



# Overview of the legislation on Child Pornography in the Member States

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### Table of Content<sup>1</sup>

1. Austria.....	3
2. Belgium.....	6
3. Cyprus .....	9
4. Czech Republic .....	10
5. Denmark.....	13
6. Estonia.....	14
7. Finland .....	15
8. France.....	17
9. Germany.....	20
10. Greece .....	24
11. Hungary.....	26
12. Italy .....	27
13. Latvia .....	29
14. Lithuania .....	30
15. Malta .....	31
16. The Netherlands .....	33
17. Poland .....	34
18. Slovak Republic .....	35
19. Slovenia.....	37
20. Spain .....	38
21. Sweden.....	48
22. The United Kingdom .....	50

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<sup>1</sup> This compilation does not contain legislation from Ireland, Luxembourg and Portugal.

## EUROPOL PUBLIC INFORMATION



### 1. Austria

#### Penal Code

Grievous sexual abuse of minors  
Section 206

- (1) Anyone who has sexual intercourse, or a sexual act equivalent to intercourse, with a minor will be sentenced to 1-10 years' imprisonment.
- (2) Anyone who incites a minor to perform or endure sexual intercourse, or a sexual act equivalent to intercourse, with another person, or, in order sexually to arouse or satisfy himself or a third party, incites a minor to perform a sexual act equivalent to intercourse on him, shall also be punished.
- (3) If the act results in grievous bodily harm (under Section 84(1)) or pregnancy of the minor, the perpetrator shall be sentenced to 5-15 years' imprisonment. If the act results in the death of the minor, the perpetrator shall be sentenced to 10-20 years' imprisonment or to life imprisonment.
- (4) If the perpetrator is not more than three years older than the minor, the sexual act does not involve penetration with an object and the act does not result either in grievous bodily harm (under Section 84(1)) or the death of the minor, then the perpetrator under paragraphs 1 and 2 shall not be punished, unless the minor is under 13 years of age.

Sexual abuse of minors

Section 207

- (1) Anyone who, except for the case provided in Section 206, performs a sexual act on a minor or has a sexual act performed on him by a minor, will be sentenced to six months' to five years' imprisonment.
- (2) Anyone who incites a minor to perform a sexual act (under paragraph 1) with another person or, in order sexually to arouse or satisfy himself or a third party, incites a minor to perform a sexual act on him, shall also be punished.
- (3) If the act results in grievous bodily harm (under Section 84(1)), the perpetrator shall be sentenced to 1-10 years' imprisonment. If the act results in the death of the minor, the perpetrator shall be sentenced to 5-15 years' imprisonment.
- (4) If the perpetrator is not more than four years older than the minor, and if none of the consequences provided in paragraph 3 apply, then the perpetrator under paragraphs 1 and 2 shall not be punished, unless the minor is under 12 years of age.

## EUROPOL PUBLIC INFORMATION

### Pornographic depictions of minors

#### Section 207a

(1) Anyone who

1. produces or
2. imports, transports or exports for the purpose of dissemination or
3. offers, procures, transfers, presents or makes available in any other manner to another person a pornographic depiction of a minor (under paragraph 4) will be sentenced to up to three years' imprisonment.

(2) Anyone who commits the offence for financial gain will be sentenced to six months' to five years' imprisonment. Anyone who commits the offence as a member of a criminal organisation, or in such a way that the minor sustains particularly grievous harm, will be sentenced to 1-10 years' imprisonment; anyone who produces a pornographic depiction of a minor (under paragraph 4) using severe violence or who, in producing such pornographic depiction, endangers the life of the depicted minor either intentionally or as a result of gross negligence, will also be punished.

(3) Anyone who obtains, or is in possession of, a pornographic depiction of a minor over 14 years of age (under paragraph 4, subparagraphs 3 and 4) will be sentenced to up to one year's imprisonment. Anyone who obtains, or is in possession of, a pornographic depiction of a minor (under paragraph 4) will be sentenced to up to two years' imprisonment.

(4) Pornographic depictions of minors are:

1. realistic depictions of a sexual act performed on a minor under 14 years of age
1. realistic depictions of a sexual act performed on a minor under 14 years of age or by such minor on himself, on another person or with an animal,
2. realistic depictions of an event performed with a minor under 14 years of age, examination of which creates the impression, according to the circumstances of the case that it involves a sexual act performed on such minor or by the minor on himself, on another person or with an animal,
3. realistic depictions
  - a) of a sexual act within the meaning of subparagraph 1 or of an event within the meaning of subparagraph 2, though with minors over 14 years of age, or
  - b) of the genitals or pubic region of minors, provided such depictions are distorted in a sensational manner, focus on the genitals or pubic region or are devoid of other manifestations of life in order sexually to arouse the observer,
4. pictorial representations, an examination of which – following alteration of a depiction or without use of such alteration – creates the impression, according to the circumstances of the case, that it is a depiction within the meaning of subparagraphs 1-3.

(5) In accordance with paragraph 1, subparagraph 1, and paragraph 3, anyone who:

1. produces, or is in possession of, a pornographic depiction of a minor over 14 years of age with the latter's consent or for the latter's own private use, or

## **EUROPOL PUBLIC INFORMATION**

2. produces, or is in possession of, a pornographic depiction of a minor over 14 years of age, within the meaning of paragraph 4, subparagraph 4, for his own private use, provided no risk of dissemination of the depiction is associated with the act, shall not be punished.

Endangering the moral development of persons under 16 years of age

### **Section 208**

(1) Anyone who performs an act likely to endanger the moral or psychological development or health of persons under 16 years of age in front of a minor or a person under 16 years of age with whose upbringing, education or supervision he is charged, in order sexually to arouse or satisfy himself or a third party, will be sentenced to up to one year's imprisonment, unless, according to the circumstances of the case, an endangering of the development of the minor or person under 16 years of age can be ruled out.

(2) If the perpetrator in the first case in paragraph 1 is not more than four years older than the minor, then the perpetrator shall not be punished, unless the minor is under 12 years of age.

## EUROPOL PUBLIC INFORMATION



### 2. Belgium

Relevant articles to combat child pornography are:

The “Moniteur Belge” of 25 April 1995 published a law covering, among others, child pornography and its distribution:

***13 APRIL 1995 – Law containing clauses on the repression of trafficking in human beings and child pornography***

#### *CHAPTER II – Child pornography*

Art. 7. Article 383bis, as follows, is added to the same Code (Penal Code):

"Art. 383bis. § 1. Without prejudicing the application of Articles 379 and 380bis, whosoever has exhibited, sold, hired, distributed or handled emblems, objects, films, photographs, slides or any other visual media representing sexual positions or acts of a pornographic nature, involving or presenting minors below the age of sixteen or having, for commercial or distribution purposes, made, held, imported or had imported, sent to a forwarding agent or distributor the aforementioned, shall be punished by imprisonment and a fine of five hundred to ten thousand francs.

§ 2. Whosoever has wittingly held in his/her possession the emblems, objects, films, photographs, slides or other such visual media mentioned in § 1 shall be punished by imprisonment for one month to one year and a fine of one hundred to one thousand francs.

§ 3. The offence covered by § 1 shall be punished by hard labour for ten to fifteen years and a fine of five hundred to fifty thousand francs if it forms part of the main or secondary activity of an association, whether or not the guilty party is a director.

§ 4. The special confiscation allowed for in Article 42, point 1, may be applied to the offences covered by §§ 1 and 2, even when the items to which it refers do not belong to the sentenced person.

§ 5. Article 382 applies to offences addressed in §§ 1 and 3."

Furthermore, the “Moniteur Belge” of 25 April 1995 introduced a law punishing the advertising and/or distribution of pornographic products whether or not involving minors:

## EUROPOL PUBLIC INFORMATION

*Law adding Article 380quinquies to the Penal Code and repealing Article 380quater, paragraph 2, of the aforementioned Code.*

Article 1. Article 380 quinquies, as follows, is added to the Penal Code:

"Article 380 quinquies. § 1. It is an offence punishable by imprisonment for two months to two years and a fine of two hundred francs to two thousand francs for anybody, by whatever means, to make or have made, publish, distribute or disseminate advertisements, whether directly or indirectly, for sexual services in order to make, directly or indirectly, a profit, even when the nature of the offer is dissimulated by language, when the advertising specifically targets minors or when it proposes services by minors or persons claiming to be minors.

The sentence shall be imprisonment for three months to three years and a fine of three hundred to three thousand francs when the advertisement mentioned in Article 1 is designed to facilitate, whether directly or indirectly, the prostitution or debauchery of a minor or his/her exploitation for sexual purposes.

§ 2. It is an offence punishable by imprisonment for one month to one year and a fine of one hundred to one thousand francs for anybody, by whatever means, to make or have made, publish, distribute or disseminate advertisements, whether directly or indirectly, for sexual services in order to make, directly or indirectly, a profit, even when the nature of the offer is dissimulated by language, when the aforesaid services are provided by a means of telecommunication.

§ 3. Other cases not covered by §§ 1 and 2. It is an offence punishable by imprisonment for one month to one year and a fine of one hundred to one thousand francs for anybody, by advertising of any kind whatsoever, even when the nature of the offer or demand is dissimulated by language, to make it known that he/she is given over to prostitution, facilitates the prostitution of a third party or that he/she wishes to contact a person given over to debauchery.

The same sentences shall be applied to anybody who, by any means of advertising whatsoever, incites, by allusions contained therein, a third party to exploit minors or persons of age for sexual purposes, or who uses such advertising to propose services."

28 Novembre 2000. - Loi relative à la protection pénale des mineurs

Art. 21. A l'article 383bis du même Code, inséré par la loi du 13 avril 1995, sont apportées les modifications suivantes :

1° le § 1er est remplacé par la disposition suivante :

" § 1er. Sans préjudice de l'application des articles 379 et 380, quiconque aura exposé, vendu, loué, distribué, diffusé ou remis des emblèmes, objets, films, photos, diapositives ou autres supports visuels qui représentent des positions ou des actes sexuels à caractère pornographique, impliquant ou présentant des mineurs ou les aura, en vue du commerce ou de la distribution, fabriqués ou détenus, importés ou fait importer, remis à un agent de

## **EUROPOL PUBLIC INFORMATION**

transport ou de distribution, sera puni de la réclusion de cinq ans à dix ans et d'une amende de cinq cents francs à dix mille francs. ";

2° au § 3, les mots " des travaux forcés " sont remplacés par les mots " de la réclusion ";

3° au § 5, les mots " L'article 382 est applicable " sont remplacés par les mots " Les articles 382 et 389 sont applicables ".

