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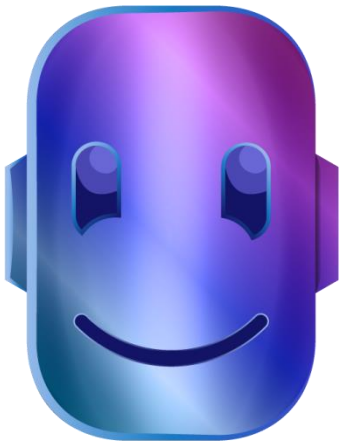

CESAGRAM

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Abbreviations

AI	Artificial Intelligence
CSAM	Child Sexual Abuse Material
CSEA	Child Sexual Exploitation and Abuse
CoE	Council of Europe
DSA	Digital Services Act
EU	European Union
ILO	International Labour Organisation
OSA	Online Safety Act
VLOPs	Very Large Online Platforms
VLOSEs	Very Large Online Search Engines
UK	United Kingdom
UN	United Nations
UN CRC	United Nations Convention on the Rights of the Child

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Executive Summary

It is imperative for states to establish an advanced and uniform legislation to eradicate all forms of Child Sexual Exploitation and Abuse (CSEA), including CSAM and grooming, and safeguard children in online environments. Consequently, this report delves into the legal landscape concerning the protection of children against all forms of CSEA, with a specific focus on (tech-facilitated) grooming, across international, European Union (EU), and national levels.

The report commences with an examination of the relevant international and supranational legal frameworks. It identifies and analyses legal instruments from key entities such as the United Nations, the Council of Europe, and the EU, with notable mentions including the Lanzarote Convention and Directive 2011/93/EU. Additionally, attention is given to legal instruments governing the role of tech companies in the area of fighting CSAM and grooming, namely, the EU proposal for a CSAM Regulation, the EU Digital Services Act, and the UK Online Safety Act.

Drawing from the legal research conducted on international and supranational legal frameworks, the report outlines fundamental requirements, with a focus on grooming, that a model framework should encompass. Subsequently, an examination of the regulatory frameworks pertaining to CSEA crimes, with a particular focus on the legislation concerning CSAM and grooming, is conducted across six countries to assess their alignment with these requirements. The countries in question are Belgium, Lithuania, Italy, Greece, France, and the United Kingdom.

The report summarises all findings and starts with identifying legal gaps and possible legal uncertainties in the international and EU legal framework. More specifically, a legal uncertainty on the scope of CSAM provisions, legal gaps on the scope of grooming provisions, a legal gap in the EU regarding the criminalisation of attempt grooming, and legal gaps on the safeguarding of consensual sharing of self-generated images and videos and the protection of victims are identified. Consequently, the report formulates recommendations for a comprehensive approach in legislation and policies to combat (tech-facilitated) grooming.

Lastly, the report summarises the findings from the national legal frameworks, including references to how national legislation addresses the uncertainties and gaps identified. For instance, several countries have addressed the legal gaps on the scope of grooming provisions. The grooming definition in Belgium and Italy refers to a wide range of CSEA crimes, instead of only to providing CSAM and engaging in sexual activities with a minor. The Belgian definition also includes both online and offline grooming in its scope, and refers to any child below the age of 18, regardless of the age of sexual consent. Also, France and Italy have explicitly addressed the 'followed by material acts'-gap. Similarly, the Belgian, UK and Greek legislation provide for offenses encompassing behaviours that could constitute online grooming even in the absence of subsequent material actions leading to a physical meeting. Furthermore, Belgium, France and Greece have addressed

the legal uncertainty on the scope of CSAM provisions by including AI-generated material in their definition of CSAM. Regarding the legal gap on the safeguarding of consensual sharing of self-generated images and videos, Belgium and Lithuania explicitly protect the consensual sharing of self-generated images and videos in their legislation.

It is envisaged that the insights gleaned from this report will bolster analysis and advocacy within the EU, thereby enhancing the effectiveness of legal and policy frameworks aimed at addressing CSEA, including (tech-facilitated) grooming.

1 Background

Aided by the technological developments of recent years and the increasing availability of the internet on a global scale, more and more young individuals are dedicating a significant amount of their time to online activities. In 2022, 96% of young people in the EU were found to access the internet daily.[1] The digital environment is becoming increasingly important across more aspects of children's lives, as it serves as a valuable tool for educational purposes, skill development, and social growth.[2] The internet allows children to connect with others, explore, learn, and engage in creative activities.

However, while the digital landscape affords new opportunities for the realisation of children's rights, it also exposes them to potential risks that, if not effectively managed, can jeopardise their health and well-being. These risks include cyberbullying, exposure to unwanted sexual or violent content and behaviour, CSAM, and online grooming. Notably, online sexual abuse, even without an offline component, remains highly impactful, as it introduces issues like permanence, blackmail, and repeated victimisation each time an image or video is shared.[3]

The Council of Europe states that about one in five children in the EU falls victim to some form of sexual abuse and violence.[4] Child sexual abuse and exploitation constitute terrible crimes and serious violation of the fundamental rights of children. When the abuse is also digitally captured and distributed online, the enormous trauma and abuse are perpetuated. Moreover, aided by the exponential development of the digital world and the increasing sophistication of offenders, recent numbers indicate a dramatic increase globally of CSAM and online grooming.[5]

[1] EUROSTAT. Being young in Europe today – digital world. https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Being_young_in_Europe_today_-_digital_world.

[2] United Nations' Committee on the Rights of the Child (2021). General comment No. 25 on children's rights in relation to the digital environment, CRC/G/GC/25. https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation.

[3] Hamilton-Giachritsis and others (2017). Everyone deserves to be happy and safe: A mixed methods study exploring how online and offline child sexual abuse impact young people and how professionals respond to it. https://learning.nspcc.org.uk/research-resources/2017/impact-online-offline-child-sexual-abuse.

[4] Council of Europe. The Underwear Rule. https://www.coe.int/en/web/children/underwear-rule.

[5] See reports of the National Center for Missing & Exploited Children, https://www.missingkids.org/gethelpnow/cybertipline/cybertiplinedata#files.

2 Terminology

The term 'child sexual exploitation and abuse' (CSEA) is understood as the broader term for any kind of exploitative or abusive situation or activity involving a child relating to his or her sexuality, sexual intimacy, or sexual integrity.[6] It encompasses different forms of conduct, such as grooming, exploitation of children in/for prostitution and CSAM.

While the term 'child pornography' is often still used in both national as international legislation, the term 'child sexual abuse material' (CSAM) is to be preferred as it more aptly describes the true nature and extent of materials depicting acts of sexual abuse of children and/or depicting the sexual organs of the child victim, to which children can never consent.[7] Likewise, while several legal instruments use the term 'child prostitution', the term 'exploitation of children in/for prostitution' is preferred as to not stigmatise or otherwise harm the child.[8] Consequently, we have made the decision to use the terms 'CSAM' and 'exploitation of children in/for prostitution' within this report.

In the context of CSEA, 'grooming' is the term used for the solicitation of children for sexual purposes. It refers to the process of establishing and building a relationship with a child either in person or through the use of the internet or other digital technologies to facilitate either online or in-person sexual contact with that child.

[6] Frangez, D., Klancnik, A.T., Zagar Karer, M, Lundvigsen, B.-E., Konczyk, J., Ruiz Perez, F., Vijalainen, M., & Lewin, M. (2015). The Importance of Terminology, Related to Child Sexual Exploitation. *Revija za kriminalistiko in kriminologijo*, 66(4), 291-299 (295). https://www.policija.si/images/stories/Publikacije/RKK/PDF/2015/04/RKK2015-04_DanijelaFrangez_TheImportanceOfTerminology.pdf.

[7] Interagency Working Group on Sexual Exploitation of Children (2016). Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, 35-40. Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse (ecpat.org).

[8] Ibid, 29-30.

3 Scope of the report

The development of an advanced and uniform legislation is an essential step for states to end CSEA, and protect children online. Therefore, the report is intended to shed light on the legal landscape regarding the protection of children against all forms of CSEA, with a focus on (tech-facilitated) grooming, both on the international and EU level as on the national level of 6 countries (Belgium, Italy, Greece, Lithuania, France, and the UK). After analysing the applicable legislation, national transpositions can be identified and analysed.

In particular, CESAGRAM's research will look to see if national legislation:

- Exists with specific regard to CSAM and grooming;
- Provides definitions of CSAM and grooming;
- Criminalises (tech-facilitated) CSAM offences and the knowing possession of CSAM, in accordance with Directive 2011/93/EU and the Lanzarote Convention;
- Criminalises (tech-facilitated) grooming, in accordance with Directive 2011/93/EU and the Lanzarote Convention.

These findings will be juxtaposed with the international and EU legal framework, and with each other. The report will summarise all the findings and create recommendations for a comprehensive approach in legislation and policies against (tech-facilitated) grooming. Ideally, the findings of the report will be used to support analysis and advocacy in the EU, to improve the legal and policy frameworks to address CSEA, including (tech-facilitated) grooming of children, more effectively.

4 Data gathering and methodology

The report starts with an overview of the international and EU legal framework, which was created through desk-based research. The international and EU legal framework sets out obligations for Member States, but also leaves room for national transpositions and deviations. With the guidance of this information, a template checklist was created in order to identify relevant legislation, case law, jurisprudence, data from government ministries and police concerning the regulatory framework for CSEA crimes. The template checklist can be used to gather complete information and a full overview of national jurisdictions, and support future analysis in different countries.

The template checklist was consequently shared with all consortium partners, accompanied by a request to disseminate it among relevant stakeholders, experts or partners they may have who could provide input. Despite extending the distribution of the checklist beyond the consortium, no additional feedback was solicited or received from external parties. Consequently, an examination of the regulatory frameworks pertaining to CSEA crimes, with a particular focus on the legislation concerning CSAM and grooming, was conducted across six countries. The countries in question are Belgium, Lithuania, Italy, Greece, France, and the United Kingdom. The rationale behind this selection was predicated on the fact that project partners either hail from these countries or possess language proficiency conducive to analysing their respective national legislations.

The project partners completed the template checklist with information concerning the relevant legal instruments on CSEA crimes in their respective countries. This approach was selected in gathering the necessary information on national legislations in order to overcome the language barriers that prevented the authors of the report from directly analysing the legal instruments in the selected countries. The template checklist, as well as the completed checklists compiled with the information of the analysed countries, are added as Annexes to this report.

Once the checklists were compiled, the authors focused on extracting pertinent information pertaining to the regulatory framework addressing CSAM and grooming. Consequently, the results were compiled and summarised in the present report to offer a comprehensive overview of the legislation concerning CSAM and grooming in the selected countries. In this regard, it is imperative to underline that the methodological approach taken presents a notable limitation, as it precludes the authors from directly accessing and analysing legislation in some of the countries due to language barriers. This limitation may potentially impact the accuracy and depth of the research results. However, whenever feasible, the authors endeavoured to access and verify the legislation to ensure the highest possible level of accuracy and rigor.

Lastly, desk-based research was carried out by the authors in order to provide an overview of relevant provisions in the two main EU legal instruments regulating the role of tech companies in the area of CSAM and grooming – namely, the Digital Services Act and the proposal for a CSAM Regulation. The authors also performed desk-research to provide a similar overview of relevant

provisions in the Online Safety Act, recently adopted to regulate such role of tech companies in the UK. Therefore, the role of tech companies with regard to detecting and reporting CSAM and grooming, as emerging in the analysed legal instruments, was analysed by means of literature review.

5 International and EU legal framework

5.1 United Nations

The **United Nations Convention on the Rights of the Child**[9] (UN CRC), adopted in 1989, sets out the rights of children and is the most widely ratified human rights treaty in history. This legal instrument is legally binding for all the parties that ratified it. Article 1 of the Convention on the Rights of the Child defines a child as any human being below the age of eighteen, unless the law in a particular jurisdiction grants majority status earlier.

Article 19 UN CRC states that *"States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."* Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement. Furthermore, Article 34 grants children the right to be free from all forms of sexual exploitation and abuse by stating that *"States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse (…)"*.

Article 2(1) UN CRC also specifies that these rights shall be respected and ensured without any exceptions or differentiations by stating that *"States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic, or social origin, property, disability, birth or other status"*.

The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography[10], adopted in 2000, focuses on protecting children from sexual

[9] United Nations, Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990.

