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## **LANZAROTE COMMITTEE / COMITÉ DE LANZAROTE**

### **FOCUSED QUESTIONNAIRE**

**aimed at gathering information for a forthcoming exchange of views  
to build capacity**

#### **Legal age for sexual activities / Age of sexual consent**

Compilation of information received from State Parties  
and other stakeholders

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### **QUESTIONNAIRE CIBLÉ**

**visant à rassembler des informations pour un futur échange de vues destiné à  
renforcer les capacités**

#### **Âge légal pour entretenir des activités sexuelles / Âge du consentement sexuel**

Compilation des informations reçues par les États parties  
et autres parties prenantes

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<sup>1</sup> This document compiles the information received from the Parties to the Lanzarote Convention which have agreed to respond to the Focused questionnaire. The Parties had no obligation to respond since this collection of information does not take place in the context of the monitoring of the implementation of the Convention but of an exchange of information, experiences and good practices. The replies are reproduced in the language version in which they were received (English or French) /

*Ce document compile les informations reçues des Parties à la Convention de Lanzarote qui ont accepté de répondre au Questionnaire ciblé. Les Parties n'avaient pas d'obligation de réponse puisque cette collecte d'information ne se fait pas dans le contexte du suivi de la mise en œuvre de la Convention mais d'un échange d'informations, d'expériences et de bonnes pratiques. Les réponses sont reproduites dans la version linguistique dans laquelle elles ont été reçues (anglais ou français).*

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## Background information

### What does the Lanzarote Convention foresee?

There are two basic rules under the Lanzarote Convention:

- An adult who engages in sexual activities with a child who has not reached the legal age for sexual activities established by national law commits a crime;
- Any person (adult or child) who engages in sexual activities with a child (including with a child who is above the legal age for sexual activities) using coercion, force, threat; abusing his/her recognised position of trust, authority or influence over the child and/or abusing the particular vulnerability of the child, commits a crime.

Article 18 of the Lanzarote Convention refers to the “legal age for sexual activities”, also known as the “age of sexual consent” by the public at large. The Lanzarote Convention does not set a common age. Such age is thus set in Parties’ national laws. Currently, there are different “legal ages for sexual activities” among the Parties to the Convention, ranging from 14 to 18.<sup>2</sup>

Article 18 requires Parties to criminalise the fact that a person engages in sexual activities with a child who has not reached the “legal age for sexual activity”.<sup>3</sup>

Article 18 additionally, requires criminalisation of the fact that a person engages in sexual activities with a child regardless of his/her age (i.e. any person under 18) if:

- coercion, force or threats are used; or
- abuse is made of a recognised position of trust, authority or influence over the child, including within the family; or
- abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.

**In these situations, the question whether the child has given his or her consent is irrelevant.**

### What has the Lanzarote Committee clarified?

It is worth recalling that while examining the implementation of Article 18 in the context of its [1<sup>st</sup> monitoring round on the protection of children against sexual abuse in the circle of trust](#), the Lanzarote Committee (i.e. the body in charge of verifying the effective implementation of the Convention) further clarified that:

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<sup>2</sup> See, FRA tables of 2017 mapping minimum age requirements and sexual consent and other relevant information at

<https://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements/sexual-consent> and [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2017-status-religion-health-specific-data\\_en.xlsx](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-status-religion-health-specific-data_en.xlsx) as well as the following table: <https://www.worldatlas.com/articles/age-of-consent-around-the-world.html>

<sup>3</sup> It should be noted that consensual sexual activities between children should not be criminalised in accordance with Article 18§3.

- Regardless of the specific wording chosen by domestic law, the intention of the authors of the Lanzarote Convention was to ensure that relationships based on “trust”, “authority” or “influence” be all encompassed in the criminal offence defined by Article 18§1(b), 2nd indent (hereafter named “sexual abuse of children in the circle of trust” for ease of reference);
- To eliminate ambiguity and better guarantee that all children are protected against sexual abuse in the circle of trust, domestic law should specify that the child’s age is not relevant in the context of the criminal offence of sexual abuse in the circle of trust;
- Most legislations enumerate specific types of relationships within which sexual abuse of a child may occur. Rigid listings of very specific situations risks leaving others without protection, thus jeopardising the enjoyment by children of their right to be safe from sexual abuse in the circle of trust.

In addition, it should be noted that none of the reviewed Parties provided information on situations where the position of influence of a child may induce a younger and more vulnerable child to engage in sexual activities with him or her. The Committee thus invited Parties to consider how to take into account in their legislation the fact that a child may sexually abuse another child by taking advantage of his or her position of influence or trust.

On the basis of the above, the Committee specifically recommended that Parties review their legislations to:

- introduce a clear reference to the possible “abuse of a recognised position of trust, authority or influence” and to avoid any rigid listing of very specific situations as it risks leaving children in other situations without protection (R3);
- include a reference to the notion of “circle of trust” which would comprise members of the extended family (including new partners), persons having caretaking functions (including trainers of any kind) or exercising control over the child professionally or on a voluntary basis (including persons who look after children in their leisure-time) and any other person trusted by the child (including other children) (R4);
- ensure that every child up to 18 years is protected in the context of the basic criminal offence of sexual abuse in the circle of trust (R6);
- ensure that the offence of sexual abuse in the circle of trust is constituted even when the perpetrator does not use coercion, force or threats (R8).



## Questions

1. What is the legal age for sexual activities in your country (i.e. What is the age above which a child may engage in sexual activities with a person aged 18 or more, without the latter committing a criminal offence?)
2. Is there only one legal age for sexual activities or does the legal age for sexual activities depend on the type of sexual activity? Please specify.
3. Does the legislation of your country include the issue of age difference between the persons engaged in sexual activities? Please specify (including, if relevant, age difference between a child and an adult or between children).
4. Does your legislation make a difference between the legal age for sexual activities and the age under which a child is never deemed to be in a position to give his/her consent? Please specify the different age limits, if appropriate.
5. What are the situations where, irrespective of the age of the child, the child is never deemed to be in a position to give his/her consent (e.g. abuse of a position of trust, authority, or influence)?
6. Does your legislation or case law define “consent” and/or “lack of consent” by a child to sexual activities? If so, please provide details, including examples.
7. Has there been a change in the legal age for sexual activities or the age under which a child is never deemed to be in a position to give his/her consent in recent years? If so, can you specify the changes and the rationale of the change?
8. Is there an on-going discussion in your country to change the legal age for sexual activities or the age under which a child is never deemed to be in a position to give his/her consent? If so, can you indicate whether the aim is to lower or raise the legal age for sexual activities and/or the age under which a child is never deemed to be in a position to give his/her consent?
9. Is the fact that a child may sexually abuse another child by for example taking advantage of his or her position of influence or trust reflected in your legislation? If so, how?

\*\*\*\*\*

## Contexte

### Que prévoit la Convention de Lanzarote ?

Il existe deux règles de base en vertu de la Convention de Lanzarote :

- un adulte qui se livre à des activités sexuelles avec un enfant n'ayant pas atteint l'âge légal défini par le droit national pour entretenir des activités sexuelles commet une infraction pénale ;
- toute personne (adulte ou enfant) qui se livre à des activités sexuelles avec un enfant (y compris avec un enfant ayant dépassé l'âge légal pour entretenir des activités sexuelles) en faisant usage de la contrainte, de la force ou de menaces, en abusant de sa position reconnue de confiance, d'autorité ou d'influence sur l'enfant et/ou en abusant de la vulnérabilité particulière de l'enfant, commet une infraction pénale.

L'article 18 de la Convention de Lanzarote fait référence à « l'âge légal pour entretenir des activités sexuelles », également connu comme « âge du consentement sexuel » par le grand public. La Convention de Lanzarote ne fixe pas d'âge commun. Cet âge est ainsi fixé par la législation nationale des Parties. Il existe actuellement dans les Parties à la Convention différents âges légaux pour entretenir des activités sexuelles, qui vont de 14 à 18 ans<sup>4</sup>.

L'article 18 exige que les Parties érigent en infraction pénale le fait pour une personne de se livrer à des activités sexuelles avec un enfant n'ayant pas atteint « l'âge légal pour entretenir des activités sexuelles »<sup>5</sup>.

Cet article exige également d'ériger en infraction pénale le fait pour une personne de se livrer à des activités sexuelles avec un enfant, quel que soit son âge (c'est-à-dire toute personne de moins de 18 ans) lorsqu'il y a :

- usage de la contrainte, de la force ou de menaces ; ou
- abus d'une position reconnue de confiance, d'autorité ou d'influence sur l'enfant, y compris au sein de la famille ; ou
- abus d'une situation de particulière vulnérabilité de l'enfant, notamment en raison d'un handicap physique ou mental ou d'une situation de dépendance.

**Dans ces situations, la question de savoir si l'enfant a donné son consentement ou pas est sans objet.**

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<sup>4</sup> Voir les tableaux de la FRA de 2017 établissant les exigences d'âge minimum et le consentement sexuel, et d'autres informations pertinentes (anglais seulement) : <https://fra.europa.eu/en/publication/2017/mapping-minimum-age-requirements/sexual-consent> et [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2017-status-religion-health-specific-data\\_en.xlsx](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-status-religion-health-specific-data_en.xlsx) ainsi que le tableau suivant : <https://www.worldatlas.com/articles/age-of-consent-around-the-world.html>

<sup>5</sup> Il convient de noter que les activités sexuelles consenties entre enfants ne devraient pas constituer des infractions pénales en vertu de l'article 18§3.

### Qu'est-ce que le Comité de Lanzarote a clarifié ?

Il convient de rappeler qu'au cours de son examen de la mise en œuvre de l'article 18 dans le cadre de son [1<sup>er</sup> cycle de suivi sur la protection des enfants contre les abus sexuels commis dans le cercle de confiance](#), le Comité de Lanzarote (organe chargé de contrôler la mise en œuvre effective de la Convention) a précisé que :

- Quel que soit le choix des termes employés dans le droit interne, l'intention des auteurs de la Convention de Lanzarote était de garantir que les relations fondées sur la « confiance », l'« autorité » ou l'« influence » soient toutes incluses dans l'infraction pénale définie à l'article 18§1(b) 2e tiret (que l'on désignera ci-après, par commodité, par l'expression « abus sexuels commis sur des enfants dans le cercle de confiance ») ;
- Afin d'éliminer toute ambiguïté et de mieux garantir la protection de tous les enfants contre les abus sexuels dans le cercle de confiance, la législation nationale devrait préciser que l'âge de l'enfant n'entre pas en ligne de compte dans le contexte de l'infraction d'abus sexuel dans le cercle de confiance ;
- La plupart des législations énumèrent une série de relations dans le cadre desquelles des abus sexuels concernant des enfants sont susceptibles de se produire. Avoir une liste rigide de situations très spécifiques risque de laisser des enfants qui se trouvent dans d'autres situations sans protection et de les priver ainsi de la jouissance du droit d'être à l'abri d'abus sexuels commis dans le cercle de confiance.

De plus, il convient de noter qu'aucune des Parties examinées n'a communiqué d'informations sur les situations où la position d'influence d'un enfant peut inciter un enfant plus jeune et plus vulnérable à se livrer à des activités sexuelles avec lui/elle. Le Comité a par conséquent invité les Parties à réfléchir aux moyens de prendre en compte dans leur législation le fait qu'un enfant peut faire subir des abus sexuels à un autre enfant en profitant de sa position d'influence ou de confiance.

Sur la base de ce qui précède, le Comité a spécifiquement recommandé aux Parties de réviser leur législation afin de :

- introduire une référence claire à la possibilité d'abuser « d'une position reconnue de confiance, d'autorité ou d'influence » et d'éviter toute liste rigide de situations très spécifiques, ce qui risque de laisser des enfants dans d'autres situations sans protection (R3) ;
- mentionner la notion de « cercle de confiance », définie comme comprenant les membres de la famille élargie (y compris les nouveaux partenaires), les personnes qui ont la charge de l'enfant (y compris tout type d'entraîneur) ou qui exercent un contrôle sur l'enfant à titre professionnel ou en qualité de bénévole (y compris les personnes qui s'occupent d'enfants pendant leurs loisirs) et toute autre personne en laquelle l'enfant a confiance (y compris d'autres enfants) (R4) ;
- veiller à ce que tout enfant de moins de 18 ans soit protégé dans le contexte de l'infraction d'abus sexuel dans le cercle de confiance (R6) ;
- veiller à ce que l'infraction d'abus sexuel dans le cercle de confiance soit constituée même lorsque l'auteur n'a pas recours à la contrainte, à la force ou à la menace (R8).

## Questions

1. Quel est l'âge légal pour entretenir des activités sexuelles dans votre pays (c'est-à-dire quel est l'âge au-dessus duquel un enfant peut se livrer à des activités sexuelles avec une personne âgée de 18 ans ou plus, sans que cette dernière ne commette une infraction pénale ?)

2. Y a-t-il un seul âge légal pour entretenir des activités sexuelles ou est-ce que l'âge légal pour entretenir des activités sexuelles dépend du type d'activité sexuelle ? Veuillez préciser.

3. La législation de votre pays inclut-elle la question de la différence d'âge entre les personnes se livrant à des activités sexuelles ? Veuillez préciser (y compris, le cas échéant, la différence d'âge entre un enfant et un adulte ou entre les enfants).

4. Votre législation fait-elle une différence entre l'âge légal pour entretenir des activités sexuelles et l'âge en dessous duquel un enfant n'est jamais considéré comme étant en mesure de donner son consentement ? Veuillez préciser les différentes limites d'âge, le cas échéant.

5. Quelles sont les situations dans lesquelles, quel que soit l'âge de l'enfant, il est considéré que l'enfant ne peut jamais donner son consentement (par exemple, abus de confiance, d'autorité ou d'influence) ?

6. Votre législation ou votre jurisprudence définit-elle le « consentement » et / ou le « défaut de consentement » d'un enfant à des activités sexuelles ? Dans l'affirmative, veuillez fournir des détails, y compris des exemples.

7. Y a-t-il eu un changement ces dernières années de l'âge légal pour entretenir des activités sexuelles ou de l'âge en dessous duquel il est considéré qu'un enfant ne peut jamais donner son consentement ?  
Si tel est le cas, pouvez-vous préciser les changements et ce qui les a motivés ?

8. Existe-t-il une discussion en cours dans votre pays pour modifier l'âge légal pour entretenir des activités sexuelles ou l'âge en dessous duquel il est considéré qu'un enfant ne peut jamais donner son consentement ?  
Dans l'affirmative, pouvez-vous indiquer si l'objectif est d'abaisser ou de relever l'âge légal pour entretenir des activités sexuelles et / ou l'âge en dessous duquel il est considéré qu'un enfant ne peut jamais donner son consentement ?

9. Le fait qu'un enfant puisse abuser sexuellement d'un autre enfant, par exemple en profitant de sa position d'influence ou de confiance, est-il reflété dans votre législation ?  
Si c'est le cas, de quelle manière ?

**Question 1**

What is the legal age for sexual activities in your country (i.e. What is the age above which a child may engage in sexual activities with a person aged 18 or more, without the latter committing a criminal offence?)

*Quel est l'âge légal pour entretenir des activités sexuelles dans votre pays (c'est-à-dire quel est l'âge au-dessus duquel un enfant peut se livrer à des activités sexuelles avec une personne âgée de 18 ans ou plus, sans que cette dernière ne commette une infraction pénale ?)*

*Albania / Albanie*

In the Criminal Code of the Republic of Albania, in article 101 “Violent sexual or homosexual intercourse with a minor who is fourteen to eighteen years old” is predicted:

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

*Andorra / Andorre*

L’année 2022 avec l’adoption de la Loi 6/2022, du 31 mars, pour l’application effective du droit à l’égalité de traitement et d’opportunités et à la non-discrimination entre femmes et hommes, dans sa disposition finale dix-septième, modifie la Loi 9/2005, du 21 février, qualifiée du Code pénale, concrètement et dans la matière relative aux délits contre la liberté sexuelle, établit dans son article 144 qu’on comprend par commis sans consentement ou avec un consentement vicié le comportement ou relation sexuelle qui soit réalisé avec une personne mineure de 14 ans ou privée de son sens, inconscient ou incapable de s’opposer ou avec abus de leur incapacité et doit être puni avec peine d’emprisonnement de trois mois jusqu’à trois ans.

Pourtant, le Code pénale établit que le mineur de 14 ans n’a pas de la capacité pour consentir en ce qui concerne aux relations sexuelles et pourtant elles sont considérées comme relations sans consentement constitutives de délit contre la liberté sexuelle.

En conclusion, on comprend par commis sans consentement le comportement ou relation sexuelle qui soit réalisé avec des personnes mineures de 14 ans.

*Armenia / Arménie*

16 is the legal age.

*Austria / Autriche*

In principle, persons over the age of fourteen can engage in sexual contact without committing a criminal offense.

However, there are exceptions which are regulated in sections 207b, 208 and 212 CC. In these cases, sexual contacts with persons over the age of fourteen are punishable because the person is particularly vulnerable or because the relationship of authority is exploited.

<p><b>Sexual abuse of juveniles</b></p> <p>§ 207b. (1) Any person [the perpetrator] who, performs a sexual act on a person under the age of 16 who, for particular reasons does not have the maturity to understand the significance of such an act or to act according to this understanding, or any person [the perpetrator] who has a sexual act performed on himself or herself by such a person or who induces such a person to perform a sexual act on a third person or to have a sexual act performed by a third person on that person, and takes advantage of the lack of maturity of that person and the age advantage of the perpetrator is liable to imprisonment for up to one year or a fine not exceeding 720 penalty units.</p> <p>(2) Any person who performs a sexual act on a person under the age of 18, or who has a sexual act performed on him or her by such a person or who induces such a person to perform a sexual act on a third person or to have a sexual act performed by a third person on that person, and takes advantage of a predicament of that person is liable to imprisonment for up to three years.</p> <p>(3) Any person [the perpetrator] who through payment directly induces a person under the age of 18 to perform a sexual act on the perpetrator or on a third person or to have a sexual act performed on him or her by the perpetrator or a third person is liable to imprisonment for up to three years.</p>	<p><b>Indecent endangerment of persons under the age of 16</b></p> <p>§ 208. (1) Any person [the perpetrator] who, in order to sexually arouse or satisfy himself, herself, or a third person, engages in an act capable of endangering the ethical, mental, or physical development of a person under the age of 16 and does so in front of a person under the age of 14 or a person under the age of 16 who is being educated, trained, or supervised by the perpetrator is liable to imprisonment for up to one year or a fine not exceeding 720 penalty units, unless any endangerment of the person under the age of 14 or under the age of 16 respectively is impossible in the circumstances.</p> <p>(2) The same penalty applies to any person, except in cases under para. 1, who, in order to sexually arouse or satisfy himself, herself, or a third person, causes a minor to observe a sexual act.</p> <p>(3) Any person who, in order to sexually arouse or satisfy himself, herself, or a third person, causes a minor to observe an offence under §§ 201 to 207 or 207b is liable to imprisonment for up to two years.</p> <p>(4) The person is not liable under paras. 1 and 2 if, in cases under para. 1 1st alternative and para. 2 the perpetrator is no more than four years older than the person under the age of 14 unless the minor had not reached the age of 12.</p>
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**Abuse of a position of authority**

§ 212. (1) Any person who engages in a sexual act with 1. a minor with whom the person is related in a descending line, a minor who is the adopted child of the person, the person's stepchild, or a minor under the guardianship of the person,  
or

2. a minor who is being educated, trained, or supervised by a person abusing his or her position in relation to the minor, who has a sexual act performed on the person by such a minor, or who induces such a minor to perform a sexual act on himself or herself in order to sexually arouse or satisfy the person or a third person is liable to imprisonment for up to three years.

(2) The same penalty applies to any person [the perpetrator] being

1. a medical doctor, clinical psychologist, health psychologist, psychotherapist, member of a health and nursing profession, or chaplain, with a person in their professional care

2. an employee of an educational institution or otherwise working in an educational institution with a person in the care of that institution,  
or

3. a government official with a person placed in their official care who by abusing their position towards that person engages in a sexual act, has a sexual act performed by that person on the perpetrator, or who induces such a person to perform a sexual act on himself or herself in order to sexually arouse or satisfy the perpetrator or a third person.

*Azerbaijan / Azerbaïdjan*

The age for sexual activities in Azerbaijan Republic is 16 (sixteen).

*Belgium / Belgique*

L'âge du consentement sexuel n'est pas en soi prévu dans la loi , mais découle de l'article 372, premier alinéa, du Code pénal concernant les attentats à la pudeur. Cet article implique que

les actes sexuels sur des mineurs de moins de 16 ans (volontaire, sans violence ) sont punissables.

L'article 375 du Code Pénal, qui concerne le viol, implique que tout acte sexuel est réputé viol avec violence s'il est commis sur un enfant de moins de quatorze ans accomplis.

A partir de 16 ans, un·e mineur·e peut donc, légalement, avoir des rapports sexuels. On parle de majorité sexuelle.

La majorité civile est fixée à 18 ans. Entre 16 et 18 ans, un·e mineur·e peut donc avoir des relations sexuelles mais il/elle est toujours mineur·e civilement et donc soumis·e à l'autorité parentale. Celle-ci permet, notamment, aux parents d'avoir, au moins théoriquement, un contrôle sur les relations de leur enfant.

En ce qui concerne les enfants entre 14 et 16 ans, il y a donc une particularité dans la loi qui a été expliqué par la Cour Constitutionnelle comme ce qui suit :

En effet, le 29 octobre 2009, la Cour constitutionnelle, a clarifié l'interprétation de la loi sur les relations sexuelles consenties pour un·e mineur·e entre 14 et 16 ans. Ainsi, si le mineur de 14 ans consent « volontairement et consciemment » à la pénétration sexuelle, il n'y a pas viol. Selon les circonstances, cet acte reste punissable. Ce seront les dispositions relatives à l'attentat à la pudeur qui s'appliqueront s'il y a poursuite et non plus les dispositions relatives au viol.

L'article 375 du Code pénal prévoit ce point :« Si le crime a été commis sur la personne d'un enfant âgé de plus de 14 ans accomplis et de moins de 16 ans accomplis, le coupable sera puni de la peine de la réclusion de quinze à vingt ans ».

L'explication de la Cour Constitutionnelle est lie au « ratio legis » de viol et l'attentat à la pudeur.

Il est prévu que cette âge « intermédiaire » sera également repris dans la réforme du Code pénal qui est en préparation.

L'âge de la majorité sexuelle reste fixé à 16 ans avec une tolérance à partir de 14 ans en cas de consentement et de différence d'âge de trois ans maximum (contre 5 ans auparavant). La nouvelle loi insiste donc sur le fait qu'il ne peut y avoir de consentement en dessous de 14 ans. En dessous de cet âge, tout acte sexuel sera considéré comme un viol.

#### Child Focus' reply on Belgium's legal framework

16 ans

Tempérament concernant les mineurs entre 14 et 16 ans, si la différence d'âge avec le majeur ne dépasse pas 3 ans.



### Bosnia and Herzegovina / *Bosnie-Herzégovine*

There are three criminal codes in Bosnia and Herzegovina: Criminal Code of Federation of BiH, Criminal code of Republika Srpska and the Criminal Codey of the Brčko District of BiH.

According to those laws, legal age for sexual activities in Republika Srpska is 15 years of age, while in Federation of Bosnia and Herzegovina and Brčko District is 14 years of age.

### Bulgaria / *Bulgarie*

Section Eight "Debauchery" of Chapter Two "Crimes against the Person in the Penal Code" covers various possible life hypotheses of sexual assault (with or without intercourse), including in relation to a child.

According to the Bulgarian legislation, a "child" is a minor (i.e. 18 years old), and according to their age the children are minors (under 14 years old) and underage (over 14 years old).

According to the legislator, a minor cannot form a legally valid will, which is why fornication or intercourse with such a child is always a crime, regardless of whether he/she has given consent.

The crime of "rape" by definition involves intercourse with a female (including a child under 14 years of age or under) when force or intimidation has been used, or a helpless child has been used, or has been brought to such a state, or through the use of dependence or supervision.

Therefore, fornication and intercourse by an adult with a child under the age of 14 are not a crime, if committed voluntarily. It should be noted, however, that even in the case of a voluntary act of intercourse, if it is committed in incest, it will be an offense.

### Croatia / *Croatie*

Legal age for sexual activities in the Republic of Croatia is 15 years of age.

### Cyprus / *Chypre*

According to article 2 of the Prevention and Combating of Sexual Abuse and Sexual Exploitation of Children and Child Pornography Law of 2014 (L. 91(I)/2014), the legal age for sexual activities in Cyprus is when a child reaches the age of 17 years old.

*"Hope For Children" CRC Policy Center Cyprus/"Hope For Children" CRC Policy Center Chypre on Cyprus' legal framework*

According to the Law 91(I) / 2014, the legal age for sexual activities in Cyprus is the age of 17 y.o.

### *Czech Republic / République tchèque*

In the Czech Republic the legal age for sexual activities is set for 15 years of age.

### *Denmark / Danemark*

The legal age for sexual activities in Denmark is 15. This also applies when the other person involved is underage. It is thus criminal for a 16-year-old to have sex with a 14-year-old.

Under certain circumstances, the legal age is raised to 18. This is the case, when a person has sexual intercourse or engages in other sexual activities with a person under 18 years of age who is the offender's stepchild or foster child, or with whose education or upbringing the offender has been entrusted.

Any person who grossly exploits another person's dependency of him for employment, financial dependence, dependence on treatment or care to engage in sexual intercourse with such person is sentenced to imprisonment for a term not exceeding one year or, if the offence was committed against a person under 18 years of age, by imprisonment for a term not exceeding four years

It is also a criminal offence for an adult to grossly exploit his or her age and maturity to seduce a person under the age of 18.

### *Estonia / Estonie*

14, depending on the nature of sexual activities however because some sexual activities, such as buying sex from minors, are still considered to be criminal offences even if the victims are 14-18 years old.

The legal age for sexual activities is 16 years. However, depending on the nature of sexual activities, because some sexual activities, such as buying sex from minors, are still considered to be criminal offences even if the victims is 16-18 years old.

### *Finland / Finlande*

16.

### *France*

La loi n° 2021-478 du 21 avril 2021 visant à protéger les mineurs des crimes et délits sexuels et de l'inceste ont supprimé le critère du consentement pour les relations sexuelles entre un majeur et un mineur de 15 ans, ou, dans certains cas de relations incestueuses, entre un majeur et un mineur.

Dans les hypothèses qu'elles prévoient, les actes de violence, contrainte, menace ou surprise commis par l'auteur ne constituent plus des éléments constitutifs de l'infraction de viol ou

d'agression sexuelles sur un mineur mais seront pris en compte pour l'appréciation de la peine.

L'article 222-23-1 du code pénal qualifie ainsi de viol tout acte de pénétration sexuelle, de quelque nature qu'il soit, ou tout acte bucco-génital commis par un majeur sur la personne d'un mineur de quinze ans ou commis sur l'auteur par le mineur, lorsque la différence d'âge entre le majeur et le mineur est d'au moins cinq ans.

Il précise que la condition de différence d'âge n'est cependant pas applicable si les faits sont commis en échange d'une rémunération, d'une promesse de rémunération, de la fourniture d'un avantage en nature ou de la promesse d'un tel avantage, c'est-à-dire en cas de prostitution du mineur.

L'article 222-23-2 du code pénal qualifie de viol incestueux tout acte de pénétration sexuelle, de quelque nature qu'il soit, ou tout acte bucco-génital commis par un majeur sur la personne d'un mineur ou commis sur l'auteur par le mineur, lorsque le majeur est un ascendant ou toute autre personne mentionnée à l'article 222-22-3 du code pénal ayant sur le mineur une autorité de droit ou de fait (un frère, une sœur, un oncle, une tante, un grand-oncle, une grand-tante, un neveu ou une nièce, le conjoint, ou le concubin de l'ascendant).

Ces deux viols sont, en application de l'article 222-23-3 du code pénal, punis de vingt ans de réclusion criminelle.

L'article 222-29-2 du code pénal qualifie d'agression sexuelle punie de dix ans d'emprisonnement et de 150 000 € d'amende toute atteinte sexuelle autre qu'un viol commise par un majeur sur la personne d'un mineur de 15 ans, à la condition qu'il existe une différence d'âge entre le majeur et le mineur d'au moins cinq ans, sauf si les faits ont été commis en échange d'une rémunération, d'une promesse de rémunération, de la fourniture d'un avantage en nature ou de la promesse d'un tel avantage (prostitution du mineur).

Enfin, l'article 222-29-3 du code pénal qualifie d'agression sexuelle incestueuse punie de dix ans d'emprisonnement et de 150 000 € d'amende toute atteinte sexuelle autre qu'un viol commise par un majeur sur la personne d'un mineur, lorsque le majeur est un ascendant ou toute autre personne mentionnée à l'article 222-22-3 du code pénal ayant sur le mineur une autorité de droit ou de fait.

Ces infractions constituant des crimes ou des délits, il s'agit donc d'incriminations intentionnelles impliquant, conformément au premier alinéa de l'article 121-3 du code pénal, l'intention de leur auteur de les commettre, et donc la connaissance par celui-ci du fait que la victime était mineure de 15 ans ou était mineure.

Ces nouvelles incriminations sanctionnent ainsi de façon plus sévère des faits qui, par le passé, soit étaient qualifiés de viol ou d'agression sexuelle parce que l'existence de violence, contrainte, menace ou surprise avait été établie, soit étaient qualifiés d'atteinte sexuelle.

Il convient de préciser que ces nouvelles qualifications ne s'appliqueront qu'aux faits commis sur des mineurs à compter du 23 avril 2021, date d'entrée en vigueur de la nouvelle loi, en vertu du principe constitutionnel de non rétroactivité de la loi pénale plus sévère.

Pour les faits commis avant la réforme, ou commis à compter de cette date lorsque les conditions posées par les nouveaux textes ne seront pas réunies, continueront de s'appliquer les crimes et délits de viols et d'agression sexuelle prévus par les articles 222-23, 222-24, 222-29 et 222-29-1 du code pénal et les délits d'atteintes sexuelles prévus par les articles 227-25, 227-26 et 227-27 de ce code.

En vertu de ces dispositions, l'âge légal est fixé à 15 ans par le droit pénal français. Ainsi, un majeur, c'est-à-dire toute personne ayant atteint l'âge de 18 ans, ne commet pas d'infraction s'il se livre à une activité sexuelle avec un mineur ayant atteint l'âge de 15 ans. En revanche, si le majeur use de violences, menace, contrainte ou surprise pour que l'activité sexuelle soit accomplie, il pourra être poursuivi des chefs de viol ou agression sexuelle.

L'article 222-22-1 du code pénal précise que la contrainte morale ou la surprise permettant de caractériser les infractions de viol ou agression sexuelle sont constituées, lorsque les faits sont imposés à un mineur de 15 ans, par l'abus de la vulnérabilité de la victime qui ne dispose pas du discernement nécessaire pour se livrer à une activité sexuelle.

L'article 222-24 2° du code pénal dispose ainsi que le viol est puni de vingt ans de réclusion criminelle lorsqu'il est commis sur un mineur de quinze ans.

Cet âge légal de 15 ans pour entretenir des activités sexuelles se déduit, d'une lecture *a contrario* de l'article 227-25 du code pénal qui énonce que « *hors le cas de viol ou de toute autre agression sexuelle, le fait, par un majeur, d'exercer une atteinte sexuelle sur un mineur de 15 ans est puni de sept ans d'emprisonnement et de 100 000 euros d'amende* ».

La répression de ce délit est portée à dix ans d'emprisonnement et 150 000 euros d'amende lorsque sont caractérisées certaines circonstances aggravantes (article 227-26 du code pénal). Tel est le cas si les faits sont commis par un ascendant ou toute autre personne ayant sur la victime une autorité de droit ou de fait, ou bien par une personne qui abuse de l'autorité que lui confèrent ses fonctions, ou par plusieurs personnes, ou par une personne agissant en état d'ivresse manifeste ou sous l'emprise manifeste de stupéfiants, ou si le mineur a été mis en contact avec l'auteur des faits via un réseau de communication électronique.

Il existe toutefois une exception à cet âge, prévue par l'article 227-27 du code pénal. En effet, est réprimée (trois ans d'emprisonnement et 45 000 euros d'amende) toute activité sexuelle commise sans violence, contrainte, menace ni surprise entre un mineur de plus de 15 ans et un ascendant ou toute autre personne ayant sur la victime une autorité de droit ou de fait ou par une personne abusant de l'autorité que lui confèrent ses fonctions.

### Georgia / Géorgie

According to Article 140 of the Criminal Code of Georgia Penetration of a sexual nature into the body of a person below 16 years of age, committed knowingly by an adult is punished by

imprisonment for a term of seven to nine years.

The same act committed:

- a) knowingly by an offender against a person with disability or a pregnant woman;
  - b) by a group of persons;
  - c) against two or more persons;
  - d) repeatedly;
  - e) by a person who has previously committed any of the offenses provided for in Articles 137 (rape), 138 (Another action of a sexual nature) 139 (Coercion into penetration of a sexual nature into the body of a person, or into another action of a sexual nature) and 141(Lewd act) of the Criminal Code -
- shall be punished by imprisonment for a term of eight to ten years.

A lewd act of an adult committed knowingly by an offender without violence against a person below 16 years of age is also punished by imprisonment for a term of five to seven years under article 141 of the Criminal Code of Georgia.

### *Germany / Allemagne*

Under the age of 14 years, the person is defined as a “child” by the German Criminal Code, see section 176 subsection 1 of the German Criminal Code. Performing so called “sexual acts” (specified in section 184h number 1) on a child is punishable under section 176 of the German Criminal Code in any case, regardless of the age of the offender.

Between the ages of 14 to 18 years, a person is considered a “juvenile” by the German Criminal Code. If the offender is 18 years of age or older and performs sexual acts on the juvenile, the conduct may be punishable for the former if additional requirements are met, see section 174 and 182 of the German Criminal Code.

If the person is 18 years of age or older, sexual acts are in principle legal.

See Appendix / *Voir l'Annexe*

### *Greece / Grèce*

No reply available / *Pas de réponse disponible*

### *Hungary / Hongrie*

The legal age for consensual sexual relations in Hungary is 14 years.