Belgium established a site on the Web for complaints about Child Pornography.



## EUROPOL PUBLIC INFORMATION



### 3. Cyprus

Cyprus does not have specific legislation on Child pornography however the following paragraphs have been added into the law Combating of Trafficking in persons and Sexual Exploitation of Children (Law No. 3(1) of 2000). These paragraphs provide for special protection of persons being victims of sexual exploitation and for related matters i.e. Child Pornography.

#### **Law 3(1)/2000<sup>2</sup>**

##### 4. Marketing of pornographic material

1. A person using children for purposes of trafficking, who produce, obtains, possess, carries or in any way imports or exports or places into circulation documents, publications, books, drawings, pictures, paintings, symbols, photographs, movie-tapes or other indecent articles of whatsoever kind of uses any means of publicity in order to facilitate the circulation of the marketing of indecent articles, commits an offence and upon conviction is liable to imprisonment for ten years.
2. For the purpose of this section indecent articles are considered to include manuscripts, publications, pictures and other articles, which are considered to offend the morality of the public;

Provided that indecent articles are not considered as works of art or science and particularly those belonging to the cultural creation of humanity or contribution to the promotion of human knowledge.

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<sup>2</sup> <http://www.legislationline.org>

## EUROPOL PUBLIC INFORMATION



### 4. Czech Republic

Law no: 140/1961 of Digest-Penal Code

#### § 204 Soliciting

1) A person who engages, forces or corrupts somebody else to prostitute oneself or a person who exploits the fact that someone has sexual relations against payment, shall be sentenced to imprisonment for at most three years.

2) A person who commits the offence mentioned in paragraph 1 by using violence, threat of violence or threat of other serious detriment or by misuse of straits or dependence of the other person shall be sentenced to imprisonment for at least one and at most five years.

3) A sentence to imprisonment for at least two years and at most eight years shall be imposed if a person:

- a) gains a great profit by committing the offence mentioned in paragraph 1 or 2;
- b) commits such an offence as a member of an organised group;
- c) commits such an offence against person under 18 years of age

4) A sentence to imprisonment for at least five years and at most twelve years shall be imposed if a person commits the offence mentioned in paragraph 2 against a person under 15 years of age.

#### § 205 Jeopardy of morality

1) Person, that distributes, spreads, publicly access, produces, imports, transits, exports or for such reason keeps pornographic materials either written, audio or visual, pictures or other articles which jeopardize morality and such materials show:

- a) children
- b) disrespect to human being or violence or
- c) sexual intercourse with animal

will be punished by imprisonment up to 1 year, by fee or forfeiture of thing

2) Person, that pornographic materials:

- a) offers, leaves free for access to person younger than 18 years or
- b) accesses to persons younger than 18 years on the place publicly approachable

will be punished by imprisonment up to 2 years, by fee or forfeiture of thing

3) Offender will be punished by imprisonment from 6 months up to 3 years, by fee or forfeiture of thing if he

## EUROPOL PUBLIC INFORMATION

- a) commits such a crime as a member of organised group or
- b) commits such a crime by broadcast ( press, TV, film) or by computer network

### § 241 Rape

1) A person who by violence or by threat of imminent violence forces a woman to copulate or abuses her helpless state and has sexual intercourse with her, shall be sentenced to imprisonment for at least two and at most eight years.

2) A person shall be sentenced to imprisonment for at least five and at most twelve years if:

- he inflicts serious injury by the offence mentioned in paragraph 1; or
- he commits this offence against a woman under 15 years of age.

3) A sentence to imprisonment for at least ten and at most fifteen years shall be imposed if the offender causes a death by the offence mentioned in paragraph 1.

### § 242 Carnal abuse

1) A person who has sexual intercourse with a child under 15 years of age or who sexually abuses such a person by other way shall be sentenced to imprisonment for at least one and at most eight years.

2) If an offender commits the offence mentioned in paragraph 1 against the person who is under his/her supervision and misuses his/her dependence, a sentence of imprisonment for at least two and at most ten years shall be imposed.

3) An offender shall be sentenced to imprisonment for at least five and at most twelve years if he inflicts serious injury by the offence mentioned in paragraph 1.

4) An offender shall be sentenced to imprisonment for at least ten and at most fifteen years if he causes a death by the offence mentioned in paragraph 1.

### § 243

The person who misuses the dependence of an other person under 18 years of age or who misuses the person under his/her supervision and forces him/her to extramarital sexual intercourse or who sexually abuses such a person by other way shall be sentenced to imprisonment for at most two years.

### § 245

If a person has sexual intercourse with relatives in proximate generation or with a sibling, a sentence of imprisonment for at most two years shall be imposed.

## **EUROPOL PUBLIC INFORMATION**

### **§ 246**

1) A person who lures, engages or takes a woman abroad for the purpose to use her for sexual intercourse with an other person, shall be sentenced to imprisonment for at least one and at most five years.

2) An offender shall be sentenced to imprisonment for at least three and at most eight years if he:

- a) commits the offence mentioned in paragraph 1 as a member of an organised group; or
- b) commits such an offence against a woman under 18 years of age; or
- c) commits such an offence for the purpose to use a woman for prostitution

## EUROPOL PUBLIC INFORMATION



### 5. Denmark

#### Danish Penal Code

##### Section 230 of the

Any person, who records obscene photographs, films or similar objects of a person under the age of 18 with the intention to sell or otherwise disseminate the material, shall be liable to a fine or imprisonment for any term not exceeding two years, under aggravating circumstances imprisonment not exceeding 6 years. Considered as aggravating circumstances are particularly cases where the life of the child is endangered, where aggravated violence is applied, where the child is harmed, or where the recordings have a more systematic or organised character. Section 226 similarly applies.

##### Section 235

(1) Any person, who disseminates obscene photographs, films, other visual productions or similar objects of persons under the age of 18, shall be liable to a fine or imprisonment for any term not exceeding two years, under aggravating circumstances imprisonment for any term not exceeding six years. Considered as aggravating circumstances are particularly cases where the life of the child is endangered, where aggravated violence is applied, where the child is seriously harmed, or where the dissemination have a more systematic or organised character.

(2) Any person, who possesses or by way of payment is acquainted with obscene photographs, films, or other obscene visual reproductions or similar objects of persons under the age of 18, shall be liable to a fine or imprisonment for any term not exceeding one year.

(3) The provision in subsection (2) does not include possession of obscene pictures of a person who has turned the age of 15, if the person has consented to the possession.

## EUROPOL PUBLIC INFORMATION



### **6. Estonia**

#### **Penal Code**

#### **Offences against minors**

##### **§ 177. Use of minors in manufacture of pornographic works**

(1) Use of a person of less than 18 years of age as a model or actor in the manufacture of a pornographic or erotic picture, film or other work is punishable by a pecuniary punishment or up to one year of imprisonment.

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

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

(1) A person who manufactures, stores, hands over, displays or makes available in any other manner pictures, writings or other works or reproductions of works depicting a person of less than 14 years of age in erotic or pornographic situations shall be punished by a pecuniary punishment or up to one year of imprisonment.

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

##### **§ 179. Sexual enticement of children**

(1) A person who hands over, displays or makes otherwise knowingly available pornographic works or reproductions thereof to a person of less than 14 years of age, engages in sexual intercourse in the presence of such person or knowingly sexually entices such person in any other manner shall be punished by a pecuniary punishment or up to one year of imprisonment.

## EUROPOL PUBLIC INFORMATION



### **7. Finland**

#### **Finnish Criminal Act**

#### **Chapter 17,**

##### Section 18

##### Dissemination of depictions of obscenity

Any person who produces, offers for sale or for rent, exports, imports, carries through Finland to another country or otherwise distributes obscene pictures or visual recordings depicting:

- 1) children,
- 2) violence, or
- 3) bestiality

shall be sentenced to a fine or a maximum of two years imprisonment for dissemination of depictions of obscenity.

Attempts are punishable.

A child is considered to be a person under the age of eighteen or whose age cannot be determined, but who there is reason to assume is under the age of eighteen.

#### **Chapter 17,**

##### Section 18 a

Dissemination of grossly obscene depictions of children if in the dissemination of obscene depictions of children,

- 1) the child is particularly young
- 2) the depiction also shows brutal violence or the child being treated in a particularly humiliating manner
- 3) the offence is committed in a particularly deliberate manner or
- 4) the offence is committed by an organised criminal group within the meaning of Section 1 (4)

and the offence is aggravated also when assessed as a whole, the offender shall be sentenced to a fine or at least four months and at most six years imprisonment for distribution of a grossly obscene depiction of a child.

Attempts are punishable.

## **EUROPOL PUBLIC INFORMATION**

### **Chapter 17, Section 18 b**

Presenting or distributing illegal audiovisual material to minors

Anyone who publicly exhibits or distributes

1) to a person under the age of eighteen an audiovisual programme which has not been approved under Section 8 of the Act on the Classification of Audiovisual Programmes for exhibition or distribution,

2) an audiovisual programme to a person younger than the classification category required under Section 8 of the above Act, or

3) to a person under the age of eighteen an unclassified audiovisual programme which, under Section 8 of the above Act, would have been prohibited or would have been classified for a higher age bracket than that of the person in question if the programme had been classified,

shall be sentenced to a fine or a maximum of six months imprisonment for exhibiting or distributing illegal audiovisual programmes to minors.

### **Chapter 17, Section 19**

Possession of obscene pictures of children

Anyone who unlawfully has possession of a photograph, video tape, film or any other virtual visual recording in which a child referred to in Section 18 (4) is shown to be having sexual intercourse or is engaged in sexual behaviour comparable thereto or in any other obviously indecent manner shall be sentenced to a fine or a maximum of one year's imprisonment.