[10] United Nations (25 May 2000), Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution, and Child Pornography, Resolution A/RES/54/263 at the fifty-fourth session of the General Assembly of the United States. https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-sale-children-child.

exploitation and includes measures to prevent and combat exploitation of children in/for prostitution, CSAM and sexual exploitation of children in travel and tourism. The legal instrument is legally binding for the parties that decide to ratify it in addition to the abovementioned Convention on the Rights of the Child. It lays down States' obligation to penalise CSAM offences in articles 1 and 3(1)(c). CSAM is defined as *"any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes"* in Article 2(c). Article 3(3) obliges State Parties to make CSAM offences punishable *"by appropriate penalties that take into account their grave nature"*. Article 34 explicitly states that State Parties should take preventive measures to address the sexual exploitation of children.

In March 2021, the UN Committee on the Rights of the Child **published General Comment No. 25 on Children's Rights in relation to the digital environment**[11], which explicitly places children's digital experiences within the UN Convention on the Rights of the Child. While the General Comment is not legally binding, it serves as a guide on how children's rights should be implemented and protected in digital environments by countries and businesses, such as by the realisation of legislative and administrative measures. First of all, the General Comment outlines four principles, including the principle of best interest of the child. It emphasises that the best interests of the child should always be the primary considerations of States[12], including when it comes to regulating the digital environment.[13] Moreover, the General Comment underlines that the digital environment is a rather dangerous place where children may experience different forms of violence, including sexual abuse. It puts certain obligations on States when it comes to protecting children from violence in the digital environment, such as legislative and administrative measures, *"including the regular review, updating and enforcement of robust, legislative, regulatory and institutional frameworks that protect children from recognized and emerging risks of all forms of violence in the digital environment"*.[14] Furthermore, the General Comment acknowledges that adolescents themselves create and share content of themselves and peers. While this makes them more vulnerable for exploitation and abuse, the consensual sharing of explicit images and videos between peers is also part of the adolescent sexual development and should not be criminalised.[15]

[11] United Nations' Committee on the Rights of the Child (2021). General comment No. 25 on children's rights in relation to the digital environment, CRC/G/GC/25. https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation.
[12] See also Article 3(1) of the UN Convention on the Rights of the Child.
[13] United Nations' Committee on the Rights of the Child (2021). General comment No. 25 on children's rights in relation to the digital environment, CRC/G/GC/25, para. 12-13. https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation.
[14] Ibid, para. 82.
[15] Ibid, para. 112 and 118.

Lastly, in 1999, the International Labour Organisation (ILO) adopted the **Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO No. 182)**, which came into force in 2000.[16] The Convention is legally binding for the countries that ratified it. It includes in the definition of *"the worst forms of child labour"* the use, procuring or offering of a child for prostitution, for the production of CSAM or for sexual performances.[17] Article 1 requires that Member States take immediate and effective measures to ensure the prohibition and elimination of the worst forms of child labour as a matter of urgency. Article 2 defines child as any person under the age of 18.

5.2 Council of Europe

The Council of Europe (CoE)'s **Convention on Cybercrime (Budapest Convention)**[18] entered into force in 2004 and was established with the hope of implementing a cooperative and uniform approach to the prosecution of cybercrime. The Convention has been ratified by a significant number of countries, including numerous non-EU countries.[19] For such ratifying countries, it represents a binding legal instrument. Its Article 9 deals with the criminalisation of offences related to CSAM. Article 9(3) states that the term "minor" shall include all persons under the age of 18. However, State Parties may require a lower age-limit, which shall not be less than 16 years. Article 11 requires State Parties to address attempt crimes as well as aiding and abetting. Article 13(1) states that State Parties must adopt legislative (and other) measures to ensure that criminalised offenses *"are punishable by effective, proportionate and dissuasive sanctions, which include deprivation of liberty"*.

Furthermore, the **Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)**[20], which came into force in 2010**,** lays down obligations for States to criminalise various CSEA related offences, such as CSAM in Article 20 and grooming in Article 23. It is a legally-binding treaty for the countries that ratified it.

Article 3(a) defines a child as *"any person under the age of 18 years"*. Article 20(2) defines CSAM as *"any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child's sexual organs for primarily sexual purposes"*. Article 20(3) states that the Party States may choose whether or not to include in this definition simulated representations or realistic images of a non-existent child and images involving children who have reached the age of

[16] International Labour Organisation (1999). Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, No. 182.
[17] Article 3(b) Convention No. 182.
[18] Council of Europe (2004). Budapest Convention on Cybercrime, ETS No. 185.
[19] Council of Europe. Chart of signatures and ratifications of Budapest Convention on Cybercrime, ETS No. 185. https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=185.
[20] Council of Europe (2010). Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, CETS No. 201.

sexual consent. It also states that Party States may choose to not include in the definition, and therefore not criminalise, the production and possession of materials involving children having reached the age of sexual consent when such material is produced and is possessed by them with their consent and solely for their own private use.

Article 23 defines grooming as the *"solicitation of children for sexual purposes"*. It requires Member States to criminalise the *"intentional proposal, through information and communication technologies, of an adult to meet a child"* who has not reached the age of sexual consent, *"for the purpose of committing any of the offences established in accordance with Article 18, paragraph 1.a, or Article 20, paragraph 1.a, against him or her, where this proposal has been followed by material acts leading to such a meeting"*. Notably, it only refers to engaging in sexual activities with a child that has not reached the age of sexual consent (Article 18, paragraph 1.a) and the production of CSAM (Article 20, paragraph 1.a). While other unlawful behaviours may be covered and criminalised under other provisions of the Convention, it does indicate that to be able to categorise and punish a certain unlawful behaviour as grooming, it must be committed for the purpose of engaging in sexual activities with a child that has not reached the age of sexual consent or for the purpose of producing CSAM. Furthermore, grooming is only made punishable where that proposal was followed by material acts leading to such a meeting.

Furthermore, Article 24 addresses attempt crimes as well as aiding and abetting to such crimes. More specifically, it says that Party States must take the necessary legislative or other measures to also punish attempts to commit, and aiding or abetting the commission of any of the offences established in the Lanzarote Convention. However, Article 24(3) leaves the option for Party States to choose to not apply this to the offences in Article 20, paragraph 1.b, d, e and f, Article 21, paragraph 1.c, Article 22 and Article 23. This means that Party States may for example choose to not criminalise aiding or abetting or the attempt to the possession of CSAM or grooming.

Lastly, Article 28 lists a number of aggravating circumstances. These aggravating circumstances are: a) the fact that from the offense seriously damages the physical or mental health of the victim; b) the fact that the offence was preceded or accompanied by acts of tortures or serious violence; c) the fact that the crime was committed against a particularly vulnerable victim; d) the fact that the offense was committed by a member of a family, a person cohabitating with the child or a person having abused his or her authority; e) the fact that the offense was committed by several people acting together; f) the fact that the offense was committed within the framework of a criminal organisation; g) the fact that the perpetrator has previously been convicted for offenses of the same nature.

In **an issued opinion from 2015**[21], the Lanzarote Committee[22] recognised a gap in the legislation by noting that sexual abuse of a child may be committed exclusively online, without material acts leading to a meeting in person, which is a constitutive element of the criminal offence of Article 23 of the Lanzarote Convention. This leads to the concern that acts of sexual abuse committed exclusively online may not be adequately recognised as criminal and may therefore remain unpunished, although it may nonetheless cause serious harm to the child.[23] As a result, the Lanzarote Committee clarifies that Article 23 of the Lanzarote Convention does not require a meeting or other offences to actually take place but aims at criminalising the adult's preparation of the offences.[24] Furthermore, the Lanzarote Committee acknowledges that the overall phenomenon of online grooming evolves and that it can now be done online in a faster and more anonymous way, which means that State Parties *"should consider extending its criminalization also to cases when the sexual abuse is not the result of a meeting in person, but is committed online"*.[25]

Moreover, in an **issued opinion from 2019**[26], the Lanzarote Committee highlights that CSAM should be considered the result of abusive/exploitative conduct and may not lead to criminal prosecution of the victims.[27] Furthermore, self-generated sexual images and/or videos should not be seen as CSAM or criminalised as any CSAM offence when it is intended solely for their own private use and it is voluntarily and consensually shared.[28]

5.3 European Union[29]

The **EU Charter of Fundamental Rights of the EU**[30] is the main legal instrument concerning human rights protection in the EU which is legally binding. Its Article 24(1) states that *"Children shall have the right to such protection and care as is necessary for their well-being."*

[21] Council of Europe's Lanzarote Committee (17 June 2015). Opinion on Article 23 of the Lanzarote Convention and its explanatory note. https://edoc.coe.int/en/children-s-rights/7064-lanzarote-committee-opinion-on-article-23-of-the-lanzarote-convention-and-its-explanatory-note.html.

[22] The Lanzarote Committee provides guidance and recommendations to member states of the Council of Europe regarding the implementation of the Lanzarote Convention. The opinions and recommendations issued by the Lanzarote Committee are not legally binding in the sense that they do not create obligations for member states under international law. However, they carry significant weight and are considered influential in shaping policies and practices related to the protection of children against sexual exploitation and abuse. See https://www.coe.int/en/web/children/lanzarote-committee.

[23] Ibid, para. 11.

[24] Ibid, para. 15.

[25] Ibid, para. 20.

[26] Council of Europe's Lanzarote Committee (6 June 2019). Opinion on child sexually suggestive or explicit images and/or videos generated, shared and received by children. https://rm.coe.int/opinion-of-the-lanzarote-committee-on-child-sexually-suggestive-or-exp/168094e72c.

[27] Ibid, para. 1.

[28] Ibid, para. 3 to 5.

[29] It should be reminded that the UK is not a member state of the EU anymore, and is therefore not bound by the EU legal framework.

[30] Charter of Fundamental Rights of the European Union, OJ C 326, 26 October 2012, p. 391–407.

Directive 2011/93 on combating the sexual abuse and sexual exploitation of children and child pornography[31], adopted in 2011, sets out common rules for the prevention and combating of CSEA of children. It obliges the EU Member States to criminalise all forms of CSEA in its Articles 3 (sexual abuse), 4 (sexual exploitation), 5 (CSAM) and 6 (grooming). As this is a Directive, it provides minimum rules concerning the definition of criminal offences and sanctions in the area of CSEA, and EU Member States must incorporate the contents of it into their national legislation.[32]

The Directive defines a child as *"any person below the age of 18 years"*.[33] With *"the age of sexual consent"* is meant *"the age below which, in accordance with national legislation, it is prohibited to engage in sexual activities with a child"*.[34]

CSAM is defined as:

- *"any material that visually depicts a child engaged in real or simulated sexually explicit conduct;*
- *any depiction of the sexual organ of a child for primarily sexual purposes;*
- *any material that visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appeared to be a child, for primarily sexual purposes; or*
- *realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organ of a child, for primarily sexual purposes."*[35]

Furthermore, grooming, worded as *"the solicitation of children for sexual purposes"*, is defined as the proposal, by means of information and communication technology, by an adult to meet a child who has not reached the age of sexual consent, *"for the purpose of committing any of the offences referred to in Article 3(4) and Article 5(6)"*.[36] Notably, similarly to the Lanzarote Convention, the Directive only refers to the Articles that criminalise engaging in sexual activities with a child that has not reached the age of sexual consent and producing CSAM, indicating that grooming is punishable only if it's committed for the purpose of engaging in sexual activities with a child that has not reached the age of sexual consent or for the purpose of producing CSAM. Furthermore, grooming is only made punishable where that proposal was followed by material acts leading to such a meeting.[37] Member States must also take the necessary measures to ensure that an attempt made by an adult through the means of information and communication technology to solicit a child to

[31] Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ L 335, 17 December 2011, p. 1-14.
[32] See also Article 1 of Directive 2011/93/EU.
[33] Article 2(a) of Directive 2011/93/EU.
[34] Article 2(b) of Directive 2011/93/EU.
[35] Article 2(c) of Directive 2011/93/EU.
[36] Article 6(1) of Directive 2011/93/EU.
[37] Ibid.

provide CSAM depicting that child.[38] Moreover, Recital 19 of Directive 2011/93/EU leaves room for Member States to acknowledge the importance of also criminalising the solicitation of children outside the context of the Internet or through the use of information and communication technology.

Article 7 of Directive 2011/93/EU addresses attempt crimes as well as incitement and aiding and abetting. First of all, it states that all Member States must take the necessary measures to ensure that inciting or aiding and abetting to any of the offences referred to in Articles 3 to 6 is punished. Secondly, it mentions that *"Member States shall take the necessary measures to ensure that an attempt to commit any of the offences referred to in Article 3(4), (5) and (6), Article 4(2), (3), (5), (6) and (7), and Article 5(4), (5) and (6) is punishable"*. Most notably, it does not refer to Article 6, which handles grooming, which indicates that Member States are not obliged to punish attempts to commit grooming.