#### I. Sexual relation between minors (where both children are under the age of 18 years)

##### A) Provisions for victims under the age of 12 years

All types of sexual acts in which a child below the age of 12 years is involved, qualify as sexual violence under § 197 Section (2) of the Criminal Code, even if the perpetrator is of the age

between 14 and 18 years. (The minimum age of criminal liability for criminal offences against the freedom of sexual life and sexual morality is 14 years).

B) Provisions for victims between 12 and 18 years old

Between the ages 12 and 18 years, children are not punishable for having consensual sexual relation with each other.

However, if a child between 14 and 18 years old coerces another child being the age of 14-18 years old to engage in or to tolerate a sexual act, commits sexual coercion (under § 196 of the Criminal Code), or sexual violence if the sexual coercion is committed by violence or direct threat to life or physical integrity, or if the perpetrator takes advantage of the state of another person who is incapable of self-defence or unable to express his will (under § 197 of the Criminal Code).

II. Sexual relation between a minor and a person aged 18 years or more

A) Provisions for victims under the age of 12 years

All types of sexual acts in which a child below the age of 12 years is involved, qualify as sexual violence under § 197 Section (2) of the Criminal Code, if the perpetrator is aged 18 years or more.

B) Provisions for victims between 12 and 14 years

BA) Sexual abuse

A person who has attained the age of eighteen years, who engages in a sexual act with a person who has not attained the age of fourteen years, or induces such a person to engage in a sexual act with another person, is guilty of sexual abuse under § 198 Section (1).

BB) Sexual coercion

A person who coerces another person to engage in or tolerate a sexual act is guilty of sexual coercion under § 196 Section (2) a). (Which is a qualified case of sexual coercion committed against a person who has not attained the age of eighteen years).

BC) Sexual violence

A person, who commits sexual coercion by violence or direct threat to life or physical integrity, or in order to engage in a sexual act, takes advantage of the state of another person who is incapable of self-defence or unable to express his will commits sexual violence under § 197 Section (3) a) of the Criminal Code. (Which is a qualified case of sexual violence committed against a person who has not attained the age of eighteen years).

C) Provision for victims between 14 and 18 years

As the legal age for consensual sexual relations in Hungary is 14 years, people aged 18 years or more who engage in sexual activities with children aged between 14 and 18 years old, do not commit a punishable act if the sexual relation was consensual.

CA) Sexual abuse

A person who has attained the age of eighteen years, who engages in a sexual act with a person who has attained the age of fourteen years but has not attained the age of eighteen years by abusing his power or influence over that person commits the offence of sexual abuse.

CB-CC) Sexual coercion and sexual violence

If the sexual act was committed by coercion, violence or threat, perpetrators are punishable

for sexual coercion or sexual violence as referred to under the previous points of BB and BC.

#### *Iceland / Islande*

The Age of Consent in Iceland is 15 years old. The age of consent is the minimum age at which an individual is considered legally old enough to consent to participation in sexual activity.

#### *Ireland / Irlande*

Under the Criminal Law (Sexual Offences) Act 2006, as amended by Section 17 of the Criminal Law (Sexual Offences) Act 2017, it is a criminal offence to engage or attempt to engage in a sexual act with a child under 17 years of age.

An individual accused under this Act may argue a defence that he or she was reasonably mistaken that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 17 years. In this case, it falls to the court to consider this defence and whether, in all the circumstances of the case, a reasonable person would have concluded that the child had attained the said age.

It is not a defence to show that the child consented to the sexual act.

Under the Criminal Law (Sexual Offences) Act 2006, as amended by Section 18 of the Criminal Law (Sexual Offences) Act 2017, it is a criminal offence for a person in authority to engage in a sexual act with a child who has attained the age of 17 years, but is under the age of 18 years.

An individual accused under this Act may argue a defence that he or she was reasonably mistaken that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 18 years. In this case, it falls to the court to consider this defence and whether, in all the circumstances of the case, a reasonable person would have concluded that the child had attained the said age.

An individual accused under the Act may argue a defence that he or she had reasonable grounds for believing that he or she was not a person in authority in relation to the child against whom the offence is alleged to have been committed.

It is not a defence to show that the child consented to the sexual act.

#### *Italy / Italie*

In Italy legal age to engage sexual activity is 14.

#### *Latvia / Lettonie*

According to Section 161 of the Criminal law, for a person who commits an act of sexual intercourse, anal or oral act, or sexual gratification in an unnatural way, or other acts of sexual nature in physical contact with the body of the victim, if it has been committed on a person

who has not attained the age of sixteen years and if such offence has been committed by a person who has attained the age of majority, the applicable punishment is the deprivation of liberty for a period of up to five years or temporary deprivation of liberty, or community service, or a fine, with probationary supervision for a period of up to five years.

Therefore, legal age for sexual activities in Latvia is 16.

#### Liechtenstein

No reply available / *Pas de réponse disponible*

#### Lithuania / Lituanie

It should be noted that Article 13 of the Criminal Code of the Republic of Lithuania (hereinafter referred to as the CC) („The age from which a person is held liable under criminal laws) provides that the criminal acts provided for in this Code (except for the exceptions provided for in paragraph 2 of this Article) shall be held liable only by the person who had reached the age of 16 prior to the commission of the crime. Paragraph 2 stipulates that rape (Art. 149 CC) and sexual assault (Art. 150 CC) shall be the responsibility of a person who was 14 years old before the commission of the crime. However, paragraph 3 of Article 13 stipulates that a person who committed a criminal act before the age of fourteen years prior to commission thereof may be subject to reformatory or other sanctions in accordance with the procedure laid down by laws of the Republic of Lithuania.

Paragraph 1 of Article 151<sup>1</sup> of the CC (Assistance of sexual desires in violation of a minor's freedom of sexual self-determination and/or inviolability) imposes a fine or restriction of liberty or arrest or a sentence of imprisonment of up to five years of age on an adult person who had sexual intercourse or otherwise satisfied sexual desires, in the absence of signs of rape, sexual assault or sexual coercion with a person under sixteen years of age.

Paragraph 2 of Article 151<sup>1</sup> of the CC imposes a public service or a fine or a restriction of liberty or a sentence of imprisonment of up to five years, or a sentence of imprisonment of up to five years for a person, who is 16 years of age, who has had sexual intercourse or otherwise satisfied sexual desires with a person under 16 years of age, and who offered, promised or provided to child or another person money or other form of reward, in the absence of indications of a rape, sexual assault or sexual coercion.

Paragraph 3 of Article 151<sup>1</sup> of the CC establishes a fine or restriction of liberty, or arrest, or imprisonment for up to six years to 16 years or older parent, mother, guardian, carer or other legal representative of a child, or a person with statutory authority over a minor, or a person who has abused trust, authority or influence over a minor who has had sexual intercourse or otherwise satisfies his or her sexual passion with that minor, without signs of sexual abuse or coercion.

Also, Article 153 of the CC (“Abuse of a person under the age of sixteen”) provides for restriction of liberty or arrest, or imprisonment for up to six years for a person from the age of 16, who has committed acts of abuse against a person under the age of sixteen.



In summary, criminal liability is limited to sexual acts against a person under the age of 16, provided there are no indications of coercion, abuse of dependence, trust, abuse of influence or authority, or satisfaction of an offer or promise to pay for sexual intercourse or sexual passion.

### Luxembourg

L'âge légal pour entretenir des activités sexuelles au Luxembourg est fixé à 16 ans.

### Malta / *Malte*

In 2021, an amendment was made to the Criminal Code of Malta that decreased the legal age for sexual activities from 18 to 16. Therefore, if a child is 16 he or she can engage in sexual activities legally. This is in line with the legal age to marry; where in Malta one can marry at 16 if there is parental consent.

### Republic of Moldova / *République de Moldova*

The legal age of consent is 16.

### Monaco

L'âge légal pour entretenir des activités sexuelles est fixé à seize ans par l'article 261 du Code pénal qui réprime « *tout attentat à la pudeur, consommé ou tenté sans violence sur la personne d'un mineur de l'un ou l'autre sexe, au-dessous de l'âge de seize ans accomplis* ».

Le projet de loi initial, déposé le 25 décembre 2020, a finalement été adopté le 23 décembre 2021 et est devenu la loi n° 1.517 portant réforme de dispositions relatives à l'incrimination des agressions sexuelles. La nouvelle loi est venue abaisser cet âge légal à quinze ans.

Ainsi, l'article 261 du Code pénal a été modifié comme suit :

« *L'atteinte sexuelle désigne tout acte à caractère sexuel, hors les cas de viol ou d'agression sexuelle.*

*Hors le cas de viol ou d'agression sexuelle, le fait, par un majeur, d'exercer une atteinte sexuelle sur un mineur de moins de quinze ans sera puni d'un emprisonnement de trois à cinq ans, lorsque la différence d'âge entre le majeur et le mineur est de moins de cinq ans.*

*Hors le cas de viol ou d'agression sexuelle, le fait, par un majeur, d'exercer une atteinte sexuelle sur un mineur de moins de quinze ans sera puni d'un emprisonnement de cinq à dix ans et de l'amende prévue au chiffre 3 de l'article 26, lorsque la différence d'âge entre le majeur et le mineur est d'au moins cinq ans.*

*Hors le cas de viol ou d'agression sexuelle, sera puni de la même peine, le fait, par un majeur, d'exercer une atteinte sexuelle sur un mineur âgé de quinze ans au moins, mais non émancipé par le mariage, lorsque les faits sont commis :*

*1°) par une personne qui abuse de l'autorité que lui confèrent ses fonctions ;*

2°) *par toute personne ayant sur la victime une autorité de droit ou de fait. Hors le cas de viol ou d'agression sexuelle, sera puni de la réclusion de cinq à dix ans, le fait, par un majeur, d'exercer une atteinte sexuelle sur un mineur de moins de quinze ans, lorsque les faits sont commis par une personne qui abuse de l'autorité que lui confèrent ses fonctions ou par une personne ayant sur la victime une autorité de droit ou de fait. ».*

#### Montenegro / Monténégro

Our legislation doesn't provide an age limit for a person aged 18 or more, without the latter committing a criminal offence.

#### Netherlands / Pays-Bas

The legal age for sexual activities in the Netherlands is sixteen years.

#### North Macedonia / Macédoine du Nord

No reply available / *Pas de réponse disponible*

#### Norway / Norvège

As the requirement for sexual activities to be voluntary is paramount in the Norwegian legal system, the legal age for sexual activities corresponds with the age of sexual consent, which is 16 years of age. Individuals below the age of 16 are therefore not legally able to consent to sexual activity. Such activity may be a violation of The Norwegian Penal Code section 299 (*Sexual assault on a child under 14 years of age*), section 302 (*Sexual activity with a child between 14 and 16 years of age*) or section 304 (*Sexual act with a child under 16 years of age*).

#### Poland / Pologne

In Poland, the age of consent is 15 years. Any sexual contact (intercourse or other sexual activities) with a minor below 15 years of age is a criminal offence irrespective of the circumstances of the event, including any alleged consent given by such a minor.

Article 200 § 1 Whoever engages in sexual intercourse with a minor below 15 years of age or another sexual activity with regard to such person or induces such person to submit to or perform such activity,

shall be liable to 2 to 12 years' imprisonment.

§ 2 (Abrogated.)

§ 3 Whoever presents pornographic material to a minor below 15 years of age or makes available to such person any articles of such nature, or disseminates pornographic in a manner enabling such minor to engage with such material, shall be liable to up to 3 years' imprisonment.

§ 4 Whoever, for the purpose of one's own sexual satisfaction or the sexual satisfaction of another presents the performance of a sexual activity to a minor below 15 years of age shall be liable to the penalty set forth in section 3.

§ 5 Whoever engages in the advertisement or promotion of an activity consisting in the dissemination of pornographic material in a manner enabling such material to be engaged with by a minor below 15 years of age shall be liable to the penalty set forth in section 3.

The sexual exploitation of a minor below 15 years of age is an intentional offence. It can be either directly (*dolus directus*) or quasi-conditionally (*dolus quasi-eventualis*) intended, where the perpetrator intends to engage in sexual intercourse with a given person or engage in another sexual activity with regard to such a person, or to induce such a person to submit to or perform such other sexual activity, but is unsure as to the minor's age, predicts that it may be less than 15 years and accepts such a possibility.<sup>6</sup>

## Portugal

The Portuguese Criminal Code (Law no. 48/95, of March 15, last updated by Law no. 58/2020, of August 31) distinguishes crimes of a sexual nature in two groups:

- i) crimes against sexual freedom (Art. 163 to 170 of the Criminal Code, CC), which criminalize sexual activities committed without the consent of the victim, using threat or violence, regardless of age; In these cases if the victim is a minor the aggravating circumstances of Article 177 of the CC apply.
- ii) crimes against sexual self-determination (Articles 171 to 176-A CC), which criminalize sexual activities with minors, and whose existence is directly linked to the need to protect the free development of the child's personality.

The age of civil adulthood in Portugal is 18.

In Portugal, the legal age for sexual activities is not defined. Yet, Article 171 CC states that it is always a crime to engage in sexual activity with or on a person under the age of 14, or causing him or her to engage in such activity with another person. Between 14 and 16, children cannot consent in the circumstances of Article 173 (sexual acts with adolescents) and between 14 and 18 in the circumstances of Article 172 (*Sexual abuse of minors who are dependent or in a particularly vulnerable situation*).

In the scope of sexual freedom, the consent is hardly valid as it is most time mined by threat or other constraints of the free will.

## Romania / Roumanie

Legal age in Romania is 16 years old for sexual intercourse or other acts involving penetration and 14 years old for other types of sexual activity.

For pornography, the legal age is 18 years old.

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<sup>6</sup> V. Konarska-Wrzošek (ed.), A. Lach, J. Lachowski, T. Oczkowski, I. Zgoliński, A. Ziółkowska, *Kodeks karny. Komentarz*, WKP 2020, Lex e-access (commentary on Article 200 of the Criminal Code). Also Court of Appeals in Cracow, judgment in II AKa 233/17, of 14 December 2017, Lex no. 2456162.

*Russian Federation / Fédération de Russie*

No reply available / *Pas de réponse disponible*

*San Marino / Saint-Marin*

No reply available / *Pas de réponse disponible*

*Serbia / Serbie*

The age of consent in Serbia is 14 years old.

The legal age for sexual activities in the Republic of Serbia is 14, so a minor aged 14 or more may engage in sexual activities.

*Slovak Republic / République slovaque*

In accordance with the legal order of the Slovak Republic, the legal age of a child's ability to give consent to sexual activities is 15 years. A person under the age of fifteen is a person until the day preceding her/ his fifteenth birthday (§ 136). Gender and sexual maturity, impairment, or emotional attachment or consent of a person under the age of 15 are not decisive.

*Slovenia / Slovénie*

15 years of age (Art. 173 of the Criminal Code – CC).

*Spain / Espagne*

Bear in mind that a minor under 14 years is not liable under criminal law.

In Spain the legal age for sexual activities is set for 16 years of age.

According our legislation, a minor cannot form a legally valid will. Sexual activities with such a child is always a crime, regardless of whether he/she has given consent.

*Sweden / Suède*

General comment: The Swedish sexual offences legislation is found in Chapter 6 of the Criminal Code. For the full text, please see our up-to-date unofficial translation: <https://www.government.se/government-policy/judicial-system/the-swedish-criminal-code/>

In Sweden the minimum age of sexual consent is 15.

*Switzerland / Suisse*

*English is not an official language of the Swiss Confederation. The translation of the cited articles of the Swiss criminal code are provided for information purposes only and have no*

legal force. Link to the English text: [SR 311.0 - Swiss Criminal Code of 21 December 1937 \(admin.ch\)](#)

Link to the official law text in French: [RS 311.0 - Code pénal suisse du 21 décembre 1937 \(admin.ch\)](#)

The legal age for sexual activities in Switzerland is 16 years. According to article 187 CC any person who engages in a sexual act with a child under 16 years of age or incites a child to commit such an activity or involves a child in a sexual act, is liable to a custodial sentence up to five years or to a monetary penalty. See also question 3.

### Tunisia / Tunisie

Le cadre légal tunisienne ne prévoit pas expressément la notion de « capacité sexuelle ». Toutefois, il l'a réglementé d'une manière implicite dans la loi n°58-2017 du 11 aout 2017 relative à l'élimination de la violence faite aux femmes, en précisant que les rapports sexuels livrés avec un enfant, fille ou garçon, âgé de moins de 18 ans sont pénalisés. En effet, établir des relations sexuelles avec un l'enfant de moins de 16 ans, est considéré comme un viol. L'âge de 16 ans est une présomption légale d'absence de consentement.

En outre, se livrer à des rapports sexuels avec un enfant entre 16 et 18 ans diffère qu'il soit avec son consentement ou non. Si l'enfant a consenti ces rapports, la personne aura commis une infraction de tenir de rapports sexuels consentis avec un enfant (article 227 bis du code pénal) sinon l'infraction est un viol (article 227 du code pénal).

Par ailleurs, les rapports sexuels consentis entre enfants âgés de 16 à 18 ans ne sont pas punis par la loi. Ces enfants sont considérés des « enfants en situation de danger » et on applique l'article 59 du code de protection de l'enfant.

### Turkey / Turquie

Although the legal age limit for sexual activities is 18 in our country, in Article 104 titled "Sexual intercourse with a minor" of the Turkish Criminal Code No: 5237, it is regulated that in terms of the crime of having sexual intercourse with a minor between the ages of 15 and 18 without any force, threat or deceit, investigation and prosecution shall be carried out upon the complaint of the victim. If the victim is under the age of 15, it is considered that the victim is never in a position to consent to sexual activity.

### Ukraine

In accordance with the Art. 155 of Criminal Code of Ukraine the age of consent is sixteen.

Article 155. Committing acts of a sexual nature with a person who has not reached the age of sixteen

1. Committing by an adult person of acts of a sexual nature related to vaginal, anal or oral penetration of the body of a person who has under the age of sixteen, with the use of genitalia, another organ or part of the body or any object,
2. shall be punished by restriction of liberty for a term of up to five years or deprivation of liberty for the same term.

3. The same actions committed by close relatives or family members, a person entrusted with the duties of raising or caring for the injured person, or if they are combined with providing a monetary or other reward to the injured person or a third person or with a promise such remuneration, or if they caused infertility or other serious consequences, -
4. shall be punished by deprivation of liberty for a term of five to eight years with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years or without such.

Note. In Articles 155, 156 of this Code, close relatives or family members should be understood as persons defined by Clause 1 of Part One of Article 3 of the Criminal Procedure Code of Ukraine.

*United Kingdom / Royaume-Uni*

The age at which a person may lawfully consent to any sexual activity is 16 (that is someone who has attained the age of 16 years).

Question 2

Is there only one legal age for sexual activities or does the legal age for sexual activities depend on the type of sexual activity? Please specify.

*Y a-t-il un seul âge légal pour entretenir des activités sexuelles ou est-ce que l'âge légal pour entretenir des activités sexuelles dépend du type d'activité sexuelle ? Veuillez préciser.*

*Albania / Albanie*

In the Criminal Code of the Republic of Albania, in article 100 “Sexual or homosexual relations with minors” determined that, any kind of sexual activity committed against a child up to the age of 14 is punishable: Having sexual or homosexual relations with minor children, or with a female minor, who is not sexually matured, shall be punished from seven to fifteen years imprisonment. When the sexual or homosexual intercourse was committed in complicity, more than once or by violence, or when the child victim had serious health consequences shall be punished to not less than twenty-five years of imprisonment. When that offence brought as a consequence the minor’s death or suicide, it shall be punished to not less than thirty years or life imprisonment.

*Andorra / Andorre*

L’âge légal est le même quelle que soit l’activité sexuelle réalisée mais on met l’accent en que en tout cas, la victime est considérée spécialement vulnérable par raison de son âge lorsqu’elle a un âge inférieur à 14 ans.

*Armenia / Arménie*

No, the same legal 16 for all children and all type of sexual activity.

*Austria / Autriche*

In principle, sexual contact is permitted from the age of fourteen. However, an age tolerance clause has been implemented, whereby persons under the age of fourteen may also engage in sexual contact if a certain age difference is not exceeded. See question 3.

*Azerbaijan / Azerbaïdjan*

There is a one legal age for sexual activities in the legislation of Azerbaijan Republic.

*Belgium / Belgique*

16 ans est l’âge requis, peu importe le type d’activités sexuelles tant qu’il y a consentement. Cf question 1.

Child Focus' reply on Belgium's legal framework

Un seul âge.

*Bosnia and Herzegovina / Bosnie-Herzégovine*

Yes, there is only one legal age for sexual activities by each las, and it is as listed in answer above.

*Bulgaria / Bulgarie*

Please see the answer of №1.

*Croatia / Croatie*

There is only one legal age for all types of sexual activities (sexual intercourse, sexual act equated with sexual intercourse and lewd act).

*Cyprus / Chypre*

There is only one legal age for sexual activities.

*"Hope For Children" CRC Policy Center Cyprus / "Hope For Children" CRC Policy Center Chypre reply on Cyprus' legal framework*

The legal age for sexual activities is 17 y.o regardless of the type of sexual activity.

*Czech Republic / République tchèque*

There is only one legal age for sexual activities regardless of type of sexual activity.

*Denmark / Danemark*

Section 222 of the Danish Criminal Code criminalizes sexual intercourse with a child under the age of 15. Pursuant to section 225, section 222 also applies in regard to other sexual activities than sexual intercourse. Thus, the legal age is the same for all sexual activities.

*Estonia / Estonie*

No. According to §§ 147 Estonian Penal Code a person is deemed to be incapable to comprehend if he or she is less than ten years of age. This means that a sexual act towards these persons is automatically qualified as rape or act of sexual nature against will.

The age of consent is 14 years. Various offences are linked to the age of consent (mainly acts committed by adults (18 + years of age). Also some sexual offences require the age of the



victim to be just under 18 (various acts directed towards minors. So there's three different milestones of age to consider, when talking about sexual offences:

- 1) Under 10 years old – age of comprehension
- 2) Under 14 years old – child
- 3) Under 18 years old – minor

The Penal Code does not specifically regulate situations where sexual acts are committed between children/minors. However, it must be noted that the general clauses still apply to minors. The age of comprehension is still 10 years old for the victim and the age of guilt capacity is 14 years, meaning minors who are 14-18 years old can be responsible for acts like rape and act of sexual nature against will.

The legal age for sexual activities does not depend on the type of sexual activity.

The legal age for sexual activities i.e. the age of consent is 16 years and various offences are linked to the age of consent (mainly acts committed by adults (18 + years of age). However, some sexual offences require the age of the victim to be just under 18 (various acts directed towards minors, e.g. buying sex from minors).

Also, it is relevant that according to §§ 147 of Estonian Penal Code a person is deemed to be incapable to comprehend if he or she is less than ten years of age. This means that a sexual act towards these persons is automatically qualified as rape or act of sexual nature against will.

(The age of criminal responsibility is 14 years, meaning minors who are 14-18 years old can be responsible for acts like rape and act of sexual nature against will.)

#### Finland / Finlande

The punishability of depicting a child sexually concerns pictures of children under the age of 18.

See also reply under question 5.

#### France

Les seuils d'âge qui ont été présentés en réponse à la première question sont applicables quel que soit le type d'activité sexuelle.

Le type d'activité sexuelle permet de distinguer le viol de l'agression sexuelle, le premier nécessitant un « *acte de pénétration sexuelle, de quelque nature qu'il soit, commis sur la personne d'autrui ou sur la personne de l'auteur* ».

#### Georgia / Géorgie

As mentioned above the legal age above which a child may engage in sexual activities with a person aged 18 or more is 16 years. In such case an adult will not commit a criminal offence. The same age is considered for the lewd act and the criminal liability is aggravated in case the lewd act is committed with a child up to 14 years.

There is no legal age for other crimes such as rape, another action of a sexual nature and Coercion into penetration of a sexual nature into the body of a person, or into another action of a sexual nature. Any person (adult or child) committing the mentioned crimes against an adult or a child will be criminally liable.

#### Germany / *Allemagne*

The legal age for sexual activities does not depend on the type of the sexual activity. As soon as the threshold of the “sexual act” under section 184h number 1 of the German Criminal Code is reached, the conduct is always punishable under section 176 of the German Criminal Code if the victim is under 14 years of age

Performing sexual acts may be punishable if the offender is 18 years or older, while the victim is between 14 to 18 years of age, although the culpability likewise does not depend on the type of sexual activity see question 1.

See Appendix / *Voir l'Annexe*

#### Greece / *Grèce*

No reply available / *Pas de réponse disponible*

#### Hungary / *Hongrie*

The Criminal Code does not differentiate between sexual activities, it only refers to them as “sexual acts” in general. Hence, there is only one legal age in the Hungarian Criminal Code.

#### Iceland / *Islande*

Yes, there is only one legal age for sexual activities, 15 years.

#### Ireland / *Irlande*

Under Section 2 of the Criminal Law (Sexual Offences) Act 2017, “sexual activity” means any activity where a reasonable person would consider that –

- (a) whatever its circumstances or the purpose of any person in relation to it, the activity is because of its nature sexual, or
- (b) because of its nature the activity may be sexual and because of its circumstances or the purposes of any person in relation to it (or both) the activity is sexual

In light of this, the legal age for all sexual activities is 17 years old, or 18 years old in the case of a person in a position of authority. It is a criminal offence to engage in any sexual act with a child under the age of 17, or under the age of 18 in the case of a person in a position of authority.

### Italy / *Italie*

Art.609 quater penal code provides that a 13-year-old can have sexual relations with another minor if there is the consent of both and the age difference between them does not exceed 4 years.

### Latvia / *Lettonie*

There is only one legal age for sexual activities in Latvia, and it is age of 16.

At the same time, it is necessary to point out that formally if a minor produce self-generates sexually explicit images and/or videos it is an offence according to Paragraph 2 of Section 166 of the Criminal law, which stipulates that a person who commits handling of such materials of pornographic nature which contain child pornography.

### Liechtenstein

No reply available / *Pas de réponse disponible*

### Lithuania / *Lituanie*

See the answer to the question number 1.

### Luxembourg

Au Luxembourg, il n'existe qu'un seul âge légal pour entretenir des activités sexuelles, fixé à 16 ans.

### Malta / *Malte*

There is only one legal age for all types of sexual activity.

### Republic of Moldova / *République de Moldova*

Only one legal age of consent – 16.

### Monaco

L'article 261 du Code pénal ne distingue pas suivant le type d'activité sexuelle. Toute activité sexuelle constitutive d'« *attentat à la pudeur* » « *sans violence* » peut ainsi être sanctionnée.

### Montenegro / *Monténégro*

Our legislation doesn't provide an age limit for sexual activities.

### Netherlands / Pays-Bas

The Dutch criminal law system consists of one legal age for sexual activities. However, in certain circumstances persons could also be held criminally liable for sexual activities with a person between 16-18 years of age (see under 5).

### North Macedonia / Macédoine du Nord

No reply available / Pas de réponse disponible

### Norway / Norvège

The legal age for sexual activities applies to all sexual acts and activities. See the answer to question 1 above.

### Poland / Pologne

There is only one age of consent — 15 years. The type of sexual activity is irrelevant to its lawfulness or to the perpetrator's liability. (See question 1.)

### Portugal

Article 171 CC states that it is always a crime to engage in sexual activity with or on a person under the age of 14, or causing him or her to engage in such activity with another person. Between 14 and 16, children cannot consent in the circumstances of article 173 (sexual acts with adolescents) and between 14 and 18 in the circumstances of article 172 (*Sexual abuse of minors who are dependent or in a particularly vulnerable situation*).

In all those articles it is possible to find common characterization of the criminalized sexual activities as *sexual relevant act* and *relevant sexual act consisting of copulation, anal coitus, oral coitus or the vaginal or anal introduction of body parts or objects*.

Article 171 and article 172 also include harassing *a minor under 14 years of age by committing an act provided for in article 170; acting upon a minor under 14 years of age by means of pornographic talk, writing, show or objects*) enticing a minor under the age of 14 to witness sexual abuse or sexual activities.

### Romania / Roumanie

The legal age for sexual activities depends on the type of sexual activity, also as on the type of relationship existent between the child and the perpetrator or the circumstances in which the act was committed:

As mentioned above, for sexual intercourse or any type of sexual activity that involves penetration, the legal age is 16 years old, while for other types of sexual activities the legal age is 14 years old.

However, legal age is 18 years old, no matter of the type of sexual activity committed, in the following cases:

- the child is a family member of the adult;
- the child is in the care, protection, education, guarding or treatment of the perpetrator or the perpetrator has abused his/her recognized position of trust or authority over the child or his/her manifestly vulnerable situation, due to a mental or physical disability, a situation of dependence, a state of physical or mental incapacity or other cause;
- the activity endangered the life of the child;
- the activity was committed for the purpose of producing pornographic materials.

Also, child pornography is criminalised, regardless of the child's age. So, for pornographic materials/activities, the age of consent is 18 years old.

### Russian Federation / Fédération de Russie

No reply available / *Pas de réponse disponible*

### San Marino / Saint-Marin

No reply available / *Pas de réponse disponible*

### Serbia / Serbie

The age of consent rises to age 18 if the victim was entrusted to the offender for learning, tutoring, guardianship, or care. It is also illegal to cohabit with a minor outside of wedlock.

The legal age for sexual activities is 14. We must mention that the Serbian Criminal code in Article 185 states that: „Whoever sells, shows or publicly displays or otherwise makes available texts, pictures, audio-visual or other items of pornographic content to a minor or shows to a minor a pornographic performance... “, and according to the Article 112 a minor is considered a person over fourteen years of age but who has not attained eighteen years of age.

### Slovak Republic / République slovaque

In the Slovak Republic, the legal age is set uniformly for all sexual activities - 15 years.

### Slovenia / Slovénie

There is only one legal age for all the activities: “Whoever has sexual intercourse or performs any lewd act with a person of the same or opposite sex under the age of fifteen years shall be sentenced to imprisonment for not less than three and not more than eight years.” – CC Art. 173(1)

### Spain / Espagne

There are some sexual activities where the age raises to 18, for example, child pornography offences concern pictures of children under the age of 18.

### Sweden / Suède

The type of sexual activity determines the applicable provision (rape of a child or sexual exploitation of a child) but does not affect the legal age for sexual activities. According to Swedish law, it is punishable to perform a sexual act with a child under the age of 15. Under conditions equivalent to those mentioned in the Convention’s provision on abuse of a recognised position of trust, authority or influence, this is also punishable when the child is between the age of 15 and 18 (see the provisions below).

The provision on *rape of a child* applies to sexual intercourse and comparable sexual acts (Chapter 6, Section 4, first paragraph of the Criminal Code) and reads as follows:

A person who performs sexual intercourse, or another sexual act that in view of the seriousness of the violation is comparable to sexual intercourse, with a child **under fifteen years of age** is guilty of *rape of a child* and is sentenced to imprisonment for at least two and at most six years.

This also applies to a person who commits an act referred to in the first paragraph against a child who has **attained the age of fifteen but not eighteen years** and who is the perpetrator’s descendant, or is being brought up by or has a comparable relationship with the perpetrator, or for whose care or supervision the perpetrator is responsible by decision of a public authority.

The provision on *sexual assault of a child* applies to other sexual acts (Chapter 6, Section 6, first paragraph of the Criminal Code) and reads as follows:

A person who performs a sexual act other than those referred to in Sections 4 [*rape of a child*] and 5 [*sexual exploitation of a child*] with a child **under fifteen years of age**, or with a child who has **attained fifteen but not eighteen years of age** and with whom the perpetrator has a relationship referred to in Section 4, second paragraph,

is guilty of *sexual assault of a child* and is sentenced to imprisonment for at most two years.

### Switzerland / Suisse

*English is not an official language of the Swiss Confederation. The translation of the cited articles of the Swiss criminal code are provided for information purposes only and have no legal force. Link to the English text: [SR 311.0 - Swiss Criminal Code of 21 December 1937 \(admin.ch\)](#)*

*Link to the official law text in French: [RS 311.0 - Code pénal suisse du 21 décembre 1937 \(admin.ch\)](#)*

There is only one legal age for sexual activities (16 years of age). There are however some norms which protect the adolescent between 16 and 18 years.

According to art. 188 CC any person who commits a sexual act by exploiting his or her relationship with a minor over the age of 16 who is dependent on him due to a relationship arising from the minor's education, care or employment or another form of dependent relationship is liable to a custodial sentence not exceeding three years or to a monetary penalty. The same applies if the perpetrator encourages such a minor to commit a sexual act by exploiting such a relationship.

According to art. 195 lit. a CC any person who induces a minor into prostitution or encourages a minor in his or her prostitution with the intention of securing a financial advantage is liable to a custodial sentence not exceeding ten years or to a monetary penalty.

According to art. 196 CC any person who carries out sexual acts with a minor or induces a minor to carry out such acts and who makes or promises payment in return is liable to a custodial sentence not exceeding three years or to a monetary penalty.

### Tunisia / Tunisie

Dans le cadre légal tunisien, on distingue entre deux limites d'âge pour entretenir des relations sexuelles avec les enfants. Une telle distinction a une influence sur la qualification de l'infraction. En effet, si l'enfant n'a pas atteint l'âge de 16 ans accomplis, le fait d'entretenir des rapports sexuels, consentis ou non, avec lui est considéré comme viol (article 227). Par contre, si l'âge de l'enfant est supérieur à cet âge, l'infraction varie selon le type de rapports. Si ces rapports sont consentis, l'infraction est érigée dans le fait de subir volontairement l'acte sexuel à un enfant (article 227 bis du code pénal) sinon l'acte est considéré comme un viol en application de l'article 227 du même code.

### Turkey / Turquie

In Turkish Criminal Code No. 5237;

“Sexual assault

Article 102 (Amended on 18/06/2014 by Law No. 6545 Art. 58)

(1) Any person who violates the physical integrity of another person, by means of sexual conduct, shall be sentenced to a penalty of imprisonment for a term of five to ten years, upon the complaint of the victim. Where the sexual assault has remained at the level of molestation, the person shall be sentenced to a penalty of imprisonment for a term of two to five years.

(2) Where the act is committed by means of inserting an organ, or another object, into the body, the offender shall be sentenced to a penalty of imprisonment for a term of not less than twelve years. If the act is committed against the offender's spouse, conducting an investigation and prosecution shall be subject to a complaint by the victim.