### **Chapter 17, Section 20**

Marketing of indecent goods

Anyone who, for the purposes of earning money,

1) gives to a person under the age of fifteen

2) puts on public display

3) delivers unsolicited to another person or

4) openly offers for sale or promotes by advertisement, brochure or poster or by other means, in a way causing public offence, an obscene picture, visual recording or object which is conducive to causing public offence

shall be sentenced to a fine or imprisonment for a maximum of six months for unlawful marketing of obscene material.

A sentence for unlawful marketing of obscene material shall also be passed on a person who, in the manner referred to in paragraph (1) (4), offers for sale or promotes an obscene text or sound recording which is conducive to causing public offence.





## 8. France

### Penal Code (legislative Part)

TITLE II, Offences against the human person

Chapter II, Offences against the physical integrity of the person

Section 3. Sexual aggressions-common provisions

#### § 1. Rape

Article 222-24

Rape is punished by twenty years' criminal imprisonment

1. where it causes mutilation or permanent disability;
2. where it is committed against a minor under the age of fifteen years;
3. where it is committed against a person whose particular vulnerability, due to age, sickness, to a disability, a psychic or physical deficiency or to a state of pregnancy, is apparent or known to the perpetrator;
4. where it is committed by a legitimate, natural or adoptive ascendant, or by any other person having authority over the victim
5. where it is committed by a person misusing the authority conferred by his functions;
6. where it is committed by several persons acting as perpetrators or accomplices;
7. where it is committed with the use or threatened use of a weapon.

#### § 2. Other sexual aggressions

Article 222-27

Sexual aggressions other than rape are punished by five years' imprisonment and a fine of € 75,000.

Article 222-28

The offence defined under article 222-27 is punished by seven years' imprisonment and a fine of € 100,000:

1. where it has caused an injury or a lesion;
2. where it is committed by a legitimate, natural or adoptive ascendant, or by any other person having authority over the victim;
3. where it is committed by a person misusing the authority conferred by his functions;
4. where it is committed by several persons acting as offenders or accomplices;

## EUROPOL PUBLIC INFORMATION

5. where it is committed with the use or threatened use of a weapon.

### Chapter VII, Offences against minors and family

#### Section 5, Endangerment of minors

##### Article 227-22

Assisting or attempting to assist in the corruption of a minor is punished by five years' imprisonment and a fine of € 75,000. The penalty is increased to seven years' imprisonment and a fine of € 100,000 where the minor is under fifteen years of age, where the minor was put in contact with the offender by the use, for the dissemination of messages to an unrestricted public, of a telecommunications network, or where the offence is committed inside a learning or educational institution or, when the pupils are entering or leaving, outside such an institution.

The same penalties are in particular applicable to the organisation by an adult of meetings involving indecent exposure or sexual relations in which minors are present or participating.

##### Article 227-23

Taking, recording or transmitting the picture or representation of a minor with a view to circulating it, where that image or representation has a pornographic character, is punished by three years' imprisonment and a fine of € 45,000.

The same penalty applies to the distribution of such a picture or representation, and its import or export, or causing it to be imported or exported.

The penalty is increased to five years' imprisonment and a fine of € 75,000 where for the diffusion of the image or representation of a minor use was made of a communication network open for the dissemination of messages to an unrestricted public.

Retaining such an image or representation is punished by two years' imprisonment and a fine of € 30,000.

The provisions of the present article also apply to the pornographic image of a person whose physical appearance is that of a minor unless it is proved that the person was over eighteen on the day the picture was taken or recorded.

##### Article 227-24

The manufacture, transport, distribution by whatever means and however supported, of a message bearing a pornographic or violent character or a character seriously violating human dignity, or the trafficking in such a message, is punished by three years' imprisonment and a fine of € 75,000, where the message may be seen or perceived by a minor.

Where the offences under the present article are committed through the press or by broadcasting, the specific legal provisions governing those matters are applicable to define the persons who are responsible.

##### Article 227-25

The commission without violence, constraint, threat or surprise of a sexual offence by an adult on the person of a minor under fifteen years of age is punished by five years' imprisonment and a fine of € 75,000.

## EUROPOL PUBLIC INFORMATION

### Article 227-26

The offence set out under article 227-25 is punished by ten years' imprisonment and a fine of € 150,000:

1. when it was committed by a legitimate, natural or adoptive ascendant or by any other person having authority over the victim;
2. when it was committed by a person abusing the authority conferred by his functions;
3. when it was committed by several persons acting as perpetrators or accomplices;
4. when it was accompanied by the payment of remuneration;
5. when the minor was put in contact with the offender by the use, for the dissemination of messages to an unrestricted public, of a telecommunications network.

### Chapter V, Offences against the dignity of persons

#### Section 2, Of recourse to minors' prostitution

### Article 225-12-1

Soliciting, accepting or obtaining, in exchange for a remuneration or a promise of a remuneration, sexual relations with a minor who is engaging in prostitution, even if not regularly, is punished by three years' imprisonment and a fine of € 45,000.

### Article 225-12-2

The penalty is increased to five years' imprisonment and to € 75,000:

1. where the offence is committed habitually or against more than one minor;
2. where the minor was put in contact with the offender by the use, for the dissemination of messages to an unrestricted public, of a communication network;
3. where the offence was committed by a person abusing the authority conferred upon him by his position.

The penalty is increased to seven years' imprisonment and to a fine of € 100,000 where the minor is under fifteen years of age.

Felonies and misdemeanours against property

### TITLE II, Other offences against property

#### Chapter I, Receiving and related offences

### Article 321-1

Receiving is the concealment, retention or transfer a thing, or acting as an intermediary in its transfer, knowing that that thing was obtained by a felony or misdemeanour.

Receiving is also the act of knowingly benefiting in any manner from the product of a felony or misdemeanour.

Receiving is punished by five years' imprisonment and a fine of € 375,000.

## EUROPOL PUBLIC INFORMATION



### 9. Germany

(Unofficial translation)

#### GERMAN CRIMINAL CODE

General part  
Chapter one  
The Criminal law

Title one

#### AREA OF APPLICABILITY

##### *Section 176*

##### Sexual Abuse of Children

(1) Whoever commits sexual acts on a person under fourteen years of age (a child), or allows them to be committed on himself by the child, shall be punished with imprisonment from six months to ten years.

(2) Whoever induces a child to commit sexual acts on a third person, or to have them committed on the child by a third person, shall be similarly punished.

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

(4) Whoever:

1. commits sexual acts in front of a child;
2. induces the child to commit sexual acts on his own body;
3. exerts influence on a child by writings (Section 11 subsection 3) to induce him to commit sexual acts on or in front of the perpetrator or a third person or by the perpetrator or a third person on the child, or
4. exerts influence on a child by showing him pornographic illustrations or images, by playing him audio recording media with pornographic content or by corresponding speech,

shall be punished with imprisonment from three months to five years.

(5) Whoever offers or is shown to have promised a child for an act under subsections (1) to (4) or who arranges with another to commit such an act, shall be punished with imprisonment from three months to five years.

(6) An attempt shall be punishable; this shall not apply for acts under subsection (4), numbers 3 and 4 and subsection (5).

## EUROPOL PUBLIC INFORMATION

### *Section 176a*

#### Serious Sexual Abuse of Children

(1) The sexual abuse of children shall be punished with imprisonment for no less than one year in cases under Section 176 subsections (1) and (2), if the perpetrator has been convicted in a final judgment of such a crime within the previous five years.

(2) The sexual abuse of children shall be punished with imprisonment for no less than two years in cases under Section 176 subsections (1) and (2), if:

1. a person over eighteen years of age completes an act of sexual intercourse or similar sexual acts with the child, which are combined with a penetration of the body, or allows them to be committed on himself by the child;
2. the act is committed jointly by more than one person; or
3. the perpetrator by the act places the child in danger of serious health damage or substantial impairment of his physical or emotional development.

(3) Whoever, in cases under Section 176 subsections (1) to (3), (4) nos. 1 or 2, or Section 176 subsection 6, acts as a perpetrator or other participant with the intent of making the act the object of a pornographic writing (Section 11 subsection (3)), which is to be disseminated pursuant to Section 184b subsections (1) to (3), shall be punished with imprisonment for not less than two years.

(4) In less serious cases under subsection (1), imprisonment from three months to five years shall be imposed, in less serious cases under subsection (2), imprisonment from one year to ten years.

(5) Whoever, in cases under Section 176 subsections (1) to (3), seriously physically abuses the child or places the child in danger of death, shall be punished with imprisonment for not less than five years.

(6) The time in which the perpetrator is in custody in an institution pursuant to order of a public authority shall not be credited to the term indicated in subsection (1). An act as to which judgment was rendered abroad shall be deemed equivalent in cases under subsection (1), to an act as to which judgment was rendered domestically, if under German criminal law it would have been such an act under Section 176 subsections (1) or (2).

### *Section 180*

#### Promoting Sexual Acts by Minors

(1) Whoever abets the commission of sexual acts of a person under sixteen years of age on or in front of a third person or sexual acts of a third person on a person under sixteen years of age:

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

shall be punished with imprisonment for not more than three years or a fine. Sentence 1, Number 2 shall not be applicable if the person responsible for the care of the person acts; this shall not apply if the person responsible for the care of the person grossly violates a duty to provide upbringing in thus abetting.

(2) Whoever induces a person under eighteen years of age to commit sexual acts on or in front of a third person for compensation, or allows them to be committed on the person

## EUROPOL PUBLIC INFORMATION

by a third person, or whoever abets such acts by acting as an intermediary, shall be punished with imprisonment for not more than five years or a fine.

(3) Whoever induces a person under eighteen years of age, who is entrusted to him for upbringing, education or care in leading his life, or who is subordinated to him within the framework of an employment or work relationship, to commit sexual acts on or in front of a third person, or to allow them to be committed on the person by a third person, while abusing a dependency connected with the upbringing, education, care, employment or work relationship, shall be punished by imprisonment for not more than five years or a fine.

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

### *Section 182*

#### Sexual Abuse of Youths

(1) A person over eighteen years of age who abuses a person under sixteen years of age, in that he:

1. commits sexual acts on the person by exploiting a coercive situation or for compensation, or allows them to be committed on himself by the person; or
2. by exploiting a coercive situation induces the person to commit sexual acts on a third person or to allow them to be committed on the person by a third person,

shall be punished with imprisonment for not more than five years or a fine.