Article 9 describes aggravating circumstances for sentencing purposes. Such aggravating circumstances are: a) the fact that the crime was committed against a particularly vulnerable victim, such as a child with a mental or physical disability, in a situation of dependence or in a state of physical or mental incapacity; b) the fact that the offense was committed by a member of the family, a person cohabitating with the child or a person having abused his or her authority or his or her position of trust; c) the fact that the offense was committed by several people acting together; d) the fact that the offense was committed within the framework of a criminal organisation; e) the fact that the perpetrator has previously been convicted for offenses of the same nature; f) the fact that the offender has deliberately or recklessly endangered the life of the child; or g) the fact that the offence involved serious violence or caused serious harm to the child.

Lastly, Article 8(3) leaves it to the Member States' discretion to decide whether to criminalise or not the production, acquisition or possession of material involving children who have reached the age of sexual consent if this material is produced and possessed with the consent of those children and only for their private use. However, Article 14 (together with Recital 24) ensures that child victims of certain CSEA are not prosecuted or penalised for their involvement in criminal activities. More specifically, a child that has been compelled to participate in an act of prostitution or the appearance in pornography should not be criminalised.

On 24 July 2020, the European Commission adopted the **EU Strategy for a More Effective Fight Against Child Sexual Abuse**.[39] The document, which does not have a binding legal value, is nevertheless important in defining the policy priorities of the EU with regard to the matter at stake.

[38] Article 6(2) of Directive 2011/93/EU.

[39] European Commission (24 July 2020). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM/2020/607 final. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0607&qid=1634899236324.

It sets out a comprehensive response to the growing threat of child sexual abuse both offline and online, by improving prevention, investigation, and assistance to victims. One of the promises of the Commission was the adoption of new legislation to combat the growing threat of grooming and child sexual abuse, and to ensure complete implementation of current legislation (namely Directive 2011/93/EU). Furthermore, the European Commission included the objective to enhance industry efforts to ensure the protection of children among the EU. The Communication acknowledged that the voluntary report of child sexual abuse from online service providers significantly helps various types of criminal conducts, ranging from the sharing of abusive content to acts posing an imminent threat to the safety of children. In light of the pivotal role of such private actors, the Commission also affirmed the importance of online services taking responsibility for the safety of children using their products.[40]

As a result, in February 2024, the European Commission adopted **a proposal to amend the existing Directive 2011/93/EU, thus updating the criminal law provisions concerning CSEA in EU Member States.**[41] The aim of this proposal is to address the latest developments and to ensure that all forms of CSEA, including those enabled or facilitated by technological developments, are criminalised. One of the key aspects of the proposal includes changes in terminology and expanding the definition of criminal offences related to child sexual abuse across Member States. For instance, the proposal abolishes terms such as 'child pornography' for the preferred term 'child sexual abuse material', which more aptly describes the true nature and extent of such materials. Also, the proposal aims to criminalise the possession and exchange of manuals for perpetrators (the so-called paedophile manuals), while also strengthening the criminalisation of CSAM in deep fakes or AI-generated material.[42]

Furthermore, the proposal aims to expand the scope of Article 6 of Directive 2011/93/EU, by 1) deleting the reference to the age of sexual consent, meaning that it now entails all children below the age of 18, 2) adding *"either online or in person"* to explicitly acknowledge the need to also combat grooming outside the context of the Internet, when it is not carried out by using information and communication technology[43], and 3) adding references to the other offences in Article 3, instead of merely referring to the paragraph on engaging in sexual activities with a child.[44] Also, the proposal clarifies that *"by means of information and communication technology"* should

[40] Ibid.
[41] European Commission (6 February 2024). Proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child sexual abuse material and replacing Council Framework Decision 2004/68/JHA, COM(2024) 60 final. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2024%3A60%3AFIN.
[42] See proposed change to Article 2(3)(d) and proposal for new Article 2(3)(e) of Directive 2011/93/EU.
[43] Also see proposal for Recital 22 of Directive 2011/93/EU.
[44] See proposed changes for Article 3 and 6 of Directive 2011/93/EU. Note that Article 3 is also broadened and the punishments are set higher.

be understood in a sufficiently broad manner as to cover not only voice, text or mail conversations, but also contacts or exchanges through new technological developments, such as in augmented extended or virtual reality settings, or through chat-bots.[45]

[45] See proposal for Recital 23 of Directive 2011/93/EU.

6 The role of online service providers

The volume of CSAM and grooming has notably increased over the last twenty years, also due to misuse of the more and more advanced information and communication technologies.[46] Given the dual nature of technology as both a facilitator and combatant in CSEA-related crimes, the role of online service providers in countering the online development of these phenomena has been at the centre of a lengthy policy debate and various legislative initiatives.

Online service providers are in a unique position to prevent, detect and report child sexual abuse acts, when they occur by means of their services and infrastructures. For this reason, the European Commission included the objective to enhance industry efforts to ensure the protection of children among the EU priorities 2020 Communication "EU strategy for a more effective fight against child sexual abuse" (see also above).[47] As a result, the Commission submitted several legislative proposals:

- In 2020 on a temporary derogation from certain provisions of the ePrivacy Regulation, which was adopted in July 2021: the so-called interim CSAM Regulation[48];
- In May 2022 on permanent rules which should replace the temporary ones on detecting, reporting and removing online CSAM. This proposal[49] is currently still being negotiated in the European institutions;
- And a proposal which was announced in 2020 and was adopted in 2022 under the name of Digital Services Act (DSA), which functions as the *lex generalis* for service providers' obligations regarding illegal content.[50]

Due to similar concerns with regard to the role played by technology and online platforms in facilitating the dissemination of illegal content, including CSAM, the UK also adopted a law

[46] ACHIAGA, M. D. M. N. (2020). Curbing the surge in online child abuse: The dual role of digital technology in fighting and facilitating its proliferation. https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/659360/EPRS_BRI(2020)659360_EN.pdf.

[47] European Commission (24 July 2020). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM/2020/607 final. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0607&qid=1634899236324.

[48] Regulation (EU) 2021/1232 of the European Parliament and of the Council of 14 July 2021 on a temporary derogation from certain provisions of Directive 2002/58/EC as regards the use of technologies by providers of number-independent interpersonal communications services for the processing of personal and other data for the purpose of combating online child sexual abuse, OJ L 274, 30 July 2021, p. 41-51.

[49] European Commission (11 May 2022). Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse, COM(2022) 209 final. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A209%3AFIN&qid=1652451192472.

[50] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (hereafter: DSA).

dedicated to duties of care of online services providers with regard to content moderation in 2023. The legal instrument took the name of "Online Safety Act" (OSA).[51]

The first section discusses the interim CSAM Regulation and the proposal for a permanent CSAM Regulation. The next sections analyse the DSA and OSA, by focusing on two main aspects. On the one hand, the analysis is aimed at highlighting how the DSA and Online Safety Act impact on the role of online services providers with regard to detecting and removing CSAM, as well as preventing its dissemination online. On the other hand, the following analysis identifies the scenarios where the two regulatory frameworks impose an obligation upon such providers to report CSAM and CSEA-related criminal offenses, in particular online grooming, to competent authorities.

6.1 The CSAM Regulation(s)

6.1.1 The Interim CSAM Regulation

Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (the ePrivacy Directive)[52] ensures the confidentiality of communications in the electronic communications sector. To know which services fall under its scope, the ePrivacy Directive relies on the definition of 'electronic communications services', as defined by the European Electronic Communications Code[53]. The European Electronic Communications Code, which came into force in December 2020, expanded the notion of electronic communications services to include number-independent interpersonal communications services (NI-ICS). NI-ICS are communication services like webmail messaging services and internet telephony, such as WhatsApp, Instagram and Facebook messenger. As a result, NI-ICS are covered by the ePrivacy Directive as of December 2020. While most providers of NI-ICS previously voluntarily detected and reported CSAM on their services, these practices interfere with the ePrivacy Directive since December 2020. To ensure that providers of NI-ICS can continue detecting, reporting, and removing CSAM after the European Electronic Communications Code entered into force, the European Commission had proposed an interim Regulation[54] on 10 September 2020. This proposal presented a temporary and strictly

[51] Online Safety Act 2023 (hereafter: OSA).
[52] Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector, OJ L 201, 31 July 2002, p. 37-47.
[53] Directive 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code, OJ L 321, 17 December 2018, 36-214.
[54] European Commission (10 September 2020). Proposal for a Regulation of the European Parliament and of the Council on a temporary derogation from certain provisions of Directive 2002/58/EC of the European Parliament and of the Council as regards the use of technologies by number-independent interpersonal communications service providers for the processing of personal and other data for the purpose of combatting child sexual abuse online, COM(2020) 568 final. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020PC0568&from=EN.

limited derogation from the applicability of Articles 5(1) And 6 of the ePrivacy Directive, which protect the confidentiality of communications and traffic data.

While the initial proposed text of the European Commission raised some concerns over the proposal's potential impact on human and fundamental rights of the users of NI-ICS[55], the final text (after examination and amendments by the European Parliament) offered more clarity and nuance.

First of all, end-to-end encryption and professional secrecy are safeguarded.[56] Recital 7 of the interim CSAM Regulation clarifies which technologies may be used by providers of NI-ICS in the fight against CSAM by explicitly referring to hashing technologies and AI. Article 3(1)(d) of the interim CSAM Regulation adds to this that new technologies may be used in the future in case of prior consultation of a supervisory authority.

Furthermore, it is clarified grooming is included in the scope, while the scanning of audio communications is explicitly excluded.[57] The processing of (personal and other) data must be proportionate and limited to specific technologies.[58] The technologies used must be state-of-the-art and the least privacy-intrusive, meaning that if they are used to scan textual communications they may only detect patterns without deducing the substance of the content.[59] They must also be sufficiently reliable to limit the possibilities of false positives and negatives and to rectify any error without delay.[60] If technologies are used to detect patterns of possible grooming, only key indicators or *"objectively identified risk factors"* (such as, age difference between communicators and possible involvement of a child in said communications) may be used.[61]

Also, the processing of (content and traffic) data must be strictly necessary for the purpose of detecting and removing CSAM or detecting grooming, and to report it to law enforcement authorities and/or organisations that act in the public interest against CSEA.[62] Data may only be stored in case of identification of CSAM, and even then only for certain purposes and for as long as strictly necessary, which will never be more than 12 months.[63] Lastly, there are obligations posed on the NI-ICS providers, including information and reporting obligations.[64]

[55] European Parliamentary Research Service (February 2021). Commission proposal on the temporary derogation from the e-Privacy Directive for the purpose of fighting online child sexual abuse – Targeted substitute impact assessment. https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662598/EPRS_STU(2021)662598_EN.pdf.
[56] Recitals 25 and 27 of the interim CSAM Regulation.
[57] Articles 1(2) and 2(3) of the interim CSAM Regulation.
[58] Article 3(1)(a)(ii) of the interim CSAM Regulation.
[59] Article 3(1)(b) of the interim CSAM Regulation.
[60] Article 3(1)(e) of the interim CSAM Regulation.
[61] Recital 16 and Article 3(1)(f) of the interim CSAM Regulation.
[62] Article 3(1)(a)(i), (iii),and (iv) of the interim CSAM Regulation.
[63] Recital 19 and Article 3(1)(h) and (i) of the interim CSAM Regulation.
[64] Article 3(1)(g)(i), (ii), (iii), (iv), (v), (vi), and (vii) of the interim CSAM Regulation.

6.1.2 Proposal for a permanent Regulation

As the Interim CSAM Regulation will only apply until August 2026, the European Commission submitted a proposal for long-term legislation[65] in May 2022. Most notably, the proposal seems to step away from voluntary measures, and puts forward a framework of supervised risk assessments combined with obligations for providers to detect and report CSAM. Furthermore, it requires providers to also detect grooming, in addition to known and new CSAM. The proposed Regulation itself does not prescribe which detecting technologies may or may not be used. It provides safeguards regarding how and whether detection must be done. In particular, providers can only be forced to scan for CSAM by a judicial authority if there is evidence of a *"significant risk of the service being used for the purpose of online child sexual abuse"* and it outweighs the negative consequences for the rights and interests of all parties affected. Additionally, the proposal creates a new independent EU Centre on Child Sexual Abuse to provide guidance and help exchange information and best practices.