(3) Where the offence is committed:

- a) against a person who is physically or mentally incapable of defending himself;
- b) by misusing the influence derived from a position in a public office, guardianship or a service relationship;
- c) against a person of blood relationship or kinship by marriage, including third-degree blood relationship, or by step-mother, step-father, step-sibling, adoptive parent or adoptive child;
- d) by using weapons or jointly with the cooperation of more than one person;
- e) by taking advantage of places where people are compelled to live collectively;

the penalties imposed in accordance with the paragraphs above shall be increased by one-half.

(4) Where any force or violence, used with the aim of sexual assault, leads to any aggravated injury on account of its consequences, the provisions of intentional injury shall be applied as well.

(5) Where, as a result of the offence, the victim enters a vegetative state, or dies, a penalty of aggravated life imprisonment shall be imposed."

"Sexual intercourse with a minor  
Article 104

(1) Any person who enters, without any force, threat or deceit, into sexual intercourse with a minor who has completed fifteen years of age shall be sentenced to a penalty of imprisonment for a term of two to five years, upon complaint.

(2) Where the offence is committed by a person, who is prohibited to marry the victim, the offender shall be punished by a sentence of imprisonment for a term of ten to fifteen years, without any preconditions of filing of a complaint.

(3) Where the offence is committed by the prospective adoptive parent of the minor, during the pre-adoptive placement of the minor, or when a person assumed the protection, care and custody of the minor or within the context of a protective family, the offender shall



be punished under paragraph two above, whether a complaint has been filed with the court or not.”

“Sexual harassment  
Article 105

(1) Any person, who harasses sexually another person, shall be punished by a penalty of imprisonment for a term of three months and two years or by a judicial fine, upon the complaint of the victim; where the act is committed against a minor, the perpetrator shall be punished by a penalty of imprisonment for a term of six months to three years.

(2) (Amended on 18/06/2014 by Law No. 6545 Art. 61) Where the offence is committed:

- a) by taking advantage of one’s public office or position or of a family relation;
- b) by a guardian, tutor, trainer, teacher, nanny, a protective family or by a health service provider, or by persons responsible for care or observation;
- c) by taking advantage of working at the same workplace;
- d) by using mail or electronic media;
- e) by exhibition;

the penalty imposed for the offences under the above paragraph shall be increased by one-half. If this act has caused the victim to leave his work, school, or family, the sentence to be imposed shall not be less than one year.”

## Ukraine

It is one legal age for sexual activities in Ukraine since 2021. It is sixteen.

The Criminal Code of Ukraine in its Article 156. Corruption of minors says:

1. Committing lewd acts against a person who has not reached the age of sixteen - shall be punished by restriction of freedom for a term of up to five years or imprisonment for the same term.
2. The same actions committed against a minor or committed by family members or close relatives, by a person entrusted with the responsibilities of raising the victim or taking care of him, - shall be punished by deprivation of liberty for a term of five to eight years with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years or without such.

## United Kingdom / *Royaume-Uni*

The age at which a person may lawfully consent to any sexual activity is 16 (that is someone who has attained the age of 16 years.) The **Sexual Offences Act 2003** contains a range of offences and activities that addresses sexual abuse and exploitation in all its forms. Here is a link to the 2003 Act: <https://www.legislation.gov.uk/ukpga/2003/42/contents>

**Question 3**

Does the legislation of your country include the issue of age difference between the persons engaged in sexual activities? Please specify (including, if relevant, age difference between a child and an adult or between children).

*La législation de votre pays inclut-elle la question de la différence d'âge entre les personnes se livrant à des activités sexuelles ? Veuillez préciser (y compris, le cas échéant, la différence d'âge entre un enfant et un adulte ou entre les enfants).*

**Albania / Albanie**

There is no definition of the age difference between persons involved in sexual activities, both between a minor and an adult, as well as between minors.

**Andorra / Andorre**

La législation du Principauté de l'Andorre n'inclut pas aucun supposé qui inclut la différence d'âge entre personnes qui mènent des activités sexuelles.

Toutefois, l'article 146 de la Loi 9/2005, du 21 février, qualifiée du Code pénal, typifie comme agressions qualifiées, punies avec des peines supérieures, entre autres, les comportements ou relations sexuelles lorsque la victime est spécialement vulnérable par raison de son âge, incapacité, maladie ou situation. En tout cas, la victime est considérée spécialement vulnérable par raison de son âge lorsqu'elle a un âge inférieur à 14 ans. On considère aussi comme agression qualifiée lorsque l'agression se réalise avec prévalence d'autorité, supériorité, avec abus de confiance, ou en situation de besoin ou dépendance.

**Armenia / Arménie**

Yes there is a differentiation. Started from 16 the child may engage in sexual activities, voluntarily express his/her will. If the child is enforced to sexual activity or sexual services, this enforcement is qualified as a child trafficking or sexual exploitation.

**Austria / Autriche**

The age tolerance clause, which thus entails, under certain conditions, the exemption from punishment of actions that are in principle punishable under Sections 206 or 207 of the Criminal Code, was introduced by the 1998 Criminal Law Amendment Act. This is a personal ground for exclusion from punishment.

<b>Serious sexual abuse of a person under the age of 14</b>	<b>Sexual abuse of a person under the age of 14</b>
§ 206. (1) Any person who engages in sexual intercourse or conduct equivalent to sexual intercourse with a person under the age of 14 is liable to imprisonment for one	§ 207. (1) Any person who, except in cases under § 206, performs a sexual act on a person under the age of 14 or has sexual acts performed on him or her by the person under

<p>to 10 years.</p> <p>(2) The same penalty applies to any person who leads a minor to engage in or acquiesce to sexual intercourse or conduct equivalent to sexual intercourse with a third person or to perform an act equivalent to sexual intercourse on himself or herself in order to sexually arouse or satisfy the perpetrator or a third person.</p> <p>(3) The person is liable to imprisonment for five to 15 years if the offence results in a serious assault (§ 84 para. 1) or pregnancy of the person under the age of 14 or if the person under the age of 14 is placed into a state of agony or treated in a particularly humiliating way for a longer period of time; the person is liable to imprisonment for 10 to 20 years or imprisonment for life if the offence results in the death of the person under the age of 14.</p> <p><b>(4) The person is not liable under paras. 1 and 2 if the perpetrator is no more than three years older than the person under the age of 14, if the person under the age of 14 is not placed into a state of agony or treated in a particularly humiliating way, and if the offence neither results in a serious assault (§ 84 para. 1) nor in the death of the person under the age of 14, unless the person under the age of 14 had not reached the age of 13.</b></p>	<p>the age of 14 is liable to imprisonment for six months to five years.</p> <p>(2) The same penalty applies to any person [the perpetrator] who induces a person under the age of 14 to perform a sexual act (para. 1) with another person or induces the person under the age of 14 to perform sexual acts on himself or herself in order to sexually arouse or satisfy the perpetrator or a third person.</p> <p>(3) The person is liable to imprisonment for five to 15 years if the offence results in a serious assault (§ 84 para. 1) or pregnancy of the person under the age of 14 or if the person under the age of 14 is placed into a state of agony or treated in a particularly humiliating way for a longer period of time; the person is liable to imprisonment for 10 to 20 years or imprisonment for life if the offence results in the death of the person under the age of 14.</p> <p><b>(4) The person is not liable under paras. 1 and 2 if the perpetrator is no more than four years older than the person under the age of 14, if the person under the age of 14 is not placed into a state of agony or treated in a particularly humiliating way, and if none of the consequences under para. 3 eventuated, unless the person under the age of 14 had not reached the age of 12.</b></p>
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#### *Azerbaijan / Azerbaïdjan*

There is not any difference depending on persons engaged in sexual activity.

#### *Belgium / Belgique*

Le Code pénal est actuellement en train d'être actualisé. Une des grandes avancées est qu'un jeune âgé d'au moins 14 ans pourra donner son consentement éclairé lorsque la différence d'âge avec le partenaire s'élève à maximum 5 ans et qu'il n'est pas question d'une position d'autorité (enseignant, entraîneur...) ou de confiance à son égard (ascendant, frère et sœur...). Néanmoins il est important de mettre l'accent sur le fait qu'il s'agit d'un projet de loi pour le moment.

Cf question 1.

### Child Focus' reply on the legal framework of Belgium

Toute relation sexuelle d'un majeur avec un mineur entre 14 et 16 ans est considérée comme un viol, sauf si l'écart d'âge entre les deux jeunes n'est pas supérieur à trois ans.

### Bosnia and Herzegovina / *Bosnie-Herzégovine*

No.

### Bulgaria / *Bulgarie*

As mentioned above, the Penal Code distinguishes between the age of the victims, respectively those who have reached and those who have not reached 14 years of age in a voluntary act. There are no age limits for the perpetrator, and the general rules of the Penal Code for criminally responsible persons (over 14 years) are applied.

### Croatia / *Croatie*

Yes. Article 158 Paragraph 3 of the Criminal Code (Sexual Abuse of a Child under the Age of Fifteen) prescribes that if the age difference between the persons engaging in sexual intercourse or an equivalent sexual act or a lewd act does not exceed three years, there shall be no criminal offence referred to in paragraphs 1 and 2 of that Article. Paragraphs 1 and 2 prescribe as follows:

(1) Whoever engages in sexual intercourse or an equivalent sexual act with a child under the age of fifteen, or induces a child under the age of fifteen to engage in sexual intercourse or an equivalent sexual act with a third party or to perform upon himself or herself a sexual act equated with sexual intercourse, shall be punished by imprisonment from three to twelve years.

(2) Whoever commits a lewd act against a child under the age of fifteen, or induces a child under the age of fifteen to commit a lewd act with a third party or upon himself or herself, shall be punished by imprisonment from one to eight years.

### Cyprus / *Chypre*

According to article 12 of the L. 91(I)/2014 consensual sexual activities between two children who have not reached the age of consent and are close in age and degree of psychological and physical development or maturity, in so far as the activities did not involve any abuse or violence or exploitation or coercion, shall not be a criminal offence pursuant to this Law.

Furthermore, according to article 12 of the L. 91(I)/2014, consensual sexual activities, between an adult and a child who has not reached the age of consent, where the age difference between the two does not exceed three (3) years, and in so far as the activities did

not involve any abuse or violence or exploitation or coercion, shall not be a criminal offence pursuant to this Law.

*"Hope For Children" CRC Policy Center Cyprus / "Hope For Children" CRC Policy Center Chypre's reply on the legal framework of Cyprus*

Consensual sexual activities between two children who have not reached the legal age, who are close-in-age and physical - psychological development and no coercion, violence or abuse has been used, do not constitute a crime. Consensual sexual activities between an adult and a child who has not reached the legal age, when the age difference do not exceed 3 years and coercion, abuse or violence has not been used do not constitute a crime.

*Czech Republic / République tchèque*

No, the legislation does not include the issue of age difference between the persons engaged in sexual activities. However, such age difference may be evaluated and taken into account by courts in criminal proceedings based on the circumstances of individual case.

*Denmark / Danemark*

Sexual intercourse with children below the age of 15 is punishable as rape if the offender is above the age of 22. The offence is punishable with a penalty of imprisonment for a term not exceeding 12 years. This also applies to other sexual activities than sexual intercourse.

*Estonia / Estonie*

Between children/minors and adults (for example §§ 143<sup>2</sup> – sexual intercourse or other act of sexual nature using influence) and also when one person is under 10 years old (age of comprehension) – see above.

Yes. With the recent amendments to the Penal Code (entered into force 01.11.2022), which changed the legal age for sexual activities from 14 to 16 year of age, also the so-called *Romeo and Juliet clause* was added to §§ 145. §§ 145 (Sexual intercourse or other act of sexual nature with child) subsection 1 now stipulates that engaging in sexual intercourse or any other acts of sexual nature with a person under sixteen years of age by an adult person, unless the age difference between the adult person and the person between fourteen and sixteen years of age is not more than five years, is punishable by up to five years' imprisonment.

*Finland / Finlande*

An act that does not violate the sexual self-determination of the subject and where there is no great difference in the age and mental and physical maturity of the parties shall not be deemed sexual abuse of a child.

## France

La loi du 21 avril 2021 précitée prévoit que le viol sur mineur de 15 ans prévu par l'article 222-23-1 du code pénal n'est caractérisé que s'il existe une différence d'âge d'au moins 5 ans entre le majeur et le mineur de 15 ans. Cette condition répond à une exigence constitutionnelle, car il serait disproportionné de criminaliser automatiquement les amours adolescentes.

Elle n'implique évidemment aucune impunité des majeurs de 18 ou 19 ans qui resteront punissables du chef de viol à chaque fois qu'ils auront agi par contrainte.

Cette condition de différence d'âge n'est pas prévue lorsque la relation est intervenue dans un cadre prostitutionnel, qui concerne nécessairement un mineur victime, ou qu'elle a été imposée dans un cadre incestueux. Il n'est en effet pas possible de considérer qu'un mineur âgé entre 15 et 18 ans peut librement consentir à une relation sexuelle avec son père ou sa mère, ou avec un adulte composant sa famille proche (oncle, tante, beau-père, belle-mère) qui exerce sur lui une autorité de droit ou de fait.

## Georgia / Géorgie

As mentioned above, legal age above which a child may engage in sexual activities with a person aged 18 or more, in order not to qualify the case as a criminal offence, is 16 years. Georgian legislation does not include any other issue of age difference between the persons engaged in sexual activities.

## Germany / Allemagne

If someone performs sexual acts with a child under the age of 14 years, the specific age difference between the child and the offender does not matter, see Section 176 of the German Criminal Code. For example, if a 15-year-old performs sexual acts on a 13-year-old, the conduct is punishable under section 176 subsection 1 of the German Criminal Code.

However, if the offender is 18 years of age or older and has sexual intercourse with the child or performs similar sexual acts on the child or has similar sexual acts performed on them by the child which involve penetration of the body, the offender is furthermore subject to punishment for aggravated sexual abuse of children under section 176a subsection 2 number 1 of the German Criminal Code.

If a person over the age of 21 years performs sexual acts on a juvenile between the ages of 14 to 16 years, the conduct is punishable under section 182, subsection 3 of the German Criminal Code, if the offender either performs sexual acts on that person or has that person perform sexual acts on them or causes that person to perform sexual acts on a third person or has a third person perform sexual acts on that person, and thereby exploits the victim's lack of capacity for sexual self-determination.

See Appendix / *Voir l'Annexe*

*Greece / Grèce*

No reply available / *Pas de réponse disponible*

*Hungary / Hongrie*

The Hungarian Criminal Code does not include any specific provisions for the age difference between the persons engaged in sexual activities. As referred to under Question 1, however, the legal age of the victim and of the perpetrator do have an impact on the qualification of the act committed and on the type and length of the punishment.

The age difference only becomes important if one of the partners is slightly above the age of 18: if the child is aged between 12 and 14 years old, the person aged more than 18 years commits the offence of sexual abuse (since the age of consent is 14 years), however, if one of the partners is 12 years old and the other is a couple of days below the age of 18, their consensual sexual act is not punishable.

*Iceland / Islande*

No, legislation in Iceland does not include the issue of age difference between the persons engaged in sexual activities. However, according to 4 paragraph in article 4: When imposing a penalty, one of the points to be taken into consideration is the age of the person responsible for the act.

Additionally, according to the third paragraph in article 202. Anyone who by deception, gifts or in any other way entices [a child] 1) [younger than 18 years of age] 2) to have intercourse or another sexual partner shall be imprisoned for up to 4 years.]

*Ireland / Irlande*

Under the Criminal Law (Sexual Offences) Act 2006, as amended by the Criminal Law (Sexual Offences) Act 2017, a distinction is made between a person who engages in a sexual act with a child who is under 17, and a person who engages in a sexual act with a child who is under 15. The penalties for these two crimes differ.

The Criminal Law (Sexual Offences) Act 2017 recognises the reality of under age, consensual, peer relationships through the introduction of a 'proximity of age' defence. Under this provision, a person charged with an offence of engaging in a sexual act with a person between the ages of 15 and 17 years can use consent as a defence if the person charged is younger or is less than two years older than the alleged victim. The accused must not be in a position of authority over the child or be intimidatory or exploitative.

*Italy / Italie*

Italian legislation includes the issue of age difference between the person engaged and in particular:

- Art.609 bis penal code provides that:  
the penalty established by article 609 bis (sexual abuse) is increased by half if the facts

envisaged therein are committed against a person who has not completed fourteen years of age.

The penalty is doubled if the facts referred to in article 609 bis are committed against a person who has not completed the age of ten.

The penalty established by article 609 bis is increased by one third if the acts envisaged therein are committed against a person who has not completed eighteen years of age.

- Art.609 quater penal code provides that:

The punishment established by article 609 bis is subject to anyone who, apart from the hypotheses provided for in said article, engages in sexual acts with a person who, at the time of the act:

1) under fourteen years of age;

2) has not completed sixteen years of age, when the culprit is the ascendant, the parent, even adoptive, or his/her cohabitant, the guardian, or other person to whom, for reasons of care, education, supervision or custody, the minor is entrusted or has a cohabitation relationship with the latter.

Except for the cases provided for by article 609 bis, the ascendant, parent, even adoptive, or his/her cohabitant, guardian, or other person to whom, for reasons of care, education, supervision or custody, the minor is entrusted, or who has a cohabitation relationship with the latter, who, with the abuse of the powers connected with his position, performs sexual acts with a minor who has completed sixteen years of age, is punished with imprisonment by three to six years.

Except for the cases provided for in the previous paragraphs, anyone who engages in sexual acts with a minor who has reached the age of fourteen, abusing the trust collected in the minor or the authority or influence exercised over him by reason of his own quality or the office held or family, domestic, work, cohabitation or hospitality relationships, is punished with up to four years' imprisonment.

### *Latvia / Lettonie*

According to Section 161 of the Criminal law, person shall be held criminally liable if a person who commits an act of sexual intercourse, anal or oral act, or sexual gratification in an unnatural way, or other acts of sexual nature in physical contact with the body of the victim, if it has been committed on a person who has not attained the age of sixteen years and if such offence has been committed by a person who has attained the age of majority.

Therefore, criminal liability would arise in cases if the person (victim) would be under the age of sixteen and the perpetrator would be at least 18 years old.



## Liechtenstein

No reply available / *Pas de réponse disponible*

## Lithuania / Lituanie

The Law on the Fundamentals of Protection of the Rights of the Child of the Republic of Lithuania (Rights of the Child protection law) establishes that a child is a person under the age of 18, except in cases where the laws of the Republic of Lithuania provide otherwise. If a person's age is unknown and there are reasons to believe that he or she is a minor, such a person is considered a child until otherwise determined.

The concepts of a minor and an underage are defined in the Recommendations on the Interrogation of a Juvenile Witness and a Victim approved by the Prosecutor General of the Republic of Lithuania in 2009. The following terms are used in both legal doctrine and case-law interpretations to be followed in criminal proceedings:

A minor is a person who has not reached the age of 14 at the time of the act.

An under-age is a person who has not reached the age of eighteen at the time of the performance of a procedural act. If the age of a person is in doubt, the person is considered a minor until his or her age is determined.

The distinction between the concepts of a minor and an underage is important for the proper classification of sexual offenses against children - if the victim was under the age of 14 at the time of the crime, he or she is considered a minor; if the victim was 14 years old at the time the crime was committed but was not 18 years old, he or she is considered a underage. The criminal law imposes stricter penalties for the commission of criminal offenses against minors and, in accordance with the provisions of Paragraphs 5 and 6 of Article 60 of the CC ("Aggravating Circumstances"), an offense committed against a minor or an offense committed to the underage, taking advantage by authority or influence, as well other articles of CC, such as "Coercion", "Seduction of a person under the age of sixteen", "Exploitation of a child for pornography", "Profiting from prostitution of another person", "Involvement in prostitution" and other sexual activities were committed by a close relative of the victim, a family member or a person living together are considered to be aggravating circumstances for criminal liability the application of the penalties provided for in criminal law to persons who have committed such offenses.

## Luxembourg

Non, la législation luxembourgeoise n'inclut pas la question de la différence d'âge entre les personnes se livrant à des activités sexuelles.

## Malta / Malte

A provision was added in 2021 to the offence of defilement of minors under article 203A and

also to the offence of participation in sexual offences with persons under the age of 16 under article 204C (3), “Provided further that when the act is consensual between peers who are close in age and in the level of development and provided that the acts do not involve physical and, or psychological abuse, the punishment shall be decreased by one or two degrees ». The age of « peers » is not specified.

#### Republic of Moldova / République de Moldova

The person who is close with the child below 16 by his age and physical and mental development can be released from criminal liability in case of consent.

#### Monaco

L'article 261 du Code pénal ne distingue pas suivant l'âge de l'auteur de l'infraction. Ainsi, le fait de se livrer à des activités sexuelles avec un mineur consentant de moins de seize ans constitue un crime, que l'auteur soit majeur ou mineur.

Cependant, l'article 4 du projet de loi n° 1027 portant réforme des dispositions relatives à l'incrimination des agressions sexuelles, déposé en Séance Publique le 25 novembre 2020, tend à ne plus incriminer que le « majeur » qui aurait exercé une « atteinte sexuelle sur un mineur au-dessous de l'âge de seize ans accomplis ».

De plus, les articles 5 et 7 du projet de loi susvisé tendent à inclure au sein des infractions de viol et d'agressions sexuelles, la question de la différence d'âge entre les personnes se livrant à des activités sexuelles. Ainsi, la différence d'âge entre l'auteur et la victime pourrait permettre de caractériser l'absence de consentement caractéristique du viol (article 5 du projet de loi) et des agressions sexuelles (article 7 du projet de loi). Les articles 5 et 7 du projet de loi tendent en effet à modifier les articles 262 et 263 du Code pénal, lesquels disposeraient désormais :

*« Lorsque les faits sont commis sur la personne d'un mineur, la contrainte morale mentionnée à l'alinéa précédent ou la surprise mentionnée au premier alinéa peuvent résulter de la différence d'âge existant entre la victime et l'auteur des faits et de l'autorité de droit ou de fait que celui-ci exerce sur la victime, cette autorité de fait pouvant être caractérisée par une différence d'âge significative entre la victime mineure et l'auteur majeur.*

*Lorsque les faits sont commis sur la personne d'un mineur au-dessous de l'âge de seize ans accomplis, la contrainte morale ou la surprise peuvent être caractérisées par l'abus de la vulnérabilité de la victime ne disposant pas du discernement nécessaire pour ces actes ».*

#### Montenegro / Monténégro

In criminal acts concerning sexual activities, such as rape, if the act is committed against a minor, the perpetrator will be punished with imprisonment of five to fifteen years, and if it is committed against a child, the perpetrator will be punished with imprisonment of at least ten

years or a fine long-term imprisonment.

#### *Netherlands / Pays-Bas*

The section of the Dutch Penal Code on sexual crimes consists of aggravating circumstances, the minor age of the victim being one of them (in conjunction with the person's vulnerability). Furthermore, in specific circumstances persons could also be held criminally liable for sexual activities with a person between 16-18 years of age. This is for example the case where the person involved finds himself in a specific relation with the minor, for instance where this person is in the minor's 'circle of trust' (Article 249 of the Dutch Penal Code; abuse of authority with minors; see under 5).

#### *North Macedonia / Macédoine du Nord*

No reply available / *Pas de réponse disponible*

#### *Norway / Norvège*

Yes. According to section 308, the penalty pursuant to the above-mentioned provisions may be waived or set below the minimum penalty if the persons involved are approximately equal in age and development.

#### *Poland / Pologne*

The age difference between the persons engaged in sexual activities does not matter for the legal qualification of a given act.

#### *Portugal*

The Portuguese CC only includes the issue of age difference between an adult and child, not between children. Related to the relevance of age difference between children please see the answer to question 9.

#### *Romania / Roumanie*

Yes, the Romanian legislation addresses this issue.

Consensual sexual activities are not sanctioned if the difference between the two persons is no more than 3 years, except for acts committed in aggravated circumstances, like:

- when the deed was committed by a family member of the child or by a person living with him/her;
- when the child is in the care, protection, education, guard or treatment of the perpetrator or he/she has abused the position of trust or authority over the child or his/her manifestly vulnerable situation, due to a mental or physical disability, a situation of dependence, a state of physical or mental incapacity or other cause;

- when the deed endangered the life of the child;
- when the act was committed for the purpose of producing pornographic materials;

*Russian Federation / Fédération de Russie*

No reply available / *Pas de réponse disponible*

*San Marino / Saint-Marin*

No reply available / *Pas de réponse disponible*

*Serbia / Serbie*

In Article 180 paragraph 4 of the Criminal code it is stated that: “An offender shall not be punished for the offence specified in paragraph 1 of this Article if there is no considerable difference between the offender and the child in respect of their mental and physical development.” There are no specifications regarding “considerable difference”.

*Slovak Republic / République slovaque*

No.

*Slovenia / Slovénie*

Yes: “*The act referred to in paragraph one of this Article shall not be illegal if it is committed with a person of comparable age and if it corresponds to the mental and physical maturity of this person.*” – CC Art. 173(5)

*Spain / Espagne*

According to article 183 bis of the Criminal Code consensual sexual activities between a minor who has not reached the age of consent and an adult shall not be a criminal offence pursuant to this Law, when both are close in age and degree of psychological and physical development or maturity, in so far as the minor has expressed his /her valid consent,. That excludes any activities involving abuse, deceit, violence, exploitation, coercion, vulnerability of the victim. This will apply in case the victim is deprived to give consent or the consent is reached by abusing of the psychological capacity.

In case of sexual activities between children under 14 years old, the conduct shall not be a criminal offence pursuant Misdemeanor Criminal Liability Act. In Spain the age limit to have criminal responsibility is 14 years old.

## Sweden / Suède

YES.

A child over the age of criminal responsibility, 15 years, may be punished for committing a sexual offence against another child. However, a person who has committed one of the less serious offences is not held responsible if it is obvious that the act did not involve an assault on the child in view of the slight difference in age and development between the person who committed the act and the child, and the other circumstances. This applies e.g. when the offence is *sexual exploitation of a child* (less serious cases of rape of a child; see the provision below) or when *sexual assault of a child* (see the provision above) is committed against a child under fifteen years of age. (Chapter 6, Section 14, first paragraph.)

The provision on *sexual exploitation of a child* in Chapter 6, Section 5 of the Criminal Code reads as follows:

If, in view of the circumstances associated with the offence, an offence referred to in Section 4 first or second paragraph (*rape of a child*) is considered less serious, the person is guilty of *sexual exploitation of a child* and is sentenced to imprisonment for at most four years.

## Switzerland / Suisse

*English is not an official language of the Swiss Confederation. The translation of the cited articles of the Swiss criminal code are provided for information purposes only and have no legal force. Link to the English text: [SR 311.0 - Swiss Criminal Code of 21 December 1937 \(admin.ch\)](#)*

*Link to the official law text in French: [RS 311.0 - Code pénal suisse du 21 décembre 1937 \(admin.ch\)](#)*

The issue of age difference between persons engaged in sexual activities is included. According to art. 187 CC no. 2 CC, the sexual act with a child under 16 years of age is not an offence if the difference between the persons involved is not more than three years. The legislator's aim was to decriminalize teenage love affairs where there is little age difference between the participants.

## Tunisia / Tunisie

La législation tunisienne ne fait de distinction par rapport à l'âge qu'entre l'adulte et l'enfant dans le fait de se livrer à des activités sexuelles. En effet, les rapports sexuels avec un enfant sont toujours incriminés (comme expliqué dans les deux questions précédentes) sauf si l'auteur de l'acte est lui-même un enfant (donc son âge entre 13 ans âge de discernement pénal et 18 ans) et a commis l'acte avec le consentement de l'autre enfant âgé de plus de 16 ans. Dans ce cas, la loi le considère comme un enfant en danger et le juge applique les mesures prévues dans l'article 59 du code de protection de l'enfant. Il est à noter que la Commission des droits, libertés et relations extérieures à l'ARP a proposé lors de la discussion du projet du nouvel article 227 du code pénal, à l'occasion de l'approbation du projet de loi relatif à l'élimination de la violence faite aux femmes, d'insérer un critère de différence d'âge entre les

enfants se livrant à de tels actes qui est de 3 ans maximum, donc l'agresseur dans ce cas est celui le plus âgé. Mais, cette proposition n'a pas été retenue à la fin dans le texte finale de la loi approuvée et ce afin d'assurer plus d'égalité entre les enfants qui sont tous des enfants en situation de danger et nécessitant une prise en charge spéciale en application de l'article 59 du code de protection de l'enfant (rapport en arabe, p51 et 52, accessible sur <https://majles.marsad.tn/ar/media/download/1262>).

#### Turkey / *Turquie*

In our country's legislation, regulations on sexual crimes are not made based on the difference between the age of the perpetrator and the victim.

#### Ukraine

There is no determined the age difference between the persons engaged in sexual activities, no matter is it between children or between a child and an adult.

#### United Kingdom / *Royaume-Uni*

Any sexual activity with someone under the age of 16 is a criminal offence, regardless of the age of the perpetrator or the position in relation to consent.

**Question 4**

Does your legislation make a difference between the legal age for sexual activities and the age under which a child is never deemed to be in a position to give his/her consent? Please specify the different age limits, if appropriate.

*Votre législation fait-elle une différence entre l'âge légal pour entretenir des activités sexuelles et l'âge en dessous duquel un enfant n'est jamais considéré comme étant en mesure de donner son consentement ? Veuillez préciser les différentes limites d'âge, le cas échéant.*

*Albania / Albanie*

In the Criminal Code of the Republic of Albania, there is no difference between age and sexual activity, under which the child is never considered in a position to give consent.

*Andorra / Andorre*

Comme cela a déjà été exposé, le Code pénal établit que la personne mineure de 14 ans n'a pas de la capacité pour consentir en ce qui concerne aux relations sexuelles.

*Armenia / Arménie*

The children under the age of 16, are sexually inviolable, and children under the age of 12 are considered to be in helpless situation. Any sexual activity with involvement of a child under the age of 12 is qualified as an offence -rape. For children of the age 12 and above, any engagement of sexual activity should be referred to forensic expertise, and if it is proved that the sexual activity has been in helpless situation, or in a circumstance where the child could not assess his/her behavior and consequences, the engagement is qualified a rape. In the case where there is evidence and expertise of child acknowledgment and assessment of his/her own behavior, the engagement is also criminalized as a sexual offence under the article of 200 of the Criminal Code.

*Austria / Autriche*

Criminal liability under Sections 206 and 207 of the Criminal Code is independent of the consent of the person under the age of fourteen. An exception is only made if the age tolerance clause is applied.

*Azerbaijan / Azerbaïdjan*

The sexual activity with the person junior 16 years causes criminal liability by the article 152 of Criminal Code (CC) of Azerbaijan Republic (Sexual contact or sexual characteristic activities with the person junior age of 16). The sexual activities with the person upper age of 16 against his/her consent causes the criminal liability by the article 149 (Rape) or 150 (Sexual abuse activities) CC of Azerbaijan Republic. Activities enforced to the person who does not understand the essence of activities because of unthinkability or physical and mental defects

(if this situation is clear for the offender), causes the criminal liability by the articles 149 or 150 of CC of Azerbaijan Republic.

### *Belgium / Belgique*

Avant 14 ans, tout acte de pénétration sexuelle est strictement interdit et est considéré comme étant un viol, puisqu'on considère en Belgique qu'en dessous de 14 ans, il y a une absence de consentement dans le cas de ces enfants.

Par contre entre 14 ans et 16 ans, la situation est particulière. Comme déjà expliqué à la question 1.

Si le/la jeune a un rapport sexuel entre 14 et 16 ans, le législateur considère alors qu'il y a un attentat à la pudeur, même s'il donne son consentement.

En effet, le 29 octobre 2009, la Cour constitutionnelle, a clarifié l'interprétation de la loi sur les relations sexuelles consenties pour un-e mineur-e entre 14 et 16 ans. Ainsi, si le mineur de 14 ans consent « volontairement et consciemment » à la pénétration sexuelle, il n'y a pas de viol. Selon les circonstances, cet acte reste punissable. Ce seront les dispositions relatives à l'attentat à la pudeur qui s'appliqueront s'il y a poursuite et non plus les dispositions relatives au viol.

L'article 375 du Code pénal prévoit ce point : « Si le crime a été commis sur la personne d'un enfant âgé de plus de 14 ans accomplis et de moins de 16 ans accomplis, le coupable sera puni de la peine de la réclusion de quinze à vingt ans ».

L'explication est liée au « ratio legis » comme déjà explicité.

Cf question 1.

#### *Child Focus' reply on Belgium's legal framework*

##### [Art. 417/6.](#) <sup>[1]</sup> Les restrictions à la faculté de consentir du mineur

§ 1er. Sous réserve du paragraphe 2, un mineur qui n'a pas atteint l'âge de seize ans accomplis n'est pas réputé avoir la possibilité d'exprimer librement son consentement.

§ 2. Un mineur qui a atteint l'âge de quatorze ans accomplis mais pas l'âge de seize ans accomplis, peut consentir librement si la différence d'âge avec l'autre personne n'est pas supérieure à trois ans.

Il n'y a pas d'infraction entre mineurs ayant atteint l'âge de quatorze ans accomplis qui agissent avec consentement mutuel lorsque la différence d'âge entre eux est supérieure à trois ans.

(...)

### *Bosnia and Herzegovina / Bosnie-Herzégovine*

In all three criminal codes in BiH there is no difference between the two.



*Bulgaria / Bulgarie*

The legislator does not explicitly stipulate a specific age as legal for sexual activities of the person, but through the envisaged penalties for fornication and intercourse with persons under 14 years of age, it has in fact accepted that this is the age, below which the consent of the minor is irrelevant for the composition of the act.

Copulation with a 14-year-old child would be a crime, if he/she or did not understand the nature and significance of the act.

*Croatia / Croatie*

In the criminal legislation of the Republic of Croatia there is no difference between the two.

*Cyprus / Chypre*

Article 12 of the L. 91(I)/2014, as described above (Q.3) does not apply in cases where any of the involved children is under the age of (13) thirteen.

*"Hope For Children" CRC Policy Center Cyprus / "Hope For Children" CRC Policy Center Chypre's reply on Cyprus' legal framework*

If a child is under the age of 13 y.o., the question whether he/she has given his/her consent is irrelevant.