(2) A person over twenty-one years of age who abuses a person under sixteen years of age, in that he:

1. commits sexual acts on the person or allows them to be committed on himself by the person; or
2. induces the person to commit sexual acts on a third person or to allow them to be committed on the person by a third person,

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

(3) In cases under subsection (2) the act shall only be prosecuted upon complaint, unless the prosecuting authority considers *ex officio* that it is required to enter the case because of the special public interest therein.

(4) In cases under subsections (1) and (2) the court may dispense with punishment pursuant to these provisions if, in consideration of the conduct of the person against whom the act was directed, the wrongfulness of the act is slight.

### *Section 184*

#### Dissemination of Pornographic Writings

(1) Whoever, in relation to pornographic writings (Section 11 subsection (3)):

1. offers, gives or makes them accessible to a person under eighteen years of age;
2. displays, posts, presents or otherwise makes them accessible at a place accessible to persons under eighteen years of age, or into which they can see;
3. offers or gives them to another in retail trade outside of the business premises, in kiosks or other sales areas which the customer usually does not enter, through a mail-order business or in commercial lending libraries or reading circles;
- 3a. offers or gives them to another by means of commercial rental or comparable commercial furnishing for use, except for shops which are not accessible to persons under eighteen years of age and into which they cannot see;
4. undertakes to import them by means of a mail-order business;

## EUROPOL PUBLIC INFORMATION

5. publicly offers, announces, or commends them at a place accessible to persons under eighteen years of age or into which they can see, or through dissemination of writings outside of business transactions through normal trade outlets;
  6. allows another to obtain them without having been requested to do by him;
  7. shows them at a public film showing for compensation requested completely or predominantly for this showing;
  8. produces, obtains, supplies, stocks, or undertakes to import them in order to use them or copies made from them within the meaning of numbers 1 through 7 or to make such use possible by another; or
  9. undertakes to export them in order to disseminate them or copies made from them abroad in violation of the applicable penal provisions there or to make them publicly accessible or to make such use possible,
- shall be punished with imprisonment for not more than one year or a fine.
- (2) Subsection 1 no. 1 shall not be applicable if the person authorized for the care of the person acts; this does not apply if the person authorized for the care grossly violates his duties in regards to upbringing by offering, giving, or making available. Subsection 1 no. 3a does not apply if the action takes place in business transactions with commercial borrowers.

### *Section 184c*

Dissemination of Pornographic Presentations via Radio, Media Services, or Teleservices  
Whoever disseminates pornographic presentations via radio, media services, or teleservices pursuant to Sections 184 to 184b shall also be punished. In cases under Section 184 subsection (1), sentence 1 shall not be applicable to dissemination via media services or teleservices if it is ensured through technical or other measures that the pornographic presentation is not accessible to persons under eighteen years of age.

## EUROPOL PUBLIC INFORMATION



### 10. Greece

L.3064/02 to combat trafficking in human beings, crimes against carnal freedom, pornography, economic exploitation of carnal freedom and support to the victims

Article 348 A. Pornography with minors

1. Those who manufacture, offer, procure, circulate, provide, possess or sell pornographic materials are punished with imprisonment of one year minimum and pecuniary fine of 10.000 to 100.000 euros.
2. Pornographic material under the previous paragraph is any description, real or artificial depiction of sexual acts in any material format of real or virtual act involving a under age person.
3. If acts described by paragraph 1 of this article constitute pornographic material related with exploitation of need or mental incapacity, deafness or inexperience of an under age person or by the use of violence against him, incarceration up to ten years is imposed and pecuniary fine of 50.000 to 100.000 euros. If the act results in bodily injuries of the victim, the incarceration is 10 years at the minimum and the fine 100.000 to 500.000 euros.

L.5060/1931 “Press Insult of Honour” articles 29 and 30

- a) Article 29, paragraph 1 of law 5060/1931 “For sexual offences, etc.”  
Whosoever creates, obtains, possesses, conveys, imports or exports in the country or circulates in any way documents, images, photographs, etc. indecent of any kind, or whosoever employs means of publicity in any way to facilitate the circulation or trade of such indecent objects shall be punished by imprisonment of at least one month and pay a fine of GDR 30 000.
- b) Article 30, paragraph 2 of law 5060/ 1931  
Under the provisions of this article, manuscripts, publications, images and other materials are considered indecent when, according to the public morals they are indecent. Works of art or science, and specifically those dedicated to humanity or that contribute to the promotion of human knowledge are not considered indecent, with the exception of those for sale, sold or supplied specifically to people below the age of 18 and for the purpose, other than education.

In order to characterise a work as belonging to the exceptions mentioned above, the public prosecutor may request a considered opinion from a five member committee appointed by him and consisting solely of educators and scholars.



## **EUROPOL PUBLIC INFORMATION**

In combination with L.3064/02 other Hellenic Laws are implemented such as:

- L.2331/95 “Concerning Money Laundering”
- L.2472/97 “Concerning Personal Data Protection”\
- L.2928/01 “Concerning Organised Crime”

## EUROPOL PUBLIC INFORMATION



### 11. Hungary

<sup>3</sup>Hungarian Penal Code  
V Child Pornography

#### Section 195/A Misuse of prohibited pictures

- 1) A person acquiring or keeping pornographic pictures of a minor by video, film photograph, or by any other means, commits a felony and shall be punishable with imprisonment of up to 3 years.
- 2) A person offering or adding pornographic pictures of a minor by video, film photograph or by any other means commits a felony and shall be punishable with imprisonment of up to 5 years.
- 3) A person making, distributing or trading pornographic pictures of a minor by video, film photograph or by any other means, or makes such picture available for big publicity, commits a felony and shall be punishable with imprisonment between 2 to 8 years.
- 4) A person having a minor participating in a pornographic show shall be punishable as set forth in subsection 3).
- 5) The person providing financial means and thus assisting in the commission of the crime defined in subsection 30-40 shall be punishable with imprisonment between 2 to 8 years.
- 6) In the application of subsection 1)-4) pornographic picture or pornographic picture or pornographic show is the act or display of sexuality in a gravely indecent manner or exposure specifically arousing sexual demeanour.

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<sup>3</sup> Legislation of Interpol member states on sexual offences against children

## EUROPOL PUBLIC INFORMATION



### 12. ITALY

(This translation of the Italian law cannot be considered as an official translation)

Italian act on child pornography 3.08.1998, no 269

Article 1

(Modifications at the penal code)

Article 2

(Child prostitution)

Article 3

(Child pornography)

Whoever exploits under ages of 18 years to realise porno exhibition or to produce porno material has punished from 6 to 12 years of imprisonment and a fine from 25.000 € to 250 000 €.

At the same punishment has subjected whoever trades in the same material of the first paragraph.

Whoever, outside the hypothesis of the first and second paragraphs, through any mean, also through network telecommunications, disseminates, broadcasts or publishes the porn material referring to first paragraph, or disseminates, broadcasts information aimed to the soliciting or to the sexual exploitation of under age of 18 years has punished from 1 to 5 years of imprisonment and a fine from 2.500 € to 50 000 €.

Whoever, outside the hypothesis of the first, second and third paragraphs, consciously give (also for free) to other people porno material made through the sexual exploitation of under ages of 18 years has punished from 1 to 3 years of imprisonment and a fine from 1.500 € to 5.000 €.

Article 4

(Possession of material on child pornography)

Whoever, outside the hypothesis foreseen in the Article 3, consciously gets or has porno material produced through the sexual exploitation of under age of 18 years has punished until 3 years of imprisonment and a fine not less than 1.500 €.

Article 5 (Sexual tourism aimed to exploitation of child prostitution)

Article 6 (Aggravating and extenuating circumstances)

## EUROPOL PUBLIC INFORMATION

In the hypothesis foreseen in the Article 2 first paragraph, Article 3 and Article 5 the punishment rises from 1/3 to the 50% when the crime is committed against a child under 14 years.

In the hypothesis foreseen in Articles 2 and 3 the punishment has raised from the 50% to 2/3 if the crime has committed by an ascendant, adoptive parents, or by their husband/wife or cohabitant, or husband/wife or relative-in-law within the second rank, by relative-in-law within the fourth rank, by the guardian or by the person whom the child has been left for matters of care, upbringing, education, surveillance, custody, work, or by public officials or by persons when they are in charge of public services or when the under age of 18 years is mentally or psychical insane, even when this state of fact is natural or provocative.

In the hypothesis foreseen in Article 2 first paragraphs and Article 3, the punishment has raised whether the crime is committed through violence or menace.

In the hypothesis foreseen in Articles 2 and 3, the punishment has reduced from 1/3 to 50% for who strongly help the under age to achieve his autonomy and freedom again.

### Article 7

(Incidental punishments)

In the hypothesis of conviction foreseen in the Articles 2, 3, 4, and 5, the confiscation of every commercial business involved/used in the criminal activity has established. Moreover, the revocation of every authorisation of the exercise TV networks has foreseen.

### Article 8

(Safeguarding of child personal data and hi/her image)

With reference to article 734-bis of penal code (whoever use means of telecommunication to spread the victim's personal data or his/her image without the consent, can be arrested from 1 to 6 months), Articles 2, 3, 4, and 5 are also included.

### Article 9

(Trade of under ages)

Whoever trade in under ages of 18 years has punished from 6 to 20 years of imprisonment.

### Article 10

(Crime committed abroad)

The establishments in this section are also applicable for Articles 2, 3, 4, and 5 of this act and applicable when the crime is committed abroad by Italian citizen, or against an Italian citizen, or by foreigner citizen in co-operation with Italian citizen. In this last hypothesis, the foreigner citizen can be punished when for the crime is foreseen a punishment of imprisonment not below in the maximum of 5 years and when the request by Ministry of Justice has been issued.

## EUROPOL PUBLIC INFORMATION



### 13. Latvia

#### Criminal Law

Article 166 Violation of Provisions regarding importation, production and distribution of pornographic or erotic materials.