However, while there is a consensus about the paramount importance of preventing and combating CSAM online and offline, the effectiveness, necessity and proportionality of the proposal is currently still being discussed and negotiated in the European institutions. More specifically, the file has been allocated to the European Parliament's Civil Liberties, Justice and Home affairs Committee (LIBE), where the rapporteur presented his draft report on 19 April 2023. LIBE voted the report and decided to enter into inter-institutional negotiations in November 2023.[66] The report includes some notable amendments, such as:

- the safeguarding of encryption[67], audio communications[68], and the prohibition of general monitoring or general data retention obligations[69];
- the emphasis on risk assessments that should be specific to the specific services offered and proportionate to the risk considering its severity and probability[70], which means *inter alia* that very large online platforms and providers which are substantial have an obligation to conduct a risk assessment, while providers that qualify as small and micro enterprises should carry out a simplified risk assessment[71];

[65] European Commission (11 May 2022). Proposal for a Regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse, COM(2022) 209 final. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A209%3AFIN&qid=1652451192472.
[66] Committee on Civil Liberties, Justice and Home Affairs (16 November 2023). Report on the proposal for a regulation of the European Parliament and of the Council laying down rules to prevent and combat child sexual abuse. https://www.europarl.europa.eu/doceo/document/A-9-2023-0364_EN.html.
[67] Ibid, amendment 9 for (new) Recital 9a and amendment 83 to Article 1(3)(a).
[68] Ibid, amendment 79 to Article 1(2)(a).
[69] Ibid, amendment 84 to Article 1(3)(b).
[70] Ibid, amendment 12 to Recital 14 and amendment 103 to Article 3(1).
[71] Ibid, amendment 13 for (new) Recital 14a and amendment 127 for (new) Article 3(6)(a).

- clarifications on the detection orders, *inter alia*, by putting forward the establishment of voluntary detection order[72];
- the clarification that providers that have identified a risk of use of their services for the purpose of the solicitation of children, should be able to take age verification measures, while the implementation of such technical procedures to verify the age must be in accordance with the rights to privacy and data protection[73] and the age verification systems must meet certain criteria[74];
- the clarification that providers of online games are included in the scope[75];
- emphasis that service providers must adapt the design, features and functions to their services in order to ensure the highest level of privacy, safety, and security be design and by default, while providing specific mitigation measures[76];
- setting out mitigation measures for platforms primarily used for the dissemination of pornographic content and for NI-ICS within games[77];
- clarification that not only known CSAM, but also unknown CSAM and grooming is included in the scope[78];
- and clarifications on (the role of) the new EU Centre, while simultaneously setting up a Victims' Consultative Forum.[79]

6.2 Digital Services Act

Adopted under the premise that what is illegal offline must also be illegal online[80], the DSA was a crucial step in the shift from a self-governance paradigm of the Internet to a stronger intervention of the public in the area of illegal content moderation. The shift reflected a change of mentality with regard to the entities responsible for ensuring public safety online. Traditionally, the state and law enforcement authorities are deputed to enforce laws that address matters of public security. However, social media platforms have grown to be perceived, in the eyes of the public, as an equally significant actor in addressing risks deriving from illegal and harmful online content, including child sexual abuse material (CSAM).[81]

[72] Ibid, see for example amendment 16 to Recital 17, amendment 24 to Recital 21 and amendment 169 to Article 7(2)(1).
[73] Ibid, amendment 21 for (new) Recital 18c.
[74] Ibid, amendment 146 for (new) Article 4(3)(a).
[75] Ibid, see for example amendment 76 to Article 1(1)(2)(d)(a), amendment 88 to Article 2(1)(b)(b) and amendment 128 for (new) Article 3(6)(b).
[76] Ibid, amendment 131 for (new) Article 4(1)(a)(a).
[77] Ibid, amendment 150 for (new) Article 4(a) and amendment 151 for (new) Article 4(b).
[78] Ibid, explanatory statement in the report.
[79] Ibid, amendments 344 to 360 and 385, and explanatory statement.
[80] Recital 12 of the DSA.
[81] Bleakley, P., Martellozzo, E., Spence, R., & DeMarco, J. (2023). Moderating online child sexual abuse material (CSAM): Does self-regulation work, or is greater state regulation needed?. *European Journal of Criminology*, 14773708231181361.

The DSA has been defined as a legal instrument privileging procedure over substance.[82] In fact, it does not define what illegal content is. Instead, it defines illegal content as any content that is made illegal by EU or Member States' law.[83] In turn, it establishes horizontal rules to be respected by online service providers with regard to content moderation, and, more in general, tackling the risks to which online platforms are exposed.

6.2.1 Detecting and removing CSAM and grooming. Obligations of online service providers

The DSA fosters a proactive role of online service providers in countering the spread of illegal content. The regulation does not impose a general obligation to monitor transmitted or stored information, nor it imposes on providers a duty to search indicators of illegal activities online.[84] However, at the same time, the DSA does not discourage forms of voluntary own-initiative investigations of the providers aimed at detecting, identifying or removing illegal content. In fact, the DSA provides for an exemption from liability for the provider hosting illegal content on its platform, as long as it does not have actual knowledge of the presence of such material.[85] With regard to own-initiative investigations, the DSA establishes that this exemption of liability is not automatically inapplicable solely because providers carry out such investigations, or take other measures to counter illegal content, in good faith and in a diligent manner.[86] As a consequence, online service providers subject to the DSA can take voluntary measures to detect CSAM.

In relation to the safety of children, the DSA lays down a general obligation for online services providers[87] accessible to minors. These platforms must put in place appropriate and proportionate measures to ensure a high level of privacy, safety, and security of the minors on their services.[88] Therefore, the DSA establishes some general duties for these entities to curb the proliferation of CSAM or grooming acts on their platforms.

Some more specific duties are provided for in the DSA for providers of Very Large Online Platforms (VLOPs) and Very Large Search Engines (VLOSEs).[89] VLOPs and VLOSEs are designated by the

[82] Ortolani, P. (2023). If You Build it, They Will Come. The DSA "Procedure Before Substance" Approach. https://verfassungsblog.de/dsa-build-it/.
[83] Art. 3(h) of the DSA.
[84] Art. 8 of the DSA.
[85] Art. 4-5-6 of the DSA.
[86] Art. 7 of the DSA.
[87] Pursuant to article 3(i) of the DSA, "'Online platform' means a hosting service that, at the request of a recipient of the service, stores and disseminates information to the public, unless that activity is a minor and purely ancillary feature of another service or a minor functionality of the principal service and, for objective and technical reasons, cannot be used without that other service, and the integration of the feature or functionality into the other service is not a means to circumvent the applicability of this Regulation".
[88] Art. 38 of the DSA.
[89] Pursuant to art. 3(j) of the DSA, "'online search engine' means an intermediary service that allows users to input queries in order to perform searches of, in principle, all websites, or all websites in a particular language, on the basis of

Commission based on the number of average monthly active recipients, which should be equal or higher than 45 million.[90] Pursuant to this provision, the Commission adopted a first list of such entities in April 2023, which includes a number of major tech players in the field of online content moderation.[91] Thus, such entities are obliged to perform a risk assessment of any systemic risks deriving from the design and functioning of their services, and related systems. The systemic risks' category that trigger the obligation of a risk assessment are the dissemination of illegal content, any actual or foreseeable negative consequences for the exercise of fundamental rights, any actual or foreseeable negative impact on civic discourse, electoral processes and public security, and any actual or foreseeable negative effect related to gender-based violence, the protection of public health and minors, and serious negative consequences on the physical and mental well-being of individuals.[92] Therefore, systemic risks related to the spread of illegal content include those related to the dissemination of CSAM, which has been criminalised at the EU level.[93] Moreover, the protection of minors is also mentioned as a separate risk category.

Based on the performed risk assessments, VLOPs and VLOSEs are then required to adopt reasonable, proportionate and effective mitigation measures to counter the identified risks, while preserving fundamental rights.[94] The DSA provides a non-exhaustive list of measures that can be adopted by the private actors. Among the others, the DSA alludes to adapting the design, feature and functioning of the online services, their terms and conditions and their content moderation processes, including the procedures allowing the disabling of access or removal of illegal content. It also poses a focus on the need to adapt recommender systems, advertising systems and, in general algorithmic systems in order to address the identified risks. These measures aim to oblige online service providers to modify their terms and conditions, intended as rules that govern the use of their services, to reflect the applicable EU and Member States' legislation concerning illegal or harmful content. In this sense, the DSA represents the latest step in a number of legislative and policy initiatives that have shaped what has been defined as "co-production of security" of public and private actors. The vision of co-production of security is opposed to that of a mere privatisation of security-related tasks. In fact, in spite of the influence exercised by legislation on online services providers, the latter still retain a level of discretion in pursuing the objectives of public interests

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a query on any subject in the form of a keyword, voice request, phrase or other input, and returns results in any format in which information related to the requested content can be found".

[90] Art. 33 of the DSA.

[91] European Commission (24 April 2023). Digital Services Act: Commission designates first set of Very Large Online Platforms and Search Engines - Press Release. https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2413.

[92] Art. 34(1) of the DSA.

[93] Art. 2.2 of the Regulation (EU) 2021/1232 of the European Parliament and of the Council of 14 July 2021 on temporary derogation from certain provisions of Directive 2002/58/EC as regards the use of technologies by providers of number-independent interpersonal communications services for the processing of personal and other data for the purpose of combating online child sexual abuse.
The provision in question defines 'child sexual abuse material' as encompassing child pornography, as defined in art. 2(c) of the Directive 2011/93/EU, and pornographic performances, as defined in art. 2(e) of the same Directive.

[94] Art. 35 of the DSA.

connected to the public security domain.[95] For example, this discretion is exercised in selecting the algorithmic technologies that will be used to enforced the rule governing online services. The use of such algorithmic technologies poses fundamental rights concerns with regard to transparency, accountability and the risk to consider these technologies as more reliable than what they really are in the context of content moderation practices.[96]

Besides general measures applicable to any of the risks identified in the risk assessments, the DSA also refers specifically to *"taking targeted measures to protect the rights of the child, including age verification and parental control tools, tools aimed at helping minors signal abuse or obtain support, as appropriate"*.[97] This provision, dedicated to the protection of children, exemplifies the trend of deputing private actors to pursue public interests, and proactively adopting strategies and tools to do so. This push of online services providers toward acquiring a significant public role underlies that such entities are called to perform value judgements on how to pursue the interests at stake – in this case, how to protect the safety of children online. This is a domain that is traditionally in the competences of public actors only. In this sense, the DSA is to be interpreted as representing a shift of paradigm with regard to the role of these types of businesses in society.[98]

In conclusion, the DSA requires online services providers to remove illegal content, including CSAM. Furthermore, it requires them to address systemic risks related to the dissemination of CSAM as well as to render their platforms safe for minors in general. As a consequence, it can be argued that the legal instrument enables private entities to adopt measures to tackle online grooming as well, given their duties to make the online environment safe for minors and limit any negative consequences on the physical and mental well-being of users.

6.2.2 Reporting CSAM and grooming. Obligations of the online services providers

The DSA provides for an obligation for online services providers to promptly notify to the law enforcement or judicial authorities of the Member States concerned when they become aware of any information giving rise to a suspicion that a criminal offense involving a threat to the life or safety of a person or persons has taken place, is taking place or is likely to take place. With the notification, providers must also provide competent authorities with all the information they have at their disposal.[99] Pursuant to the recitals of the DSA, the criminal offenses enshrined in Directive

[95] Bellanova, R., & De Goede, M. (2022). Co-Producing Security: Platform Content Moderation and European Security Integration. *JCMS: journal of common market studies*, 60(5), 1316-1334.
[96] Gorwa, R., Binns, R., & Katzenbach, C. (2020). Algorithmic content moderation: Technical and political challenges in the automation of platform governance. *Big Data & Society*, 7(1), 2053951719897945.
[97] Art. 35(1)(j) of the DSA.
[98] Tosza, S. (2021). Internet service providers as law enforcers and adjudicators. A public role of private actors. *Computer Law & Security Review*, 43, 105614.
[99] Art. 18(1) of the DSA.

2011/93/EU are to be considered among those that trigger the reporting obligation.[100] Therefore, any suspicion of both CSAM-related offenses or grooming would oblige the providers to report all the information available. In this regard, the DSA specifies in its recitals that it does not provide a legal basis for profiling their users with a view to potential identification of offenders,[101] in line with the underlying principle that providers do not have a general duty to search for illegal activities online, but only an obligation to report certain criminal offenses when they become aware of content possibly signalling their potential or actual commission.