*Czech Republic / République tchèque*

The legal age for sexual activities and the age under which a child is never deemed to be in a position to give his/her consent is the same in both cases, i.e. 15 years of age.

*Denmark / Danemark*

As stated above, the legal age is 15. However, under section 216 (2) of the Danish Criminal Code, sexual intercourse with a child under 12 years of age is always considered rape and is punishable with a penalty of imprisonment for a term not exceeding 12 years. This also applies to other sexual activities than sexual intercourse.

*Estonia / Estonie*

In Estonia, the age of comprehension is 10 years old and the age of consent is 14 years old. See above.

In Estonia, the age of comprehension is 10 years of age and the age of consent is 16 years of age. Please see the previous answer.

*Finland / Finlande*

No.

*France*

La législation française a fixé un âge seuil pour les activités sexuelles entre un majeur et un mineur : lorsque les faits seront commis sur un mineur de 15 ans, ou 18 ans en cas d'inceste, par un majeur, même en l'absence de violence, contrainte, menace ou surprise, le législateur ayant considéré que le mineur ne pouvait en effet jamais librement consentir à de tels actes avec une personne majeure.

Le législateur n'a en revanche pas fixé d'âge seuil du consentement de l'activité sexuelle entre mineurs.

*Georgia / Géorgie*

Penetration of a sexual nature into the body of a person below 16 years of age, committed knowingly by an adult is a crime irrespective the child gave the offender his/her consent. There is no difference between legal age for sexual activities and the age under which a child is never deemed to be in a position to give his/her consent.

*Germany / Allemagne*

Under the age of 14 years, a child is never deemed to be in a position to give his/her consent, see section 176 of the German Criminal Code.

Between the ages of 14 to 18 years, the juvenile may give his/her consent; however, performing sexual acts with the juvenile is punishable if the requirements of section 174 or section 182 of the German Criminal Code are met.

See Appendix / *Voir l'Annexe*

*Greece / Grèce*

No reply available / *Pas de réponse disponible*

*Hungary / Hongrie*

Yes.

The legal age for consensual sexual relations is 14 years. However, all types of sexual acts in which a child below the age of 12 years is involved, qualify as sexual violence under § 197 Section (2) of the Criminal Code. In these cases, it is indifferent, whether the act was actually committed by violence, threat or coercion.

*Iceland / Islande*

No, legislation does not make such difference.

*Ireland / Irlande*

In the case where a person is accused of engaging in sexual activities with a child under the age of 17, or under the age of 18 if the accused individual held a position of authority in relation to the child, it is not a defence to argue that the child gave consent. In this context, there is no difference between the legal age for sexual activities and the age under which a child is never deemed to be in a position to give his/her consent.

In the case where a child under 17 years of age, and offence is against a child who had attained the age of 15 years but was under the age of 17 years, and who is less than 2 years younger than the older child, it may be a defence that the child consented to the sexual act. This defence also depends on the offending child not being in a position of authority in respect of the younger child, and that the relationship was not intimidatory or exploitative.

*Italy / Italie*

See above.

*Latvia / Lettonie*

As mentioned before, legal age for sexual activities in Latvia is 16. According to the Criminal law age under 16 is consider as the limit when child is never deemed to be in a position to give his or her consent for sexual activities.

*Liechtenstein*

No reply available / *Pas de réponse disponible*

*Lithuania / Lituanie*

Liability for crimes against the freedom of sexual expression and inviolability of children (persons under 18 years of age) is determined by:

Paragraph 3 of Article 149 (“Rape”) of the CC for rape of a person under the age of 18 (sexual intercourse with a person against the will by using physical violence or threatening to use it immediately, or otherwise depriving him or her of the helpless condition of the victim ) provides for a term of imprisonment of between three and ten years (serious offense) and paragraph 4 for the rape of a minor (under 14 years of age) for a term of imprisonment of between five and fifteen years (very serious offense).

Paragraph 3 of Article 150 of the CC (“Sexual Rape”) for sexual abuse of a person under the age of 18 (satisfaction of sexual passion with a person against this will by anal, oral or other

physical contact using physical violence or threatening to use it immediately, or otherwise depriving him of the possibility of taking advantage of the helplessness of the victim) is punishable by a term of imprisonment of two to ten years (a serious crime) and paragraph 4 by a term of imprisonment of a minor (under 14) for a term of imprisonment of three to thirteen (a very serious crime).

Paragraph 2 of Article 151 of the CC (“Forced sexual intercourse”) for coercing a child under the age of 18, including minors under the age of 14 into sexual intercourse (threatening to use violence, using other mental coercion or using a person’s addiction to sexually intercourse or otherwise satisfy sexual passion with the perpetrator or other person) imposes a custodial sentence of up to eight years (a serious crime).

Paragraph 1 of Article 151<sup>1</sup> of the CC (“Satisfaction of sexual passion in violation of a minor’s freedom of sexual self-determination and (or) inviolability”) provides that an adult who has had sexual intercourse or otherwise satisfied sexual passion with a person under the age of sixteen, if there was no rape, sexual abuse or signs of coercion to have sex, punishable by a fine or restriction of liberty, or arrest, or imprisonment for up to five years (a felony). Part 2 of the CC 151<sup>1</sup> - a person who has had sexual intercourse or otherwise satisfied sexual passion with a child under the age of 18, including minors - under the age of 14), who has offered, promised to give or has given him or another person money or other means of rewards, if there were no signs of rape, sexual abuse or coercion to have sex, punishable by public works or a fine, or restriction of liberty, or arrest, or imprisonment for up to five years (a felony).

In case law, sexual intercourse and satisfaction of sexual passion with a minor (under the age of 14) is generally considered to be the exploitation of the victim’s helpless state, unless the victim has understood and consented to his or her physical and mental development and social maturity or those acts took place on the initiative of the minor (victim).

Article 153 of the CC (“Abuse of a person under the age of sixteen”) provides that a person who has committed acts of abuse of a person under the age of sixteen is punishable by deprivation of liberty or arrest, or imprisonment for up to five years (a serious crime).

Article 157<sup>1</sup> of the CC (“Purchase or Sale of a Child”) provides that a person who offered to buy, otherwise acquire, sell, buy, otherwise transfer, acquire, recruit, transport or hold a child under the age of 18) knowing or seeking to child abuse, prostitution, pornography, other forms of sexual exploitation, forced, marriage, forced labour or services, should be punished for twelve years (very serious crime). Article 157<sup>2</sup> of the CC - a person who has committed an act provided for in Paragraph 1 of this Article to two or more children or a minor, or endangering the life of the victim, or participating in an organized group, or knowing or seeking to remove an organ, tissue or cell of the victim, or as a civil servant or a person performing public administration and exercising powers, is punishable by a term of imprisonment of between five and fifteen years (a very serious crime).

Article 162 of the CC (“Exploitation of a child for pornography”) provides that a person who recruits, values or involves a child to participate in pornographic events, or exploits a child for such purposes, or exploits a child for the production of pornographic performances, punishable up to eight years (serious crime).

Paragraph 3 of Article 307 of the CC (“Profiting from prostitution of another person”) stipulates that a person who profited from the prostitution of a child under the age of 18 or organized or directed the prostitution of a child under the age of 18, or otherwise exploited a minor for the purposes of prostitution, is punishable by three to ten years (severe crime).

Paragraph 3 of Article 308 of the CC (“Involvement in prostitution”) stipulates that a person who has recruited, engages in prostitution or has involved a child under the age of 18 in prostitution in any way is punishable by three to ten years' imprisonment (serious crime).

### Luxembourg

Non, la législation luxembourgeoise ne fait pas de différence entre l'âge légal pour entretenir des activités sexuelles et l'âge en dessous duquel un enfant n'est jamais considéré comme étant en mesure de donner son consentement. Est considéré comme âge en dessous duquel un enfant n'est jamais considéré comme étant en mesure de donner son consentement l'âge légal pour entretenir des activités sexuelles, qui est fixé à 16 ans.

Cependant, on notera qu'il y a des circonstances aggravantes si l'enfant était âgé de moins de 11 ans au moment des faits.

### Malta / *Malte*

Specifically with regards to the offence of inducing a person under age to prostitution (article 204 Criminal Code), there is an aggravation in punishment when the offence is carried out on a child below the age of 12.

### Republic of Moldova / *République de Moldova*

The law does not explicitly indicate the age below each formal consent has no legal power. The Supreme Court of Justice Explanatory Decision operates with the term of “child of fragile age” and indicates that such cases shall be qualified as one of two other crimes related to use of coercion for sexual activities, where an aggravating circumstance is the situation of the child victim under 14.

### Monaco

L'article 261 du Code pénal fixe l'âge pour entretenir des activités sexuelles. En ce sens, l'article 261 du Code pénal se réalise avec le consentement de la victime mineure. L'article 261 du Code pénal considère simplement que les relations ou les actes de nature sexuelle avec une victime mineure pourtant consentante constituent une infraction notamment parce qu'elle est trop jeune (moins de seize ans, article 261, alinéa premier).

En revanche, le droit monégasque ne prévoit pas d'âge en-dessous duquel un enfant n'est jamais considéré comme étant en mesure de donner son consentement.

Selon le cas d'espèce, l'âge de la victime pourrait néanmoins permettre de caractériser la contrainte ou la surprise de la pénétration sexuelle, caractéristique de viol (article 262, alinéa premier) ou « *la violence* » d'autres actes sexuels, caractéristique d'attentat à la pudeur avec violence (article 263 du Code pénal).

Le projet de loi susvisé n'envisage pas non plus d'âge en dessous duquel un enfant n'est jamais considéré comme étant en mesure de donner son consentement.

Cependant, l'âge de la victime pourrait permettre de caractériser l'absence de consentement caractéristique du viol (article 5 du projet de loi) et des agressions sexuelles (article 7 du projet de loi). En ces hypothèses, les articles 5 et 7 du projet de loi tendent en effet à modifier les articles 262 et 263 du Code pénal, lesquels disposeraient désormais :

*« Lorsque les faits sont commis sur la personne d'un mineur, la contrainte morale mentionnée à l'alinéa précédent ou la surprise mentionnée au premier alinéa peuvent résulter de la différence d'âge existant entre la victime et l'auteur des faits et de l'autorité de droit ou de fait que celui-ci exerce sur la victime, cette autorité de fait pouvant être caractérisée par une différence d'âge significative entre la victime mineure et l'auteur majeur.*

*Lorsque les faits sont commis sur la personne d'un mineur au-dessous de l'âge de seize ans accomplis, la contrainte morale ou la surprise peuvent être caractérisées par l'abus de la vulnérabilité de la victime ne disposant pas du discernement nécessaire pour ces actes ».*

#### Montenegro / Monténégro

When it comes to the legal regulation of the age for engaging in sexual activities, our legislation does not prescribe age limits when a child is able or unable to give consent. However, it is considered a criminal offense if rape or an act equivalent to rape is committed with a child.

#### Netherlands / Pays-Bas

In Dutch law, a minor under twelve years of age is never deemed to be in a position to give his or her consent. As a rule, sexual activities with minors between 12-16 years of age are punishable, unless there is an equal situation between peers. Insofar, Dutch legislation indeed makes a difference between the legal age for sexual activities and the age under which a child is never deemed to be in a position to give his/her consent.

#### North Macedonia / Macédoine du Nord

No reply available / Pas de réponse disponible

## Norway / Norvège

As mentioned in the answer to question 2, the legal age for sexual activities and the legal age of sexual consent are corresponding. However, the Norwegian legislation differentiates between the legal age of consent for non-sexual activities and the legal age of sexual consent. Hence, there is no necessary relationship between the legal age for sexual activities and the age of consent for non-sexual activities. As a general rule, children achieve full self-determination at the age of majority (18 years). There are nevertheless situations where also children under 18 years have the right of self-determination. In accordance with section 33 of The Children Act (*The child's right to make his or her own decisions*), “[p]arents shall steadily extend the child's right to make his or her own decisions as he or she gets older and until he or she reaches the age of 18». As such, parents do not have complete authority over children until they achieve the age of majority, and there is no age limit under which a child is never deemed to be in a position to give his/her consent to non-sexual activities.

There are other statutory provisions that require the child’s consent, subject to age limits that differ depending on the context and the activity in question. For example, a child aged 16 may legally change his or her name, and children who have reached the age of 12 must consent to any decision concerning relocating or staying abroad without a parent with parental responsibility. An overview of different age limits in Norwegian law is listed in NOU 2020: 14 (pages 342-346).

## Poland / Pologne

Any consent given to sexual activity (intercourse, or performance of or submission to another sexual activity) is relevant only in the case of a minor at least 15 years old. Those younger than 15 are incapable of giving legally effective consent — so as to affect the evaluation of the event in the light of criminal law.

Decision-making, including consent, is regulated differently in the Civil Code and the Act on Patients’ Rights and on the Patients’ Rights Ombudsman.

➤ Act of 23 April 1964 — Civil Code (Dz.U.2020.1740)

In line with Article 15 of the Civil Code, minors having completed thirteen years of age enjoy limited capacity to enter into legal transactions. Such a person may:

(a) enter into such contracts as are universally made in trivial current matters of everyday life (Article 20);

(b) dispose of one’s own earnings, save where the custody court orders otherwise for important reasons (Article 21);

(c) enter into legal transactions in respect of items of property put in such a person’s liberal use (Article 22).

➤ Act of 6 November 2008 on Patients’ Rights and on the Patients’ Rights Ombudsman (Dz.U.2020.849)

In accordance with Article 17:

(1) Any patient, including a minor having completed 16 years of age, shall be entitled to give

consent to the conduct of an examination or to other health-care services.

(2) The statutory representative of a minor (...) shall be entitled to grant the consent referred to in section 1. Where there is no statutory representative, said right may be exercised in respect of an examination by the factual carer.

(3) A minor having completed 16 years of age (...) shall be entitled to object to the provision of a health-care service in spite of the consent of the statutory representative or factual carer. In any such case the custody court's permission shall be required.

(4) The consent or objection referred to in sections 1 to 3 may be communicated orally or by such conduct of the persons referred to therein as shall indubitably indicate the intention or no intention of submitting to the activities proposed by the medical practitioner.

### Portugal

Under 14-year-old a child does not have the capacity to freely consent in any sexual acts (article 171) but this does not mean that there is a consent rule after 14. In fact until the child reaches the age of consent defined by article 38, the child cannot give his/her consent.

On most cases, even after 16 years old consent is of null relevance. This is the case of article 172, where consent cannot be given until 18 years old.

The same happens in the situation foreseen by article 174 (Prostitution of minors). The consent does not produce a legal effect. Resorting to the prostitution of a child between 14 and 18 is always a crime, regardless of any consent of the victim (if the victim is under 14 the conduct falls within the scope of article 171 and is child sexual abuse). This is also the case of article 175, 176, 176-A and 176-B.

General rules on consent are enshrined in article 38 of the CC (as explained in the answer to question 5).

### Romania / Roumanie

The age under which any sexual activity with a child is considered to be committed without consent (this meaning that the act will be qualified as rape or sexual assault, even if the child did not manifest opposition) is not regulated by law, but by the judiciary practice, taking into consideration the particularities of each case.

### Russian Federation / Fédération de Russie

No reply available / *Pas de réponse disponible*

### San Marino / Saint-Marin

No reply available / *Pas de réponse disponible*



*Serbia / Serbie*

No, child under age of 14 cannot be criminally liable; also consent of the child under age of 14 has no legal strength beside in legal affairs of lesser importance in line with family law.

No, there is no such difference.

*Slovak Republic / République slovaque*

No, there is only one age limit - 15 years old.

*Slovenia / Slovénie*

No. The ratio of the provision of the CC Art. 173(1) is that a child below the age of 15 is not capable to give consent to sexual activities.

*Spain / Espagne*

No, there is no difference. There is just a legal age for sexual activities (16yo).

*Sweden / Suède*

No.

*Switzerland / Suisse*

*English is not an official language of the Swiss Confederation. The translation of the cited articles of the Swiss criminal code are provided for information purposes only and have no legal force. Link to the English text: [SR 311.0 - Swiss Criminal Code of 21 December 1937 \(admin.ch\)](#)*

*Link to the official law text in French: [RS 311.0 - Code pénal suisse du 21 décembre 1937 \(admin.ch\)](#)*

The Swiss legislation does not make a difference between the legal age for sexual activities and the age under which a child is never deemed to be in a position to give his/her consent, the two age limits coincide. Circumstances such as sexual experience, capacity to judge, consent to the sexual act on the part of the victim or the risk or occurrence of harm have no relevance for the criminal liability according to article 187 CC. Below the legal age for sexual activities, the child is never deemed to be in a position to give his/her consent for a sexual activity with a person, who is more than three years older than the person itself.

*Tunisia / Tunisie*

La législation tunisienne n'a pas prévu expressément un âge légal pour entretenir des activités sexuelles. Toutefois, elle a consacré une présomption légale irréfragable selon laquelle le

consentement de l'enfant au-dessous de 16 ans accomplis à faire des actes de pénétration sexuelles est considéré inexistant dans ce cas (article 227 du code pénal).

### *Turkey / Turquie*

Although the legal age limit for sexual activities is 18 in our country, in Article 104 titled "Sexual intercourse with a minor" of the Turkish Criminal Code No: 5237, it is regulated that in terms of the crime of having sexual intercourse with a minor between the ages of 15 and 18 without any force, threat or deceit, investigation and prosecution shall be carried out upon the complaint of the victim. If the victim is under the age of 15, it is considered that the victim is never in a position to consent to sexual activity.

In our country's legislation, regulations on sexual crimes are not made based on the difference between the age of the perpetrator and the victim.

### *Ukraine*

In the Criminal Code of Ukraine there is no such differences.

### *United Kingdom / Royaume-Uni*

Any sexual activity with someone under the age of 16 is a criminal offence. However, for many offences where the victim is 13 – 15 years of age a defence is available that the "defendant" held a reasonable belief that the child was aged 16 years or older. That defence of reasonable belief of age of consent is not available when the activity involves a child under 13 years of age.

### Question 5

What are the situations where, irrespective of the age of the child, the child is never deemed to be in a position to give his/her consent (e.g. abuse of a position of trust, authority, or influence)?

*Quelles sont les situations dans lesquelles, quel que soit l'âge de l'enfant, il est considéré que l'enfant ne peut jamais donner son consentement (par exemple, abus de confiance, d'autorité ou d'influence) ?*

#### Albania / Albanie

In the Criminal Code of the Republic of Albania, there are no situations when, despite of the age of the child, he / she is not able to give consent.

#### Andorra / Andorre

L'article 146 de la Loi 9/2005, du 21 février, qualifiée du Code pénale, typifie comme agressions sexuelles qualifiées qui, indépendamment de l'âge de la victime, n'est pas considéré valide le consentement, lorsque aucune des circonstances suivantes concoure :

- a) Exécuter le fait en groupe, en y concourant deux ou plus personnes.
- b) Lorsque le coupable cohabite ou soit ascendant, descendant ou frère de la victime ou soit une personne qui exerce, de fait ou de droit, une autorité familiale sur elle.
- c) La victime est spécialement vulnérable par raison de son âge, incapacité, maladie ou situation. En tout cas, la victime est considérée spécialement vulnérable par raison de son âge lorsqu'elle a un âge inférieur à 14 ans. Dans ce supposé les peines s'appliquent dans sa moitié supérieure.
- d) Lorsque en attention à la nature de la conduite sexuelle, des moyens utilisés, des circonstances spécifiques ou n'importe quelle autre raison, l'agression sexuelle aille un caractère spécialement dénigrant et vexatoire pour la victime.
- e) Lorsque l'agression se réalise avec prévalence d'autorité, supériorité, avec abus de confiance, ou en situation de besoin ou dépendance.
- f) Lorsque la victime soit privée de son sens.
- g) Lorsque, en moyennant l'agression, se pose en danger la vie ou l'intégrité physique de la victime.
- h) Lorsque l'agresseur de façon directe ou en moyennant l'intervention d'un tiers, aille laissé à la victime dans une situation d'incapacité, d'impuissance ou d'inconscience intentionnellement pour exécuter l'agression sans aucune résistance de la victime, en la induisant à la consommation excessive de boissons alcoolisées ou en moyennant l'usage de médicaments, de drogues ou de n'importe quelle autre substance naturelle ou chimique.
- i) La diffusion de l'agression par le biais de la technologie et/ou les réseaux sociaux.

#### Armenia / Arménie

The situations of engagement of the child in a sexual activity against the will of the victim, or accompanied with abuse or violence or harassment or helpless situation are described in the

legislation.

### *Austria / Autriche*

In this regard, reference may be made to the already cited sections 207b, 208 and 212 CC.

Section 207b CC protects the sexual right of self-determination of adolescents who - due to the situation - cannot exercise this right at all or only to a limited extent against abuse. Victim according to Section 207b para 1 CC is a person under 16 years of age, who for certain reasons is not mature enough to understand the meaning of the sexual act or to act according to this understanding. Victim according to Section 207b para 2 are persons up to 18 years, who are in a coercive situation. Victims according to section 207b para 3 are, as in para 2, persons who have not yet reached the age of 18.

The victims of section 208 CC are to be protected from direct confrontation with sexual acts and expressions of others.

Section 212 CC aims to protect against involuntary sexual acts (not only against juveniles, but also adults), assuming that not only violence or threats are used as a method of influencing the will, but also relationships of authority and dependence can lead to the improper realization of sexual acts.

### *Azerbaijan / Azerbaïdjan*

As mentioned above, sexual activities with a person in the junior age of 16 causes criminal liability irrespective of his/her consent. Commitment of these crimes by the person who is responsible for the bringing up or education and medical health of a junior, is the more serious circumstance for the criminal liability.

### *Belgium / Belgique*

Avant 14 ans, tout acte de pénétration sexuelle est strictement interdit et est considéré comme étant un viol, puisqu'on considère en Belgique qu'en dessous de 14 ans, il y a une absence de consentement.

L'article 375 du Code pénal détermine les éléments constitutifs d'un viol. C'est dans ce cadre que la loi se réfère à la notion de consentement. *« Tout acte de pénétration sexuelle, de quelque nature qu'il soit et par quelque moyen que ce soit, commis sur une personne qui n'y consent pas, constitue le crime de viol. Il n'y a pas consentement notamment lorsque l'acte a été imposé par violence, contrainte ou ruse, ou a été rendu possible en raison d'une infirmité ou d'une déficience physique ou mentale de la victime .*

*Est réputé viol à l'aide de violences tout acte de pénétration sexuelle, de quelque nature qu'il soit et par quelque moyen que ce soit, commis sur la personne d'un enfant qui n'a pas atteint l'âge de quatorze ans accomplis. Dans ce cas, la peine sera la réclusion de quinze à vingt ans. Elle sera de la réclusion de vingt à trente ans si l'enfant était âgé de moins de 10 ans accomplis.»*

Il n'y a pas de consentement lorsque l'acte à caractère sexuel a été commis en profitant de la situation de vulnérabilité de la victime due notamment à un état de peur, à l'influence de l'alcool, de stupéfiants, de substances psychotropes ou de toute autre substance ayant un effet similaire, à une maladie ou à une situation de handicap, altérant le libre arbitre.

En tout état de cause, il n'y a pas de consentement si l'acte à caractère sexuel résulte d'une menace, de violences physiques ou psychologiques, d'une contrainte, d'une surprise, d'une ruse ou de tout autre comportement punissable.

En tout état de cause, il n'y a pas de consentement lorsque l'acte à caractère sexuel a été commis au préjudice d'une victime inconsciente ou endormie.

#### Child Focus' reply on Belgium's legal framework

##### **Art. 417/6**

(...)

§ 3. Un mineur n'est jamais réputé avoir la possibilité d'exprimer librement son consentement si:

1° l'auteur est un parent ou un allié en ligne directe ascendante, ou un adoptant, ou un parent ou un allié en ligne collatérale jusqu'au troisième degré, ou toute autre personne qui occupe une position similaire au sein de la famille, ou toute personne cohabitant habituellement ou occasionnellement avec le mineur et qui a autorité sur lui, ou si

2° l'acte a été rendu possible en raison de l'utilisation, dans le chef de l'auteur, d'une position reconnue de confiance, d'autorité ou d'influence sur le mineur, ou si

3° l'acte est considéré comme un acte de débauche ou un acte de prostitution visé dans la sous-section 2 de la section 2, intitulée "De l'exploitation sexuelle de mineurs à des fins de prostitution".<sup>1</sup>

#### Bosnia and Herzegovina / *Bosnie-Herzégovine*

All of three criminal codes additionally criminalize aggravating circumstances if the criminal act was conducted by close relative, with use of force or threat, deception, fraud or abuse of authority.

#### Bulgaria / *Bulgarie*

Please also see the answer of №4.

In cases where there is a use of a position of dependence or supervision, power or influence, they lead to criminal liability and when the victim has reached 14 years of age. The hypothesis is similar when the child has been transferred to a helpless state or has been used in intercourse with another person, forcing him/her to do so by using material dependence on him/her.

#### Croatia / *Croatie*

A child under the age of 15 is in a position to give his/her consent to a peer (the age difference

between the persons engaging in sexual intercourse or an equivalent sexual act or a lewd act does not exceed three years) only for consensual sexual activities. If the age deference between the persons engaging in sexual intercourse or an equivalent sexual act or a lewd act does exceed three years the child under the age of 15 is not in the position to provide the consent.

In relation to this question we emphasize that the child is never in the position to give his/her consent under the circumstances prescribed by Article 158 Paragraphs 5 and 6 of the Criminal Code (Sexual Abuse of a Child under the Age of Fifteen) which criminalises sexual intercourse or an equivalent sexual act or a lewd act with a child under the age of fifteen by means of the use of force or threat, deception, fraud, abuse of authority or of a situation of hardship or dependence of the child on the perpetrator.

Although the child over the age of 15 is in the position to give her/his consent for engaging in sexual activities, each sexual intercourse or an equivalent sexual act with the person in the circle of trust shall be criminalized as the criminal offence of Sexual Abuse of a Child over the Age of Fifteen (Article 159 of the Criminal Code).

Article 159 of the Criminal Code prescribes criminal offence Sexual Abuse of a Child over the Age of Fifteen, as follows:

(1) Whoever engages in sexual intercourse or an equivalent sexual act with a child over the age of fifteen with whose upbringing, education, custody, spiritual guidance or care he or she has been entrusted, or whoever induces a child over the age of fifteen with whose upbringing, education, custody, spiritual guidance or care he or she has been entrusted to engage in sexual intercourse or an equivalent sexual act with a third party or to perform upon himself or herself a sexual act equated with sexual intercourse, shall be punished by imprisonment from one to eight years.

(2) The same punishment as referred to in paragraph 1 of this Article shall be inflicted on a relative by blood or by adoption in direct line, a step-father, a step-mother or common-law spouse or life partner or informal life-partner of a child's parent who engages in sexual intercourse or an equivalent sexual act with a child over the age of fifteen or who induces a child over the age of fifteen to engage in sexual intercourse or an equivalent sexual act with a third party or to perform upon himself or herself a sexual act equated with sexual intercourse.

### *Cyprus / Chypre*

According to the L. 91(I)/2014 the child is never deemed to be in position to give his/her consent when such activities involved any abuse or violence or exploitation or coercion and when the abuse was from a person of trust, authority or influence.

*"Hope For Children" CRC Policy Center Cyprus / "Hope For Children" CRC Policy Center Chypre's reply on Cyprus' legal framework*

- a) Abuse of a position of trust, authority or influence
- b) Abuse of vulnerability of a child due to mental or physical disability or drug

addiction

c) Use of violence, coercion or threat

### *Czech Republic / République tchèque*

These situations include use of violence, threat of violence or threat of other serious detriment, exploitation of the child's vulnerability, exploitation of child's dependence or the offender's position and exploitation of the credibility or influence derived thereof.

### *Denmark / Danmark*

A child under the age of 15 cannot give exculpatory consent to sexual intercourse. Several sections of the Danish Criminal Code entails an absolute prohibition of sexual intercourse with children over the age of 15, meaning situations where it is not relevant whether the child has given his or her consent. This applies to the following situations:

- In cases of incest between children and parents, grandparents, great-grandparent etc. and between siblings (section 210);
- Abuse of mental disorder or mental retardation of another person in order to engage in sexual intercourse or other sexual activities (section 218);
- Where the offender abuses his or her position of trust and authority, i.e. employees of the police, of a child or youth institution, psychiatric wards or similar institutions, if the victim is under the offender's custody (section 219).

### *Estonia / Estonie*

§§-s 141 and 141<sup>1</sup> of the Penal code (Rape and act of sexual nature against will respectively) criminalize the acts in question when the perpetrator is using force or is taking advantage of a situation in which the person is not capable of initiating resistance or comprehending the situation. The latter two can occur when the victim is heavily intoxicated (according to case-law just a mild intoxication does not mean that a person is unable to comprehend the situation) or for example when the victim is not able to comprehend the situation due to a health issue, age etc. According to case-law a person can be deemed unable to initiate resistance even when resistance is technically possible but would prove to be futile and would merely equate to more damage for the victim (the perpetrator is physically stronger, perpetrators outnumber the victim etc.).

The Penal Code also contains §§ 143<sup>2</sup> which criminalizes 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 or 141<sup>1</sup>. Dependency can be formal or non-formal. For example, there can be a relation of worker-superior, teacher-pupil etc. but also when the perpetrator has threatened to publicise compromising materials about the victim (without having an aforementioned formal relation to the victim). The influence can even derive from the status

of the perpetrator (role-model or idol of the victim). Also §§ 145 of the Penal Code criminalizes sexual intercourse with a descendant.

### *Finland / Finlande*

As concerns children under the age of 16: the child cannot give his/her consent in any situation other than mentioned above under question 3.

As concerns children of the age of 16 or 17: the child cannot give his/her consent (1) if the other party to the sexual act abuses his/her position of the authority or supervision in a school or other institution, an employment relationship or free time activities, (2) if the offender ~~blatantly~~ takes advantage of the child's immaturity or (3) if the other party is the child's parent or is in a position comparable to that of a parent.

As concerns a person of any age (including children under the age of 18): the person cannot give his/her consent, if the sexual act is committed by using force or threat or by abusing the person's vulnerable position.

### *France*

Elles ont été exposées dans les réponses aux questions précédentes.

### *Georgia / Géorgie*

No reply available / *Pas de réponse disponible*

### *Germany / Allemagne*

According to section 174, subsection 1 number 1 of the German Criminal Code, a juvenile under the age of 16 is never deemed to be in a position to give his/her consent if the offender performs sexual acts, although being entrusted to them for upbringing, education or care.

According to section 174, subsection 1, number 2 and 3, a juvenile under the age of 18 years is never deemed to be in a position to give his/her consent, if the offender performs sexual acts on the juvenile,

2. who is entrusted for upbringing, education or care, or who is their subordinate within a service or employment relationship, by abusing the dependence associated with the educational, care, service or employment relationship

or

3. who is their biological or adopted descendant or the biological or adopted descendant of their spouse, life partner or a person with whom they live in a quasi-marital relationship or quasi-life partnership

In addition, according to section 174 subsection 2 of the German Criminal Code, the juvenile between the ages of 14 to 18 years is never deemed to be in a position to give his/her consent if the offender is entrusted with the upbringing, education or care of the person in an



institution specified for this purpose and who

1. performs sexual acts on a person under 16 years of age who has a legal relationship with the institution which serves this person's upbringing, education or care, or who has that person perform sexual acts on them

or

2. exploits their position in order to perform sexual acts on a person under 18 years of age who has a legal relationship with the institution which serves this person's upbringing, education or care, or who has that person perform sexual acts on them.

According to section 182 subsection 1 number 1 and 2 of the German Criminal Code, a juvenile between the ages of 14 to 18 years is never deemed to be in a position to give his/her consent, when the offender abuses said person by taking advantage of a predicament by

1. performing sexual acts on that person or having said person perform sexual acts on them
- or
2. causing the person to perform sexual acts on a third person or to have sexual acts performed on them by a third person.

If a person over 18 years of age abuses a juvenile between the ages of 14 to 18 years by performing sexual acts on that person or having that person perform sexual acts on them for a consideration, the conduct is punishable under section 182 subsection 2 of the German Criminal Code, regardless whether or not consent was given.

If the offender is 21 years of age or older, while the victim being between the ages of 14 to 16 years, the latter is not deemed to be in a position to give his/her consent, if the offender abuses the person by

1. performing sexual acts on that person or having that person perform sexual acts on them
- or
2. causing that person to perform sexual acts on a third person or to have a third person perform sexual acts on that person,

and thereby exploits the victim's lack of capacity for sexual self-determination, see section 182 subsection 3 number 1 and 2 of the German Criminal Code.

See Appendix / *Voir l'Annexe*

[Greece / Grèce](#)

No reply available / *Pas de réponse disponible*

[Hungary / Hongrie](#)

The Criminal Code does not per se see children to be in a position not to give consent based on the relationship to or influence of the perpetrator, or the authority exercised over the children, it is always connected to the legal age of the child.

However, all relevant criminal offences (including sexual abuse, sexual coercion and sexual violence) have qualified cases, where the perpetrator commits the offence against a relative or a person raised by him, or who is under the supervision, care, medical treatment or otherwise the power or influence of him.

### *Iceland / Islande*

According to article 200 in the Penal Code, any person who has sexual intercourse or other sexual relations with his or her own child or other descendant shall be imprisoned for up to [8 years] and up to [12 years] if the child [is 15, 16 or 17 years of age].

According to article 201 in the Penal code, any person who has sexual intercourse or other sexual relations with a child aged 15, 16 or 17 year who is his or her adopted child, step-child, foster-child or the child of his or her cohabiting partner, or is bound to him or her by similar family relationships in direct line of descent, or is a child who has been committed to his or her authority for education or upbringing, shall be imprisoned for up to 12 years. Sexual harassment of a type other than that specified in the first paragraph of this article shall be punishable by up to 4 years' imprisonment.

### *Ireland / Irlande*

Under the Criminal Law (Sexual Offences) Act 2006, as amended by Section 18 of the Criminal Law (Sexual Offences) Act 2017, it is a criminal offence for a person in authority to engage in a sexual act with a child who has attained the age of 17 years, but is under the age of 18 years.