- 1) For a person who commits the importation, production, public demonstration, advertising or other distribution of such pornographic or erotic materials as relate or portray the sexual abuse of children, bestiality, necrophilia or violence of a pornographic nature, or the keeping of such materials for similar purposes, the applicable sentence is deprivation of liberty for a term not exceeding three years, or a fine not exceeding fifty times the minimum monthly wage, with or without confiscation of property.
- 2) For a person who commits procurement or utilisation of minors in the production (manufacturing) of pornographic or erotic materials, the applicable sentence is deprivation of liberty for a term not exceeding six years, or a fine not exceeding eighty times of the minimum monthly wage, with or without confiscation of property.
- 3) For a person who commits procurement or utilisation of juveniles in the production (manufacturing) of pornographic or erotic materials, the applicable sentence is deprivation liberty for a term of not less than five and not exceeding twelve years with or without confiscation of property.

## EUROPOL PUBLIC INFORMATION



### **14. Lithuania**

Penal code of Republic of Lithuania

Article 162 Sexual Child Exploitation

Any person, who uses a child for the production of pornographic materials, shall be punished by a fine or arrest or imprisonment for a term of up to 4 years.

Article 309, The use of materials of pornographic content

2) Any person who produces, acquires, possesses, displays, advertises or distributes materials of pornographic nature where a child or a person who looks like a child is presented, shall be punished by a fine or imprisonment for a term of up to 2 years.

## EUROPOL PUBLIC INFORMATION



### 15. Malta

#### Article 208 of the Criminal Code

- 1) Whosoever, for gain or for distribution or for display in a public place or in a place accessible to public, manufactures, prints or otherwise makes or introduces into Malta, or acquires, keeps, puts in circulation or exports, any pornographic or obscene print, painting, photograph, film, book, card, or writing, or any other pornographic or obscene article whatsoever, whether similar the above or not, shall on conviction, be liable to imprisonment not exceeding six months or to a fine not exceeding two hundred liri, or to both.
- 2) Whosoever trades in any article mentioned in sub-article (1), even if such trade is clandestine, or distributes any such article in public or in a place accessible to public, shall, on conviction, be liable to the punishment prescribed in sub-article (1).
- 3) For the purposes of this article an article shall be regarded as pornographic or obscene if it is so described or defined by regulations made under sub-article (4) or it is otherwise to be so regarded in accordance with any regulations made as aforesaid.

#### Article 208A Criminal Code

- 1) Any citizen or permanent resident of Malta, whether in Malta or outside Malta, as well as any person in Malta, who takes or permits to be taken any indecent photograph, film, video recording or electronic image of a minor, or distributes or shows such indecent photograph, film, video recording or electronic image, or is in possession of such indecent photography, shall, on conviction, be liable to imprisonment for a term not exceeding 6 months or to a fine (multa) not exceeding 200 liri, or both such imprisonment and fine:

Provided that for the purposes of this article the expression 'permanent resident' shall have the same meaning assigned to it by article 5 (1) (d).

2. A photograph, film, video recording or electronic image shall, if it shows a person under age and is indecent, be treated for all purposes of this article as an indecent photograph, film, video recording or electronic image.
3. Where the offence referred to in sub-article (1) is committed by any ascendant to consanguinity or affinity, or by the adoptive father or mother, or by the tutor, or by other person charged, even though temporally, with the care, education, instruction, control or custody of the person under age shown in the photograph, film, video recording or electronic image, or where such person under age has not completed the age of 9 years, the punishment shall be of imprisonment for a term from 7 months to 1 year, with or without solitary confinement, and the provisions of article 197(4) shall also apply.

## **EUROPOL PUBLIC INFORMATION**

4. Where a person is charged with distributing or showing, or with being in possession of any indecent photograph, film, video recording or electronic image under sub-article (1), it shall be a defense for him to prove that he had a legitimate reason for distributing or showing, or for having in his possession, such photograph, film, video recording or electronic image, and neither knew nor had any reason to suspect them to be indecent.
5. For the purposes of article 635 (1) (a) the person under age shown in any such photograph, film, video recording or electronic image shall be deemed to be the person against whom the offence is committed.
6. In this article references to a photograph includes the negative as well as the positive version.



## EUROPOL PUBLIC INFORMATION



### 16. The Netherlands

Article 240b of the Dutch Criminal Code

1. 1: Any person who distributes, publicly exhibits, manufactures, imports, conveys in transit, exports or possess a pictorial representation or a data carrier containing a pictorial representation of a sexual act involving a person who is manifestly under the age of eighteen shall be liable to a term of imprisonment not exceeding four years or a fifth category fine
- 2: Lapsed
- 3: Any person who makes a profession or habit of committing one of the criminal offences described in paragraph 1 shall be liable to a term of imprisonment not exceeding six years or a fifth category fine.

## EUROPOL PUBLIC INFORMATION



### 17. Poland

Polish Penal Code

#### *Article 202*

Subject to prosecution is anyone, who:

- 1) Publicly presents pornographic material in such manner that it is imposed upon a person who may not wish so.
- 2) Present pornographic material to a minor under 15 years of age or makes available to him/her items of this nature.
- 3) Produce, for the purpose of dissemination, records, imports, distributes or propagates pornographic material in which minors under the age of 15 participate or pornographic material associated with the use of violence or the use of an animal.
- 4) Subject to prosecution are persons, who:  
Records, imports, keeps or possesses pornographic material with the participation of a minor under age of 15.
- 5) Court may decide upon forfeiture of means or other items, which were intended to be used or were used to commit offences described in paragraphs 1 – 4, even if they were not owned by the perpetrator himself.

## EUROPOL PUBLIC INFORMATION



### 18. Slovak Republic

Slovakian Penal Code:  
Endangering morality

#### Article 205

(1) Any person, who

- a) offers, relinquishes or enables access to pornography to a person younger than 18 years of age, or
- b) exhibits or otherwise enables access to pornography at places that are easily accessible to persons younger than 18 years of age

shall be liable to a term of imprisonment not exceeding two years, or to a ban of activity, or to a pecuniary penalty, or to forfeiture of a thing.

(2) The offender shall be liable to a term of imprisonment from one to three years if he through commission of the offence referred to in paragraph 1:

- a) violates special obligation arising from his employment, or
- b) gains considerable profit for himself or for another.

#### Article 205a

Any person who produces, purchases, imports or otherwise procures and subsequently sells, lends or otherwise introduces into circulation, distributes, makes publicly accessible or publishes any pornography that shows disrespect to human beings and violence, or that depicts sexual intercourse between an individual and an animal or other pathological sexual practices, shall be liable to a term of imprisonment not exceeding two years, or a ban of activity, or to a pecuniary penalty, or to the forfeiture of a thing.

The offender shall be liable to a term of imprisonment from one to five years if through the commission of the offence referred to in paragraph 1.

- a) as a member of an organised group,
- b) through press, movie, radio, television, a computer network or using another, similarly effective manner, or
- c) against a person younger than eighteen years of age, or at a place that is accessible to persons younger than eighteen years of age.

(3) The same sentence set out in paragraph 2 shall be imposed on the offender if through the commission of the offence referred to in paragraph 1

- a) he violates a specific duty arising from his employment, or
- b) he gains a considerable profit for himself or for another.

## EUROPOL PUBLIC INFORMATION

### Section 205b

#### Production of child pornography

- (1) Any person, who abuses a child for the production of child pornography or enables such abuse of the child, or otherwise shares to such a production, shall be liable to a term of imprisonment of two to eight years.
- (2) The offender shall be liable to a term of imprisonment of five to ten years if he commits the offence referred to in paragraph 1
  - a) against a child under twelve years of age,
  - b) using violence, the threat of violence or the threat of other serious harm or abusing distress or dependency of another or
  - c) against several children.
- (3) The sentence set out in paragraph 2 shall be imposed on the offender also if he through the commission of the offence referred to in paragraph 1
  - a) harms the physical evolution or moral development of the child or
  - b) gains considerable profit for himself or for another.
- (4) The offender shall be liable to a term of imprisonment of five to twelve years if he commits the offence referred to in paragraph 1 as a member of an organised group or if he causes through the commission of such an offence serious bodily harm.

### Section 205c

#### Dissemination of child pornography

- (1) Any person who disseminates child pornography shall be liable to a term of imprisonment of one to five years or to a ban of activity, or to a pecuniary penalty or to a forfeiture of a thing.
- (2) The offender shall be liable to a term of imprisonment of two to eight years if he commits the offence referred to in paragraph 1
  - a) as a member of an organised group,
  - b) using press, film, radio, television, computer network or other similarly effective means, or
  - c) against a person under eighteen years of age or in a place accessible to persons under eighteen years of age.
- (3) The same sentence set out in paragraph 2 shall be imposed on the offender if he through the commission of the offence referred to in paragraph 1
  - a) violates a specific duty arising from his employment, or
  - b) gains a considerable profit for himself or for another.

### Section 205d

#### Keeping child pornography

Any person who keeps child pornography shall be liable to a term of imprisonment for a term exceeding one year, or to a pecuniary penalty, or to the forfeiture of thing.

## EUROPOL PUBLIC INFORMATION



### 19. Slovenia

Article 187 of the Penal Code was amended in 2004. The following were defined as criminal offences: presentation and/or enabling access to pornographic material and presentation of a pornographic performance to a person under 14 years of age and abuse of a minor (i.e. younger than 18 years of age) for the purpose of manufacturing pornographic materials.

The 2004 amendments also include sanctions for production, dissemination, sale, export, import and/or other ways of offering of materials, in which minors are presented, for the purpose of production, dissemination, sale, export and import or other ways of offering such materials.

#### Penal Code

Article 187 Presentation, manufacture, possession and distribution of pornographic material

(1) Whoever sells, presents or publicly exhibits documents, pictures or audiovisual or other items of a pornographic nature to a person under 14 years of age, enables them to gain access to these in any other way or shows them a pornographic performance shall be given a fine or a prison sentence of up to two years.

(2) Whoever abuses a minor in order to produce pictures or audiovisual or other items of a pornographic nature, or uses them in pornographic performance, shall be given a prison sentence of between six months and five years.