6.3 Online Safety Act

The UK Online Safety Act, adopted in 2023, is the British response to the spread of illegal or harmful content online. Similarly to the DSA, the legal initiative derives from the necessity to place a duty of care on online service providers to protect their users from online harms. The UK government identified child sexual abuse exploitation and abuse online as one of the online harms giving a decisive impetus to the legislative initiatives. Therefore, the Online Safety Act was aimed at combating online CSAM, an already criminalised type of content, through the cooperation with online platforms.[102]

The Online Safety Act defines illegal content as *"content that amounts to a relevant offence"*.[103] Besides regulating illegal content in general, the Online Safety Act takes a more specific focus than the DSA in regulating content that can be harmful to children. In fact, the legal instrument establishes among its purposes that of managing risks of harm not only from illegal content and activities in general, but specifically from content and activities that are harmful to children.[104] Such duties have as a final goal for the regulated services to be designed and operated in a way that ensures *"an higher standard protection for children than for adults"*.[105]

Importantly, the Online Safety Act differentiates in principle the duties of care of the obliged entities depending on whether they fall within three categories (Category 1, Category 2A and Category 2B). Category 1 is destined to include high-risk, high-impact user-to-user services. Such services are defined as those providing for the possibility of generated, uploaded or shared content to be encountered by other users.[106] Category 2A will instead encompass the highest-reach search

[100] Recital 56 of the DSA.
[101] Ibid.
[102] Secretary of State for Digital, Culture, Media & Sport and Secretary of State for the Home Department (November 2020). Online Harms White paper: Full Government Response to the Consultation. https://assets.publishing.service.gov.uk/media/5fd8af718fa8f54d5f67a81e/Online_Harms_White_Paper_Full_Government_Response_to_the_consultation_CP_354_CCS001_CCS1220695430-001__V2.pdf.
[103] Section 59(2) of the OSA.
[104] Section 1(2)(a)(ii) of the OSA.
[105] Section 1(3)(b)(i) of the OSA.
[106] Section 3(1) of the OSA.

services, intended as services that include a search engine.[107] Finally, category 2B will cover services with potentially risky functionalities or other factors. Unlike the DSA, the Online Safety Act delegates the task to identify the entities falling under the different categories to the UK Government, in collaboration with Ofcom, the UK's Communications Regulator.[108]

6.3.1 Detecting and removing CSAM and grooming. Obligations of online services providers.

When it comes to managing risks related to illegal content in general, the Act, similarly to the DSA, imposes a duty for all user-to-user services to conduct a risk assessment. This risk assessment should take into consideration the user base of the services, the risks of the users to encounter any type of illegal content and the potential harms derived by these potential encounters, and an evaluation of how the design and operation of the services can help handling the risks. Moreover, the risk assessment should evaluate the likelihood of the service to be used to commit priority offences.[109] As specified in the legal instrument, such offences include those related to child sexual exploitation and abuse.[110]

In turn, the Online Safety Act imposes on providers safety duties to manage and mitigate the identified risks. The Act mentions some of the areas on which providers are called to act in order to comply with their safety duties. In particular, they should act, among others, on the design of algorithms and functionalities, on their terms of use, on content moderation practices and on policies that allow to block access to specific content or to the service as a whole to certain users.[111] With regard to the systems and processes used to operate the services, these should be designed to minimise the length of time of illegal content being present on the platform, and to ensure the swift removal of it once the provider becomes aware of its presence in any way.[112] Various provisions regulating the safety duties focus in particular on the terms of services of the providers, which should be adapted to describe how and by which technological means the different types of illegal content are tackled. With regard to the implementation of the safety duties, the Act specifies that measures should be based on the findings of the previously performed risk assessments, and on the size and capacity of the obliged providers.[113]

[107] Section 3(4) of the OSA.
[108] Kira, B., & Schertel, L. (2023). A Primer on the UK Online Safety Act. *Verfassungsblog, DOI*, *10*. https://verfassungsblog.de/a-primer-on-the-uk-online-safety-act/.
[109] Section 9 of the OSA.
[110] Section 59.7(b) of the OSA.
[111] Section 10 of the OSA.
[112] Section 10.3(a) of the OSA..
[113] Section 10.10(b)OSA.

In addition to these general duties, the Online Safety Act requires user-to-user services that are likely to be accessed by children to carry out an additional children's risk assessment.[114] Concerning this assessment, it is important to note that the Online Safety Act introduces a distinction between primary priority content, priority content and non-designated content that is harmful to children. The first category of content includes pornographic content, content that encourages suicide, self-injury or the development of eating disorders.[115] The second category of content refers to that is abusive toward children with specific characteristics such as age, religion, sex orientation or gender, content that depicts or incites to acts of hatred or violence against certain categories of people, bullying content and other content that encourages to carry out specific acts of self-injury.[116] The third one is a residual category encompassing any content that represents a material risk of significant harm to an appreciable number of children in the UK.[117]

Similarly to the general safety duties imposed to providers to address illegal content, the Online Safety Act provides for some specific safety duties related to the safety of children, to be taken based on the risk assessment.[118] The measure taken to mitigate the identified risks should aim to avoid that children encounter content which is harmful to them. To this end, the Act suggests among possible measures the implementation of age verification tools that protect children of particular ages.[119] The remaining provisions on the children's safety duties broadly reflect the safety duties to tackle illegal content, with regard to the areas on which providers should focus. With regard to the terms of services, the Act requires particularly detailed descriptions of how the different harmful content is handled, and how children of different groups or ages are protected on the platform.[120]

It can be concluded that, similarly to the DSA, the Online Safety Act provides for a duty upon the obliged entities to remove illegal content, including CSAM. It also provides for obligations to limit its spread by taking measures to address systematic risks for children's safety on their platforms. However, some fundamental differences can be noted with regard to this latter aspect, when comparing the UK legal instrument to the DSA. First, as anticipated, the Online Safety Act establishes differentiated duties of care for three categories of providers. However, it does not enshrine criteria to identify them. Instead, the identification of online services as belonging to different categories is delegated to secondary legislation, to be adopted by the UK Government in collaboration with Ofcom. This aspect of the legal instrument has raised concerns with regard to

[114] Section 11 of the OSA.
[115] Section 61 of the OSA.
[116] Section 62 of the OSA.
[117] Section 60.2(c) of the OSA.
[118] Section 12 of the OSA.
[119] Section 12.4-12.6-12.7 of the OSA.
[120] Section 12.9 of the OSA.

legal certainty in its implementation.[121] Secondly, the Online Safety Act does not include a systemic risk assessment on the impact of certain services on the enjoyment of fundamental rights, such as the right to privacy and data protection, and freedom of expression. This type of risk assessment is instead required to VLOPs and VLOSEs in the DSA, compared to which the UK legal instrument has a narrower scope and only focuses on risks deriving from the spread of illegal content. As anticipated during the preparatory stage of the law by some scholars, the Online Safety Act risks providing less guarantees with regard to fundamental rights at stake in content moderation practices, in comparison to its EU counterpart.[122]

6.3.2 Reporting CSAM and grooming. Obligations of the online services providers

Pursuant to the Online Safety Act, regulated services' providers must have systems in place that ensure the reporting of all the detected and unreported CSEA content present on the service to the National Crime Agency (NCA).[123] The content and characteristics of such reports are to be established by the Secretary of State, which will have the power, among other things, to set rules with regard to the data retention by providers associated with the reports in question.[124] CSEA content is considered as detected when the provider becomes aware of its presence of the platform.

Compared to the DSA, the provision establishing an obligation to report CSEA content is more specific, as it refers to a specific type of illegal content, instead of an open category of crimes. However, the notion of CSEA content encompasses all criminal offences related to CSEA, meaning that providers subject to the reporting obligation are required to report any content that indicates the commission of these crimes, and not only CSAM.[125] In this sense, the provision is broader than the reporting obligation enshrined in the DSA, as it obliges to report not only suspected criminal offenses that represent an imminent threat to life or safety of children, but any sign of CSEA offenses, including grooming.[126]

[121] Kira, B., & Schertel, L. (2023). A Primer on the UK Online Safety Act. *Verfassungsblog, DOI*, *10*. https://verfassungsblog.de/a-primer-on-the-uk-online-safety-act/
[122] Nash, V., & Felton, L. (2023). Treating the Symptoms or the Disease? Analysing the UK Online Safety Bill's Approach to Digital Regulation. *Analysing the UK Online Safety Bill's Approach to Digital Regulation (June 2, 2023)*.
[123] Section 66.1 of the OSA.
[124] Section 67 of the OSA.
[125] Section 59.9 of the OSA.
[126] Schedule 6 of the OSA.

7 Model framework and national legislation

7.1 Model framework

Based on the legal research conducted in the previous chapter, fundamental requirements that a model legislation should entail can be addressed.

Given the focus in the CESAGRAM project on countering online grooming, the overview will focus, in particular, on the national legislation applicable to this type of criminal offense, as well as on related CSEA-offences that interject with it.

These fundamental requirements are:

Requirement 1 – Addressing grooming

Subrequirement 1.a – Definition and criminalisation of grooming

In the international and EU legislation, grooming is defined as the intentional proposal, through information and communication technologies, of an adult to meet a child, for the purpose of engaging in sexual activities when the child has not reached the age of sexual consent, or producing CSAM, where this proposal has been followed by material acts leading to such a meeting.[127]

Pursuant to the Directive 2011/93/EU, EU Member States must also criminalise the solicitation of a child who has not yet reached the age of consent to providing CSAM depicting that child, by means of information and communication technologies.[128]

Subrequirement 1.b – Definition of child

In both international and EU legislation, "child" means any person under the age of 18 years.[129]

Subrequirement 1.c – Definition of age of sexual consent

In both international and EU legislation, the 'age of sexual consent' is intended as the age below which it is prohibited to engage in sexual activities with a child.[130]

Subrequirement 1.d – The legal status of online grooming, when not followed by material acts

The Lanzarote Convention aims to criminalise online grooming only when followed by material acts. However, as mentioned above, in an issued opinion from 2015[131], the Lanzarote Committee recognised a gap in the legislation by noting that sexual abuse of a child may be committed

[127] Article 23 Lanzarote Convention and Article 6(1) of Directive 2011/93/EU.
[128] Article 6(2) of Directive 2011/93/EU.
[129] Article 3(a) Lanzarote Convention and Article 2(a) of Directive 2011/93/EU.
[130] Article 2(b) of Directive 2011/93/EU.
[131] Council of Europe's Lanzarote Committee (17 June 2015). Opinion on Article 23 of the Lanzarote Convention and its explanatory note. https://edoc.coe.int/en/children-s-rights/7064-lanzarote-committee-opinion-on-article-23-of-the-lanzarote-convention-and-its-explanatory-note.html.

exclusively online, without material acts leading to a meeting in person. Also, the Lanzarote Committee clarifies that Article 23 of the Lanzarote Convention does not require a meeting or other offences to actually take place but aims at criminalising the adult's preparation of the offences.[132]

In the EU, this gap is slightly mitigated as EU Member States must also criminalise the solicitation of a child who has not yet reached the age of consent for the purpose of providing CSAM depicting that child, by means of information and communication technologies.[133]

As a consequence, the following comparative analysis will assess whether the national definitions of grooming encompass the possibility of such a crime being punished when material acts do not occur, and it is committed exclusively online.

Requirement 2 – Criminalisation of engaging in sexual activities with a child who has not yet reached the age of consent

Both the international and EU applicable legislation provide for the criminalisation of the engagement in sexual activities with a child who has not yet reached the age of sexual consent.[134] Since one of the criminalised purposes of grooming is engaging in such sexual activities, the following comparative analysis will assess whether such acts are criminalised in the observed national legislations.

Requirement 3 – Addressing CSAM

Subrequirement 3.a – Definition of CSAM

Pursuant to the Lanzarote Convention, CSAM is intended as any material that visually depicts a child engaged in real or simulated sexual activities, or any depiction of a child's sexual organs for primarily sexual purposes.[135] The Directive 2011/93/EU expands the scope of the definition, stating that this type of material falls within the definition of CSAM even when it depicts an individual that only appears to be a child.[136]

Subrequirement 3.b – Criminalisation of CSAM

Both the international and EU applicable legislation provide for the criminalisation of producing CSAM.[137] Both the Lanzarote Convention as Directive 2011/93/EU provide for the criminalisation of the production, acquisition or possession, distribution, dissemination or transmission, offering, supplying or making available, and knowingly obtaining access to CSAM.[138] Since one of the criminalised purposes of grooming is producing CSAM, the following comparative analysis will focus

[132] Ibid, para. 15.
[133] Article 6(2) of Directive 2011/93/EU.
[134] Article 18(1)(a) Lanzarote Convention and Article 3(4) of Directive 2011/93/EU.
[135] Article 20(2) Lanzarote Convention.
[136] Article 2(c)(iii) of Directive 2011/93/EU.
[137] Article 20 Lanzarote Convention and Article 5(6) of Directive 2011/93/EU.
[138] Article 20(1)(a) to (f) Lanzarote Convention and Article 5(2) to (6) of Directive 2011/93/EU.

on both the definition of child pornography in national legislations, its criminalisation in the analysed countries and its relation to the crime of grooming.