An individual accused under this Act may argue a defence that he or she was reasonably mistaken that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 18 years. In this case, it falls to the court to consider this defence and whether, in all the circumstances of the case, a reasonable person would have concluded that the child had attained the said age.

An individual accused under the Act may argue a defence that he or she had reasonable grounds for believing that he or she was not a person in authority in relation to the child against whom the offence is alleged to have been committed.

It is not a defence to show that the child consented to the sexual act.

### *Italy / Italie*

The age for consent is always 14 except for the case referred to n.2 and n.3 (609 quarter penal code).

### *Latvia / Lettonie*

If sexual intercourse occurs taking advantage of the state of helplessness of a victim or against the will of the victim by means of violence, threats or using trust, authority or exerting other influence over the victim it is considered rape and is a crime according to Section 159 of the Criminal law. In addition, according to Section 162 of the Criminal law person will be held criminally liable if he/she commits leading to depravity of a person who has not attained the age of sixteen years or who is in the state of helplessness, that is, for a person who commits acts of sexual nature without physical contact with the body of the victim for the purpose of

sexual gratification or to rouse sexual instinct in the victim, if such act has been committed by a person who has attained the age of majority or it has been committed taking advantage of the state of helplessness of the victim or against the will of the victim by means of violence, threats or using trust, authority or exerting other influence over the victim.

#### Liechtenstein

No reply available / *Pas de réponse disponible*

#### Lithuania / Lituanie

See the answer to the question 4.

#### Luxembourg

Pour les faits de l'attentat à la pudeur et le viol, le Code pénal luxembourgeois ne fait pas de référence explicite aux situations dans lesquelles il est considéré que l'enfant ne peut jamais donner son consentement, indépendamment de l'âge de l'enfant, autre que les faits commis sur un enfant âgé de moins de seize ans.

Cependant, l'article 372 du Code pénal dispose, au point 3, que 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 EUR.

A ce titre, la jurisprudence précise expressément que l'article 372 du Code pénal érige l'attentat à la pudeur en infraction indépendamment du consentement de la victime. (TA, 3 nov. 1998, n°1745/98)

L'article 377 du Code pénal luxembourgeois définit les circonstances aggravantes pour les faits de l'attentat à la pudeur et du viol comme suit :

*« Le minimum des peines portées par les articles précédents sera élevé conformément à l'article 266 et le maximum pourra être doublé:*

- 1° lorsque le viol ou l'attentat à la pudeur est commis par un ascendant légitime, naturel ou adoptif, ou par toute autre personne ayant autorité sur la victime;*
- 2° lorsque le viol ou l'attentat à la pudeur est commis par une personne qui abuse de l'autorité que lui confèrent ses fonctions;*  
*lorsque le viol ou l'attentat à la pudeur est commis par plusieurs personnes*
- 3° agissant en qualité d'auteur ou de complice ou dans le cadre d'une organisation criminelle;*  
*lorsque le viol ou l'attentat à la pudeur est commis avec usage ou menace d'une*
- 4° arme, ou est accompagné d'actes de torture ou a causé un préjudice grave à l'enfant;*

*lorsque la victime est*

*une personne dont la particulière vulnérabilité, due à son âge, à une maladie, à une infirmité, à une déficience physique ou psychique ou à un état de grossesse, est apparente ou connue de l'auteur,*

- 5° *- le conjoint ou le conjoint divorcé, la personne avec laquelle l'auteur vit ou a vécu habituellement,*
- un ascendant légitime, naturel ou adoptif de l'auteur,*
- un frère ou une sœur,*
- un ascendant légitime ou naturel, l'un des parents adoptifs, un descendant, un frère ou une sœur d'une personne visée au tiret 1. »*

Pour les faits de l'exploitation de la prostitution et du proxénétisme et les délits liés à la consultation, diffusion et fabrication de contenu pornographique impliquant des mineurs (Articles 383 et 384), le Code pénal luxembourgeois ne prévoit pas d'âge de consentement. Les mécanismes de protection visent toutes les personnes âgées de moins de 18 ans.

#### Malta / Malte

Maltese law is not worded specifically in this way, but the following situations are considered to be an aggravation: if there is use of violence, deceit, or when a person compels or induces a person, even if above the age of 16, this is an offence and aggravated when there is abuse of authority, trust or domestic relations, habitually or for gain.

Furthermore, article 207 of the Criminal Code speaks of the non-consensual act of a sexual nature, whereby if there is an act of a sexual nature which is not covered under the description or definition of any of the articles in the Criminal Code dealing specifically with sexual offences, the act will still be punishable if it is non consensual.

#### Republic of Moldova / République de Moldova

Situation of constraint of any kind.

#### Monaco

En cas de pénétration sexuelle, les premier et le troisième alinéas de l'article 262 du Code pénal prévoient actuellement que :

*« Le viol se définit comme tout acte de pénétration sexuelle, de quelque nature qu'il soit et par quelque moyen que ce soit, commis sur la personne d'autrui, par violence, contrainte, menace ou surprise » et qu'« Est en outre un viol tout acte de pénétration sexuelle, de quelque nature qu'il soit et par quelque moyen que ce soit, commis sur un mineur par :*

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

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

En ces situations, il est donc considéré que le mineur ne peut avoir donné son consentement à la réalisation de tout acte de pénétration sexuelle.

L'article 5 du projet de loi susvisé tendant à redéfinir le viol comme « tout acte de pénétration sexuelle, de quelque nature qu'il soit et par quelque moyen que ce soit, imposé à la personne d'autrui sans son consentement », poursuit en précisant :

*« Il n'y a pas consentement notamment lorsque l'acte de pénétration sexuelle prévue au premier alinéa a été imposé par violence, contrainte, menace ou surprise.*

*La contrainte prévue à l'alinéa précédent peut être physique ou morale.*

*Lorsque les faits sont commis sur la personne d'un mineur, la contrainte morale mentionnée à l'alinéa précédent ou la surprise mentionnée au premier alinéa peuvent résulter de la différence d'âge existant entre la victime et l'auteur des faits et de l'autorité de droit ou de fait que celui-ci exerce sur la victime, cette autorité de fait pouvant être caractérisée par une différence d'âge significative entre la victime mineure et l'auteur majeur.*

*Lorsque les faits sont commis sur la personne d'un mineur au-dessous de l'âge de seize ans accomplis, la contrainte morale ou la surprise peuvent être caractérisées par l'abus de la vulnérabilité de la victime ne disposant pas du discernement nécessaire pour ces actes ».*

Il en résulterait désormais que le mineur, quel que soit son âge, ne peut avoir donné son consentement à la réalisation de tout acte de pénétration sexuelle « notamment » en cas de « violence, contrainte, menace ou surprise ».

En l'absence de pénétration sexuelle, l'article 263 du Code pénal réprime tout « attentat à la pudeur, consommé ou tenté avec violence ». Le mineur ne peut ainsi avoir donné son consentement à la réalisation d'autres actes sexuels que la pénétration en cas de « violence ».

L'article 7 du projet de loi susvisé, tend à redéfinir cette infraction en précisant :

*« L'agression sexuelle se définit comme toute atteinte sexuelle commise, sans acte de pénétration sexuelle, sur la personne d'autrui sans son consentement.*

*Il n'y a pas consentement notamment lorsque l'atteinte sexuelle prévue au premier alinéa a été imposé par violence, contrainte, menace ou surprise.*

*La contrainte prévue à l'alinéa précédent peut être physique ou morale.*

*Lorsque les faits sont commis sur la personne d'un mineur, la contrainte morale mentionnée à l'alinéa précédent ou la surprise mentionnée au premier alinéa peuvent résulter de la différence d'âge existant entre la victime et l'auteur des faits et de l'autorité de droit ou de fait que celui-ci exerce sur la victime, cette autorité de fait pouvant être caractérisée par une différence d'âge significative entre la victime mineure et l'auteur majeur.*

*Lorsque les faits sont commis sur la personne d'un mineur au-dessous de l'âge de seize ans accomplis, la contrainte morale ou la surprise peuvent être caractérisées par l'abus de la vulnérabilité de la victime ne disposant pas du discernement nécessaire pour ces actes ».*

Il en résulterait désormais que le mineur, quel que soit son âge, ne pourrait avoir donné son consentement à la réalisation de tout acte sexuel autre que la pénétration « *notamment* » en cas de « *violence, contrainte, menace ou surprise* ».

#### Montenegro / Monténégro

The Criminal Code of Montenegro does not prescribe the conditions under which it would be considered that a child can or cannot give his consent for engaging in sexual activities, and prescribes the strictest prison sentences for all activities of this type with children.

#### Netherlands / Pays-Bas

As already mentioned above, a minor under twelve years of age is never deemed to be in a position to give his or her consent. Furthermore, sexual activities with minors between 12-16 years of age are punishable, unless there is an equal situation between peers. Moreover, Article 249 DPC criminalises all forms of sexual abuse with minors (<18) committed by a perpetrator abusing his/her authority. Criminally liable are in this regard, inter alia, (step/foster) parents, employers or persons entrusted with the supervision, care or education of the minor. Under the same conditions is punishable the civil servant who sexually abuses a person subject to his authority or entrusted to or placed under his supervision; the director, doctor, teacher, official, supervisor or staff member of a prison, state institution for the care and protection of children, orphanage, hospital, or charitable institution, who sexually abuses a person admitted to such institution ; and the person employed in the health care or social care sector who sexually abuses a person who has entrusted himself, as a patient or client, to his assistance or care. A Draft Bill – which will reform the sexual crimes section in the DPC and that is open for consultation as from March 8, 2021 – consists of a new provision, criminalising the person who commits sexual acts against a person who is 16-18 years of age and is in a particularly vulnerable situation. The text of this provision arises from the obligations laid down in Article 18, Paragraph 1, under b, of the Lanzarote Convention and Article 3, Paragraph 5, under 2 of the EU Directive 2011/93. In the Explanatory Report to the Draft Bill it is stated that the definition of 'particularly vulnerable person' is not limitative.

#### North Macedonia / Macédoine du Nord

No reply available / *Pas de réponse disponible*

#### Norway / Norvège

See the answer to question 9 below.

## Poland / Pologne

(A) The consent of a minor (even older than 15) to sexual intercourse or to submission to or performance of another sexual activity will be irrelevant if such activity has taken place as a result of:

- abuse of dependence;
- abuse of a critical situation;
- abuse of trust;
- conferral or promise of an economic or personal benefit.

Article 199 § 1 Whoever, by abusing a relationship of dependence or the critical situation of another, induces such other to sexual intercourse or to submit to or perform another sexual activity,

shall be liable to up to 3 years' imprisonment.

§ 2 If the offence set forth in section 1 is committed against a minor, the perpetrator shall be liable to 3 months to 5 years' imprisonment.

§ 3 Whoever, by abuse of trust or by conferring or promising a material or personal benefit, engages in sexual intercourse with a minor or in another sexual activity with regard to such person or induces such person to submit to or perform such activity, shall be liable to the penalty set forth in section 2.

For additional explanation of this Article please refer to Question 9 below.

(B) The giving of consent will also be irrelevant if the minor is induced to sexual intercourse or submission to or performance of another sexual activity as a result of:

- taking advantage of the helpless position of another
- such a person's inability to discern the meaning of the act or direct one's conduct, resulting from mental impairment or illness.

Article 198. Whoever, by taking advantage of another's helpless position or inability to discern the meaning of the act or direct one's conduct as a result of mental impairment or illness, induces such other to sexual intercourse or submission to or performance of another sexual activity,

shall be liable to 6 months to 8 years' imprisonment.

In all of the above situations sexual activity with a minor will be a criminal offence. It should be noted, however, that in Polish law the term 'perpetrator of a criminal offence' is only applicable to a person aged 17 or older (or exceptionally 15 — see Question 9a).

## Portugal

According to Article 38 CC, apart from those cases specifically provided for by law, consent shall exclude the illicitness of the act when it refers to freely available legal interests and the act does not offend good customs. Consent may be expressed by any means that expresses a serious, free and informed will of the holder of the legally protected interest and may be freely revoked up to the execution of the fact. Consent shall only be effective if it is given by anyone over 16 years of age that holds the necessary judgment to evaluate its meaning and scope at

the moment of giving it.

Specifically, in the case of sexual abuse a child cannot give his/her consent under 14 years old (Article 171 CC) or in the circumstances of Articles 172 (*Sexual abuse of minors who are dependent or in a particularly vulnerable situation*) or 173 (*Sexual acts with adolescents*) CC.

#### Romania / Roumanie

Sexual activities with a child are always a criminal offence, irrespective of the age and consent of the child, if:

- the child is a family member of the adult;
- the child is in the care, protection, education, guarding or treatment of the perpetrator or the perpetrator has abused his/her recognized position of trust or authority over the child or his/her manifestly vulnerable situation, due to a mental or physical disability, a situation of dependence, a state of physical or mental incapacity or other cause;
- the activity endangered the life of the child;
- the activity was committed for the purpose of producing pornographic materials.

Also, in case of child pornography, the consent of a child is never a cause for lack of criminal responsibility.

#### Russian Federation / Fédération de Russie

No reply available / *Pas de réponse disponible*

#### San Marino / Saint-Marin

No reply available / *Pas de réponse disponible*

#### Serbia / Serbie

In case of Sexual Intercourse through Abuse of Position (art. 181 Criminal Code).

In Article 179 paragraph 2 of the Criminal code it is stated that “If the helpless persons suffer serious bodily harm due to the offence specified in paragraph 1 of this Article, or the offence has been committed by several persons or in a particularly cruel or humiliating manner, or against a juvenile or if the act resulted in pregnancy...”. The Article 179 of the Criminal code is called “Sexual Intercourse with a Helpless Person” and so, in the paragraph 2 (since it is stated against a “juvenile” which term is also regulated in the Article 112 of the Criminal code and means “a person who has not attained eighteen years of age”) it is regulated that a person who has not attained eighteen years of age is not deemed to be in position to give his/her consent.

#### Slovak Republic / République slovaque



In the case of criminal offenses such as rape (Section 199 (2) (b)) or sexual violence (Section 200 (2) (b)), it does not matter whether or not the child has consented to their execution. In the qualified facts of the above-mentioned criminal offenses, the imposition of a stricter criminal rate is conditioned by the fulfilment of at least one of the qualification features, which also includes the “protected person”, which is e.g. also a child or dependent. A dependent is a person if the perpetrator has the right and obligation to supervise him. It is primarily the relationship of parents and children, even stepchildren, the relationship of the guardian to the deprived person, but also applies to educators or teachers to inmates and students, the head of the youth department, which parents entrusted primary school students or a spouse who is not the child's parent when living in the same household is also considered to be such a person etc. Likewise, the consent of children over the age of 15 is irrelevant in relation to a criminal offense within the meaning of Section 202. The object of this criminal offense is freedom of choice in sexual relations, while human dignity in this area is protected in children - people under eighteen years. In order to fulfil the objective aspect of this criminal offense, in addition to the fact that it is a child, i.e. a person under the age of eighteen, it is necessary for other features to be fulfilled alternatively:

1. it must be a person entrusted to the care of the offender or under his supervision, or a dependent person, or
2. it is child prostitution, or if
3. the offender abuses a recognised position arising from trust, authority or influence over the child. Abuse of a recognised position resulting from trust, authority or influence over the child will relate not only to the liability of the child's legal guardians, resp. persons who have such a child in personal care either on the basis of an official decision or such a child has been handed over to their care, but also their superiors in employment, teachers, educators, coaches, etc.

### Slovenia / Slovénie

*“A teacher, educator, guardian, adoptive parent, parent or any other person who through the abuse of his position has sexual intercourse or performs any lewd act with a person above the age of fifteen whom he is entrusted to teach, educate, protect or care for shall be sentenced to imprisonment for not less than one and not more than eight years.” – CC Art. 174(2).*

The general rule (applying to other situations) reads: *“Whoever, by abusing his or her position, induces his or her subordinate or a person of the same or different sex who depends on him or her to have sexual intercourse with him or her or to perform or submit to any lewd act shall be sentenced to imprisonment for not more than five years.” – CC Art. 174(1)*

### Spain / Espagne

In Spain under 16 years old minors are never deemed to be in position to give his/her consent to sexual activities.

In case of minors above 16 and under 18 years old they are not deemed to be in position to give her/his consent to sexual activities involving abuse, deceit, violence, exploitation,

coercion or vulnerability of the victim. The same provision in case the victim is deprived to give consent or the consent is reached by abusing of his/her psychological capacity.

### Sweden / Suède

As already mentioned, it is punishable to perform a sexual act with a child under the age of 15 regardless of whether the child participated voluntarily in the sexual act or not.

As described under question 1, it is also punishable to perform a sexual act with a child between the ages of 15 and 18 who is the perpetrator's descendant, or is being brought up by or has a comparable relationship with the perpetrator, or for whose care or supervision the perpetrator is responsible by decision of a public authority.

If that is not the case, the act may be punishable as *rape* or *sexual assault* depending on the nature of the sexual act. Pursuant to these provisions, it is punishable to perform a sexual act with someone who is not participating voluntarily. When assessing whether participation is voluntary or not, particular consideration is given to whether voluntariness was expressed by word or deed or in some other way. There are certain circumstances under which participating is never considered voluntary, e.g. when violence or threats were used or the victim's particularly vulnerable situation was exploited. In the present context, it is of particular relevance that a person can never be considered to be participating voluntarily if the perpetrator induces the person to participate by seriously abusing the person's position of dependence on the perpetrator

(Chapter 6, Section 1, first paragraph of the Criminal Code.)

### Switzerland / Suisse

No reply available / *Pas de réponse disponible*

### Tunisia / Tunisie

L'absence de consentement, nonobstant la présomption légale de l'âge de 16, est réglementé par l'article 227 du code pénal qui considère que «Est considéré viol, tout acte de pénétration sexuelle, quelle que soit sa nature, et le moyen utilisé commis sur une personne de sexe féminin ou masculin sans son consentement l'auteur du viol est puni de vingt ans d'emprisonnement ». Le consentement n'est pas défini par la loi tunisienne. De ce fait le juge peut qualifier l'abus de confiance ou d'autorité ou d'influence comme une contrainte morale viciant le consentement de l'enfant (voire les exemples jurisprudentiels dans la réponse 6).

Il est à noter que la loi tunisienne a aggravé la peine de viol commis sur un enfant (passer de 20 ans d'emprisonnement à l'emprisonnement à vie) s'il est commis par des personnes de la famille. L'alinéa 2 de l'article 227 incrimine pour la première fois l'inceste sur un enfant par « les ascendants quel qu'en soit le degré, les frères et sœurs, le neveu ou l'un des descendants, le père de l'un des conjoints, le conjoint de la mère, l'épouse du père ou les descendants de l'autre conjoint, des personnes dont l'une d'elles est l'épouse du frère ou le conjoint de la sœur ». En outre, cette peine est applicable si l'acte est commis par «une personne ayant

autorité sur la victime ou abuse de l'autorité que lui confèrent ses fonctions ».

### Turkey / Turquie

#### “Sexual abuse of children Article 103

(1) Any person who sexually abuses a minor shall be sentenced to a penalty of imprisonment for a term of eight to fifteen years. Where the sexual abuse has remained at the level of molestation, the person shall be punished by a penalty of imprisonment for a term of three to eight years. Where the victim has not completed twelve years of age, the penalty to be imposed shall not be less than ten years in the case of abuse and not less than five years in the case of molestation. Where the offender of the offence which remained at the level of molestation is also a minor, conducting an investigation and prosecution shall be subject to a complaint by the victim, a parent or a guardian. Sexual abuse means:

- a) any act of a sexual nature against a minor who has not completed fifteen years of age or, though having completed fifteen years, lacks the competence to understand the legal meaning and consequences of such acts;
- b) sexual acts conducted against any other minor with the use of force, threat, deception or any other method which affects the willingness of the child.

(2) Where the sexual abuse occurs as a result of the insertion of an organ or other object into the body, a penalty of imprisonment for a term of not less than sixteen years shall be imposed. Where the victim has not completed twelve years of age, the penalty to be imposed shall not be less than eighteen years.

(3) Where the offence is committed:

- a) with the cooperation of more than one person;
- b) by taking advantage of places where people are compelled to live collectively;
- c) against a person of blood relationship or kinship by marriage, including third-degree blood relationship, or by step-mother, step-father, step-sibling or adoptive parent;
- d) by a guardian, tutor, trainer, teacher, nanny, a protective family or by a health service provider, or by persons responsible for care or observation;
- e) by misusing the influence derived from a position in a public office or a service relationship;

the penalties imposed in accordance with the paragraphs above shall be increased by one-half.

(4) Where the sexual assault is committed against a minor described in paragraph one (a) by force or threat, or against a minor described in paragraph one (b) by using weapons, the penalty to be imposed in accordance with the above paragraphs shall be increased by one-half.

(5) Where any force or violence, used with the aim of sexual assault, leads to any

aggravated injury on account of its consequences, the provisions of intentional injury shall be applied as well.

(6) Where the offence leads the victim to enter a vegetative state, or die, a penalty of aggravated life imprisonment shall be imposed.

“Sexual intercourse with a minor  
Article 104

(1) Any person who enters, without any force, threat or deceit, into sexual intercourse with a minor who has completed fifteen years of age shall be sentenced to a penalty of imprisonment for a term of two to five years, upon complaint.

(2) Where the offence is committed by a person, who is prohibited to marry the victim, the offender shall be punished by a sentence of imprisonment for a term of ten to fifteen years, without any preconditions of filing of a complaint.

(3) Where the offence is committed by the prospective adoptive parent of the minor, during the pre-adoptive placement of the minor, or when a person assumed the protection, care and custody of the minor or within the context of a protective family, the offender shall be punished under paragraph two above, whether a complaint has been filed with the court or not.”

## Ukraine

The situations of abusing a child without consent are regulated by the Criminal Code of Ukraine in the Article 154. Coercion to engage in sexual intercourse of

1. Coercion of a person without her voluntary consent to perform an act of a sexual nature with another person - is punishable by a fine of up to fifty tax-free minimum incomes of citizens or arrest for a term of up to six months.

2. Forcing a person, without his voluntary consent, to perform an act of a sexual nature with a person on whom the victim is materially or officially dependent – is punishable by a fine of up to one thousand tax-free minimum incomes of citizens or restriction of freedom for a period of up to two years.

3. Actions provided for in part one or two of this article, combined with the threat of destruction, damage or confiscation of the property of the victim or his close relatives, or with the threat of disclosing information that disgraces him or his close relatives, are punishable by restriction of freedom for a term of up to three years or imprisonment for the same term.

## United Kingdom / *Royaume-Uni*

Any sexual activity with someone under the age of 16 is a criminal offence. However, for many offences where the victim is 13 – 15 years of age a defence is available that the “defendant” held a reasonable belief that the child was aged 16 years or older. That defence of reasonable belief of age of consent is not available when the activity involves a child under 13 years of age.

“Positions of trust” offences:

Alongside the offences to protect those under 16 from sexual abuse, the Sexual Offences Act 2003 contains a number of offences which criminalise sexual activity with a child under the age of 18 by people who hold a “position of trust” in respect of that child, even if such activity is apparently consensual.

These offences build on the “general” child sex offences, which make it a crime for anyone to engage in sexual activity with someone under the age of 16.

“Positions of trust” offences are intended to target situations where the child has some dependency on the adult involved, often combined with an element of vulnerability on the part of the child, which makes the child particularly susceptible to influence, exploitation and abuse. These offences are directed at those whose particular roles mean they have a responsibility for looking after children under the age of 18, for example those providing care for a child in a residential care home, hospital or educational institution. However, these offences do not cover all roles or positions in which a person might have contact with, or a supervisory role in relation to, a child aged under 18, rather (currently) those where there is significant state involvement and responsibility for the provision of care and other services. However, there is an intention to add further positions to trust in the future to cover particular roles in certain other situations where specific concerns have been raised about the prevalence and risk of exploitation, for example, sports and religious settings.

The offences are at ss16 – 19 of the 2003 Act, with definitions, interpretations, etc at s20 – 24. Here is a link to s16: <https://www.legislation.gov.uk/ukpga/2003/42/section/16>

### Question 6

Does your legislation or case law define “consent” and/or “lack of consent” by a child to sexual activities? If so, please provide details, including examples.

*Votre législation ou votre jurisprudence définit-elle le « consentement » et / ou le « défaut de consentement » d'un enfant à des activités sexuelles ? Dans l'affirmative, veuillez fournir des détails, y compris des exemples.*

#### *Albania / Albanie*

In the Criminal Code of the Republic of Albania, in article 100 “Sexual or homosexual relations with minors” and 101 “Violent sexual or homosexual intercourse with a minor who is fourteen to eighteen years old” (given above), determined that, any kind of sexual activity committed against a child up to the age of 14 is punishable, while with the child from 14-18 years old, the illegality of the action comes as a result of lack of consent, or use of violence.

#### *Andorra / Andorre*

Non.

#### *Armenia / Arménie*

There is no definition in the legislation, and the new practice/case law is not in place, as the Criminal Code has been in force just recently, started from July 1, 2022.

#### *Austria / Autriche*

No.

#### *Azerbaijan / Azerbaïdjan*

Till the age of 16 the consent is not significance, upper 16 age consent is important.

#### *Belgium / Belgique*

Il n’y a pas de définition du consentement dans la législation. Cependant, comme dit précédemment, le code pénal est en passe d’être réformer. Le projet définit la notion délicate de consentement en matière sexuelle. À cette occasion, il est précisé que le consentement ne peut être déduit de l’absence de résistance de la victime et que le consentement peut être retiré à tout moment avant ou pendant l’acte sexuel. Par ailleurs, l’âge de quatorze ans est retenu comme seuil absolu en dessous duquel aucun consentement libre ne peut être donné et pour la catégorie des mineurs entre quatorze ans et seize ans, l’absence de consentement est présumée de façon irréfragable si la différence d’âge avec le partenaire excède cinq ans ou si l’auteur se trouve dans une position d’autorité ou de confiance par rapport à la victime.

Sans attendre la refonte globale du Code pénal discutée depuis plusieurs années déjà, le droit pénal des mœurs désigné sous la notion de « droit pénal sexuel » a été réformé par la loi du 21 mars 2022 modifiant le code pénal (<http://www.ejustice.just.fgov.be/eli/loi/2022/03/21/2022031330/justel>). Les modifications opérées par la loi sont nombreuses : définition légale du consentement, insertion de la notion d'intégrité sexuelle, renforcement des peines, ouverture à l'exploitation de la prostitution de majeurs... Ainsi, selon l'article 417/5, « le consentement suppose que celui-ci a été donné librement. Ceci est apprécié au regard des circonstances de l'affaire. Le consentement ne peut pas être déduit de la simple absence de résistance de la victime. Le consentement peut être retiré à tout moment avant ou pendant l'acte à caractère sexuel.

Il n'y a pas de consentement lorsque l'acte à caractère sexuel a été commis en profitant de la situation de vulnérabilité de la victime due notamment à un état de peur, à l'influence de l'alcool, de stupéfiants, de substances psychotropes ou de toute autre substance ayant un effet similaire, à une maladie ou à une situation de handicap, altérant le libre arbitre.

En tout état de cause, il n'y a pas de consentement si l'acte à caractère sexuel résulte d'une menace, de violences physiques ou psychologiques, d'une contrainte, d'une surprise, d'une ruse ou de tout autre comportement punissable.

En tout état de cause, il n'y a pas de consentement lorsque l'acte à caractère sexuel a été commis au préjudice d'une victime inconsciente ou endormie."

*Child Focus' reply on Belgium's legal framework*

*No reply available / Pas de réponse disponible*

*Bosnia and Herzegovina / Bosnie-Herzégovine*

No, mentioned laws do not define such things.

*Bulgaria / Bulgarie*

There is no explicit legal definition of consent (or lack thereof) for sexual activities by a child. Although the legislator did not include as a sign in the composition of sexual crimes, the lack of consent or the commission of the act against the will of the victim, these elements of the criminal composition are derived from the interpretation of the norm.

Examples of criminal acts despite the consent of the victim are the cases of intercourse with minors and the insane (Art. 151), such as incest. For example, incest is constituent in the case of voluntary intercourse between persons of different sexes, related by kinship, and over 14 years of age.

Examples of criminal acts against the will of the victim are rape and intercourse using addiction, as the qualified components of the crime under 151, para. 2-4 of the Penal Code

cover the hypotheses of:

- use of a position of dependence or supervision;
- in respect of a person under the age of 14, engaged in prostitution;
- committed by two or more persons;
- committed against a minor through the use of a state of dependence or supervision;
- against an insane person, who has reached 14 years of age.

### *Croatia / Croatie*

Due to the fact that the child under the age of 15 is not in the position to give consent (unless the age difference does not exceed three years) the consent has not been defined by Article 158 of the Criminal Code (Sexual Abuse of a Child under the Age of Fifteen). If the aforesaid child gives the consent, that consent could not be considered as legally valid.

Due to the fact that the child over the age of 15 is in the position to give consent (with the exception on cases within the circle of trust- Article 159 of the Criminal Code (Sexual Abuse of a Child over the Age of Fifteen) the consent has been defined by Article 153 Paragraph 5 (Rape) of the Criminal Code as follows:

Consent shall exist if the person decided of his or her own free will to engage in sexual intercourse or an equivalent sexual act and was capable of making and expressing such a decision. It shall be deemed that no such consent exists in particular if the sexual intercourse or the equivalent sexual act was performed by the use of threat, by fraud, by abusing one's position towards a person who is in a situation of dependence with respect to the perpetrator, by exploiting a person's condition due to which the person was unable to express his or her refusal or if it was performed against a person unlawfully deprived of liberty.

### *Cyprus / Chypre*

According to the L. 91(I)/2014 the legal age of sexual activities is connected with the consent and is given as a definition as follows:

"age of consent" means the age below which engagement in sexual activities with a child is prohibited and which shall be the age of seventeen (17).

*"Hope For Children" CRC Policy Center Cyprus / "Hope For Children" CRC Policy Center Chypre's reply on Cyprus' legal framework*

No, there is no relevant definition.

### *Czech Republic / République tchèque*

The term "consent" and/or "lack of consent" is not explicitly defined by the Czech legislation. However, these terms may be derived from case law which has interpreted the terms "force" and "exploitation of the vulnerability (defencelessness)" in the context of the criminal offence of rape, sexual duress and sexual abuse.



According to the case law forcing another person to sexual intercourse or to sexual activities means overcoming victim's seriously intended resistance or victim's succumbing under his or her knowledge of the hopelessness of resistance given that the offender did not give victim any opportunity to manifest resistance by using violence or a threat of violence or a threat of other serious detriment. Result of violence or threat of violence or other serious detriment is that such a victim, after expressing his or her seriously meant dissent and manifested resistance, refrains from further resistance for his or her exhaustion, apparent hopelessness or for a reasonable fear that the perpetrator commits his or her threat of violence. However, if the victim's resistance is only pretended and therefore it is not seriously meant, it is not considered to be a case of force. It is also not a case of force when the injured person initially resists but later voluntarily consents to sexual intercourse or sexual activity.

Courts have concluded that it is not necessary for the victim to put up obvious physical resistance (e.g. for the reason that victim is aware of the physical superiority of the offender and because of fear of further violence victim prefers not to show any resistance at all and fully submits to the will of the offender). It is sufficient that the victim's displeasure (resistance) is obvious to the offender (e.g. victim is apparently afraid of the offender, cries, trembles etc.).

The courts have explained the term "exploitation of victim's vulnerability (defencelessness)" as a state of victim in which, due to the circumstances, he or she is not able to express his or her will with regard to sexual intercourse or sexual activities with offender, or in which he or she is unable to put up resistance against offender's actions. The state of defencelessness therefore also applies in relation to persons whose, although they perceive the world around them, mental and intellectual abilities are not at such a level or such a state that they can evaluate the situation in which they find themselves and respond logically and effectively to it (e.g. persons suffering from mental illness, mentally retarded persons but also children because of lack of age and mental ability). These cases are named as a mental defencelessness.

According to established court practice, there may also be cases of total or absolute defencelessness which presume total surrender to the offender without any signs of expression of victim's own will or ability to respond to the demands of the offender in any way. This is a state of defencelessness where the victim finds himself or herself in a situation that he or she no longer perceives, does not realize what is happening to him or her and is therefore unable to make any judgment of himself or herself and therefore cannot influence the offender's actions in any way (e.g. a person who is unconscious, fainting or heavily drunk by alcohol, under the influence of drugs etc).

In addition to absolute defencelessness the victim may be in a state where he or she is defenceless not because he or she does not fully perceive the world around him or her or is unable to understand the meaning of the offender's actions, but because although he or she knows what is happening to him or her, he or she is not able to defend effectively, even though he or she would like to do so. This is a state in which the victim is unable to resist the actions of the offender for the lack of physical strength and abilities. According to this interpretation the Czech courts take into account that the state of victim's physical defencelessness may also cause his or her mental defencelessness.

To sum up, if the above-mentioned conditions interpreted by case law for the use force (by use of violence, threat of violence or threat of any other serious detriment) against a child or conditions for exploitation of the vulnerability (defencelessness) of a child are fulfilled, it is considered as a lack of consent under Czech criminal law.

#### Denmark / Danemark

No.

#### Estonia / Estonie

The Penal Code does not provide a definition of consent, however the conditions of a non-consensual act have been described in the text of the paragraphs (see above) which in term are detailed by case-law. According to relevant judicial texts, the existence or absence of consent cannot be only based on the statements given by the victim during the criminal proceedings but court must also take into account details such as existence of initial consent, stopping the intercourse when asked to and the overall situation in general.

#### Finland / Finlande

As concerns children of the age of 16 or 17: The participation of a person in sexual intercourse or in another sexual act shall not be considered voluntary if:

- 1) the person has not verbally, through his or her behaviour or in any other way expressed that he or she is participating in it voluntarily,
- 2) the person has been coerced into sexual intercourse by using violence against a person or by making a threat, or
- 3) the person has not been able to formulate or express his or her will due to unconsciousness, illness, disability, state of fear, state of intense intoxication, reduced consciousness, sudden nature of the situation, serious abuse of a special position of power or another comparable reason.

As concerns children under the age of 16: As a principle, the child cannot participate in sexual intercourse or in another sexual act with an adult voluntarily. The exception to this is mentioned above under question 3.