(3) Whoever produces, distributes, sells, imports or exports pornographic material depicting minors, supplies it in any other way, or possesses such material with the intention of producing, distributing, selling, importing, exporting it or supplying it in any other way, shall be subject to the same sentence.

(4) If an offence from the second or third paragraphs was committed within a criminal association for the commission of such criminal offences, the perpetrator shall be given a prison sentence of between one and eight years.

(5) Pornographic material from the second, third and fourth paragraphs of this article shall be seized or its use disabled in some other manner.

## EUROPOL PUBLIC INFORMATION



### 20. Spain

#### *EXPLANATORY MEMORANDUM*

In April 2000 the Spanish Government decided to amend the rules and regulations contained in the Penal Code approved by Organic Law no. 10/1995, of 23 November 1995, concerning crimes against sexual freedom, which do not adequately respond, either in the definition of acts or in the specification of corresponding punishments, to the demands of the national and international community as regards the significance of the legal rights involved, which cannot be reduced to sexual freedom, since very special account also has to be taken of the rights inherent in the dignity of the human person, the right to free development of the personality, integrity of the person and sexual integrity on the part of minors and people with disabilities, whose will, in the absence of the necessary development to be considered truly free, cannot always be used to determine the legality of certain acts that may, however, be legal between adults.

This reform is set out in Organic Act No 15-2003 of 25 November 2003 based on Article K.3 of the Treaty of the European Union, the joint action adopted by the Council of the European Union of 29 November 1996 and the recommendations given in Decision No 1099 (1996) of 25 September 1996 and Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography.

The reforms of the Criminal Code contained in this Organic Act respect the structure and principles of the former, with the biggest reforms in relation to child pornography and sexual offences involving minors as follows:

1. The punishment of permanent monitoring is a significant new addition that attempts to respond effectively to specific offences and is based on the application of new measures provided by developments in technology. The nature of this punishment means that it can be applied successfully in order to prevent typical behaviour involving minor criminal offences, while avoiding the negative effects of incarceration. In practice, it is envisaged that it be carried out at home or in another place designated by the judge or court for a period not exceeding 12 days, either consecutively or at weekends, if the judge or sentencing court deems it more appropriate.
2. The maximum duration of a restraining order and conditions of no contact with the victim has been increased, and includes its simultaneous enforcement with a prison sentence and even on completion of the sentence, in order to ensure that the victim is not approached during periods of release or other privileges.

## EUROPOL PUBLIC INFORMATION

The three current modalities are established separately in order to allow that modality which corresponds to the true nature of the offence to be imposed: prohibition against residing or being present in certain places, prohibition against approaching the victim or other persons and the prohibition against communicating with the victim or other persons. Finally, technical improvements mean a more effective prevention and repression of offences and, in particular, a more effective fight against domestic violence. It is now possible to suspend visiting rights, communication and child visiting rights and the prohibition against communicating by means of computer or data-transmission. This reform also applies to the way in which the equivalent security measure has been regulated.

3. Offences against sexual freedom and morality have been amended so as to enable interpretations of certain forms of conduct of a particularly serious nature to be criminalised.
4. With regard to offences relating to the corruption of minors, there has been an important reform in the offence of child pornography, where harsher sentences are meted out, the description of conduct has been improved and new offences have been introduced, such as possession of pornographic material for personal purposes where minors or the disabled have been used, or in cases of what is termed virtual child pornography.

### CHAPTER I

#### Sexual attacks

##### Article 178.

Any person, who breaches the sexual freedom of another person, by violence or intimidation, shall be punishable, as the perpetrator of a sexual attack, by a prison sentence of one to four years.

##### Article 179

When the sexual aggression consists in carnal knowledge by vaginal, anal or oral means or the insertion of body parts or objects by either of the first two means, the person responsible shall be punished with six to 12 years' imprisonment for rape.

##### Article 180.

1°. The aforementioned acts shall be punishable by a prison sentence of four to ten years for the crimes described in Article 178, and twelve to fifteen years for those described in Article 179, when any of the following circumstances apply:

1. when the violence or intimidation committed are of a particularly degrading or humiliating nature;
2. when the acts are committed jointly by two or more people;
3. when the victim is especially vulnerable because of his or her age, health or situation and, in all cases, when he or she is under thirteen years of age;

## EUROPOL PUBLIC INFORMATION

4. when, to commit the crime, the perpetrator has taken advantage of a relationship of authority or kinship with the victim, being an ascendant, descendant or sibling, by blood or adoption, or having a similar relationship with him or her;
5. when the author of the crime makes use of weapons or other similarly dangerous means that might cause death or any of the injuries provided for in Articles 149 and 150 of this Penal Code, without prejudice to any punishment that might be applied for the death or injuries caused.

2º. If two or more of the above circumstances apply, the punishments provided for in this Article shall be imposed at the higher level.

### CHAPTER II

#### Sexual abuse

##### Article 181.

7. Any person who, without violence or intimidation and without due consent, performs acts that breach the sexual freedom or immunity of another person shall be punishable, as the perpetrator of sexual abuse, by a prison sentence of one to three years or a penalty for eighteen to twenty-four months.
8. For the purposes of the previous paragraph, sexual acts involving minors under the age of thirteen, people with mental disabilities or whose mental disorder is taken advantage of shall be deemed to be sexual abuse without due consent.
9. The same punishments shall apply when consent is obtained by the perpetrator taking advantage of a clear position of authority that restricts the victim's freedom.
10. The punishments indicated in this Article shall be imposed at the higher level if the circumstances described in Subparagraphs 3 or 4, Paragraph 1 of Article 180 of this Penal Code also apply.

##### Article 182

1. In all the cases in the article above, when the sexual abuse consists in carnal knowledge by vaginal, anal or oral means or the insertion of body parts or objects by either of the first two means, the person responsible shall be punished with four to 10 years' imprisonment.
2. The punishment indicated in the previous paragraph shall be imposed at the higher level when the circumstances described in Subparagraphs 3 or 4, Paragraph 1 of Article 180 of this Penal Code also apply.



## EUROPOL PUBLIC INFORMATION

### Article 183

1. Any person who, by deception, commits sexual abuse against a person over thirteen years of age but younger than sixteen shall be punishable by a prison sentence of one to two years or a penalty for twelve to twenty-four months.
2. When the abuse consists in carnal knowledge by vaginal, anal or oral means or the insertion of body parts or objects by either of the first two means, the punishment shall be two to six years' imprisonment. The upper half of the penalty shall be applied if circumstance 3 or 4 listed in Article 180.1 of this Code is present.

## CHAPTER III

### Sexual harassment

### Article 184

1. Any person who solicits favours of a sexual nature himself or for a third party in the context of an ongoing or customary employment, educational or service relationship, and by such behaviour places the victim in an objectively and seriously intimidating, hostile or humiliating position shall be punished, as the perpetrator of sexual harassment, with three to five months' imprisonment or six to 10 months' fine.
2. If the person guilty of sexual harassment commits the act availing himself of an employment, educational or hierarchical relationship or with the express or tacit intention of causing the victim some detriment related with the victim's legitimate expectations within the realm of the aforesaid relationship, the penalty shall be five to seven months' imprisonment or 10 to 14 months' fine.
3. When the victim is especially vulnerable due to age, illness or situation, the penalty shall be five to seven months' imprisonment or 10 to 14 months' fine in the cases listed in paragraph 1, and six months' to one year's imprisonment in the cases listed in paragraph 2 of this article.

## CHAPTER IV

### Crimes of sexual provocation and exhibitionism

### Article 185

Any person performing or having another person perform acts of obscene exhibition before minors or the disabled shall be punished with six months' to one year's imprisonment or 12 to 24 months' fine.

### Article 186

Any person who by any direct means, sells, disseminates or displays pornographic material among minors or the disabled shall be punished with six months' to one year's imprisonment or 12 to 24 months' fine.

## **EUROPOL PUBLIC INFORMATION**

### **CHAPTER V**

#### **Crimes concerning the prostitution and corruption of minors**

##### **Article 187.**

1. Any person who induces, promotes, encourages or facilitates the prostitution of a minor or a person with a disability shall be punishable by a prison sentence of one to four years and a penalty for twelve to twenty-four months.
2. Any person who performs such acts by taking advantage of his or her position of authority or position as an agent of authority or a public employee shall be punishable by the prison sentence indicated above, at the higher level, and also by total disqualification for six to twelve years.
3. When the guilty party belongs to an organisation or association, including a temporary organisation or association that is dedicated to the performance of such activities the higher punishments provided for in the previous paragraphs shall be applied, as applicable.

##### **Article 188.**

1. Any person who, by using violence, intimidation or deception, or by abusing a position of authority or the neediness or vulnerability of the victim, persuades an adult to perform or continue to perform prostitution shall be punishable by a prison sentence of two to four years and a penalty for twelve to twenty-four months.
2. The same punishments shall be applied to any person who directly or indirectly encourages people to enter, remain in or leave national territory for the purpose of their sexual exploitation, by using violence, intimidation or deception or by abusing a position of authority or the neediness or vulnerability of the victim.
3. The corresponding punishments shall be applied at the higher level, plus total disqualification for six to twelve years, to any person who performs the acts described in the previous paragraphs, respectively, taking advantage of their position of authority, their position as an agent of authority or a public employee.
4. If the aforementioned acts are committed against a minor or a person with disabilities in order to introduce them to or keep them in a situation of prostitution, the guilty person shall be subject to punishment at the higher level, in accordance with the previous paragraphs.
5. The punishments indicated shall be imposed in appropriate cases, without prejudice to any punishments applicable for sexual attacks or abuse committed against the prostituted individual.