Requirement 4 – Aggravating circumstances applicable to grooming

The relevant international and EU legal instruments list a number of aggravating circumstances that are also applicable to the crime of grooming. Such aggravating circumstances are: a) the fact that from the offense derives a serious damage to the (physical or mental) health of the victim; b) the fact that the offence was preceded or accompanied by acts of torture or serious violence; c) the fact that the crime was committed against a particularly vulnerable victim; d) the fact that the offense was committed by a member of the family, a person cohabitating with the child or a person having abused his or her authority or his or her position of trust; e) the fact that the offense was committed by several people acting together; f) the fact that the offense was committed within the framework of a criminal organisation; g) the fact that the perpetrator has previously been convicted for offenses of the same nature.[139] The following comparative analysis will therefore evaluate whether such aggravating circumstances are transposed in the national legislations in relation to the crime of grooming.

Requirement 5 – Punishments of attempt, aiding or abetting of grooming

Pursuant to both the EU and international applicable framework, aiding or abetting to grooming must be punished.[140] Therefore, the following comparative analysis will assess whether the national legislations provide for punishment in such cases.

Furthermore, while the Lanzarote Convention states that Party States should criminalise attempts to commit the CSEA offences established in it, it also leaves the option for Party States to make an exception for grooming.[141] It seems that the EU has favoured this route, as it does not include a reference to grooming in Article 7 of Directive 2011/93/EU, which addresses punishable attempts. The following comparative analysis will assess whether the national legislations does provide for a criminalisation of attempts to commit grooming or not.

Requirement 6 – The safeguarding of consensual sharing of images and videos, and the protection of victims of grooming

Adolescents themselves create and share content of themselves and peers. While this makes them more vulnerable for exploitation and abuse, the consensual sharing of explicit self-generated sexual images and/or videos between peers is also part of the adolescent sexual development and should not be criminalised.[142] Article 20(3)of the Lanzarote Convention states that the Party States may

[139] Article 28 Lanzarote Convention and Article 9 of Directive 2011/93/EU.
[140] Article 24(1) Lanzarote Convention and Article 7(1) of Directive 2011/93/EU.
[141] Article 24(2) and (3) Lanzarote Convention.
[142] United Nations' Committee on the Rights of the Child (2021). General comment No. 25 on children's rights in relation to the digital environment, CRC/G/GC/25, para. 112 and 118. https://www.ohchr.org/en/documents/general-

choose to not include in the definition of CSAM, and therefore not criminalise, the production and possession of materials involving children having reached the age of sexual consent when such material is produced and is possessed by them with their consent and solely for their own private use. Similarly, Article 8(3) of Directive 2011/93/EU leaves it to the Member States' discretion to decide whether to criminalise or not the production, acquisition or possession of material involving children who have reached the age of sexual consent if this material is produced and possessed with the consent of those children and only for their private use.

Furthermore, while the applicable legal instruments at the international and EU level do not provide for a specific article on the prohibition to criminalise victims of grooming, Directive 2011/93/EU slightly addresses the issue in its Article 14 and Recital 24. According to these, in Member States where prostitution or the appearance in pornography is punishable, a child that has been compelled to participate in one of the two activities should not be criminalised.

Given the importance of safeguarding and leaving room for adolescent sexual development, while also protecting victims of grooming, the comparative analysis will assess whether the analysed national legislations leave room for the consensual sharing of explicit self-generated images and videos between peers and/or criminalise victims of grooming.

7.2 Belgium[143]

Requirement 1 – Addressing grooming

Subrequirement 1.a – Definition and criminalisation of grooming

Belgian legislation defines grooming[144] as *"approaching a minor for sexual purposes"*. Article 417/24 of the Criminal Code states that "*approaching a minor for sexual purposes consists of offering, by any means whatsoever, to meet a minor with the intention of committing an offence referred to in this chapter, if this offer is followed by material acts that may lead to the said meeting*". The offence is punishable by three to five years imprisonment.

This definition is wider than the ones given in supranational and EU legislation. First of all, it refers to all the offences referred to in chapter I/1 of the Belgian Criminal Codes, which includes all kinds

comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation. Council of Europe's Lanzarote Committee (6 June 2019). Opinion on child sexually suggestive or explicit images and/or videos generated, shared and received by children. https://rm.coe.int/opinion-of-the-lanzarote-committee-on-child-sexually-suggestive-or-exp/168094e72c, para. 3 to 5.

[143] Please note that on 22 February 2024 a new criminal code has been adopted in Belgium. However, as the new code will presumably only enter into force in 2026, only the old criminal code is discussed in detail.
However, a notable change in the new criminal code is the criminalisation of the so-called paedophile handbooks. See Articles 177-178 new criminal code: *"production, distribution of possession of content that is intended to facilitate the commission of an offence of sexual abuse or sexual exploitation to the detriment of a minor"*.

[144] Note that grooming not only constitutes an independent offence, but is also seen as an aggravating factor pursuant to Articles 417/23, 417/50 and 417/55 of the Belgian Criminal Code.

of crimes of CSEA, and goes further than the mere reference to providing CSAM and engaging in sexual activities with minors. Secondly, with its broad wording of *"by any means whatsoever"*, the legislator meant to target both online and offline grooming.[145] Lastly, it refers to approaching a minor, which is any person who has not reached the age of 18 (see also below), regardless of the age of sexual consent.

Furthermore, the Belgian Criminal Code mentions a crime that is closely related to grooming, namely the crime of *"cyberlokking"* (which can be translated to 'cyberluring'). More specifically, Article 433bis/1 states that a person of full age who uses information and communication technologies to communicate with an actual or presumed minor with a view to facilitating the commission of a crime or misdemeanour shall be liable to imprisonment for a term of three months to five years;

- if they have concealed or lied about their identity, age or status;
- if they have insisted on discretion in their dealings;
- if they offer or dangle a gift or any other advantage;
- used any other tactic.

Subrequirement 1.b – Definition of child

Belgian legislation, in line with supranational legal instruments, considers a "minor" as any person who has not reached the age of 18 with regard to all crimes of CSEA.[146]

Subrequirement 1.c – Definition of age of sexual consent

The Belgian Criminal Code establishes the age of sexual consent at 16.[147] However, a minor who is between 14 and 16 years old may consent freely if the difference in age with the other person is not more than three years.[148]

Subrequirement 1.d – The legal status of online grooming, when not followed by material acts

Belgian case law[149] and preparatory legislative work[150] on Article 417/24 has specified that merely having a sexually charged conversation is not punishable. There must be a proposal to meet with the intent to commit the crime of grooming. However, an effective physical encounter does not have to take place, but there must be material acts that may lead or are capable of leading to it,

[145] Explanatory Memorandum of the Chamber of Representatives, 2020-21, no. 55-2141/001, p. 54 and 55. When comparing Art. 417/24 CC with its predecessor (old Art. 377quater CC), it is notable that the old Art. 377quater CC limited the grooming offence to grooming via information and communication technology.
[146] Article 100ter Belgian Criminal Code.
[147] Article 417/6 §1 Belgian Criminal Code.
[148] Article 417/6 §2 Belgian Criminal Code.
[149] Court of Appeal Gent 19 October 2018, *Rechtskundig Weekblad* 2019-20, no. 17, p. 670.
[150] Explanatory Memorandum of the Chamber of Representatives, 2020-21, no. 55-2141/001, p. 54 and 55.

such as buying train tickets or cinema tickets. Also, with its broad wording, Article 417/24 targets both online and offline grooming.[151]

Also, the Belgian crime of *"cyberlokking"*, as explained above, criminalises adults who use information and communication technologies to communicate with an actual or presumed minor with a view to facilitating the commission of a crime or misdemeanour.

Requirement 2 – Criminalisation of engaging in sexual activities with a child who has not yet reached the age of consent

Belgian legislation criminalises *"non-consensual sexual acts committed to the detriment of a minor"*.[152] It differentiates between minors under the age of 16 and minors over the age of 16.

Non-consensual sexual acts committed to the detriment of a minor under the age of 16 are punishable as follows:

- violation of sexual integrity is punishable by imprisonment for a term of fifteen to twenty years;
- voyeurism is punishable by ten to fifteen years' imprisonment;
- the non-consensual dissemination of sexual content is punishable by imprisonment for a term of fifteen to twenty years;
- the non-consensual distribution of sexual content with malicious intent or for profit is punishable by imprisonment for a term of fifteen to twenty years and a fine of between 200 and 10 000 euros;
- rape is punishable by a prison sentence of between twenty and thirty years.[153]

Non-consensual sexual acts committed to the detriment of a minor over the age of 16 are punishable as follows:

- violation of sexual integrity is punishable by ten to fifteen years' imprisonment;
- voyeurism is punishable by five to ten years' imprisonment;
- non-consensual dissemination of sexual content is punishable by ten to fifteen years' imprisonment;
- the non-consensual distribution of sexual content with malicious intent or for profit is punishable by ten to fifteen years' imprisonment and a fine of between 200 and 10 000 euros;
- rape is punishable by a prison sentence of between fifteen and twenty years.[154]

[151] Ibid.
[152] Articles 417/16 and 417/17 Belgian Criminal Code.
[153] Article 417/16 Belgian Criminal Code.
[154] Article 417/17 Belgian Criminal Code.

Requirement 3 – Addressing CSAM

Subrequirement 3.a – Definition of CSAM

Article 417/43 of the Belgian Criminal Code defines *"images of sexual abuse of minors"* as:

- any material that visually depicts, by any means whatsoever, a minor engaged in real or simulated sexually explicit conduct, or depicts the sexual organs of a minor for primarily sexual purposes;
- any material that visually depicts, by any means whatsoever, a person who appears to be a minor engaged in real or simulated sexually explicit conduct, or depicts the sexual organs of that person, for primarily sexual purposes;
- realistic images representing a minor who does not exist, engaged in sexually explicit conduct, or representing the sexual organs of this minor for primarily sexual purposes.

The definition is largely in line with the definition given in Directive 2011/93/EU, with the exception that it adds in the last paragraph: *"realistic images representing a minor who does not exist"*. This was intentionally added as to include AI-generated material in its definition.[155]

Subrequirement 3.b - Criminalisation of CSAM

In line with what is established by relevant supranational legal instruments, the Belgian legislation criminalises the fabrication or dissemination of CSAM, possession and acquisition of CSAM, and obtaining access to CSAM.

The fabrication or dissemination of CSAM consists in *"exhibiting, offering, selling, renting, transmitting, supplying, disseminating, making available, handing over, producing or importing images of sexual abuse of a minor, by any means whatsoever"*.[156] This offence is punishable by imprisonment from five to ten years and a fine from 500 to 10 000 euros.[157] Possession and acquisition of CSAM is punishable by imprisonment from one to five years and a fine from 500 to 10 000 euros.[158] Obtaining access to CSAM is punishable by imprisonment from one to three years and a fine from 500 to 10 000 euros.[159]

Requirement 4 – Aggravating circumstances applicable to grooming

Belgian legislation takes aggravating circumstances into account, such as:

- The offence was committed by a person holding a public office in the exercise of that office;[160]

[155] As stated by Belgian Minister of Justice Vincent van Quickenborne in the Commission for Justice: see question 55037964C in the integral report of 18 July 2023, https://www.thebelgianhouse.be/doc/CCRI/pdf/55/ic1157.pdf.
[156] Article 417/44 Belgian Criminal Code.
[157] Ibid.
[158] Article 417/46 Belgian Criminal Code.
[159] Article 417/47 Belgian Criminal Code.
[160] Article 417/50 Belgian Criminal Code.

- The offence was committed by a person in a recognised position of trust, authority or influence over the minor;[161]
- The offence was committed against a minor under the age of 10;[162]
- The offence was committed against a minor under the age of 16 and was preceded by the perpetrator approaching the minor with the intention of subsequently committing crimes of sexual exploitation;[163]
- The offence was committed in the name of culture, custom, tradition, religion or so-called "honour";[164]
- The fact that the perpetrator has previously been committed for offenses of the same nature.[165]

Therefore, the aggravating circumstances applicable to grooming in Belgium differ from and only partially transpose those enshrined in the supranational instruments of reference.