#### France

Le consentement ou le défaut de consentement ne sont pas expressément définis. La législation française ne renvoie pas à la notion de consentement. Hors les cas de viol sur mineur de 15 ans, ou de 18 ans en cas d'inceste, l'absence de consentement de la victime se déduit de ce que l'acte sexuel a été réalisé avec l'exercice de contrainte, violence, menace ou surprise sur la victime.

S'agissant des mineurs de 15 ans, seul l'article 222-22-1 précise que la contrainte morale ou la surprise peuvent être caractérisés par l'abus de la vulnérabilité de la victime ne disposant pas du discernement nécessaire pour ces actes.

Néanmoins, la jurisprudence a eu l'occasion de préciser les contours de ces notions de consentement et de défaut de consentement, par le prisme de l'interprétation des notions de violence, contrainte, menace ou surprise.

Ainsi, le défaut de consentement a pu être analysé comme étant le fait de commettre un acte contre la volonté de la victime, et résulter de la violence physique ou morale exercée à son encontre ou de toute autre moyen de contrainte ou surprise employé pour atteindre le but recherché par l'auteur de l'action.

Dans des exemples précis, appliqués à des infractions sexuelles commises sur des mineurs, la Cour de cassation avait notamment considéré :

- « que la contrainte résulte de l'incapacité de la fillette, en raison de son tout jeune âge, six ans lors des premiers faits, à résister à l'emprise de son père et à donner un consentement valable à ses sollicitations, et ajoute que la victime a précisé que son père la terrorisait pour l'empêcher de parler, et que ce n'était qu'à l'âge de 16 ans qu'elle avait été en mesure de s'opposer définitivement à ce type d'agissement. » ([Crim, 5 décembre 2007, n°07-80.068](#))
- « que l'état de contrainte ou de surprise résulte du très jeune âge des enfants qui les rendaient incapables de réaliser la nature et la gravité des actes qui leur étaient imposés » ([Crim, 7 décembre 2005, n°05-81.316](#))
- que la contrainte était caractérisée lorsque le prévenu avait « profité de sa "stature physique et financière" pour pratiquer à domicile, au détriment d'enfants défavorisés, une sorte de "tourisme sexuel" et qu'ainsi, il n'a pas hésité à user de sa position sociale et économique dominante pour obtenir, sous une contrainte morale, les "faveurs" de cinq mineurs en situation de faiblesse sur le plan éducatif, social et financier » ([Crim, 31 mars 1999, n°98-84.080](#))

Il convient enfin de préciser que la question du consentement est indifférente, pour que soient caractérisés les délits d'atteinte sexuelle commis sur un mineur hors les cas de viol et agression sexuelle, définis aux articles 227-25 à 227-27 du code pénal (et exposés en réponse à la question 1). Ainsi, au titre des éléments matériels, outre la minorité de la victime et la majorité de l'auteur, seule la démonstration d'un contact corporel, de nature sexuelle, entre l'auteur et la victime est nécessaire pour que l'infraction soit constituée ([Crim, 7 septembre 2016, n°15-83.287](#)).

### *Georgia / Géorgie*

Georgian legislation does not define the "consent" and/or "lack of consent" by a child to sexual activities.

### Germany / *Allemagne*

The German Criminal Code does not provide a general definition of “consent”.

If the person has not yet reached 14 years of age, he/she is never deemed to be in a position to give his/her consent, see questions 1 and 4.

If the person is between the ages of 14 to 18 years, the juvenile may give his/her consent, however, performing sexual acts with the juvenile is punishable if the requirements of section 174 or section 182 of the German Criminal Code are met, see questions 3 and 5.

See Appendix / *Voir l'Annexe*

### Greece / *Grèce*

No reply available / *Pas de réponse disponible*

### Hungary / *Hongrie*

The Criminal Code does not define the term consent. According to the case law, it refers to an independent decision, made without coercion or any type of influence of another person.

### Iceland / *Islande*

According to the legislation and case-law, a child under the age of 15 years is not capable of giving consent to a sexual activity. Sexual conduct of a person 15 years or older with a child under the age of 15 years is always considered a punishable act.

### Ireland / *Irlande*

Under the Criminal Law (Rape) (Amendment) Act 1990, as amended by Section 48 of the Criminal Law (Sexual Offences) Act 2017, consent is defined as “a person consents to a sexual act if he or she freely and voluntarily agrees to engage in that act”. This amendment makes clear a non-exhaustive list of where consent to a sexual act is absent, if:

- (a) he or she permits the act to take place or submits to it because of the application of force to him or her or to some other person, or because of the threat of the application of force to him or her or to some other person, or because of a well-founded fear that force may be applied to him or her or to some other person,
- (b) he or she is asleep or unconscious,
- (c) he or she is incapable of consenting because of the effect of alcohol or some other drug,
- (d) he or she is suffering from a physical disability which prevents him or her from communicating whether he or she agrees to the act,
- (e) he or she is mistaken as to the nature and purpose of the act,

- (f) he or she is mistaken as to the identity of any other person involved in the act,
- (g) he or she is being unlawfully detained at the time at which the act takes place,
- (h) the only expression or indication of consent or agreement to the act comes from somebody other than the person himself or herself.

This Section makes clear that consent may be withdrawn at any point before or during a sexual act, and that failure or omission on the part of the person to offer resistance to an act does not of itself constitute consent to the act.

There is no explicit legislative definition of consent which applies solely to a child.

#### Italy / *Italie*

In Italian legislation there is no a definition of consent and/or lack of it but the consent must be given by a person who has the ability to understand what he is doing, which is presumed acquired at the age of 14 for some acts (this age is the same of imputability).

The consent is important in cases provided by art.609 quater code to make the difference between sexual abuse and sexual acts with a minor.

#### Latvia / *Lettonie*

The Criminal law does not define “consent” and/or “lack of consent” by a child to sexual activities.

As mentioned before, The Criminal law establishes criminal liability if sexual actions against the will of the child by means of violence, threats or using trust, authority or exerting other influence over the victim.

#### Liechtenstein

No reply available / *Pas de réponse disponible*

#### Lithuania / *Lituanie*

Only Article 157 of the CC (“Purchase or sale of a child”) clearly regulates that the criminal law provides for criminal liability for the purchase or sale of a child regardless of the child's consent to be illegally adopted, exploited in slavery or slavery-like conditions, prostitution, pornography, other forms of sexual exploitation forms of forced, scam marriage, forced labour or services, including begging, criminal offenses or other exploitation.

The commission of criminal offenses provided for in Article 149 (“Rape”) and Article 150 (“Sexual Rape”) of the CC entails criminal liability only in cases when the planned actions are committed against the will of the victim (including minors and underage children). Disagreement must be expressed and the perpetrator must be aware of the other person's disagreement. A person's disagreement may be expressed in words or other actions or in

other ways. In cases where the perpetrator uses physical violence, threats or the helplessness of the victim to break the victim's will or has sex with several perpetrators, the victim may not externally express his or her disagreement with the violence, pain or fear of violence, or physical violence, the perpetrator or perpetrators must be aware that sexual intercourse or satisfaction of sexual passion takes place against the will of the victim. However, as mentioned in the answer to question 4, in the case law, sexual gratification or relationship with a minor (under the age of 14) is generally considered to be an exploitation of the victim's helplessness, unless the victim has perceived his or her physical and mental development and social maturity and the essence of the actions taken with him and gave consent to such a relationship or those actions took place on the initiative of the minor (victim). Also, only in Paragraph 6 of Article 151<sup>1</sup> of the CC ("Satisfaction of Sexual Passion in Violation of the Juvenile Sexual Freedom and / or Inviolability") the legislator provides an exception that the specified actions provided for in this article are not considered a crime when there is no significant difference in age, mental and physical maturity between the participants in the action.

In summary, it can be stated that persons who have committed criminal offenses provided for in Articles 151<sup>1</sup>, 153, 157, 162, 307 (3), 308 (3) of the CC in respect of children (minors and underage) of the age provided for therein shall be prosecuted for the criminal offenses committed, even with the consent of the child victims.

## Luxembourg

La législation luxembourgeoise ne prévoit pas de définition du « consentement » ou du « défaut de consentement ».

Cependant, en matière en matière d'abus sexuels, l'article 375 alinéa 1er du Code pénal définit le viol comme étant « *tout acte de pénétration sexuelle, de quelque nature que ce soit et par quelque moyen que ce soit, commis sur la personne d'autrui, soit à l'aide de violences ou de menaces graves, soit par ruse ou artifice, soit en abusant d'une personne hors d'état de donner un consentement libre ou d'opposer la résistance* ».

Il résulte de cette définition légale que le viol suppose la réunion des éléments constitutifs suivants, à savoir :

- Un acte de pénétration sexuelle,
- L'absence de consentement de la victime, établie soit par l'usage de violences, de menaces graves, d'une ruse ou d'un artifice, soit par le fait que la victime était hors d'état de donner un consentement libre ou d'opposer de la résistance,
- L'intention criminelle de l'auteur.

L'article 375 du Code pénal dispose en outre qu'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. (...)»

Il résulte de cette disposition que le fait qu'un enfant n'ayant pas atteint l'âge de seize ans, est assimilable au fait que le mineur n'y a pas consenti librement.

*Malta / Malte*

No this is not defined, but the meaning is implied by interpretation of article/s.

*Republic of Moldova / République de Moldova*

No legal definition for such.

*Monaco*

Le Gouvernement Princier souhaite à ce titre appeler l'attention, d'une part sur le constat relevant du droit positif, et, d'autre part, sur les avancées prospectives formalisées par le projet de loi n° 1027, susvisé.

En l'état du droit positif, le défaut de consentement de la pénétration sexuelle résulte de l'usage de la violence, de la contrainte, de la menace ou de la surprise (article 262 du Code pénal). Le projet de loi susvisé tend à le définir de manière non exhaustive « *notamment* » « *lorsque l'acte de pénétration sexuelle [...] a été imposé par violence, contrainte, menace ou surprise* » (Cf. Article 5). En l'absence de pénétration sexuelle, le défaut de consentement résulte de l'utilisation de la « *violence* » (article 263 du Code pénal). Le projet de loi susvisé tend à le définir de manière non exhaustive « *notamment* » « *lorsque l'atteinte sexuelle [...] a été imposé par violence, contrainte, menace ou surprise* » (Cf. Article 7).

A l'inverse, le consentement aux actes sexuels résulte de l'absence de « *violence* » (article 261 du Code pénal). Le projet de loi susvisé tend à définir de manière négative le consentement aux actes sexuels dans les situations excluant « *le cas de viol ou de toute autre agression sexuelle* » (article 4).

A titre prospectif, le projet de loi précité a pour ambition de procéder à une avancée notable pour les victimes, en ce qu'il opérera un réel changement de paradigme. Le Gouvernement Princier a souhaité tirer toutes les conséquences de ce que, pour central qu'elle puisse être dans l'appréhension pénale des différents comportements réprimés, la notion de « *consentement* » n'était à aucun moment explicitement mentionnée dans la définition des infractions sexuelles, ni en matière de viol, non plus qu'en matière d'agression sexuelle. Par le biais du projet de loi précité, le Gouvernement Princier souhaite désormais que la définition juridique des viols et des autres agressions sexuelles puisse, à l'avenir, être fondée sur l'absence d'un consentement libre, à l'effet de pallier les insuffisances qui émergent de la situation actuelle.

*Montenegro / Monténégro*

The legislation does not define the consent or lack of consent of the child to sexual activities.

*Netherlands / Pays-Bas*

Not applicable.

*North Macedonia / Macédoine du Nord*

No reply available / *Pas de réponse disponible*

*Norway / Norvège*

Children under the age of 16 may not consent to sexual activities or acts, see the answers to question 1-3 above. For adults and children aged 16 or 17 the Penal Code does not define consent for most offences. Instead, some penal provisions describe the criminal act in a manner that for all practical purposes precludes consent. For instance, the conditions for imposing a penalty under section 291 is a) obtaining sexual activity through violence or threatening conduct, b) engaging in sexual activity with persons who is unconscious or for other reasons incapable of resisting the act, or c) through violence or threatening conduct making a person engage in sexual activity with another person, or perform acts corresponding to sexual activity on himself/herself. However, the lack of consent is a condition for imposing penalty under section 297 prohibiting sexual acts without consent. Whether a person consented depends on an overall assessment where a precondition for acknowledging the consent is that the aggrieved party was in such a position that he or she was able to give it, cf. Rt. 2010 p. 1042 and Ot.prp. nr. 28 (1999–2000) p. 116 (case law and preparatory work).

The Council of Criminal Law (Straffelovrådet) is, on behalf of the Government, examining the possibilities of revising the rules on sexual offences, including the possibility of using lack of consent as a legal condition for sexual assault.

*Poland / Pologne*

Polish legislation does not define the terms ‘consent’ and ‘lack of consent’ (‘no consent’). Those are facts examined on a case-by-case basis in the light of the circumstances of the case of and of the minor victim’s personal circumstances.

Emphatically, whether the minor has given consent is irrelevant to the commission of the Article 200 offence (sexual activity with a minor younger than 15 years).

Simultaneously, whenever the sexual intercourse takes place against the victim’s will (by violence, unlawful threat or deceit), the elements of the crime of rape (Article 197 CC) are fulfilled.

Where the perpetrator induces the victim to sexual intercourse or submission to or performance of another sexual activity by abusing the victim’s helpless position or the victim’s inability to discern the meaning of the act or direct one’s conduct as a result of mental impairment or illness, that fulfils the elements of the Article 198 offence.



Ultimately, where consent is given by a person aged 15 or older but younger than 18, but because the perpetrator has abused a dependent relationship with the victim or the victim's critical situation, or abused the victim's trust, conferred or promised an economic or personal benefit, the elements of the Article 199 offence are completed.

#### Portugal

Portuguese legislation does not define consent or lack of consent by a child to sexual activities.

#### Romania / Roumanie

The legal texts incriminating rape and sexual assault do not contain an express definition of lack of consent, but they list the ways that the offence can be committed, which equates a definition: "by coercion, making it impossible to defend oneself or to express one's will or taking advantage of this state". (see legal text below)

#### Note:

*All sexual activities lack of consent, irrespective of the victim's age or type of relationship with the victim (even between spouses) are criminalised in Romanian legislation. Only the level of punishment differs, the sanctions being more severe if the victim is a child or if the victim is under the authority or influence of the perpetrator or if the crime has been committed in other specific conditions.*

#### Russian Federation / Fédération de Russie

No reply available / Pas de réponse disponible

#### San Marino / Saint-Marin

No reply available / Pas de réponse disponible

#### Serbia / Serbie

There is no such definition.

#### Slovak Republic / République slovaque

The Criminal Code does not specifically define the consent / lack of consent of a child to perform sexual activities. It only defines the consent of the injured party in general. Pursuant to Section 29 of the Criminal Code, an act otherwise is not a criminal offense if it was performed with the consent of the injured party and is not directed against his life or health. It is not the consent of the injured party if the consent was not given in advance, was not serious and voluntary or if another criminal offense was committed in connection with it. This provision shall not apply if, according to the facts of the offense, the offense is to be a criminal offense even if the consent of the injured party has been given.

*Slovenia / Slovénie*

No reply available / *Pas de réponse disponible*

*Spain / Espagne*

Our legislation does not define “consent” or “lack or consent” by a child under 16yo to sexual activities.

It defines “consent” in case of sexual activities between adults or people above 16yo.

According to article 178 of the Criminal consent is valid when the person has expressed it through acts, that attending the situation, show her/his will in a clear form

*Sweden / Suède*

No.

*Switzerland / Suisse*

*English is not an official language of the Swiss Confederation. The translation of the cited articles of the Swiss criminal code are provided for information purposes only and have no legal force. Link to the English text: [SR 311.0 - Swiss Criminal Code of 21 December 1937 \(admin.ch\)](#)*

*Link to the official law text in French: [RS 311.0 - Code pénal suisse du 21 décembre 1937 \(admin.ch\)](#)*

The Swiss criminal law does not define consent.

*Tunisia / Tunisie*

La législation tunisienne ne définit pas le consentement. Elle prévoit une présomption irréfragable pour l'âge de 16 ans comme expliqué. Une telle définition demeure du pouvoir appréciatif du juge. C'est ainsi que la jurisprudence considère que le consentement est absent en cas d'utilisation de contrainte physique ou morale ne lui permettant pas de rendre l'acte ou de se défendre (décision de la cour de cassation n°29942 du 03/05/2008). Ainsi, la Cour de cassation a considéré que l'absence de consentement peut être matérielle par la violence ou la menace de la violence ou morale par l'affaiblissement de la volonté de la victime atteignant son consentement (décision de la cour de cassation n° 66828-67074 du 23/02/2018). Dans une autre décision, elle considéré que la répétition de l'acte ne constitue pas en soi un consentement tant qu'il est prouvé que la femme est un enfant et elle est dans une situation vulnérable surtout qu'elle est tombée enceinte et qu'elle craint la réaction de sa famille (décision n°66088 du 23/02/2018).

Turkey / *Turquie*

No reply available / *Pas de réponse disponible*

Ukraine

No.

United Kingdom / *Royaume-Uni*

Any sexual activity with someone under the age of 16 is a criminal offence.

Consent more broadly

Children

With regards to the specific sexual offences against children (under 16 years) in the 2003 Act “consent” is not a factor as there is no defence of “consent” available.

Adults

Consent is a main factor in a range of sexual offences. It is defined in section 74 of the 2003 Act, which states that, for the purposes of the 2003 Act, a person consents *“if he agrees by choice, and has the freedom and capacity to make that choice.”*

[In interpreting this definition, the Court has held that *“the evidence relating to 'choice' and the 'freedom' to make any particular choice must be approached in a broad common-sense way”.*]

The adult sexual offences also require that the defendant did not reasonably believe that the victim consented to the activity in question: whether belief as to consent is reasonable is determined having regard to all the circumstances, including any steps the defendant has taken to ascertain whether the victim was consenting.

In deciding whether or not the complainant had the freedom and capacity to make a choice, all relevant circumstances must be taken into account. These include the age and maturity of the complainant, the relationship between the complainant and the suspect and any vulnerability of the complainant.

In addition to the general principle of consent outlined in section 74, sections 75 and 76 of the 2003 Act set out situations in which there are rebuttable and conclusive *evidential* presumptions as to consent and reasonable belief in consent.

Section 75 sets out the circumstances in which a victim is presumed not to have consented, unless the defendant provides sufficient evidence to raise an issue that the victim did indeed consent, or to raise an issue that the defendant reasonably believed that the victim consented. The rebuttable presumptions are: where the defendant uses violence or the threat of violence

against the victim at the time of the sexual act, or immediately prior to it; where the victim is unlawfully detained at the time of the sexual act; where the victim was asleep or unconscious at the time of the act; where due to a victim's physical disability they would not have been able to communicate their consent; and where the defendant administered a substance which rendered the victim stupefied or overpowered.

Under section 76, the conclusive presumptions are where the defendant intentionally deceived the victim as to the nature or purpose of the sexual act; or where the defendant intentionally induced the victim to consent to the relevant act by impersonating a person known personally to the victim. There is a conclusive (i.e. non-rebuttable) presumption that consent was not given where either of these circumstances is proved.

It is still for the prosecution to establish beyond a reasonable doubt that that the defendant did the relevant act (e.g. sexual touching, penetration – as defined within section 77)), that the relevant circumstances specified existed, and that the defendant knew they existed.

Here is a link to section 74 of the 2003 Act:

<https://www.legislation.gov.uk/ukpga/2003/42/section/74>

**Question 7**

Has there been a change in the legal age for sexual activities or the age under which a child is never deemed to be in a position to give his/her consent in recent years? If so, can you specify the changes and the rationale of the change?

*Y a-t-il eu un changement ces dernières années de l'âge légal pour entretenir des activités sexuelles ou de l'âge en dessous duquel il est considéré qu'un enfant ne peut jamais donner son consentement ? Si tel est le cas, pouvez-vous préciser les changements et ce qui les a motivés ?*

*Albania / Albanie*

In relation to what is required above in the Republic of Albania there has been no legal change regarding the age of the children for sexual activity, or for giving consent.

*Andorra / Andorre*

Non.

*Armenia / Arménie*

No, the regulations were in place started from 2013 and now in the new Criminal Code.

*Austria / Autriche*

There have been no recent legislative changes in this area.

*Azerbaijan / Azerbaïdjan*

Has not been a change in the legal age for sexual activities or the age under which a child is never deemed to be in a position to give his/her consent in recent years.

*Belgium / Belgique*

Comme dit précédemment, le 29 octobre 2009, la Cour constitutionnelle, a clarifié l'interprétation de la loi sur les relations sexuelles consenties pour un-e mineur-e entre 14 et 16 ans. Ainsi, si le mineur de 14 ans consent « volontairement et consciemment » à la pénétration sexuelle, il n'y a pas viol. Cependant, cet acte reste punissable. Ce seront les dispositions relatives à l'attentat à la pudeur qui s'appliqueront s'il y a poursuite et non plus les dispositions relatives au viol.

La loi du 21 mars 2022 modifiant le code pénal citée ci-dessus prévoit qu'un mineur qui n'a pas atteint l'âge de seize ans accomplis n'est pas réputé avoir la possibilité d'exprimer librement son consentement. Un mineur qui a atteint l'âge de quatorze ans accomplis mais pas l'âge de seize ans accomplis, peut consentir librement si la différence d'âge avec l'autre

personne n'est pas supérieure à trois ans. Il n'y pas d'infraction entre mineurs ayant atteint l'âge de quatorze ans accomplis qui agissent avec consentement mutuel lorsque la différence d'âge entre ceux-ci est supérieure à trois ans.

Un mineur n'est jamais réputé avoir la possibilité d'exprimer librement son consentement si:

1° l'auteur est un parent ou un allié en ligne directe ascendante, ou un adoptant, ou un parent ou un allié en ligne collatérale jusqu'au troisième degré, ou toute autre personne qui occupe une position similaire au sein de la famille, ou toute personne cohabitant habituellement ou occasionnellement avec le mineur et qui a autorité sur lui, ou si

2° l'acte a été rendu possible en raison de l'utilisation, dans le chef de l'auteur, d'une position reconnue de confiance, d'autorité ou d'influence sur le mineur, ou si

3° l'acte est considéré comme un acte de débauche ou un acte de prostitution visé dans la sous-section 2 de la section 2, intitulée "De l'exploitation sexuelle de mineurs à des fins de prostitution".

En résumé, la notion de consentement est clarifiée dans la loi. Le consentement doit être exprimé de manière explicite et peut être retiré à tout moment (avant ou même pendant l'acte sexuel). Une absence de réaction ne sera plus suffisante pour justifier un acte sexuel consenti. L'âge de la majorité sexuelle reste fixé à 16 ans avec une tolérance à partir de 14 ans en cas de consentement et de différence d'âge de trois ans maximum (contre 5 ans auparavant). La nouvelle loi insiste donc sur le fait qu'il ne peut y avoir de consentement en dessous de 14 ans. En dessous de cet âge, tout acte sexuel sera considéré comme un viol. L'inceste est enfin mentionné dans la loi et reconnu comme crime à part entière. La notion d'inceste concerne tout préjudice auprès d'un mineur causé par un parent ou un allié descendant en ligne directe, un allié en ligne collatérale jusqu'au 3e degré ou toute personne occupant une position similaire au sein de la famille. La loi considère qu'aucun consentement n'est possible en cas d'inceste. La notion d'inceste concerne donc les mineurs d'âge et non les personnes majeures, dans ce cas on parlera de viol intrafamilial (qui sera plus sévèrement puni qu'un viol « classique »).

#### [Child Focus's reply on Belgium's legal framework](#)

Le code pénal sexuel a été réformé le 1er juin 2022 pour intégrer l'article 417/6 décrit dont copie ci-dessus.

Le changement intervenu concernant l'âge de la majorité sexuelle concerne le tempérament introduit pour les mineurs entre 14 et 16 ans.

#### [Bosnia and Herzegovina / Bosnie-Herzégovine](#)

Criminal Code of Republika Srpska which was adopted in 2017. raised legal age for sexual activities from 14 to 15 years of age.

### Bulgaria / *Bulgarie*

There were no legislative changes regarding the legal age of the child victim, but the range of possible hypotheses of sexual crimes was expanded, in which the victim has been transferred to a helpless state, the victim did not understand the nature and significance of the crime, or a situation of dependence and supervision was used.

### Croatia / *Croatie*

Until 1<sup>st</sup> January 2013, when the Criminal Code (Official gazette 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19) entered into force, legal age for sexual activities was 14. After entry into force of the Criminal Code, it was elevated to 15 years of age, and there were no changes thereof in recent years.

### Cyprus / *Chypre*

The age of sexual consent has been defined in the L. 91(I)/2014.

"Hope For Children" CRC Policy Center Cyprus / "*Hope For Children*" CRC Policy Center Chypre's reply on Cyprus' legal framework

No reply available / *Pas de réponse disponible*

### Czech Republic / *République tchèque*

No, there has not been any change in this regard in recent years.

### Denmark / *Danemark*

On 15 February 2022 the Criminal Code section 216 (2) was amended. With this amendment sexual intercourse with children below the age of 15 is made punishable as rape if the offender is 22 years of age or more. This also applies to other sexual activities than sexual intercourse. The offence is punishable with a penalty of imprisonment for a term not exceeding 12 years. Before the amendment, the same offence was punishable with a penalty of imprisonment for a term not exceeding 8 years.

The rationale for the amendment is that a child under the age of 15 is not capable of voluntarily consenting to a sexual relationship with an adult who is significantly older than the child because of the inequality the age difference entails.

### Estonia / *Estonie*

Yes, the amendments of the Penal Code entered into force 01.11.2022 and the legal age for sexual activities is now 16 years of age.

*Finland / Finlande*

No.

*France*

Les seuils d'âges exposés en réponse à la question 1 ont évolué depuis la loi du 21 avril 2021.

*Georgia / Géorgie*

In recent years there were no legislative changes made in the legal age for sexual activities or the age under which a child is never deemed to be in a position to give his/her consent.

*Germany / Allemagne*

There have not been any changes to the legal age for sexual activities or the age under which a child is never deemed to be in a position to give his/her consent in recent years.

See Appendix / *Voir l'Annexe*

*Greece / Grèce*

No reply available / *Pas de réponse disponible*

*Hungary / Hongrie*

There are no recent changes in the Criminal Code related to the legal age for sexual activities or the age under which a child is not deemed to be in a position to give his/her consent.

*Iceland / Islande*

In 2007 the legal age for sexual activities was increased from 14 years to 15 years.

*Ireland / Irlande*

Section 3, paragraph 9 of the Criminal Law (Sexual Offences) Act 2006 specified that, should a child under 17 years be accused of a sexual act with a child under 17, no proceedings for an offence would be brought except by, or with consent of, the Director of Public Prosecutions.

The Criminal Law (Sexual Offences) Act 2017 amended this 2006 Act to add that in the case where a child under 17 years of age, and offence is against a child who had attained the age of 15 years but was under the age of 17 years, and who is less than 2 years younger than the older child, it may be a defence that the child consented to the sexual act. This defence also depends on the offending child not being in a position of authority in respect of the younger child, and that the relationship was not intimidatory or exploitative.



Section 18 of the Criminal Law (Sexual Offences) Act 2017 amended the Criminal Law (Sexual Offences) Act 2006 to include a specific offence by a person in authority to engage in a sexual act with a child who has attained the age of 17 years, but is under the age of 18 years.

An individual accused under this Act may argue a defence that he or she was reasonably mistaken that, at the time of the alleged commission of the offence, the child against whom the offence is alleged to have been committed had attained the age of 18 years. In this case, it falls to the court to consider this defence and whether, in all the circumstances of the case, a reasonable person would have concluded that the child had attained the said age.

An individual accused under the Act may argue a defence that he or she had reasonable grounds for believing that he or she was not a person in authority in relation to the child against whom the offence is alleged to have been committed.

It is not a defence to show that the child consented to the sexual act.

#### *Italy / Italie*

The Italian legislation mainly dates to 1996 and 2006 driven by European legislation. The most recent news concern the increase of the penalty when the victim has not turned 10 years old.

#### *Latvia / Lettonie*

No reply available / *Pas de réponse disponible*

#### *Liechtenstein*

No reply available / *Pas de réponse disponible*

#### *Lithuania / Lituanie*

No such legislative changes have been adopted in recent years.

#### *Luxembourg*

La loi du 16 juillet 2011, portant sur « l’approbation de la Convention du Conseil de l’Europe pour la protection des enfants contre l’exploitation et les abus sexuels ouverte à la signature à Lanzarote les 25-26 octobre 2007 », a fixé l’âge de consentement à 16 ans.

#### *Malta / Malte*

Kindly refer to reply of question 1.

*Republic of Moldova / République de Moldova*

No.

*Monaco*

La loi n° 1.344 du 26 décembre 2007 relative au renforcement de la répression des crimes et délits contre l'enfant a porté l'âge légal pour entretenir des activités sexuelles de quinze à seize ans. Comme le titre de la loi l'indique, il s'est agi de renforcer la répression des crimes et délits contre les enfants.

*Montenegro / Monténégro*

Since the legislation does not define the consent or lack of consent of the child to sexual activities, there have been no changes over the years.

*Netherlands / Pays-Bas*

Not applicable.

*North Macedonia / Macédoine du Nord*

No reply available / *Pas de réponse disponible*

*Norway / Norvège*

There has been no change in recent years.

*Poland / Pologne*

No, the cited provisions have not been amended in that regard.

*Portugal*

Law 40/2020, of August 18, strengthened the sanctioning and procedural framework for crimes against the sexual freedom and self-determination of minors and established duties of information and blocking of sites containing child pornography, completing the transposition of Directive 2011/937UE of the European Parliament and of the Council, of December 13, 2011, amending the Criminal Code and Decree-Law 7/2004, of January 7.

Noteworthy are the amendments to article 172, amongst others, that provided for a new wording to article 172 (*sexual abuse of minors who are dependent or in a particularly vulnerable situation*) as follows:

*1 - Whoever performs or causes to be performed an act described in paragraphs 1 or 2 of the previous article, in relation to a minor between 14 and 18 years of age*

*(a) in relation to whom he exercises parental responsibilities or who has been entrusted to him for education or assistance; or  
(b) abusing a position of manifest trust, authority or influence over the child; or  
(c) abusing another situation of particular vulnerability of the minor, in particular for reasons of health or disability;*

*shall be punished with imprisonment from 1 to 8 years.*

*2 - Whoever commits an act described in paragraph 3 of the previous article, in relation to a minor included in the previous paragraph of this article and under the conditions described therein, shall be punished with a prison sentence of up to one year.*

*3 - Whoever commits the acts described in the previous number with lucrative intent shall be punished with a prison sentence of up to five years.*

*4 - Attempt is punishable”.*

The previous wording of this article (Decree-law 59/2007) was the following:

*Article 172 (Sexual abuse of dependent minors)*

*1 - Whoever commits or causes to be committed an act described in paragraphs 1 or 2 of the previous article, in relation to a minor between 14 and 18 years of age who has been entrusted to him for education or assistance, shall be punished with a prison sentence of between one and eight years.*

*2 - Whoever commits an act described in paragraph 3 of the previous article, in relation to a minor included in the previous paragraph of this article and under the conditions described therein, shall be punished with a prison sentence of up to one year.*

*3 - Whoever commits the acts described in the previous number with the intention of gaining profit shall be punished with a prison sentence of up to three years or a fine.”*

#### *Romania / Roumanie*

In the year 2020, by Law 217/2020 for the amendment and completion of Law no. 286/2009 on the Criminal Code, as well as for the amendment of art. 223 para. (2) of Law no. 135/2010 on the Code of Criminal Procedure, the legal age for sexual activities was raised from 13 to 14 years old, for sexual activities other than sexual intercourse or activities involving penetration and from 15 to 16 years old for sexual intercourse or acts involving penetration.

#### *Russian Federation / Fédération de Russie*

No reply available / *Pas de réponse disponible*

#### *San Marino / Saint-Marin*

No reply available / *Pas de réponse disponible*

### Serbia / *Serbie*

There haven't been any changes in the legal age for the sexual activities in recent years.

### Slovak Republic / *République slovaque*

No.

### Slovenia / *Slovénie*

Not in the recent years. Before 1999 the legal age for sexual activities was 14.

### Spain / *Espagne*

The last amendment on the issue took place in 2010. Since then the legal age for sexual activities was 13 years old. Minors above 13 under 16 years old were protected, in case the perpetrator deceived the minor to get his/her consent.

According to the amendment introduced by Organic Law 5/2010 the legal age to give consent for sexual activities raised to 16 years old. After the amendment the perpetrator was equally punished in case he deceived the minor from 16 to 18 years old to get his/her consent.

The Criminal Code has been recently amended by Organic Law 10/2022, in order to focus on the "valid consent". Therefore every sexual activity with a minor above 16 and under 18 years old will be sanctioned in case the consent has not been valid. As already mentioned, according to article 178 of the Criminal consent is valid when the person has expressed it through acts, that attending the situation, show her/his will in a clear form.

### Sweden / *Suède*

No.

### Switzerland / *Suisse*

*English is not an official language of the Swiss Confederation. The translation of the cited articles of the Swiss criminal code are provided for information purposes only and have no legal force. Link to the English text: [SR 311.0 - Swiss Criminal Code of 21 December 1937 \(admin.ch\)](#)*

*Link to the official law text in French: [RS 311.0 - Code pénal suisse du 21 décembre 1937 \(admin.ch\)](#)*

There has not been a change in the legal age for sexual activities in recent years.

### Tunisia / *Tunisie*

La législation tunisienne vient de modifier l'âge en dessous duquel l'acte d'entretenir des

activités sexuelles avec l'enfant étant une présomption de son non consentement. En effet, la loi organique n°2017-58 du 11/08/2017 relative à l'élimination de la violence faite aux femmes a fait passer cette âge de 13 à 16 ans. L'ancien article 227 du code pénale prévoyait que «Le consentement est considéré comme inexistant lorsque l'âge de la victime est au-dessous de treize ans accomplis.» . Désormais, à partir de l'entrée en vigueur de cette loi en février 2018, l'article 227 nouveau prévoit que «Le consentement est considéré comme inexistant lorsque l'âge de la victime est au-dessous de seize (16) ans accompli.» . Cette augmentation a suscité beaucoup de débat lors de la discussion du projet de la loi organique susmentionné devant la Commission des droits, libertés et relations extérieurs de l'ARP. Ainsi, certains députés considèrent que l'âge de 13 ans correspond plus avec le système juridique de discernement de l'enfant qu'il soit en droit civil ou en droit pénal (âge de responsabilité pénale) alors que d'autres défendent la nécessité d'augmenter cet âge pour assurer plus de protection aux enfants. (rapport en arabe, p51, accessible sur <https://majles.marsad.tn/ar/media/download/1262>).