## EUROPOL PUBLIC INFORMATION

### Article 189

1. The following persons shall be punished with one to four years' imprisonment:
  - a) Any person who uses minors or the disabled with the purpose of or in exhibitionist or pornographic shows, be they public or private, or to prepare any type of pornographic material or finance any of these activities.
  - b) Any person who by any means produces, sells, distributes, displays or facilitates the production, sale, dissemination or exhibition of any type of pornographic material in whose preparation minors or the disabled have been used, or is in possession of it for these purposes, even should the material be from another country or of unknown origin.
2. Any person possessing pornographic material for personal use in whose preparation minors or the disabled have been used, shall be punished with three months' to one year's imprisonment or six months' to two years' fine.
3. Any person committing the acts listed in paragraph 1 of this article shall be punished with four to eight years' imprisonment when any of the following circumstances are present:
  - a) When children under 13 years of age are used.
  - b) When the acts are particularly degrading or demeaning in nature.
  - c) When the acts are particularly serious given the economic value of the pornographic material.
  - d) When the pornographic material shows children or the disabled as victims of physical or sexual violence.
  - e) When the perpetrator belongs to an organisation or association, including those of a temporary nature, which is involved in such activities.
  - f) When the perpetrator is the ascendant, tutor, carer, guardian, teacher or any other person in charge, de facto or de jure, of the minor or disabled person.
4. Any person forcing a minor or a disabled person to participate in behaviour of a sexual nature harmful to the evolution or development of the victim's personality shall be punished with six months to one year's imprisonment.
5. Any person having a minor or disabled person under his authority, guardianship, protection or fosterage and having knowledge that the said minor or disabled person has been prostituted or corrupted and who fails to exert himself to the utmost to prevent the said minor or disabled person from remaining in that state or, lacking the means to care for the said minor or disabled person, fails to notify the proper authorities shall be punished with three to six months' imprisonment or six to 12 months' fine.
6. The Public Prosecutor shall further the pertinent action to deprive any person incurring in any of the types of conduct described in the above paragraph of his care and control, guardianship, protectorship or family fosterage, as applicable.
7. Any person who by any means produces, sells, distributes, displays or facilitates any type of pornographic material in which minors or the disabled have not been used directly but uses their distorted or modified voice or image shall be punished with three months' to one year's imprisonment or six months' to two years' fine.
8. In the cases listed in the above paragraphs, it shall be possible to impose the measures provided for in Article 129 of this Code where the perpetrator belongs to a society, organisation or association, including those of a temporary nature, which is involved in such activities.

## EUROPOL PUBLIC INFORMATION

With regard to the punishments and criteria to be applied by Spanish judges and courts, the following article of the Criminal Code must be mentioned:

### Article 190

A sentence imposed by a foreign judge or court for crimes included in this Chapter shall be considered equal to sentences by Spanish judges or courts for the purposes of application of the aggravating circumstances of repeated offence.

## CHAPTER VI

(Unofficial translation)

Common dispositions to the previous chapters,

Article 191. (Previous complaint of the victim or his proxy. Victim's forgiven)

1. To procedure for aggressions, harassment and crimes of sexual abuse, the complaint of the victim, his/her legal representative or the complaint of the Public Prosecutor is required. The Public Prosecutor will take care of the legal interest on the case. In case the victim is a minor or disabled the complaint of the Public Prosecutor will be enough.

2. In these cases the forgiveness of the victim or his/her legal representative does not stop the criminal procedure neither responsibilities.

**With regard to the punishments and criteria to be applied by Spanish judges and courts, the following article of the Criminal Code must be mentioned:**

### Article 129.1

1. The judge or court, in those cases established in this Code, and notwithstanding the provisions of Article 31 therein, after the Public Prosecutor has heard the owner or their legal representatives may, establishing the reasons therefore, impose the following consequences:

- a) closure of the company, its premises or establishments, temporarily or permanently. Temporary closure shall not exceed five years;
- b) dissolution of the company, association or foundation;
- c) suspension of the activities of the company, business foundation or association for a period not exceeding five years;
- d) prohibition of future activities, mercantile operations or business transactions of the type which, in their performance, the crime was committed, favoured or concealed. This prohibition may be of a temporary or permanent character. If it is of a temporary nature, the period of prohibition shall not exceed five years;
- e) intervention in the company to safeguard the rights of the employees or of the creditors for the necessary time and without exceeding a maximum term of five years.

## EUROPOL PUBLIC INFORMATION

### Article 131

1. The limitation period for offences shall be:

- 20 years, when the maximum penalty established for the offence is 15 or more years' imprisonment.
- 15 years, when the maximum penalty established by law is disqualification for more than 10 years, or imprisonment for between 10 and 15 years.
- 10 years, when the maximum penalty established by law is imprisonment or disqualification for between five and 10 years.
- Five years, when the maximum penalty established by law is imprisonment or disqualification for between three and five years.
- Three years for the remaining, lesser category of offences.
- The limitation period for the offences of slander and abuse shall be one year.

### Article 132

1. The terms established in the previous article shall take effect from the day on which the punishable offence has been committed. In the cases of continuing crime, permanent crime and habitual offences, these terms shall take effect, respectively, from the day on which the last offence was committed, the unlawful situation was eliminated or the behaviour ceased.

For attempted murder and offences of abortion without consent, bodily harm, offences against freedom, torture and offences against moral integrity, sexual freedom and morality, privacy, the right to personal reputation and the inviolability of residence, where the victim is a minor, the terms shall take effect on the day on which the latter reaches the age of majority, and if he dies before then, from the date of his death.

### Article 57

1. The judges or courts, in the offences of murder, abortion, bodily harm, offences against freedom, torture and offences against moral integrity, sexual freedom and morality, privacy, the right to personal reputation and the inviolability of residence, honour, property and the socio-economic order, taking account of the gravity of the acts or the danger posed by the criminal, may impose in their sentences one or more of the prohibitions referred to in Article 48, for a period not exceeding 10 years if the offence is major or five if it is a less serious offence.

Notwithstanding the above, if the sentence is a custodial sentence and the judge or the court orders one or more of said prohibitions, it shall do so for a period of between one and 10 years in excess of the duration of the custodial sentence handed down, in the case of a major offence, and between one and five years in the case of a less serious offence. Where this is the case, the custodial sentence and the abovementioned prohibitions must be carried out simultaneously by the accused.

## EUROPOL PUBLIC INFORMATION

2. In the cases of the offences mentioned in the first paragraph of Section 1 of this article committed against a person who is or has been the spouse, or against a person who is or has been connected to the convicted person through an analogous relationship, even when this was not one of cohabitation, or against the descendants, ascendants or siblings of the convicted, the spouse or cohabitant, or against minors or disabled persons living with the convicted person or who are under the care and custody, guardianship, protectorship or fosterage of the spouse or cohabitant, or against any person who comes under any other relationship making up the family nucleus, such as persons who due to their particular vulnerability are subjected to custody or care in public or private centres, the application of the penalty provided for in Article 48(2) shall be handed down for a period not exceeding 10 years in the case of a major offence or five in the case of a less serious offence, without prejudice to the provisions of the second paragraph of the preceding Section.

3. The prohibitions established in Article 48 may also be imposed for a period not exceeding six months for an offence classed as an offence against the persons listed in Articles 617 and 620.

### Article 48

1. The deprivation of the right to reside in or be present in specific places prohibits the convicted person from residing in or being present in the place where he committed the offence, or the place of residence of the victim's family, where this is different.

2. The prohibition against approaching the victim or his family members or other persons determined by the judge, prohibits the convicted person from approaching them, wherever they may be, and from approaching their home, places of work and wherever else they may be, being thus suspended, with regard to the children, visits, communication and stay which, in its case, is recognised in a civil hearing until the total completion of this sentence.

3. The prohibition against communicating with the victim or his family members or other persons as determined by the judge or court prohibits the convicted person from establishing with them, by any means of communication or computer or data transmission, written, verbal or visual contact.

4. The judge or court may order that the control of these means be implemented using any electronic means allowed.

### Article 83.1

Article 83.1 has been amended to provide as follows:

1. The suspension of the performance of the penalty will always be subject to the accused not offending in the period set by the judge or court, pursuant to Article 80.2 of this Code. Where the suspended penalty involves incarceration, the sentencing judge or court, if it deems it necessary, may also make that suspension dependent on the fulfilment of the obligations it has established from among the following:

1. Prohibition against being in specific places.
2. Prohibition against approaching the victim or his family members or other

## EUROPOL PUBLIC INFORMATION

persons specified by the judge or court, or against communicating with them.

### Article 105.1

In the cases listed in Articles 101 to 104, the judge or court, when imposing a sentence of loss of liberty, or during the performance of that sentence, may reasonably order the sentenced person to observe one or more of the following measures:

1. For a period not exceeding five years:
  - g) prohibition against approaching the victim or his family members or other persons specified by the judge or court, or against communicating with them.

### Article 617

1. Any person, by any means or procedure, who causes another person bodily harm not defined as an offence in this Code shall be punished with permanent monitoring for six to 12 months or a fine of one to two months.
2. Any person who strikes another person without causing bodily harm shall be punished with permanent monitoring from two to six days or a fine of 10 to 30 days.

### *FINAL PROVISION*

SOLE PROVISION. 1. Paragraph 2, Subparagraph a) of Article 23 of Organic Law no. 6/1985 of 1 July 1985, on Judicial Authority, is hereby amended and shall read as follows:

"That the act is punishable in the place of execution, except where, by virtue of an international treaty or a regulation of an international organisation of which Spain is a member, such a requirement is not necessary."

2. Paragraph 4, Subparagraph e) of Article 23 of the aforementioned Organic Law on Judicial Authority is hereby amended and shall read as follows:

"Crimes concerning the prostitution and corruption of minors or people with disabilities."

## EUROPOL PUBLIC INFORMATION



### 21. Sweden

The Swedish Penal Code

Chapter 16

Section 10 a

A person who

- 1) portrays a child in a pornographic picture;
- 2) disseminates, transfers, grants use, exhibits or in any other way makes such a picture of a child available to some other person;
- 3) acquires or offers such a picture of a child;
- 4) brings about contact between a buyer and a seller of such pictures of children or takes any other similar step to facilitate dealing in such pictures; or
- 5) possess such a picture of a child

shall be sentenced for *child pornography crime* to imprisonment for at most two years, or if the crime is petty, to a fine or imprisonment for at most six months.

By child is meant a person whose pubertal development is not complete or, if it is apparent from the picture and its attendant circumstances, who is less than 18 years of age.

A person who in the course of business or otherwise for the purpose of making money disseminates a picture of the kind described in the first paragraph through negligence shall be sentenced as there stated.