Requirement 5 – Punishments of attempt, aiding or abetting of grooming

The Belgian legislation overall punishes aiding and abetting to all CSEA crimes, including grooming.[166] However, attempted grooming is not punishable, as the crime, in essence, visions the preparatory phase of other crimes.

Requirement 6 – The safeguarding of consensual sharing of images and videos, and the protection of victims of grooming

According to Article 417/49 of the Belgian Criminal Code, children over the age of 16 may make their own sexual content with their mutual consent, to send such self-made sexual content to each other and to possess it. Mutual consent is required for the creation, possession and mutual transmission of such content.

This justification does not apply if:

- the sexual content is shown or distributed to a third party;
- a third party attempts to obtain the sexual content;
- the perpetrator is a parent or relative in the direct ascending line, or an adopter, or a parent or relative in the collateral line up to the third degree, or any other person occupying a similar position within the family, or any person habitually or occasionally cohabiting with the minor and having authority over him or her, or if;
- the act was made possible by the perpetrator's use of a recognised position of trust, authority or influence over the minor.[167]

[161] Ibid.
[162] Ibid.
[163] Ibid.
[164] Ibid.
[165] Articles 54 to 57bis Belgian Criminal Code.
[166] Articles 66 to 69 Belgian Criminal Code.

Moreover, as Belgian legislation does not specifically address the issue, it is presumed that victims of CSEA crimes are not punished under criminal law.

7.3 France

Requirement 1 – Addressing grooming

Subrequirement 1.a – Definition and criminalisation of grooming

In France, there is no precise definition of grooming (or "*pédopiégeage")* in legal terms. However, it provides certain concepts and terms, and corresponding criminal offences, that correspond to grooming.

First of all, it is understood that grooming corresponds to the concept of *"corruption of minors"* in Article 227-22 of the French Criminal Code. This Article states that promoting or attempting to promote the corruption of a minor is punishable by five years' imprisonment and a fine of 75 000 euros.

Furthermore, Article 227-22-1 of the French Criminal Code states that the act of an adult making *"sexual propositions to a minor who is younger than 15 years old or to a person presenting themselves as such using an electronic means of communications"* is punishable by 2 years imprisonment and a fine of 30 000 euros. If the proposal is followed by an in-person meeting, the penalties can be increased to 5 years imprisonment and a fine of 75 000 euros. The punishment only applies if the victim is a minor under 15 years of age. In cases where the minor is older than 15 years of age, the offense of grooming cannot be applied. However, in those cases, it is possible to apply other offences.[168]

Also, Article 227-22-2 of the French Criminal Code states that *"incitement by an adult, by electronic means of communication, of a minor to commit any act of a sexual nature, either against himself or herself or against or with a third party, even if this incitement is not followed by action"*, is punishable by seven years' imprisonment and a fine of 100 000 euros.

Lastly, Article 227-23-1 of the French Criminal Code states, that if an adult *"solicits a minor to distribute or transmit pornographic images, videos or representations of the minor"*, the offence is punishable by seven years' imprisonment and a fine of 100 000 euros.

[167] Article 417/49 of the Belgian Criminal Code.

[168] For example, Article 227-22 of the French Criminal Code (if explicit sexual content) or Article 222-22 to 222-22-1 of the French Criminal Code (if sexual aggression, where moral and physical coercion can result from the difference in age).

Subrequirement 1.b – Definition of child

French legislations does not include a definition of 'child' as such. However, having ratified the UN Convention on the Rights of the Child on the 7th of August 1990, France recognises the definition of child under Article 1 of the Convention on the Rights of the Child.[169]

Subrequirement 1.c – Definition of age of sexual consent

French legislation sets the age of sexual consent at 15, and at 18 for cases where the perpetrator is an adult having legal or de facto authority over the victim and abuses the authority conferred on him by his functions.[170]

Subrequirement 1.d – The legal status of online grooming, when not followed by material acts.

Article 227-22-1 of the French Criminal Code criminalises the act of an adult making sexual propositions to a minor who is younger than 15 years old or to a person presenting themselves as such using an electronic means of communications. Contrary to supranational and EU legislation, there is no requirement that these sexual propositions should be followed by material acts. However, if it is followed by an in-person meeting, this is seen as an aggravating circumstance, as Article 227-22-1 provides for an increase in punishments.

Similarly, Article 227-22-2 of the French Criminal Code states that incitement by an adult, by electronic means of communication, of a minor to commit any act of a sexual nature, either against himself or herself or against or with a third party, is punishable by seven years' imprisonment and a fine of 100 000 euros, "*even if this incitement is not followed by action"*.

Requirement 2 – Criminalisation of engaging in sexual activities with a child who has not yet reached the age of consent

Article 227-25 of the French Criminal Code states that sexually engaging with a minor under 15 years of age is punishable by seven years of imprisonment and a fine of 100 000 euros. Furthermore, according to Article 222-29-2 of the French Criminal Code, if an adult engages in sexual activities with a child aged 15, while there is an age gap of at least 5 years, this is also qualified as sexual assault without the need of an element of coercion or violence, which is punishable by ten years of imprisonment and a fine of 150 000 euros.

Requirement 3 – Addressing CSAM

Subrequirement 3.a – Definition of CSAM

[169] A legislative proposal was presented to the Senate the 23rd of June 2021 to create the national Children's Code in which Article 1 defined the judicial definition of 'child' and Article 2 defined the rights and liberties of the child as directly translated from Articles 1 and 2 of the UN Convention on the Rights of the Child. However, the proposal was lapsed.

[170] French law n° 2021-478 from 21st of April 2021 added Articles 222-23-1, 222-29-2 and 227-25 to the Criminal Code and was aimed at protecting minors from sexual crimes and incest.

Article 227-23 of the French Criminal Code, which criminalises all crimes of CSAM, refers to *"images or representations of a minor"* that is of *"pornographic nature"*. These are broad and open terms, and also include AI-generated images, which goes further than the definition given in supranational legal instruments.

Also, in its last paragraph, Article 227-23 of the French Criminal Code states that this includes *"pornographic images of a person whose physical appearance is that of a minor, unless it is established that this person was eighteen years old on the day the image was fixed or recorded"*.

Subrequirement 3.b - Criminalisation of CSAM

Article 227-23 of the French Criminal Code states that *"the act of fixing, recording or transmitting an image or representation of a minor with a view to its distribution, where this image or representation is of a pornographic nature"*, is punishable by five years' imprisonment and a fine of 75 000 euros. However, if the image or representation concerns a minor under the age of 15, these acts are punishable even if they were not committed with a view to disseminating the image or representation.

Furthermore, Article 227-23 states that *"offering, making available or distributing such an image or representation, by whatever means, importing or exporting it, or causing it to be imported or exported, is punishable by the same penalties"*.

The penalties are increased to seven years' imprisonment and a fine of 100 000 euros if an electronic communications network was used to disseminate the CSAM to a non-specified public. Also, the act of habitually consulting, or in return for payment, an online public communication service that makes CSAM available, or of acquiring or holding CSAM by any means whatsoever, is punishable by five years' imprisonment and a fine of 75 000 euros.

Lastly, Article 227-23 of the French Criminal Code mentions that these offences are punishable by ten years' imprisonment and a fine of 500 000 euros when committed by an organised gang, and attempts to commit these offences are also criminalised with the same penalties.

Requirement 4 – Aggravating circumstances applicable to grooming

The French Criminal Code provides several aggravating circumstances, such as:

- The offence is committed in (the vicinity or on the premises of) teaching or educational establishments[171];
- The proposal is followed by an in-person meeting[172];
- The offence is committed against a minor under the age of 15 years old[173];
- The offence is committed by an organised gang.[174]

[171] Article 227-22 of the French Criminal Code.
[172] Article227-22-1 of the French Criminal Code.
[173] Articles 227-22, 227-22-2 and 227-23-1 of the French Criminal Code.

Therefore, the aggravating circumstances applicable to grooming in France differ from and only partially transpose those enshrined in the supranational instruments of reference.

Requirement 5 – Punishments of attempt, aiding or abetting of grooming

While Article 227-22 of the French Criminal Code also criminalises the attempt to promote the corruption of a minor, the French national legislation does otherwise not explicitly punish attempts, aiding or abetting of grooming.

Requirement 6 – The safeguarding of consensual sharing of images and videos, and the protection of victims of grooming

France does not explicitly exclude the criminalisation of victims or foresees in the safeguarding of self-generated sexual images and/or videos. This means that children are potentially liable for the distribution or transmission of their own self-generated sexual images and/or videos in France. In addition, in France, criminal law does not explicitly exclude the possibility of prosecuting a child for the possession of self-generated sexual images and/or videos of another child even if the depicted child consented to share such images and/or videos for private use only. However, in practice, the public prosecutor can assess whether follow-up is to be given to such facts. To this end, he/she notably assesses the seriousness of the facts and the context in which they occurred. Thus, where it is evident that the possession of the sexual images was consensual and for private use only, the public prosecutor's office may close the case and prosecution will thus not take place.

Also, the age of criminal responsibility in France is 13 years old, meaning that children below that age cannot be held criminally liable for acts they commit. However, older children (those above the age of criminal responsibility) cannot avail themselves of this exemption

To conclude, while in practice children are not prosecuted when they possess the self-generated sexual images and/or videos of another child if these images were obtained with the consent of the latter and are for private use only, French national legislation does not explicitly safeguard the consensual sharing of self-generated sexual images and/or videos.

7.4 Italy

Requirement 1 – Addressing grooming

Subrequirement 1.a – Definition and criminalisation of grooming

Under Italian law, grooming is defined as any act aimed at gaining the trust of a minor through tricks, flattery or threats, also when implemented by means of information and communication technologies, with the purpose to commit any CSEA offenses. In this case, the punishment is

[174] Ibid.

imprisonment from 1 to 3 years.[175] The provision, in line with supranational legal instruments, includes the scenario of the act being aimed at obtaining CSAM from the child.

Subrequirement 1.b – Definition of child

In Italy, the definition of "child" corresponds to the one laid down in supranational law, as a child is intended as a human being who has not yet reached the age of 18.[176] The definition is used consistently in the context of all CSEA legislation.

Subrequirement 1.c – Definition of age of sexual consent

In Italy, the age of sexual consent can be inferred from the provision criminalising performing sexual acts with children under the age of 14.[177] As a consequence, 14 can be considered as the age of sexual consent.

Subrequirement 1.d – The legal status of online grooming, when not followed by material acts

The Italian Criminal code does not require for the act of grooming to be followed by material acts or that the grooming act achieves the underlying criminal purpose to amount to a criminal offense. If the act constitutes a more serious offense – namely, if any of the CSEA crimes that represent the final purpose of the act of solicitation are carried out – the culprit is more severely punished for such latter crimes, according to relevant provisions in the Code.[178] Therefore, Italian legislation filled the legislative gap identified in relevant supranational legal instruments.

Requirement 2 – Criminalisation of engaging in sexual activities with a child who has not yet reached the age of consent

Italian legislation criminalises the act of engaging in sexual acts with children who have not yet reached the age of 14, or have not yet reached the age of 16 when the culprit is an ascendant, parent, cohabitant or guardian of the child, or any other adult to whom the child is entrusted. The provided punishment is imprisonment from 6 to 12 years.[179]

Requirement 3 – Addressing CSAM

Subrequirement 3.a – Definition of CSAM

Under Italian law, CSAM is identified with the term *"child pornography"*. It is defined as any depiction, by any means, of a person under the age of 18 engaged in explicit sexual activity, real or simulated, or any depiction of the sexual organs of the minor for sexual purposes.[180] The definition is in line with supranational legal instruments.

[175] Art. 609undecies of the Italian Criminal Code..
[176] Art 2 of the Italian Civil Code.
[177] Art. 609-quater of the Italian Criminal Code.
[178] Art. 609undecies of the Italian Criminal Code.
[179] Art. 609-quater of the Italian Criminal Law.
[180] Art. 600-ter of the Italian Criminal Code.

Subrequirement 3.b - Criminalisation of producing CSAM

Pursuant to the Italian Criminal Code, whoever knowingly procures or possesses *"pornographic material"* created using persons under the age of 18 is punishment by imprisonment of up to 3 years, or with a fine. Whoever, through the use of the Internet or other networks or means of communication, intentionally and without justified reason accesses CSAM is punished by a fine and imprisonment up to 2 years. The same provision punishes who trades, distributes, discloses, disseminates or advertises CSAM.[181] Moreover, whoever transfers CSAM to others, even without a price, is punished by a fine and imprisonment up to 3 years. The production of CSAM is instead punished by a fine and imprisonment from 6 to 12 years.[182] The domestic law is therefore in line with supranational legal instruments.