### Turkey / Turquie

No legislative amendment is made.

### Ukraine

Before the approval of amendments to Article 155 of the Criminal Code of Ukraine in 2021, it had the wording "Sexual intercourse with a person who has not reached sexual maturity". The maturity was determining in accordance with the Rules of forensic medical examinations (examinations) regarding sexual conditions in the forensic medical examination office, approved by the order of the Ministry of Health dated January 17, 1995 No. 6.

But now the wording of the Article 155. Committing acts of a sexual nature with a person who has not reached the age of sixteen.

The term "sexual maturity" has been changed for the age of consent and it is sixteen.

### United Kingdom / Royaume-Uni

No, there has been no change in recent years. Current legislation on this is the Sexual Offences Act 2003 [link]. Any sexual activity with someone under the age of 16 is a criminal offence. However, for many offences where the victim is 13 – 15 years of age a defence is available that the “defendant” held a reasonable belief that the child was aged 16 years or older. That defence of reasonable belief of age of consent is not available when the activity involves a child under 13 years of age.

### Question 8

Is there an on-going discussion in your country to change the legal age for sexual activities or the age under which a child is never deemed to be in a position to give his/her consent? If so, can you indicate whether the aim is to lower or raise the legal age for sexual activities and/or the age under which a child is never deemed to be in a position to give his/her consent?

*Existe-t-il une discussion en cours dans votre pays pour modifier l'âge légal pour entretenir des activités sexuelles ou l'âge en dessous duquel il est considéré qu'un enfant ne peut jamais donner son consentement ? Dans l'affirmative, pouvez-vous indiquer si l'objectif est d'abaisser ou de relever l'âge légal pour entretenir des activités sexuelles et / ou l'âge en dessous duquel il est considéré qu'un enfant ne peut jamais donner son consentement ?*

#### *Albania / Albanie*

There is no information from the interior ministry to change the legal age for sexual activity or the age under which a child is never considered to be able to give his / her consent.

#### *Andorra / Andorre*

No reply available / *Pas de réponse disponible*

#### *Armenia / Arménie*

No, the definitions and regulations on the legal age are reflected in the new legislation recently.

#### *Austria / Autriche*

No.

#### *Azerbaijan / Azerbaïdjan*

No reply available / *Pas de réponse disponible*

#### *Belgium / Belgique*

Plusieurs propositions de lois ont été déposées afin de diminuer la majorité sexuelle à 14 ans. Par ailleurs, la réforme du Code pénal prévoit qu'un jeune âgé d'au moins 14 ans pourra donner son consentement éclairé lorsque la différence d'âge avec le partenaire s'élève à maximum 5 ans et qu'il n'est pas question d'une position d'autorité (enseignant, entraîneur...) ou de confiance à son égard (ascendant, frère et sœur...).

Récente modification réalisée.

Child Focus' reply on Belgium

Non, mais un article 417/5 décrit la notion de consentement, qui s'applique aussi bien aux majeurs qu'aux mineurs.

*Bosnia and Herzegovina / Bosnie-Herzégovine*

Yes, there are two initiatives to change criminal codes of Federation BiH and Brčko District to raise legal age for sexual activities of children and to harmonize those two laws with provision of Lanzarote convention. Hopefully those amendments will be adopted in the following year.

*Bulgaria / Bulgarie*

We are not familiar with such discussions.

*Croatia / Croatie*

No, there are currently no on-going discussions in the Republic of Croatia to change the legal age for sexual activities or the age under which a child is never deemed to be in a position to give his/her consent.

*Cyprus / Chypre*

At present there is no discussion to change the legal age of sexual activities or the age under which a child is never deemed to be in position to give his/her consent.

"Hope For Children" CRC Policy Center Cyprus / "Hope For Children" CRC Policy Center Chypre's reply on Cyprus

For the time being, there is no discussion to either lower or raise the legal age for sexual activities.

*Czech Republic / République tchèque*

No, currently there is no on-going discussion in this regard.

*Denmark / Danemark*

No.

*Estonia / Estonie*

There are ongoing discussions about raising the age of consent.

No, since the change was very recent (01.11.2022). Please see the previous answer.

*Finland / Finlande*

No.

*France*

Cette réforme a donné lieu à la loi du 21 avril 2021 (voir réponse à la question 1).

*Georgia / Géorgie*

No reply available / *Pas de réponse disponible*

*Germany / Allemagne*

In their final report from 2017, the reform commission on the law of sexual offences ruled unanimously that the age limit of 14 years, under which any sexual acts with the child compliant to section 184h number 1 of the German Criminal Code are punishable, is to be maintained. They justify their finding by the child's lack of sexual self-determination and the resulting inability of making autonomous sexual decisions. The sexual self-determination of children under 14 years of age is still developing and thereby demands absolute protection. Although the development of sexual self-determination may deviate in individual cases, the general psychiatric consensus supports the lawmaker's intention.

With respect to the issue of age difference between the persons engaged in sexual activities, the reform commission argues in favour of considering cases in which the persons engaged in sexual activities are nearly the same age by virtue of legislation. The child's sexual self-determination is indeed just developing, having sexual relationships with a person of nearly the same age however is precisely an expression of said development. There are several suggestions on how to implement this issue.

See Appendix / *Voir l'Annexe*

*Greece / Grèce*

No reply available / *Pas de réponse disponible*

*Hungary / Hongrie*

Currently, there are no ongoing debates in Hungary to change the legal age for sexual activities or for giving his/her consent.

*Iceland / Islande*

No there is no active discussion on the matter.



*Ireland / Irlande*

To the best of our knowledge, and in light of clarity provided in the 2017 Act, there is no ongoing discussion in Ireland to change the legal age for sexual activities or the age under which a child is never deemed to be in a position to give his/her consent.

*Italy / Italie*

**Replies sent on 22 December 2022:**

In this moment in Italy there is no discussion on legal age for sexual activity. The discussions, however, concern the attributable age with downward pressure towards 12 years because someone would like to anchor the repression to the typical age of violent crimes.

*Latvia / Lettonie*

There is no on-going discussion to change the legal age for sexual activities or the age under which a child is never deemed to be in a position to give his/her consent at this moment.

*Liechtenstein*

No reply available / *Pas de réponse disponible*

*Lithuania / Lituanie*

We have no such data.

*Luxembourg*

Actuellement, il n'existe aucune discussion à ce sujet.

*Malta / Malte*

See above.

*Republic of Moldova / République de Moldova*

There is a draft law to explicitly indicate the victim's age in case of consent - from 14 to 16, which would raise the age of legal consent from 16 to 17.

*Monaco*

Le projet de loi susvisé n'envisage pas de modifier l'âge légal pour entretenir des activités sexuelles, ni de prévoir l'âge en dessous duquel il est considéré qu'un enfant ne peut jamais donner son consentement.

*Montenegro / Monténégro*

There are no ongoing discussions about prescribing the legal age for sexual activity or the age below which a child is considered never to be in a position to give consent.

*Netherlands / Pays-Bas*

Not applicable. In a new Draft Bill reforming the Dutch crimes on sexual violence the legal age for sexual activities has not changed. An earlier version of the Draft Bill, that was also open for consultation, did not lead to discussion about changing the legal for sexual activities.

*North Macedonia / Macédoine du Nord*

No reply available / *Pas de réponse disponible*

*Norway / Norvège*

No.

*Poland / Pologne*

Currently, public debate is ongoing about raising the age of consent to 16.

*Portugal*

In the current legislature there is no bill, draft bill, or resolution under discussion that seeks to change the legal age for sexual activity.

*Romania / Roumanie*

There are no official discussions in this direction.

*Russian Federation / Fédération de Russie*

No reply available / *Pas de réponse disponible*

*San Marino / Saint-Marin*

No reply available / *Pas de réponse disponible*

*Serbia / Serbie*

NO, such discussion hasn't been organised with in the Ministry of Justice jurisdiction.

There isn't an on-going discussion in the Republic of Serbia on this issue.

*Slovak Republic / République slovaque*

No.

*Slovenia / Slovénie*

No such general discussion is ongoing at this point.

*Spain / Espagne*

Nowadays there is no discussion in Spain about the legal age for sexual activities. It is socially accepted that minors under 16 years old should be protected by the law and the criminal procedure and may not give valid consent.

*Sweden / Suède*

No.

*Switzerland / Suisse*

*English is not an official language of the Swiss Confederation. The translation of the cited articles of the Swiss criminal code are provided for information purposes only and have no legal force. Link to the English text: [SR 311.0 - Swiss Criminal Code of 21 December 1937 \(admin.ch\)](#)*

*Link to the official law text in French: [RS 311.0 - Code pénal suisse du 21 décembre 1937 \(admin.ch\)](#)*

There isn't a discussion to change the legal age for sexual activities or the age under which a child is never deemed to be in a position to give his/her consent.

*Tunisia / Tunisie*

Actuellement, cette discussion ne se pose pas en Tunisie vu qu'elle a été déjà soulevée comme expliqué dans la réponse 7 et que cet âge est augmenté de 13 à 16 ans.

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Turkey / *Turquie*

Not available.

Ukraine

For this moment No.

United Kingdom / *Royaume-Uni*

N/A

**Question 9**

Is the fact that a child may sexually abuse another child by for example taking advantage of his or her position of influence or trust reflected in your legislation? If so, how?

*Le fait qu'un enfant puisse abuser sexuellement d'un autre enfant, par exemple en profitant de sa position d'influence ou de confiance, est-il reflété dans votre législation ? Si c'est le cas, de quelle manière ?*

**Albania / Albanie**

In the Criminal Code of the Republic of Albania, in article 106 “Sexual or homosexual activity with consanguine persons and persons in the position of trust” provides for sexual intercourse with persons of the same sex or guardian, but does not specify the age of the persons committing this act: Engagement in the act of sexual or homosexual intercourse between parents and children, brother and sister, between brothers, sisters, between consanguine relatives in an ascending line or with persons in the position of trust or adoption, is sentenced by imprisonment up to seven years.

**Andorra / Andorre**

No reply available / *Pas de réponse disponible*

**Armenia / Arménie**

The sexual activities between children are not criminalized under the age of 14 for both. When one of the children is 14 years and above, and there is an evidence of violence, abuse or harassment/threat, towards another child under the age of 12 in all these cases there is a prosecution to this engagement as a criminal offence.

**Austria / Autriche**

Children under the age of fourteen are not liable to criminal prosecution. However, if the perpetrator is older than fourteen, the cited offenses of the sexual criminal law apply. If the child is coerced into sexual intercourse or a sexual act by force or threat, Sections 201 and 202 of the Criminal Code apply. If, due to the lack of use of force or threat, punishment under Sections 201 and 202 of the Criminal Code is not applicable and the conditions for the exclusion of the age tolerance clause are not met, Section 205a of the Criminal Code may be examined.

<p><b>Rape</b> § 201. (1) Any person who by use of force, deprivation of liberty, or threat with a present danger for limb or life (§ 89) coerces another to engage in or acquiesce to sexual intercourse or conduct equivalent to sexual intercourse is liable to</p>	<p><b>Sexual coercion</b> § 202. (1) Any person who, except in cases under § 201, by use of force or dangerous threat coerces another to engage in or acquiesce to sexual conduct is liable to imprisonment for six months to five years. (2) The person is liable to imprisonment for</p>
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<p>imprisonment for one to 10 years.</p> <p>(2) The person is liable to imprisonment for five to 15 years if the offence results in a serious assault (§ 84 para. 1) or pregnancy of the victim or if the victim is placed into a state of agony or is treated in a particularly humiliating way for a longer period of time; the person is liable to imprisonment for 10 to 20 years or imprisonment for life if the offence results in the death of the victim.</p>	<p>five to 15 years if the offence results in a serious assault (§ 84 para. 1) or pregnancy of the victim or if the victim is placed into a state of agony or treated in a particularly humiliating way for a longer period of time; the person is liable to imprisonment for 10 to 20 years or imprisonment for life if the offence results in the death of the victim.</p>
<p><b>Violation of the right to sexual self-determination</b></p> <p>§ 205a. (1) Any person who engages in sexual intercourse or conduct equivalent to sexual intercourse with another person by taking advantage of a predicament or after prior intimidation against that person's will is liable to imprisonment for up to two years unless the offence is punishable with a higher penalty under another provision.</p> <p>(2) The same penalty applies to any person who leads another in the manner set out in para. 1 to engage in or acquiesce to sexual intercourse or conduct equivalent to sexual intercourse with a third person or to perform an act equivalent to sexual intercourse involuntarily on himself or herself in order to sexually arouse or satisfy the perpetrator or a third person.</p>	

#### *Azerbaijan / Azerbaïdjan*

Taking advantage of the position of abusing one child by another child is not a circumstance intended as a private article in the CC of Azerbaijan Republic. This case resolves for common rules.

#### *Belgium / Belgique*

Ceci n'est pas reflété tel quel dans notre législation.

Cf question 7.

## Child Focus' reply on Belgium's legal framework

No reply available / *Pas de réponse disponible*

### Bosnia and Herzegovina / *Bosnie-Herzégovine*

There is no such distinction in our criminal legislation. In general, criminal laws prescribe that person from 14 years of age is criminally liable and may be sentenced for criminal offence.

### Bulgaria / *Bulgarie*

In general subject of the crimes on Section Eight "Debauchery" of Chapter Two "Crimes against the Person in the Penal Code" can be any criminally responsible person.

An underage, who has reached the age of 14, but has not reached the age of 18 - is criminally liable, if he/she has been able to understand the nature and significance of the act and to direct his/her actions.

The minor, under 14 years of age, is not criminally liable.

Therefore, an underage child may be the perpetrator of these crimes against the victim.

The Penal Code does not explicitly provide for the trust, between the perpetrator and the child victim, as a sign of the criminal composition.

### Croatia / *Croatie*

In the Republic of Croatia, a person which turned 14 years of age is criminally liable, so he/she may be held guilty of a criminal offence (including sexual abuse of another child) and may be sentenced.

If sexual activity between criminally liable child (14 years of age) and another child is consensual and the age difference between them does not exceed three years, there will be no criminal offence.

If a child who is 14 years old or older commits a criminal offence of sexual abuse against another child, he/she will be subjected to the special criminal procedure towards minors, which is regulated by the Juvenile Courts Act (Official Gazette no. 84/11, 143/12, 148/13, 56/15, 126/19).

This Act prescribes the difference between younger minor (who was 14 but had not yet turned 16 at the time of the commission of the criminal offence) and older minor (who was 16 but had not yet turned 18 at the time of the commission of the criminal offence).

Younger minor may be sentenced only to educational measures and security measures.

Older minor may be sentenced to educational measures, security measures and, under the conditions set out by the Juvenile Courts Act, to juvenile imprisonment.

Juvenile imprisonment may be imposed on an older minor for a criminal offense punishable by imprisonment for a term of three years or more, when, given the nature and gravity of the offense and the high degree of guilt, it would not be justified to impose an educational measure, but punishment is required.

### *Cyprus / Chypre*

The above Law applies to all ages committing a sexual offence against a child. It is noted that the age of criminal responsibility in Cyprus is (14) fourteen years old and therefore in order for a child to have criminal responsibility for a sexual offence against another child, he/she must be 14 years old and above.

*"Hope For Children" CRC Policy Center Cyprus / "Hope For Children" CRC Policy Center Chypre's response on Cyprus' legal framework*

No, sexual abuse exercised from child towards a child is not reflected in the legislation of Cyprus. There is a reference to a potential child perpetrator only in regards to the need for his/her best interest to be taken in consideration by the judicial authorities.

### *Czech Republic / République tchèque*

No, legislation does not explicitly reflect this fact. Therefore, the rules stipulated in criminal law provisions on rape, sexual duress and sexual abuse applies also in relation to these cases. However, court in criminal proceedings may take this fact into account based on the circumstances of the individual case.

### *Denmark / Danemark*

No.

### *Estonia / Estonie*

Rape and act of sexual nature against will can also be committed by an underaged perpetrator (towards an underaged victim) if there is an element of using force or taking advantage of a situation in which the person is not capable of initiating resistance or comprehending the situation.

Also, another relevant §§ to bring out here would be §§ 143 of the penal code, which criminalizes compelling person to engage in sexual intercourse or other act of sexual nature. According to subsection 1 of the §§, 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



or 141<sup>1</sup> of the Code (that is rape and act of sexual nature against will).

Since §§ 143<sup>2</sup> only applies to cases where the victim is underaged and the perpetrator is adult, §§ 143 can apply in cases where both the victim and perpetrator are underaged.

Any act of a sexual nature with a child under 10 years of age (age of comprehension) is prohibited. That applies also between children. The full text of the Penal Code in English is available here: <https://www.riigiteataja.ee/en/eli/530092022005/consolide>

### *Finland / Finlande*

Yes. Sexual acts in the situations where the child cannot give his/her consent, referred to under question 5, can also be punishable when the perpetrator is a child under the age of 18. However, in Finland criminal responsibility starts at the age of 15.

### *France*

Le droit pénal français ne comporte pas d'infraction spécifique pour réprimer le fait pour un enfant d'abuser sexuellement d'un autre enfant. Les mineurs, sous réserve de leur capacité de discernement, peuvent être poursuivis s'ils commettent des faits de viols ou d'agression sexuelle, c'est-à-dire une atteinte sexuelle commise avec violence, contrainte, menace ou surprise. En effet, les éléments constitutifs de ces infractions n'exigent pas une quelconque majorité de la part de l'auteur.

Toutefois, en application des articles 2 et 20-2 de l'ordonnance du 2 février 1945, seuls les mineurs âgés de plus de 13 ans peuvent être condamnés à une peine, dont le quantum ne peut excéder la moitié des peines encourues par les majeurs. Cette réduction légale de la peine, désignée sous le terme « d'excuse de minorité », ne peut être écartée que dans des conditions très limitées et seulement pour les mineurs âgés de plus de 16 ans au moment des faits.

A compter du 30 septembre 2021, date de l'entrée en vigueur du code de la justice pénale des mineurs, les mineurs âgés de moins de 13 ans seront présumés ne pas être capables de discernement et ne seront pas pénalement responsables des infractions qu'ils seraient susceptibles de commettre. En effet, est considéré comme capable de discernement le mineur qui a compris et voulu son acte et qui est apte à comprendre le sens de la procédure pénale dont il fait l'objet.

### *Georgia / Géorgie*

On 13 July 2020 the Parliament of Georgia adopted the legislative changes aiming at better protection of children from sexual exploitation and sexual abuse and reflecting the standards of the Lanzarote convention in Georgian legislation. Based on the legislative changes, abuse of a recognised position of trust, authority or influence over a child was added as an aggravated circumstance to the crimes of rape (article 137 of Criminal Code of Georgia) and another action of a sexual nature (Article 138). If a child who reached the age of criminal

responsibility (14 years) commits such an act against another child, she/he will be criminally liable.

### *Germany / Allemagne*

If the “child”, i.e. a person under 14 years of age, is regarded as a perpetrator of an offence, section 19 of the German Criminal Code rules that the child is deemed to act without guilt, which means that the child cannot be prosecuted and punished under the German Criminal Code, regardless of the specific act in question.

If the offender, at the time of the act, has reached the age of 14 but not yet 18 years, i.e. is regarded as a “juvenile” in the terminology of German criminal law, the conduct is punishable under the conditions of general criminal law, see question 5 (sections 174 et seq.; for example, section 176 subsection 1 of the German Criminal Code, if the alleged victim is below the age of 14 years). The criminal proceedings, however, will be held under the specific provisions of the Youth Courts Act, which specifically applies to “juveniles”, see section 1 subsections 1 and 2 of the Youth Courts Act. Furthermore, the Youth Courts Act determines different penalties and sanctions for juveniles, such as supervisory measures or disciplinary measures, see sections 5 et seq. of the Youth Courts Act. The general provisions of the German Criminal Code concerning the penalties for the different offences do not apply.

See Appendix / *Voir l'Annexe*

### *Greece / Grèce*

No reply available / *Pas de réponse disponible*

### *Hungary / Hongrie*

The Hungarian Criminal Code does not specifically refer to “children” when its provisions reflect on the relationship or influence between the persons engaging in sexual activities. However, since all offences might be committed by persons below the age of 18 years, the qualifying circumstances of being under the supervision or care of another person or being under his/her power or influence also includes cases when the offences are committed by minors.

### *Iceland / Islande*

Children under the age of 15 are not deemed responsible for their own actions, when it comes to criminal behavior. According to instructions of the Director of Public Prosecution, which are given to the police and prosecution authorities, the police should investigate cases of perpetrators under the age of 15 to reveal the extent of the criminal activity, make sure that no others took part in the behavior, to be able to find and give back items that were the object of the crime and to make sure that the welfare of all children who were either perpetrators or victims of the crime is secured. According to art. 20 of the child welfare act no. 80/2002, the police is obliged to co-operate with child protective services and provide assistance with the

resolution of cases.

#### *Ireland / Irlande*

The Criminal Law (Sexual Offences) Act 2017 recognises the reality of under age, consensual, peer relationships through the introduction of a 'proximity of age' defence. Under this provision, a person charged with an offence of engaging in a sexual act with a person between the ages of 15 and 17 years can use consent as a defence if the person charged is younger or is less than two years older.

The child against which the alleged crime is said to have occurred must be over 15 years of age.

The accused child must not be in authority over the child against which the alleged crime is said to have occurred.

The relationship must not be intimidatory or exploitative.

Proceedings against the accused child shall be brought by or with the consent of the Director of Public Prosecutions.

#### *Italy / Italie*

Art.609 quater penal code provides for cases of sexual relations with minors in the case of consent.

#### *Latvia / Lettonie*

According to Section 11 of the Criminal law, person, who has attained fourteen years of age may be held criminally liable. Therefore, if a child who has reached the age of 14 commits a crime provided for in the Criminal Law against another child, the person will be held criminally liable. For example, according to Section 159 of the Criminal law person, who has attained fourteen years of age can be held liable for committing an act of sexual intercourse against another child taking advantage of the state of helplessness of a victim or against the will of the victim by means of violence, threats or using trust, authority or exerting other influence over the victim (rape).

#### *Liechtenstein*

No reply available / *Pas de réponse disponible*

### Lithuania / Lituanie

See answers to previous questions.

In general, person who correspond to the age provided for in the Criminal Law (for crimes under Articles 149 (3) and (4) and Article 150 (3) and (4) of the CC - from 14 years of age, for others - from 16 years of age) and who have committed sexual offenses are prosecuted.

### Luxembourg

Les dispositions relatives au viol et à l'attentat à la pudeur s'appliquent aux auteurs tant majeurs que mineurs. Néanmoins, à l'heure actuelle, un mineur ayant commis une infraction pénale est jugé d'après les dispositions de la loi du 10 août 1992 relative à la protection de la jeunesse.

Selon un nouveau projet de loi portant introduction d'un droit pénal pour mineurs, projet qui a été soumis à la Chambre des Députés en avril 2022, l'âge minimum de la responsabilité pénale sera fixé à 14 ans. Les mineurs n'ayant pas atteint cet âge, ne pourront être tenus pénalement responsables.

Les mineurs ayant atteint l'âge de 14 ans seront responsables de toutes les infractions prévues dans le Code pénal luxembourgeois, à savoir des dispositions applicables en matière d'abus sexuel.

### Malta / Malte

Reference can be made to the amendment introduced in 2021 which speaks of peers, who may, by lack of definition of age, be both children, namely article 204 C (3) 'When the act is consensual between peers who are close in age and in the level of development and provided that the acts do not involve physical and, or psychological abuse, the punishment shall be decreased by one or two degrees'. There is no specific reference to position of influence or trust however.

### Republic of Moldova / République de Moldova

Children from 14 are also liable in case of sexual activities by use of constraint and in case of consensual sexual activities which do not fall under the conditions of excluding criminal liability, mentioned at Q3.

### Monaco

Les articles 262 (viol) et 263 (atteinte sexuelle avec violence) du Code pénal ne distinguent pas suivant l'âge de l'auteur de l'infraction. Ainsi, l'atteinte sexuelle avec violence et le viol constituent un crime, que l'auteur soit majeur ou mineur.

On rappellera à cet égard que l'article 262 définit le viol comme « *tout acte de pénétration*

*sexuelle, de quelque nature qu'il soit et par quelque moyen que ce soit, commis sur la personne d'autrui, par violence, contrainte, menace ou surprise. » et comme « tout acte de pénétration sexuelle, de quelque nature qu'il soit et par quelque moyen que ce soit, commis sur un mineur par :*

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

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

Le projet de loi susvisé tend à définir le viol de la manière suivante :

*« Le viol se définit comme tout acte de pénétration sexuelle, de quelque nature qu'il soit et par quelque moyen que ce soit, imposé à la personne d'autrui sans son consentement.*

*Il n'y a pas consentement notamment lorsque l'acte de pénétration sexuelle prévue au premier alinéa a été imposé par violence, contrainte, menace ou surprise.*

*La contrainte prévue à l'alinéa précédent peut être physique ou morale.*

*Lorsque les faits sont commis sur la personne d'un mineur, la contrainte morale mentionnée à l'alinéa précédent ou la surprise mentionnée au premier alinéa peuvent résulter de la différence d'âge existant entre la victime et l'auteur des faits et de l'autorité de droit ou de fait que celui-ci exerce sur la victime, cette autorité de fait pouvant être caractérisée par une différence d'âge significative entre la victime mineure et l'auteur majeur.*

*Lorsque les faits sont commis sur la personne d'un mineur au-dessous de l'âge de seize ans accomplis, la contrainte morale ou la surprise peuvent être caractérisées par l'abus de la vulnérabilité de la victime ne disposant pas du discernement nécessaire pour ces actes.*

*Le viol est constitué lorsqu'il a été imposé à la victime dans les circonstances prévues par les précédents alinéas, quelle que soit la nature des relations existant ou ayant existé entre l'agresseur et sa victime, y compris s'ils sont unis par les liens du mariage ».*

De plus, on rappellera que l'article 263 du Code pénal réprime tout « attentat à la pudeur, consommé ou tenté avec violence, contre un individu de l'un ou l'autre sexe ».

Le projet de loi susvisé tend à définir l'agression sexuelle de la manière suivante :

*« L'agression sexuelle se définit comme toute atteinte sexuelle commise, sans acte de pénétration sexuelle, sur la personne d'autrui sans son consentement.*

*Il n'y a pas consentement notamment lorsque l'atteinte sexuelle prévue au premier alinéa a été imposé par violence, contrainte, menace ou surprise.*

*La contrainte prévue à l'alinéa précédent peut être physique ou morale.*

*Lorsque les faits sont commis sur la personne d'un mineur, la contrainte morale mentionnée à l'alinéa précédent ou la surprise mentionnée au premier alinéa peuvent résulter de la différence d'âge existant entre la victime et l'auteur des faits et de l'autorité de droit ou de fait que celui-ci exerce sur la victime, cette autorité de fait pouvant être*

*caractérisée par une différence d'âge significative entre la victime mineure et l'auteur majeur.*

*Lorsque les faits sont commis sur la personne d'un mineur au-dessous de l'âge de seize ans accomplis, la contrainte morale ou la surprise peuvent être caractérisées par l'abus de la vulnérabilité de la victime ne disposant pas du discernement nécessaire pour ces actes.*

*L'agression sexuelle est constituée lorsqu'elle a été imposée à la victime dans les circonstances prévues par les précédents alinéas, quelle que soit la nature des relations existant ou ayant existé entre l'agresseur et sa victime, y compris s'ils sont unis par les liens du mariage ».*

Par ailleurs, en la matière l'article 9 de la loi n° 740 du 25 mars 1963 relative aux mineurs délinquants prévoit :

*« Si les faits sont établis à la charge du mineur, la juridiction saisie pourra prendre l'une des décisions suivantes :*

*\* 1° Faire adresser au mineur, par le président, une simple admonestation*

*\* 2° Rendre le mineur à ses parents ou la personne qui en avait la garde ou encore à une personne indiquée dans la décision, soit purement et simplement, soit sous le régime de la liberté surveillée, jusqu'à ce qu'il ait atteint l'âge de la majorité ou pour une durée moindre.*

*\* 3° Ordonner, dans les mêmes conditions de temps, le placement du mineur dans un établissement monégasque ou français, habilité à recevoir des délinquants mineurs ;*

*\* 4° Prononcer contre le mineur, s'il est âgé de treize ans au moins, la peine prévue par le texte pénal réprimant l'infraction, compte tenu tant des nécessités de la répression que des possibilités de relèvement moral et de rééducation du coupable ».*

### [Montenegro / Monténégro](#)

In the Criminal Code of Montenegro, in Article 206, which refers to adultery with a child, the perpetrator will not be punished if there is no significant difference between him and the child in their mental and physical maturity.

### [Netherlands / Pays-Bas](#)

As mentioned above, sexual activities with minors between 12-16 years of age are punishable, unless there is an equal situation between peers.

### [North Macedonia / Macédoine du Nord](#)

No reply available / *Pas de réponse disponible*

## Norway / *Norvège*

To be liable for punishment the offender must be accountable at the time of the act. The offender is not accountable if, at the time of the act, he/she is under 15 years old, cf. section 20 of the Norwegian Penal Code.

In accordance with Section 295, a penalty of imprisonment for a term not exceeding six years shall be applied to any person who obtains sexual activity for himself/herself or another person, or makes a person perform acts corresponding to sexual activity on himself/herself by a) abusing a position, dependent relationship or relationship of trust, or b) exploiting a person's mental illness or mental disability provided the conduct does not fall within the scope of section 291, or c) exploiting a person under 18 years of age in a particularly vulnerable life situation. A child over the age of 15 may in principle be criminally liable if he/she violates this provision. The same applies to other sexual offences.

See also the answer to question 3.

## Poland / *Pologne*

In accordance with Polish law, a minor is a person who has not come of age (in principle, younger than 18<sup>7</sup>).

A person younger than 18 may be held liable under the provisions of (a) the Criminal Code or (b) the Act on Proceedings in the Cases of Minors.

**RE (a)** Persons having committed a criminal offence when 17 or older are held liable under the Criminal Code (Article 10 § 1 of the Criminal Code). However, a minor at least 15 years old who commits the offence set forth in section 3 or section 4 of Article 197<sup>8</sup> of the Criminal Code may be held liable under the Criminal Code if the circumstances of the case, the perpetrator's maturity ('state of development') and personal characteristics and circumstances support such a conclusion, especially if the educational or reform measures applied so far have proven futile. (Article 10 § 2 of the Criminal Code.)

A person aged 17 or older may be held liable for the offences under Article 198 or Article 199 of the Criminal Code.

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<sup>7</sup> Art. 10 Civil Code

§ 1. An adult is a person who has attained eighteen years of age.

§ 2. A minor becomes adult on marriage. He does not lose that status if the marriage has been annulled.

<sup>8</sup> Article 197 § 1 Who by violence, unlawful threat or deceit induces another to sexual intercourse, shall be liable to 2 to 12 years' imprisonment.

§ 2 A perpetrator who, in the manner set out in section 1, induces another to submit to or perform another sexual activity, shall be liable to 6 months to 8 years' imprisonment.

§ 3 A perpetrator who commits rape:

- (1) jointly with another;
- (2) against a minor below 15 years of age;
- (3) against a descendant, ascendant, adoptee, adopter or sibling;

shall be liable to no less than 3 years' imprisonment.

§ 4 A perpetrator of the offence set forth in sections 1 to 3 who acts with particular cruelty shall be liable to no less than 5 years' imprisonment.

Article 199 § 1. Whoever, by abusing a relationship of dependence or the critical situation of another, induces such other to sexual intercourse or to submit to or perform another sexual activity, shall be liable to up to 3 years' imprisonment.

§ 2 If the offence set forth in section 1 is committed against a minor, the perpetrator shall be liable to 3 months to 5 years' imprisonment.

§ 3 Whoever, by abuse of trust or by conferring or promising a material or personal benefit, engages in sexual intercourse with a minor or in another sexual activity with regard to such person or induces such person to submit to or perform such activity, shall be liable to the penalty set forth in section 2.

Only a person on whom the victim is dependent can become the perpetrator of the Article 199 § 1 offence in respect of the abuse of a dependent relationship — this part is an individual offence (*delictum proprium*) — but in respect of the abuse of a critical situation it can be committed by anyone, i.e. it is a general offence (*delictum commune*).

The defined target (*obiectum sceleris*) and victim of the Article 199 § 2 offence is a minor (i.e. person younger than 18) who is in a relationship of dependence with the perpetrator or in a critical situation. The defined target and victim in Article 199 § 3, by contrast, is a minor (again, person younger than 18) who is putting trust in the perpetrator, or — where a benefit is conferred or promised in exchange for sex — a minor having no particular relationship with the perpetrator. In each of these examples of reprehensible conduct both the adult perpetrator and the minor victim need to be capable of making informed decisions concerning their respective sexual spheres. Considering that Article 200 § 1 of the Criminal Code confers absolute protection on minors younger than 15, with no regard to the factual situation or relationship with the perpetrator, sections 2 to 3 of Article 199 criminalize the defined conduct when its target is a minor aged 15 or older but younger than 18.<sup>9</sup>

RE (b) Polish law includes the Act of 26 October 1982 on Proceedings in the Cases of Minors (Dz.U.2018.969). Its provisions are applicable to:

- (1) prevention and counteraction of the demoralization of persons younger than 18;
- (2) proceedings in cases of punishable acts<sup>10</sup> — for persons committing the latter while 13 or older but younger than 17;

A punishable act is a prohibited by statute, including without limitation as an offence defined in the Criminal Code. Hence, a person at least 13 years old but younger than 17 will be held liable under the Act on Proceedings in the Cases of Minors for any conduct defined as a criminal offence by the Criminal Code. The elements are identical to those of a criminal offence. However, because criminal guilt cannot be attributed to a person younger than 17, such a person can only be held liable for a punishable act.

