

Question 8.3.a.

L'art. 197, al. 8, CP prévoit que le mineur âgé de 16 ans ou plus qui produit, possède ou consomme des objets ou des représentations, avec le consentement d'un autre mineur âgé de 16 ans ou plus, n'est pas punissable. Il faut donc qu'au moins deux adolescents soient impliqués, mais ils peuvent être plus nombreux. Il est dans l'esprit de la loi que la transmission d'images et/ou de vidéos entre ces adolescents n'est pas punissable non plus.

Quiconque montre ou transmet à une *tierce personne qui n'y a pas participé* une image créée dans les conditions de l'art. 197, al. 8, CP se rend punissable en vertu de l'art. 197, al. 4, CP, que l'enfant figurant sur l'image et/ou la vidéo ait consenti à sa transmission ou non.

Question 8.3.b.

Cf. réponse à la question 8.3. a.)

TURKEY / TURQUIE

State replies / Réponses de l'Etat

Question 8.1.

Situations where a child is in an obscene material are criminalized by the article 226 of Turkish Criminal Code. The text of the law is as follows:

“Obscenity

Article 226

(1) Any person who

...

gives to a child obscene written or audio-visual material; or who reads or induces another to read such material to a child or makes a child watch or listen to such material;

...

A person who uses children in the production of obscene written or audio-visual materials shall be sentenced to a penalty of imprisonment for a term of five to ten years and a judicial fine of up to five thousand days. Any person who conveys such material into the country, who copies or offers for sale such material or who sells, transports, stores, exports, retains possession of such material or offers such material for the use of others shall be sentenced to a penalty of imprisonment for a term of two to five years and a judicial fine of up to five thousand days.

...

Any person who broadcasts or publishes the materials described in sections three and four or who acts as an intermediary for this purpose or who ensures children see, hear or read such materials shall be sentenced to a penalty of imprisonment for a term of six to ten years and a judicial fine of up to five thousand days.”

...

This article approaches crimes where a child is included in obscene material without making any distinction between cases whether sexually explicit or sexual images and videos or even non-pictorial sexual content is in question. Text of the provision uses “obscene” instead. According to the third paragraph of the article, if a child is used in production of obscene material, the offender who produces, imports, offers for selling, transports, stores, submits to use of other people or keeps shall be sentenced to prison penalty. Therefore, although the text of the law does not contain a specific reference to “self-generated sexually explicit or sexual images or non-pictorial content, it uses obscenity of children which includes also these cases and the text indicates “written or audiovisual material. Therefore it can be said that criminal code contains reference to the notions stated above.

We should also note that if there is crime of sexual abuse of children for producing such materials, the offender who abuses the child shall be also sentenced to the penalty under article 103 of Turkish Criminal Code, which foresees a penalty of imprisonment up to life imprisonment pursuant to form of committing the crime and the aggravation of the harmful results on child.

Other than the crime of obscenity regarding children, self-generated sexually explicit and sexual content can be subject of “violation of privacy”. Pursuant to the article 134 of Turkish Criminal Code, violating privacy of another person’s personal life is sentenced to a penalty of imprisonment for a term of six months to two years or a judicial fine. Where the violation of privacy occurs as a result of recording images or sound, the penalty of imprisonment to be imposed shall not be less than one year. Any person who discloses the images or sounds of another person’s private life shall be sentenced to a penalty of

imprisonment from a term of one to three years. Where the offence is committed through the press or broadcasting, the penalty shall be increased by one half. Therefore if an offender broadcasts self-generated content of a child on internet, this act can be examined under this article.

“Violation of Privacy”

“Article 134

(1) Any person who violates the privacy of another person’s personal life shall be sentenced to a penalty of imprisonment for a term of six months to two years or a judicial fine. Where the violation of privacy occurs as a result of recording images or sound, the penalty of imprisonment to be imposed shall not be less than one year.

(2) Any person who discloses the images or sounds of another person’s private life shall be sentenced to a penalty of imprisonment from a term of one to three years. Where the offence is committed through the press or broadcasting, the penalty shall be increased by one half.”