If the crime described in the first paragraph is considered to be gross sentence of at least six months and at most four years shall be imposed for *gross child pornography crime*. In assessing whether the crime is gross special consideration shall be given to whether it was committed in the course of business or otherwise for profit, was a part of criminal activity that was systematically practised or practised on a larger scale, or concerned a particularly large number of pictures or pictures in which children are exposed to especially ruthless treatment.

The prohibitions against depiction and possession do not apply to a person who draws, paints or in some other similar handcrafted fashion produces a picture of the kind described in the first paragraph as long as it is not intended for dissemination, transfer, granted use, exhibition or in any other way made available to others. Even in other cases the act shall not constitute a crime if, having regard to the circumstances, it is justifiable.

(Law 1998:1444)



## EUROPOL PUBLIC INFORMATION

### Section 17

A person preparing or conspiring to mutiny, or who fails to disclose a mutiny, shall be sentenced in accordance with the provisions of Chapter 23. *The same shall also apply to the crime of attempt or preparation of gross illicit gambling, to the crime of attempt of child pornography crime described in Section 10a, first paragraph if it is not petty, and attempt or preparation to gross child pornography crime* (Law 1998:1444)



## 22. The United Kingdom

The new Sexual Offences Act came into force in May 2004. Concerning Child Pornography the new sections for the Protection of Children Act (PCA) and for the Criminal Justice Act (CJA) which are added are:

- Section 1 (A), Marriage and other relationships (PCA)
- Section 1 (B) exception for criminal proceedings, investigations etc. (PCA)
- 160 (A) Marriage and other relationships (CJA)
- Section 48, Causing or inciting child prostitution or pornography (CJA)
- Section 49, Controlling a child prostitute or a child involved in pornography (CJA)
- Section 50, Arranging or facilitating child prostitution or pornography (CJA)
- Section 51 ,sections 48 to 50: Interpretation (CJA)

Protection of Children Act 1978

(As amended by the Criminal Justice and Public Order Act 1994)

### Section 1

#### Offences

(1) It is an offence for a person to:

- a) take or permit to be taken or to make any indecent photograph or pseudo-photograph of a child (meaning in this act a person under the age of 18) or
- b) distribute or show such indecent photographs or pseudo-photographs
- c) to have in his possession such indecent photographs or pseudo-photographs with a view to their being distributed or shown by himself or others
- d) to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs or pseudo-photographs or intends to do so

2) For purposes of this Act, a person is to be regarded as distributing an indecent photograph or pseudo-photograph if he parts with possession of it to, or exposes or offers it for acquisition by, another person.

3) Proceedings for an offence under this Act shall not be instituted except by or with the consent of the Director of Public Prosecutions.

4) Where a person is charged with an offence under subsection (1) (b) or (c), it shall be a legitimate defence for him to prove;

- a) that he had a legitimate reason for distributing or showing the photographs or pseudo-photographs or (as the case may be) having them in his possession;
- b) that he had not himself seen the photographs or pseudo-photographs and did not know, nor had any cause to suspect, them to be indecent.

## EUROPOL PUBLIC INFORMATION

### Section 1 (A) Marriage and other relationships

1) This section applies where, in proceedings for an offence under section 1(1)(a) of taking an indecent photograph of a child, or for an offence under section 1(1)(b) or (c) relating to an indecent photograph of a child, the defendant proves that the photograph was of a child aged 16 or over, and at the time of the offence charged the child and he-

- a) were married, or
- b) lived together as partners in an enduring family relationship.

2) Subsections (5) and (6) also apply where, in proceedings for an offence under section 1(1) (b) or (c) relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time when he obtained it the child and he-

- a) were married, or
- b) lived together as partners in an enduring family relationship.

3) This section applies whether the photograph showed the child alone with the defendant, but not if it showed any other person.

4) In the case of an offence under section 1(1) (a), if sufficient evidence is adduced to raise an issue as to whether the child consented to the photograph being taken or made, or as to whether the defendant reasonably believed that the child so consented, the defendant is not guilty of the offence unless it is proved that the child did so consent and that the defendant did not reasonably believe that the child so consented.

1) In the case of an offence under section 1(1) (b), the defendant is not guilty of the offence unless it is proved that the showing or distributing was to a person other than a child.

### Section 1 (B) Exception for criminal proceedings, investigations etc.

2) In this section "GCHQ" has the same meaning as the Intelligence Service Act 1994.

In proceedings for an offence under section 1(1) (a) of making an indecent photograph or pseudo-photograph of a child, the defendant is not guilty of the offence if he proves that-

- a) it was necessary for him to make the photograph or pseudo-photograph for the purposes of the prevention, detection or investigation of crime, or for the purposes of criminal proceedings, in any part of the world,
- b) at the time of the offence charged he was a member of the Security Service, and it was necessary for him to make the photograph or pseudo photograph for the exercise of any of the functions of the Service, or
- c) at the time of the offence charged he was a member of Government Communications Head Quarters (GCHQ), and it was necessary for him to make the photograph or pseudo-photograph for the exercise of any of the functions of GCHQ.

## EUROPOL PUBLIC INFORMATION

### Section 4

#### Entry, Search and Seizure

The following applies where a Justice of the Peace is satisfied by information on oath, laid by or on behalf of the Director of Public Prosecutions or by a Constable, that there is reasonable grounds for suspecting that, in any premises in the Petty Sessional Area for which he acts, there is an indecent photograph of a child.

The Justice may issue a warrant under his hand authorising any Constable to enter (if need be by force) and search the premises within one month from the date of the warrant, and to seize and remove any articles which he believe (with reasonable cause) to be or include indecent photographs of children

### Section 7

#### Interpretation

1) The following Sub-sections apply for the interpretation of the Act

2) References to an indecent photograph include an indecent film, a copy of an indecent photograph or film, and an indecent photograph comprised in a film

Photographs (including those comprised in a film) shall, if they show children and are indecent, be treated for all purposes of this Act as indecent photographs of children and so as respects pseudo-photographs

4) References to a photograph include:

- a) the negative as well as the positive version, and
- b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph
- c) "Film" includes any form of video recording

6) "Child" subject to Sub-section 8 means a person under the age of 18

7) "Pseudo-photograph" means an image, whether made by computer graphics or otherwise however, which appears to be a photograph

8) If the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph shall be treated for all purposes of this Act as showing a child and so shall a pseudo-photograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult

9) References to an indecent pseudo-photograph include:

- a) a copy of an indecent pseudo-photograph, and
- b) data stored on a computer disc or by other electronic means which is capable of conversion into a pseudo-photograph

### Criminal Justice Act 1998

(As amended by the Criminal Justice and Public Order Act 1994)

### Possession of Indecent Photograph of Children

### Section 160

1) It is an offence for a person to have any indecent photograph of a child or pseudo-photograph.

## EUROPOL PUBLIC INFORMATION

2) Where a person is charged with an offence under subsection above, it shall be a defence for him to prove:

- a) that he had a legitimate reason for having the photograph or pseudo-photograph in his possession; or
- b) that he had not himself seen the photograph or pseudo-photograph and did not know, nor had any cause to suspect, it to be indecent; or
- c) that the photograph or pseudo-photograph was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.

3) A person shall be liable on summary conviction of an offence under this section to imprisonment for a term not exceeding six months or a fine not exceeding level 5 on the standard scale, or both.

### Section 160 (4)

Section 1 (3), 2 (3), 3 and 7 of the Protection of Children Act 1978: shall have effect as if any reference in them to that Act included a reference to this section.

### Section 160 (5)

Possession before this Section comes into force (d) is not an offence.

### 160 A Marriage and other relationships

1) This section applies where, in proceedings for an offence under section 160 relating to an indecent photograph of a child, the defendant proves that the photograph was of a child aged 16 or over, and that at the time of the offence charged the child and he-

- a) were married, or
- b) lived together as partners in an enduring family relationship.

2) This section also applies where, in proceedings for an offence under section 160 relating to an indecent photograph of a child, the defendant proves that the photograph was of the child aged 16 or over, and that at the time when obtained it the child and he-

- a) were married, or
- b) lived together as partners in an enduring family relationship.

3) This section applies whether the photograph showed the child alone or with the defendant, but not if it showed any other person.

4) If sufficient evidence is adduced to raise an issue as to whether the child consented to the photograph being in the defendant's possession, or as to whether the defendant reasonably believed that the child so consented, the defendant is not guilty of the offence unless it is proved that the child did not so consent and that the defendant did not reasonably believe that the child so consented.

## EUROPOL PUBLIC INFORMATION

### **Abuse of children through prostitution and pornography**

#### Section 48, Causing or inciting child prostitution or pornography

1) A person (A) commits an offence if-

- a. he intentionally causes or incites another person (B) to become a prostitute, or to be involved in pornography, in any part of the world, and
- b. either-
  - i. B is under 18, and A does not reasonably believe that B is 18 or over, or
  - ii. B is under 13.

3) A person guilty of an offence under this section is liable-

- a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

#### Section 49, Controlling a child prostitute or a child involved in pornography

1) A person (A) commits an offence if-

- a) he intentionally controls any of the activities of another person (B) relating to B's prostitution or involvement in pornography in any part of the world, and
- b) either-
  - i) B is under 18, and A does not reasonably believe that B is 18 or over, or
  - ii) B is under 13.

1) A person guilty of an offence under this section is liable-

- a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

#### Section 50, Arranging or facilitating child prostitution or pornography

1) A person (A) commits an offence if-

- a) he intentionally arranges or facilitates the prostitution or involvement in pornography in any part of the world of another person (B), and
- b) either-
  - i) B is under 18 and A does not reasonably believe that B is 18 or over, or
  - ii) A person guilty of an offence under this section is liable-
- a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

## EUROPOL PUBLIC INFORMATION

### Section 51, sections 48 to 50: Interpretation

- 1) For the purposes of sections 48 to 50, a person is involved in pornography if an indecent image of that person is recorded; and similar expressions, and “pornography” are to be interpreted accordingly.
- 2) In those sections “prostitute” means a person (A) who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise of payment to A or a third person; and “prostitution” is to be interpreted accordingly.
- 3) In subsection (2), “payment” means any financial advantage of goods or services (including sexual services) gratuitously or at a discount.