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<sup>9</sup> Konarska-Wrzosek Violetta (ed.), *ibidem*

<sup>10</sup> A punishable act is an act criminalized by statute, including without limitation as an offence defined in the Criminal Code. Accordingly, a person younger than 17 may be held liable under the Act on Proceedings in the Cases of Minors for any conduct defined as a criminal offence by the Criminal Code. The elements of a punishable act are identical to those of a criminal offence, but because criminal guilt cannot be attributed to a person younger than 17, such a person will be held liable for a punishable act.



With regard to a person younger than 13 and having engaged in conduct corresponding with the elements of a crime according to the Criminal Code, the law provides for the possibility of demoralization proceedings.

When proceeding under the Act on Proceedings in the Cases of Minors, the family court may apply the following educational measures:

- (1) admonition;
- (2) imposition of a specific obligation and especially to repair the harm done, perform specific work for or render specific benefits to the victim or the local community, to apologize to the victim, to take up education or work, to participate in suitable educational or therapeutic activities, to refrain from attending certain circles or places, or to quit alcohol or other substance used for intoxication;
- (3) impose accountable supervision by the parents or the guardian;
- (4) impose supervision by a youth organization or other social organization or employing establishment or a trustworthy person vouching for the minor;
- (5) impose supervision by a court-appointed guardian;
- (6) refer the minor to a guardianship centre or to a social organization or institution engaging in educational or therapeutic work with minors, following introduction to such organization or institution;
- (7) impose a vehicle-driving ban;
- (8) order the forfeiture of things obtained in connection with the commission of a punishable act;
- (9) order placement in a youth educational centre or professional foster family with completed preparatory training for the care of a minor;
- (10) impose other measures reserved by this Act to the competence of the family court, as well as measures provided for in the Family and Guardianship Code, with the exclusion of placement in a related foster family, non-professional foster family, family-run orphanage, day-care facility, caretaking-educational facility or regional caretaking-therapeutic facility.

Moreover, placement in a reform facility may be imposed as a corrective measure on a minor having committed a punishable act constituting a criminal offence (or fiscal-criminal offence), if supported by the minor's high degree of demoralization, the circumstances and the nature of the act, especially where other educational measures have proven futile or give no promise of successful rehabilitation.

Health-care measures may also be imposed on a minor in the case of a finding of mental impairment or illness or other disturbance of mental activities, or the abuse of alcohol or other substances for the purpose of intoxication. Health-care measures include placement in a psychiatric ward or other appropriate health-care establishment, or in a care home (if the minor suffers from a deep mental impairment and requires only care).

## Portugal

In Portugal, the protection of children starts in Portugal with the promotion and protection

system.<sup>11</sup>

When there is a need to educate a young person with antisocial behaviour, the tutelary educational system is applied to minors between the ages of 12 and 16, that have committed acts qualified as a crime.<sup>12</sup>

It gives rise to a guardianship process, as well as the application of a measure that aims to educate the minor to the law and to insert him/her, in a dignified and responsible manner, into the community life. The possible tutelary educational measures are: admonition, deprivation of the right to drive, reparations to the offended party, economic benefits or tasks for the community, imposition of rules of conduct, imposition of obligations, attendance at training programs, educational monitoring and, finally, internment, which may be open, semi-open or closed, and is carried out in an educational centre.

Closed confinement is only applicable to minors who are 14 years of age or older on the date the measure is applied. It requires that the minor has committed an act qualified as a crime punishable with a maximum sentence of imprisonment of more than 5 years, or two or more crimes against persons punishable by imprisonment for more than 3 years.

As of the age of 16, by application of article 9 of the Criminal Code, (*special provisions for juveniles*), for those over the age of 16 and under the age of 21, the rules set forth in special legislation apply, with emphasis on Decree Law no. 401/82, of September 23, which establishes the regime applicable in criminal matters to juveniles between the ages of 16 and 21.

### Romania / Roumanie

If a child is of age of criminal responsibility, than he/she will be hold responsible for the offence committed, except for the case mentioned above, when the age difference is no more than 3 years, or the cases when the text expressly sanction only the act committed by an adult.

#### Extract of legal provisions:

Law 286/2009 – the Criminal code of Romania

#### ARTICLE 113

##### Limits of criminal liability

- (1) The minor who has not reached the age of 14 is not criminally liable.
- (2) The minor who is between 14 and 16 years old is criminally liable only if it is proved that he committed the deed with discernment.
- (3) The minor who has reached the age of 16 is criminally liable according to the law.

#### Article 218

##### Rape

- (1) Sexual intercourse, oral or anal intercourse with a person, committed by coercion, inability to defend himself or to express his will or taking advantage of this condition, shall be punished

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<sup>11</sup> Law 147/99, 1 September at [Lei n.º 147/99, de 01 de Setembro \(pgdlisboa.pt\)](#)

<sup>12</sup> Law 166/99, 14 September at [Lei n.º 166/99, de 14 de Setembro \(pgdlisboa.pt\)](#)

by imprisonment from 5 to 10 years, and prohibition of the exercise of certain rights.

(2) With the same punishment shall be sanctioned any other acts of vaginal or anal penetration committed under the conditions of par. (1).

(3) The penalty is imprisonment from 7 to 12 years and the prohibition of the exercise of certain rights when:

- a) the victim is in the care, protection, education, guarding or treatment of the perpetrator;
- b) the deed was committed by a family member or by a person living with the victim;
- c) the victim is a minor;
- d) the deed was committed for the purpose of producing pornographic materials;
- e) the deed resulted in bodily injury or endangered the life of the victim in any other way;
- f) the deed was committed by two or more persons together.

(3 ^ 1) The punishment is imprisonment from 7 to 15 years and the prohibition of exercising certain rights when the deeds provided in par. (1) and (2) were committed against a minor in the circumstances provided in par. (3) lit. a), b) and d) -f) or by a person who has previously committed an offense against the sexual freedom and integrity of a minor, an offense of child pornography or pimping against a minor.

(4) If the deed resulted in the death of the victim, the punishment is imprisonment from 9 to 18 years and the prohibition of exercising certain rights.

(5) The criminal action for the deed provided in par. (1) and para. (2) shall be initiated upon the prior complaint of the injured person.

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

#### Article 219

##### Sexual assault

(1) The act of sexual nature, other than those provided in art. 218, with a person, committed by coercion, making it impossible to defend or express his will or taking advantage of this condition, is punishable by imprisonment from 2 to 7 years and a ban on exercising certain rights.

(2) The penalty is imprisonment from 3 to 10 years and the prohibition of the exercise of certain rights when:

- a) the victim is in the care, protection, education, guarding or treatment of the perpetrator;
- b) the deed was committed by a family member or by a person living with the victim;
- c) the victim is a minor;
- d) the deed was committed for the purpose of producing pornographic materials;
- e) the deed resulted in bodily injury or endangered the life of the victim in any other way;
- f) the deed was committed by two or more persons together.

(2 ^ 1) The punishment is imprisonment from 5 to 12 years and the prohibition of exercising certain rights when the deeds provided in par. (1) were committed against a minor in the circumstances provided in par. (2) lit. a), b) and d) -f) or by a person who has previously committed an offense against the sexual freedom and integrity of a minor, an offense of child pornography or pimping against a minor.

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

(4) If the acts of sexual aggression were preceded or followed by the commission of the sexual acts provided in art. 218 para. (1) and para. (2), the deed constitutes rape.

(5) The criminal action for the deed provided in par. (1) shall be initiated upon the prior complaint of the injured person.

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

#### ARTICLE 220

##### Sexual act with a minor

(1) Sexual intercourse, oral or anal sexual intercourse, as well as any other acts of vaginal or anal penetration committed with a minor aged between 14 and 16 shall be punished by imprisonment from one to 5 years.

(2) The deed provided in par. (1), committed on a minor who has not reached the age of 14, shall be punished by imprisonment from 2 to 9 years and the prohibition of the exercise of certain rights.

(3) The deed provided in par. (1), committed by an adult with a minor aged between 16 and 18, shall be punished by imprisonment from 2 to 9 years and the prohibition of the exercise of certain rights if:

- a) the minor is a family member of the adult;
- b) the minor is in the care, protection, education, guarding or treatment of the perpetrator or he has abused his recognized position of trust or authority over the minor or his manifestly vulnerable situation, due to a mental or physical disability, a situation of dependence, a state of physical or mental incapacity or other cause;
- c) the deed endangered the life of the minor;
- d) was committed for the purpose of producing pornographic materials.

(4) The deed provided in par. (1) shall be punished by imprisonment from 3 to 10 years and the prohibition of the exercise of certain rights when:

- a) the deed was committed by a family member of the minor or by a person living with him;
- b) the minor is in the care, protection, education, guarding or treatment of the perpetrator or he has abused his recognized position of trust or authority over the minor or his manifestly vulnerable situation, due to a mental or physical disability, a situation of dependence, a state of physical or mental incapacity or other cause;
- c) the deed endangered the life of the minor;
- d) was committed for the purpose of producing pornographic materials;
- e) the perpetrator has reached the age of 18.

(5) The deed provided in par. (2) shall be punished by imprisonment from 5 to 12 years and the prohibition of the exercise of certain rights when:

- a) the deed was committed by a family member of the minor or by a person living with him;
- b) the minor is in the care, protection, education, guarding or treatment of the perpetrator or he has abused his recognized position of trust or authority over the minor or his manifestly vulnerable situation, due to a mental or physical disability, a situation of dependence, a state of physical or mental incapacity or other cause;
- c) the deed endangered the life of the minor;
- d) was committed for the purpose of producing pornographic materials;
- e) the perpetrator has reached the age of 18.

(6) The facts provided in par. (1) and (2), as well as at par. (4) lit. e) is not sanctioned if the age difference does not exceed 3 years.

(7) The attempt to the offenses provided in par. (1) - (5) shall be punished.

#### ARTICLE 221

##### Sexual corruption of minors

(1) Committing an act of a sexual nature, other than the one provided in art. 220, against a

minor who has not reached the age of 14, as well as the determination of the minor to bear or perform such an act shall be punished by imprisonment from one to 5 years.

(2) The punishment is imprisonment from 2 to 8 years and the prohibition of exercising certain rights, when:

- a) the deed was committed by a family member of the minor or by a person living with him;
- b) the minor is in the care, protection, education, guarding or treatment of the perpetrator or he has abused his recognized position of trust or authority over the minor or his manifestly vulnerable situation, due to a mental or physical disability, a situation of dependence, a state of physical or mental incapacity or other cause;
- c) the deed was committed for the purpose of producing pornographic materials;
- d) the deed endangered the life of the minor.

(2 ^ 1) The deed provided in par. (1), committed by an adult with a minor aged between 14 and 18, shall be punished by imprisonment from two months to 3 years and the prohibition of the exercise of certain rights if:

- a) the minor is a family member of the adult;
- b) the minor is in the care, protection, education, guarding or treatment of the perpetrator or he has abused his recognized position of trust or authority over the minor or his manifestly vulnerable situation, due to a mental or physical disability, a situation of dependence, a state of physical or mental incapacity or other cause;
- c) the deed endangered the life of the minor;
- d) was committed for the purpose of producing pornographic materials.

(3) The sexual act of any nature committed by an adult in the presence of a minor who has not reached the age of 14 shall be punished by imprisonment from 6 months to 3 years or by a fine.

(4) The determination by an adult of a minor who has not reached the age of 14 to attend the commission of acts of an exhibitionist character or of performances or performances in which sexual acts of any nature are committed, as well as its provision of pornographic materials are punishable by imprisonment from 3 months to 2 years or a fine.

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

(6) The attempt at the offenses provided in par. (1), (2) and (2 ^ 1) shall be punished.

#### ARTICLE 374

##### Child pornography

(1) The production, possession, procurement, storage, display, promotion, distribution, as well as the provision, in any way, of pornographic materials with minors shall be punished by imprisonment from one year to 5 years.

(1^1) With the punishment provided in par. (1) the urging or recruiting of a minor for the purpose of his participation in a pornographic show, obtaining benefits from such a show in which minors participate or the exploitation of a minor in any other way for the realization of pornographic shows shall also be punished.

(1^2) Watching pornographic shows in which minors participate is punishable by imprisonment from 3 months to 3 years or a fine.

(2) If the facts provided in par. (1) were committed through a computer system or other means of storing computer data, the penalty is imprisonment from 2 to 7 years.

(3) Access, without right, of pornographic materials with minors, through computer systems or other electronic means of communication, shall be punished by imprisonment from

3 months to 3 years or by a fine.

(3<sup>1</sup>) If the facts provided in par. (1), (1<sup>1</sup>), (1<sup>2</sup>) and (2) were committed in the following circumstances:

- a) by a family member or by a person living with the victim;
- b) by a person in whose care, protection, education, guard or treatment the minor was or by a person who abused his recognized position of trust or authority over the minor;
- c) the deed endangered the life of the minor, the special limits of the punishments are increased by one third;
- d) by a person who has previously committed a crime against sexual freedom and integrity against a minor, a crime of child pornography or pimping against a minor.

(4) Pornographic material with minors means any material that presents a minor or an adult as a minor, having an explicit sexual behaviour or which, although it does not present a real person, credibly simulates a minor having such behaviour, as well as any representation of a child's genitals for sexual purposes.

(4<sup>1</sup>) A pornographic show means the live exposure addressed to an audience, including information and communication technology, of a child involved in explicit sexual behaviour or of a child's genitals, for sexual purposes.

#### *Russian Federation / Fédération de Russie*

No reply available / *Pas de réponse disponible*

#### *San Marino / Saint-Marin*

No reply available / *Pas de réponse disponible*

#### *Serbia / Serbie*

Such fact isn't reflected in our Law. Art. 181 CC says (1) Whoever by abuse of position induces to sexual intercourse or an equal act a person who is in a subordinate or dependant position shall be punished with imprisonment of three months to three years. Such prescription can be applied on the minors also.

In Article 181 paragraph 2 of the Criminal code it is stated that a „Teacher, tutor, guardian, adoptive parent, stepfather or other person who through abuse of his position or authority has sexual intercourse or commits an act of equal magnitude a juvenile entrusted to him for learning, tutoring, guardianship or care, shall be punished...”. The underlined part of the paragraph suggest that it could be any other person who has a position of authority (influence) including a child.

#### *Slovak Republic / République slovaque*

Pursuant to Section 22 (2) of the Criminal Code for the criminal offense of sexual abuse pursuant to Section 201 is not criminally liable who, at the time of committing the offense, has not reached the age of fifteen. As a child is considered to be a person under the age of eighteen if he or she has not yet reached the age of majority, the crime of sexual abuse can

also be committed by a child. The Criminal Code does not contain a more specific definition in this context.

### *Slovenia / Slovénie*

In such situations general rules of criminal liability apply. A child can be liable for a criminal offence if he or she has 14 years or more when committing it.

### *Spain / Espagne*

There is no specific provision for children. When the perpetrator takes advantage of his or her position of influence or trust, it is sanctioned in any case with a more severe penalty. Bear in mind that a minor under 14 years is not liable under Spanish criminal law.

### *Sweden / Suède*

Please refer to the answer to question 5 above.

### *Switzerland / Suisse*

*English is not an official language of the Swiss Confederation. The translation of the cited articles of the Swiss criminal code are provided for information purposes only and have no legal force. Link to the English text: [SR 311.0 - Swiss Criminal Code of 21 December 1937 \(admin.ch\)](#)*

*Link to the official law text in French: [RS 311.0 - Code pénal suisse du 21 décembre 1937 \(admin.ch\)](#)*

Art. 188 CC might be applicable in such cases (see question 2). The situation where a child commits a sexual act to another child is further regulated by article 187 CC: if both participants are under the age of 16, and if their age difference amounts to more than three years, the older participant is liable under art. 187 CC. However, the norm does not apply to the situation, in which a child below the age of 16 commits a sexual act against another child under the age of 16 when their age difference is less than 3 years. In these cases, other provisions regarding offences against sexual integrity might apply (for example indecent assault or rape, art. 189ff. CC).

### *Tunisia / Tunisie*

Les dispositions de l'article 227 du code pénal ne distinguent pas entre l'agresseur enfant ou adulte. Ainsi si l'acte commis sur un enfant moins de 16 ans accompli ou sans consentement, l'enfant agresseur sera puni, bien évidemment s'il est âgé de plus de 13 ans (âge de responsabilité pénale). L'absence de consentement dans cet acte peut être apprécié à la lumière de la contrainte que l'enfant peut exercer sur la victime qu'elle soit contrainte physique ou morale telle que la position de confiance comme expliqué dans la réponse 6.

Il a noté que dans le cas de l'existence de la responsabilité pénale d'un enfant pour le viol, les dispositions du code de protection de l'enfant permettant de ne pas emprisonner les enfants

en conflits avec la loi, peuvent être applicable par le tribunal de l'enfant en lien avec les faits commis.

Par contre, l'article 227 bis du même code, considère si un enfant a fait subir volontairement l'acte sexuel à un enfant âgés entre 16 et 18 ans, il est considéré comme en enfant en danger et il est pris en charge en appliquant les mesures de l'article 59 du code de protection de l'enfant.

### Turkey / Turquie

According to the nature of the substantial case, evaluation is made within the framework of the following provisions of the Turkish Criminal Code.

"Sexual abuse of children

Article 103

(1) Any person who sexually abuses a minor shall be sentenced to a penalty of imprisonment for a term of eight to fifteen years. Where the sexual abuse has remained at the level of molestation, the person shall be punished by a penalty of imprisonment for a term of three to eight years. Where the victim has not completed twelve years of age, the penalty to be imposed shall not be less than ten years in the case of abuse and not less than five years in the case of molestation. Where the offender of the offence which remained at the level of molestation is also a minor, conducting an investigation and prosecution shall be subject to a complaint by the victim, a parent or a guardian. Sexual abuse means:

- a) any act of a sexual nature against a minor who has not completed fifteen years of age or, though having completed fifteen years, lacks the competence to understand the legal meaning and consequences of such acts;
- b) sexual acts conducted against any other minor with the use of force, threat, deception or any other method which affects the willingness of the child.

(2) Where the sexual abuse occurs as a result of the insertion of an organ or other object into the body, a penalty of imprisonment for a term of not less than sixteen years shall be imposed. Where the victim has not completed twelve years of age, the penalty to be imposed shall not be less than eighteen years.

(3) Where the offence is committed:

- a. with the cooperation of more than one person;
- b. by taking advantage of places where people are compelled to live collectively;
- c. against a person of blood relationship or kinship by marriage, including third-degree blood relationship, or by step-mother, step-father, step-sibling or adoptive parent;
- d. by a guardian, tutor, trainer, teacher, nanny, a protective family or by a health service provider, or by persons responsible for care or observation;
- e. by misusing the influence derived from a position in a public office or a service relationship;

the penalties imposed in accordance with the paragraphs above shall be increased by one-half.

(4) Where the sexual assault is committed against a minor described in paragraph one (a) by force or threat, or against a minor described in paragraph one (b) by using weapons, the penalty to be imposed in accordance with the above paragraphs shall be increased by one-half.

(5) Where any force or violence, used with the aim of sexual assault, leads to any



aggravated injury on account of its consequences, the provisions of intentional injury shall be applied as well.

(6) Where the offence leads the victim to enter a vegetative state, or die, a penalty of aggravated life imprisonment shall be imposed.

“Sexual intercourse with a minor

Article 104

(1) Any person who enters, without any force, threat or deceit, into sexual intercourse with a minor who has completed fifteen years of age shall be sentenced to a penalty of imprisonment for a term of two to five years, upon complaint.

(2) Where the offence is committed by a person, who is prohibited to marry the victim, the offender shall be punished by a sentence of imprisonment for a term of ten to fifteen years, without any preconditions of filing of a complaint.

(3) Where the offence is committed by the prospective adoptive parent of the minor, during the pre-adoptive placement of the minor, or when a person assumed the protection, care and custody of the minor or within the context of a protective family, the offender shall be punished under paragraph two above, whether a complaint has been filed with the court or not.”

## Ukraine

Answering this question directly - NO.

But if we talk about the criminal responsibility of the child, then the Article 22 of the Criminal Code of Ukraine defines the age from which criminal responsibility can arise.

The first part of the Article 22 defines that “Persons who have reached the age of sixteen before committing a criminal offense are subject to criminal liability”.

Part 2 of the Article 22, among other things, states that “Persons between the ages of fourteen and sixteen who have committed criminal offenses are subject only to... rape (Article 152), sexual violence (Article 153)...”

## United Kingdom / *Royaume-Uni*

Any sexual activity with someone under the age of 16 is a criminal offence, regardless of the age of the perpetrator.

## Appendix / Annexe

### Germany / Allemagne

#### **1. Offences against sexual self-determination (section 174 pp of the German Criminal Code)**

##### **Section 174**

##### **Sexual abuse of persons in one's charge**

(1) Whoever performs sexual acts

1. on a person under 16 years of age who is entrusted to them for upbringing, education or care,
2. on a person under 18 years of age who is entrusted to them for upbringing, education or care, or who is their subordinate within a service or employment relationship, by abusing the dependence associated with the educational, care, service or employment relationship or
3. on a person under 18 years of age who is their biological or adopted descendant or the biological or adopted descendant of their spouse, life partner or a person with whom they live in a quasi-marital relationship or quasi-life partnership

or has the person in their charge perform sexual acts on them incurs a penalty of imprisonment for a term of between three months and five years.

(2) Whoever is entrusted with the upbringing, education or care of persons under 18 years of age in an institution specified for this purpose and who

1. performs sexual acts on a person under 16 years of age who has a legal relationship with the institution which serves this person's upbringing, education or care, or who has that person perform sexual acts on them or
2. exploits their position in order to perform sexual acts on a person under 18 years of age who has a legal relationship with the institution which serves this person's upbringing, education or care, or who has that person perform sexual acts on them

incurs a penalty of imprisonment for a term of between three months and five years.

(3) Whoever, under the conditions of subsection (1) or (2),

1. performs sexual acts in the presence of the person in their charge or
2. causes the person in their charge to perform sexual acts in their presence

for the purpose of their own sexual arousal or that of the person in their charge incurs a penalty of imprisonment for a term not exceeding three years or a fine.

(4) The attempt is punishable.

(5) In the cases under subsection (1) no. 1, subsection (2) no. 1 or subsection (3) in conjunction with subsection (1) no. 1 or with subsection (2) no. 1, the court may dispense with imposing a penalty pursuant to this provision if the wrongfulness of the act is minor.

**Section 176****Sexual abuse of children**

(1) Whoever performs sexual acts on a person under 14 years of age (child) or has the child perform sexual acts on them incurs a penalty of imprisonment for a term of between six months and 10 years.

(2) Whoever causes a child to perform sexual acts on a third person or has a third person perform sexual acts on the child incurs the same penalty.

(3) In especially serious cases, the penalty is imprisonment for a term of at least one year.

(4) Whoever

1. performs sexual acts in the presence of a child,
2. causes the child to perform sexual acts, unless the act is subject to a penalty under subsection (1) or subsection (2),
3. influences a child by way of material (section 11 (3)) or information and communication technologies
  - a) in order to cause the child to perform sexual acts on or in the presence of the offender or a third person or to have the offender or a third person perform sexual acts on the child or
  - b) in order to commit an offence under section 184b (1) no. 3 or under section 184b (3) or
4. influences a child by showing pornographic images or depictions, by playing pornographic audio recordings, making pornographic content available by way of information and communication technologies or pornographic speech

incurs a penalty of imprisonment for a term of between three months and five years.

(5) Whoever offers or promises to supply a child for an offence under subsections (1) to (4) or who arranges with another to commit such an offence incurs a penalty of imprisonment for a term of between three months and five years.

(6) The attempt is punishable; this does not apply to offences under subsection (4) nos. 3 and 4 and subsection (5).

**Section 176a****Aggravated sexual abuse of children**

(1) The sexual abuse of children in the cases under section 176 (1) and (2) incurs a penalty of imprisonment for a term of at least one year if the offender has been convicted of such an offence by final judgment within the previous five years.

(2) The sexual abuse of children in the cases under section 176 (1) and (2) incurs a penalty of imprisonment for a term of at least two years if

1. a person over 18 years of age has sexual intercourse with the child, or performs similar sexual acts on the child or has similar sexual acts performed on them by the child which involve penetration of the body,

2. the offence is committed jointly by more than one person or
3. the offender, by committing the offence, places the child at risk of serious damage to health or substantial impairment of his or her physical or emotional development.

(3) Whoever, in the cases under section 176 (1) to (3), (4) no. 1 or 2 or section 176 (6), acts as an offender or another party to an offence with the intention of making the act the subject of pornographic material (section 11 (3)) which is to be disseminated as per section 184b (1) or (2) incurs a penalty of imprisonment for a term of at least two years.

(4) In less serious cases under subsection (1), the penalty is imprisonment for a term of between three months and five years, in less serious cases under subsection (2) imprisonment for a term of between one year and 10 years.

(5) Whoever, in the cases under section 176 (1) to (3), seriously physically abuses the child or places the child in danger of death incurs a penalty of imprisonment for a term of at least five years.

(6) Any period during which the offender was detained in an institution by official order is not taken into account when calculating the time indicated in subsection (1). An offence resulting in a conviction abroad is equivalent, in the cases under subsection (1), to an offence resulting in a domestic conviction if under German criminal law it would have been an offence under section 176 (1) or (2).

## **Section 182**

### **Sexual abuse of juveniles**

(1) Whoever abuses a person under 18 years of age by taking advantage of a predicament by

1. performing sexual acts on that person or having said person perform sexual acts on them or
2. causing the person to perform sexual acts on a third person or to have sexual acts performed on them by a third person

incurs a penalty of imprisonment for a term not exceeding five years or a fine.

(2) A person over 18 years of age who abuses a person under 18 years of age by performing sexual acts on that person or having that person perform sexual acts on them for a consideration incurs the same penalty.

(3) A person over 21 years of age who abuses a person under 16 years of age by

1. performing sexual acts on that person or having that person perform sexual acts on them or
2. causing that person to perform sexual acts on a third person or to have a third person perform sexual acts on that person,

and thereby exploits the victim's lack of capacity for sexual self-determination, incurs a penalty of imprisonment for a term not exceeding three years or a fine.

(4) The attempt is punishable.

(5) In the cases under subsection (3), the offence is prosecuted only upon request, unless the prosecuting authority deems there to be a special public interest in prosecution which calls for ex officio intervention.

(6) In the cases under subsections (1) to (3), the court may dispense with imposing a penalty pursuant to these provisions if, having regard to the conduct of the person against whom the offence was committed, the wrongfulness of the act is minor.

## **Section 184h**

### **Definitions**

Within the meaning of this statute,

1. 'sexual acts' are only those which are of some relevance to the protected legal interest in question,
2. 'sexual acts in the presence of a third person' are only those which are performed by a person other than the person observing them.

## **2. Basic principles of criminal liability and limitation periods (section 19 and 78 pp of the German Criminal Code)**

### **Section 19**

#### **Lack of criminal responsibility of children**

Whoever is under 14 years of age at the time of the commission of the offence is deemed to act without guilt.

### **Section 78**

#### **Limitation period**

(1) The imposition of a penalty and the ordering of measures (section 11 (1) no. 8) are ruled out following expiry of the limitation period. Section 76a (2) remains unaffected.

(2) Serious criminal offences under section 211 (murder under specific aggravating circumstances) are not subject to the statute of limitations.

(3) Where prosecution is subject to the statute of limitations, the limitation period is

1. 30 years in the case of offences which are punishable by imprisonment for life,
2. 20 years in the case of offences which are punishable by a maximum sentence of imprisonment of more than 10 years,
3. 10 years in the case of offences which are punishable by a maximum sentence of imprisonment of more than five years but no more than 10 years,
4. five years in the case of offences which are punishable by a maximum sentence of imprisonment of more than one year but no more than five years,
5. three years in the case of other offences.

(4) The period is determined in accordance with the penalty threatened under the law which defines the elements of the offence realised, irrespective of aggravating or mitigating circumstances provided for in the provisions of the General Part or of aggravated or less serious cases under the Special Part.

## **Section 78b**

### **Stay of limitation**

(1) The limitation period is stayed

1. until the victim of an offence under sections 174 to 174c, 176 to 178, section 180 (3), sections 182, 225, 226a and 237 has reached the age of 30,
2. as long as the prosecution may, by law, not be commenced or continued; this does not apply if the only reason why the offence cannot be prosecuted is due to the absence of a request or authorisation to prosecute or a request to prosecute by a foreign state.

(2) If prosecution is not feasible because the offender is a Member of the Bundestag or of a legislative body of one of the *Länder*, the stay of the limitation period only commences upon expiry of the day on which

1. the public prosecution office or a police authority or police officer gains knowledge of the offence and of the offender's identity or
2. an offence is reported or a request to prosecute is filed against the offender (section 158 of the Code of Criminal Procedure).

(3) If a judgment has been delivered in the proceedings at first instance before the expiry of the limitation period, the limitation period does not expire before the time when the proceedings have been finally concluded.

(4) Where provision is made for an aggregate sentence of imprisonment of more than five years in especially serious cases and if the main proceedings have been opened before the regional court, the statute of limitations is stayed in the cases under section 78 (3) no. 4 from the time of the opening of the main proceedings, but no longer than for a period of five years; subsection (3) remains unaffected.

(5) If the offender is staying abroad and if the competent authority makes a formal request for extradition to that state, the limitation period is stayed as of the time the request is served on the foreign state

1. until the offender is surrendered to the German authorities,
2. until the offender leaves the territory of the requested foreign state by other means,
3. until the foreign state's denial of the request is served on the German authorities or
4. until the request is withdrawn.

If the date of service of the request on the foreign state cannot be ascertained, the request is deemed to have been served one month after having been sent or handed over to the foreign state, unless the requesting authority gains knowledge of the fact that the foreign state did not in fact receive the request or only at a later point in time. Sentence 1 does not apply to requests for extradition for which, in the requested state, a limitation period similar to section 83c of the Act on International Mutual Assistance in Criminal Matters (*Gesetz über die internationale Rechtshilfe in Strafsachen*) exists, either based on the Council Framework

Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1) or based on an international agreement.  
 (6) In the cases under section 78 (3) nos. 1 to 3, the limitation period is stayed from the time of the handing over of a person to the International Criminal Court or the executing state until that person's return to the German authorities or release from the International Criminal Court or the executing state.

### **Section 78c Interruption**

(1) The limitation period is interrupted by

1. the first examination of the accused, notice that a preliminary investigation has been initiated against the accused, or the order for such examination or notice of such examination,
2. any judicial examination of the accused or the order for a judicial examination of the accused,
3. any commissioning of an expert by the judge or public prosecutor if the accused has previously been examined or has been given notice of the launch of a preliminary investigation,
4. any judicial seizure or search warrant and judicial decisions upholding them,
5. a warrant of arrest, a provisional order for placement, an order to be brought before a judge for examination and judicial decisions upholding them,
6. the preferment of public charges,
7. the opening of the main proceedings,
8. the setting of each date for the main hearing,
9. a summary penalty order or another decision equivalent to a judgment,
10. the provisional judicial termination of the proceedings due to the indicted accused's absence, as well as any order of the judge or public prosecutor issued after such termination of the proceedings or in proceedings in absentia to ascertain the indicted accused's whereabouts or to secure evidence,
11. the provisional judicial termination of the proceedings due to the indicted accused being unfit to stand trial and any order of the judge or public prosecutor issued after such termination of the proceedings for the purposes of reviewing the indicted accused's fitness to stand trial or
12. any judicial request to undertake an investigative act abroad.

In preventive detention proceedings and independent proceedings, the limitation period is interrupted on account of those acts done to conduct the preventive detention proceedings and independent proceedings which correspond to those in sentence 1.

(2) In the case of a written order or decision being made, the limitation period is interrupted at the time at which the order or decision is signed. If the document is not immediately processed after signing, the time at which it is actually submitted for processing is decisive.

(3) After each interruption, the limitation period begins to run anew. However, the prosecution is barred by limitation once double the statutory limitation period has elapsed since the time indicated in section 78a and at least three years if the limitation period is

shorter than three years under special laws. Section 78b remains unaffected.

(4) The interruption has effect only for the person in relation to whom the interrupting act is done.

(5) If a law which applies at the time the offence is completed is amended before a decision is given and the limitation period is thereby shortened, then acts leading to an interruption which were undertaken before the entry into force of the new law retain their effect, notwithstanding that at the time of the interruption the prosecution would have been barred by the statute of limitations under the amended law.

### **3. Provisions of the youth courts act (section 1 and 5 pp)**

#### **Section 1**

##### **Scope as to persons and substantive scope**

(1) This Act shall apply if a juvenile or young adult engages in misconduct punishable under the provisions of general law.

(2) "Juvenile" shall mean anyone who, at the time of the act, has reached the age of fourteen but not yet eighteen years; "young adult" shall mean anyone who, at the time of the act, has reached the age of eighteen but not yet twenty-one years.

#### **Section 5**

##### **Consequences of youth offences**

(1) Supervisory measures may be ordered in response to a criminal offence committed by a juvenile.

(2) Where supervisory measures do not suffice, disciplinary measures or youth penalty may be imposed to punish an offence committed by a juvenile.

(3) Disciplinary measures or youth penalty shall be dispensed with if placement in a psychiatric hospital or institution for withdrawal treatment renders punishment by the judge dispensable.

#### **Section 9**

##### **Types of measure**

"Supervisory measures" shall mean:

1. the issuing of instructions,
2. an order to avail oneself of supervisory assistance within the meaning of section 12.

#### **Section 13**

##### **Types of measure and their application**

(1) The judge shall apply disciplinary measures to punish the criminal offence if youth penalty is not indicated, but if the juvenile must be made acutely aware that he must assume



responsibility for the wrong he has done.

(2) "Disciplinary measures" shall mean:

1. reprimands,
2. imposition of conditions,
3. youth detention.

(3) Disciplinary measures shall not carry the same legal consequences as a criminal sentence.

## **Section 17**

### **Form and conditions**

(1) "Youth penalty" shall mean deprivation of liberty in a facility for its execution.

(2) The judge shall impose youth penalty if, as a result of the harmful inclinations demonstrated by the juvenile during the act, supervisory measures or disciplinary measures are not sufficient for the purposes of supervision or if such a penalty is necessary given the seriousness of the juvenile's guilt.