Besides criminal law, there are other texts having a reference to sexual exploitation of children. Pursuant to the [Law On Regulation Of Publications On The Internet And Suppression Of Crimes Committed By Means Of Such Publications](#), where the crimes of sexual abuse of children or obscenity are committed on internet, access on internet to such websites are denied by a judge. Furthermore, according to the article 9/a of the same code, persons whose privacy are violated on internet have the right to make a claim to block the access to a web page. These rights are very accessible and prompt legal remedies for victims of ICT facilitated sexual coercion or extortion or violation of privacy. Besides, victims can always address to the police to start investigation against offenders. Therefore, in the case of a violation of privacy of a child by using her or his self-generated content, victim can use the legal remedies stated above.

Question 8.2.

There is not a specific article tacking involvement of more than one child generating of self-generated sexually explicit images/videos or sexual content.

Question 8.3.

Article 226 does not include any specific provision related to the fact that one or more children appear in these images/videos and content.

UKRAINE

State replies / Réponses de l’Etat

Question 8.1.

National legislation of Ukraine does not contain direct references to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. The specified Convention was ratified with statements by the Law of Ukraine dated 20.06.2012 № 4988-VI "On ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse" (hereinafter referred to as the Convention).

The Law of Ukraine dated 20.11.2003 No. 1296-IV «On the Protection of Public Morality», which establishes the following definitions of terms, defines terms and concepts related to self-generated sexual content:

Pornography - vulgar-naturalistic, cynical, obscene fixation of sexual acts, self-sufficient, special demonstration of genitals, anti-ethical sexual scenes of sexual acts, sexual perversions, sketches of

nature that do not meet moral criteria, offend human honour and dignity, inducing unworthy instincts.

Pornographic products are any material objects, items, printed, audio and video products, including advertising, messages and materials, media products, electronic media, the content of which is a detailed description of anatomical or physiological details of sexual acts or those one that contain pornographic information.

In the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, ratified by the Law of Ukraine dated 03.04.2003 N 716-IV (716-15) fixed the definition of the term child pornography, which means any image by any means of a child who carries out real or simulated sexually explicit sexual activities, or any image of the sexual organs of a child, mainly for sexual purposes.

Responsibility for the commission of sexual violence against children, the creation of sexually explicit images and / or video with the participation of children provided for in the norms of the Criminal Code of Ukraine dated April 5, 2001 No. 2341-III (hereinafter - CCU), which comply with the norms of the Convention.

In accordance with the requirements of the Criminal Procedure Code of Ukraine an investigator, a prosecutor submits the information into the Uniform Register of Pre-trial Investigations and initiate an investigation. The bodies of pre-trial investigation in the National Police of Ukraine are investigative units.

Question 8.2.

National legislation of Ukraine carries out the prosecution of the production of pornographic items as provided for in Article 301 of CCU. Persons who have reached the age of 16 years shall be criminally liable for such offences.

Question 8.3.

No answer to this question / Pas de réponse à cette question.

Comments sent by / Commentaires envoyés par La Strada

Question 8.1.

The national law contains no references to self-generated content of any kind.

Nevertheless, the Law of Ukraine 'On Protection of Public Morality' contains a number of definitions concerning child pornography, pornography, erotic products, pornographic products, sexual products, etc.

Question 8.2.

The national law contains no provisions concerning participation of more than one child (i.e., collective posing) in self-generated sexual content.

It should be noted, however, that the Criminal Code of Ukraine imposes liability for importation, making, sale or distribution of pornographic items. Person older than 16 years may be prosecuted.

Question 8.3.

There are no such specificities.

Comments sent by / Commentaires envoyés par Parliament commissioner for human rights

The Council of Europe Convention on the Protection of children against sexual exploitation and sexual abuse is not implemented in national law. At present, the text of the bill "On Amendments to the Criminal Code of Ukraine on the Protection of children against sexual abuse and sexual exploitation" (Reg. No. 2016 dated February 3, 2015) prepared for the second reading.

Comments sent by / Commentaires envoyés par "Rozrada" (Centre of practical psychology)

Question 8.1.

We don't know about such referring.

Question 8.2.

It seems that national law tackle don't involve of more than one child.

Question 8.3.

It seems to psychologists that the absence of the wide and exact information for all people about crimes in this context and risks for children who are involved and their families has issue about impunity of such activities. From other side absence of attention to this problem from parents and teachers also support such crime activities.