Requirement 4 – Aggravating circumstances applicable to grooming

The Italian Criminal Code enshrines some specific aggravating circumstances applicable to acts of grooming. In particular, the punishment is more severe if the crime is committed by more people acting together, if the crime is committed by someone who is a member of a criminal organisation, if from the crime derives, due to the reiteration of the conduct, a severe prejudice to the well-being of the child, and if the child is in life danger because of the act.[183] Therefore, with regard to grooming, the aggravating circumstances provided for by supranational law are only partially transposed. However, in case more severely punished offenses follow the solicitation of the child, additional aggravating circumstances may apply. For example, if the crime leads to engaging in sexual acts with the child, aggravating circumstances are the fact that the act is carried out with particular violence, that a severe damage to the victim derives from the crime, and that the life of the minor is put in danger by the act.[184] As regards the circumstance of the culprit of engaging in sexual acts with a child being a person in a position of trust, as anticipated, this is not an aggravating circumstance. Instead, Italian law provides for the age of sexual consent to be elevated at 16 in this case.[185]

Requirement 5 – Punishments of attempt, aiding or abetting of grooming

The Italian Criminal Code generally punishes attempts to commit any criminal offense.[186]

The Code also enshrines a general provision punishing the abetting of any crime for which reclusion is provided as a punishment, thus including all the CSEA crimes.[187] Similarly, the participation (including aiding) in a crime is also generally punished concerning any criminal offense.[188]

[181] Art. 600-quater of the Italian Criminal Code.
[182] Art. 600-ter of the Italian Criminal Code.
[183] Art. 609-undecies of the Italian Criminal Code.
[184] Art. 609-ter of the Italian Criminal Code.
[185] Art. 609-quater of the Italian Criminal Code.
[186] Art. 56 of the Italian Criminal Code.
[187] Art. 378 of the Italian Criminal Code.

Requirement 6 – The safeguarding of consensual sharing of images and videos, and the protection of victims of grooming

Italian legislation does not provide an explicit exception to CSAM prohibitions laid down by criminal law when explicit images and videos are shared consensually between peers. With regard to this element, it should be noted that the absence of an exception would render CSAM prohibitions applicable to this scenario too. This could lead to the unwanted effect of limiting the freedom of young individuals in exploring their sexuality, which is suggested to be very important by the analysed supranational legal instruments.

Italian law does not criminalise victims of grooming or other CSEA crimes.

7.5 Lithuania

Requirement 1 – Addressing grooming

Subrequirement 1.a – Definition and criminalisation of grooming

Lithuanian legislation does not foresee an explicit definition of grooming. However, the act of proposing a child under the age of 16 to meet for the purpose of obtaining sexual intercourse or any other type of sexual gratification, or for the purpose of exploiting the child, or for the purpose of obtaining *"pornographic material"*, is criminalised if the proposal is followed by concrete steps to ensure that the meeting takes place. In this case, the punishment amounts to a fine, or the restriction of liberty, or the detention in custody for up to one year.[189] The provision reflects the constitutive elements of grooming, as defined in supranational legal instruments.

Subrequirement 1.b – Definition of child

Lithuanian legislation, in line with supranational legal instruments, considers a "child" as any person under the age of 18 with regard to any crime provided by under national law.[190] A similar definition can be also found in other specific legal instruments, such as the Laws on Fundamental of Protection of the Rights of the Child.[191] In specific instances, the Lithuanian Criminal Code distinguishes the concept of "minor", intended as a child under the age of 14.[192]

Subrequirement 1.c – Definition of age of sexual consent

The Lithuanian Criminal Code establishes the age of sexual consent at 16.[193]

Subrequirement 1.d – The legal status of online grooming, when not followed by material acts.

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[188] Art. 110 of the Italian Criminal Code.
[189] Art. 152 of the Lithuanian Criminal Code.
[190] Chapter XXI of the Lithuanian Criminal Code.
[191] Art. 2.11 of the Laws on Fundamentals of Protection of the Rights of the Child..
[192] Art. 141.3 of the Lithuanian Criminal Code.
[193] Art. 151 of the Lithuanian Criminal Code.

Lithuanian legislation only criminalises grooming when concrete steps are taking for the meeting to take place. Therefore, the gap existing in supranational legislation is also present at the national level.

Requirement 2 – Criminalisation of engaging in sexual activities with a child who has not yet reached the age of consent

Lithuanian legislation, in line with what is imposed by supranational law, criminalises engaging in sexual activities with a child under the age of 16, who has therefore not reached the age of consent according to the relevant laws.

In particular, if an adult engages in sexual activities with a child, she or he shall be punished by a fine, the restriction of liberty, the arrest or the deprivation of liberty up to five years.[194] The same penalties, in addition of punishment by public works, is provided in the case of an adult promising a form of remuneration for such sexual activities.[195]

A more severe punishment is established in the case of a parent or another legal representative engaging in sexual activities with a child under the age of consent. In this case, the act is punished with imprisonment for up to eight years.[196] Likewise, the same punishment applies in the case of an adult takes advantage of the situation of dependence of a child in order to engage in sexual activities. Similarly, the act is punished with imprisonment for up to eight years when the child in threatened into engaging in sexual activities.[197]

A specific provision in the Lithuanian Criminal Code is dedicated to the situation of a child being sexually assaulted by taking advantage of the fact that the victim is powerless. In this case, the act is punished by imprisonment from 3 to 15 years when the child is under the age of 14, and by imprisonment from 2 to 10 years when the child is under the age of 16.[198]

Requirement 3 – Addressing CSAM

Subrequirement 3.a – Definition of CSAM

Under Lithuanian legislation, any type of *"child pornography"* is indicated as CSAM. In turn, pornography is defined as any piece of information that, openly and in detail, shows real or simulated sexual intercourse, genitals, defecation, masturbation or sexual perversions (such as paedophilia, sadism, masochism, zoophilia, necrophilia), as long as such depictions constitute the main purpose of the information.[199]

[194] Ibid.
[195] Ibid.
[196] Ibid.
[197] Ibid.
[198] Ibid.
[199] Art. 2.38 of the Law on the Provision of Information to the Public of the Republic of Lithuania.

Subrequirement 3.b - Criminalisation of producing CSAM

Lithuanian legislation transposes all the constitutive elements of supranational instruments with regard to the criminalisation of CSAM. It criminalises obtaining access, by means of information and communication technology, to CSAM, providing for a punishment by fine or by imprisonment for up to 4 years.[200] Likewise, the distribution of CSAM is punished by fine or imprisonment for up to 4 years.[201] The offering and supplying of CSAM is also punished by fine or imprisonment up to 4 years.[202] Moreover, whoever produces a large quantity of pornographic material depicting a child with the intent to distribute it is punishable by imprisonment for up to 5 years.[203] Finally, the national legislation criminalises acquiring and possessing CSAM, by providing a punishment by fine or imprisonment for up to 4 years.[204]

It should be noted that the national legislation criminalises the abovementioned CSAM-related offenses even when the depicted person is only presented as a child. In this case, the punishment amounts to a fine or imprisonment for up to 4 years.[205]

Requirement 4 – Aggravating circumstances applicable to grooming

Lithuanian legislation provides for aggravating circumstance applicable to CSEA-related offenses, when the act is committed by someone who has already committed the crime, or by someone acting in the framework of organised crime, or someone in a position of trust for the child, such as a close relative.[206] Therefore, the aggravating circumstances applicable to grooming only partially transpose those enshrined in the supranational instruments of reference.

Requirement 5 – Punishments of attempt, aiding or abetting of grooming

The Lithuanian Criminal code provides for a separate provision regulating the attempt to commit any criminal offenses. The attempt is punishable when such an attempt to commit a criminal act does not translate in the actual criminal offense for reasons beyond the control of the person.[207] The Lithuanian Criminal Code punishes complicity in all CSEA offenses. Aiding and abetting is enshrined in Lithuanian legislation in a provision applicable to all criminal offenses, and makes accomplices punishable as long as they had the intent to be complicit in the acts committed by the executor.[208] It can be concluded that such provisions are applicable to the case of grooming.

[200] Art. 209(2) of the Lithuanian Criminal Code.
[201] Art. 309.1 of the Lithuanian Criminal Code.
[202] Art. 309.2 of the Lithuanian Criminal Code..
[203] Art. 309.2-3 of the Lithuanian Criminal Code.
[204] Art. 309.2 of the Lithuanian Criminal Code.
[205] Ibid.
[206] Art. 60 of the Lithuanian Criminal Code.
[207] Art. 24-26 of the Lithuanian Criminal Code.
[208] Art. 26 of the Lithuanian Criminal Code..

Requirement 6 – The safeguarding of consensual sharing of images and videos, and the protection of victims of grooming

Pursuant to Lithuanian legislation, children over the age of 16, who have therefore reached the age of consent, and who consensually share or keep sexual images and videos of themselves, are not punished. In this regard, the Supreme Court of Lithuania has clarified that sharing one's intimate photos with another person, if the latter person does not object to the sharing, is part of the realisation of the person's right to private life. Therefore, this act cannot be criminalised. Notably, the case concerned the sharing of such images by a 16 years old child.[209]

Moreover, victims of CSEA crimes are not punished under criminal law.

7.6 Greece

Requirement 1 – Addressing grooming

Subrequirement 1.a – Definition and criminalisation of grooming

In line with supranational and EU legislation, the Greek Criminal Code criminalises the act of whoever intentionally, by means of information and technology communication systems, proposes to a minor who has not reached the age of 15 to meet him or her, or a third party, with the aim of committing one of crimes entailing engaging in sexual activities with children or any offense related to CSAM, when the proposal is followed by further acts leading to such a meeting. The punishment for this offense is a fine and imprisonment for at least two years.[210]

Moreover, the Code also criminalises the attempt to solicit a child who has not reached the age of consent to provide CSAM depicting him or her, by means of information and communication technologies.[211]

Subrequirement 1.b – Definition of child

In Greek legislation, a child is considered as every human being who is younger than 18 years old, unless adulthood is reached at a younger age according to the existing legal instruments.[212] Pursuant to the Greek Criminal Code, a definition for the term "minor" is introduced. The latter is considered as a child who, at the time of certain criminal offenses being committed, is of an age between 12 and 18 years old.[213] This definition is applicable to all the CSEA crimes. The definitional framework is therefore in line with supranational legal instruments.

[209] *Baudžiamojibyla Nr. 2K-85-628/2023.*
[210] Art. 348B of the Greek Criminal Code.
[211] Art. 348B of the Greek Criminal Code.
[212] Art. 1 of the Law 2101/1992.
[213] Art. 121 of the Greek Criminal Code.

Subrequirement 1.c – Definition of age of sexual consent

In Greece, the age of sexual consent is established at 15.[214]

Subrequirement 1.d – The legal status of online grooming, when not followed by material acts

The Greek legislation does not explicitly include in the definition of grooming the circumstance of a proposal not followed by material acts. However, the Greek Criminal Code provides for the offense to sexual dignity which fills the legislative gap identified at a supranational level. In fact, pursuant to the Code, an adult who by means of the Internet or other media, or similar technologies, makes contact with a person under the age of 15, and with gestures or suggestions insults the honor of the minor in the reams of sexual life, is punished by imprisonment of at least 2 years. In case the contact is followed by a meeting, the adult is punished by imprisonment for at least 3 years.[215]

Requirement 2 – Criminalisation of engaging in sexual activities with a child who has not yet reached the age of consent

Pursuant to Greek legislation, whoever performs a sexual act on a person younger than 15 years of age, or misleads him as a result of performing or undergoing such an act, is committing a criminal offense. If the victim is below the age of 12 years, the provided punishment is imprisonment for at least 10 years. If the victim is above the age of 12 years, the provided punishment is imprisonment.[216] Therefore, national law is in line with the relevant supranational legal instruments.

Requirement 3 – Addressing CSAM

Subrequirement 3.a - Definition of CSAM

Under Greek legislation, CSAM is identified as *"child pornography"*. The latter encompasses a wide range of content whose aim is to exploit minors. Among the types of content that fall within the category, there are images or videos of minors engaged in sexual activity, materials that show genital organs of minors and are primarily intended for sexual arousal, any type of child pornography made available online, and content that depicts minors in explicit scenarios, albeit simulated or animated.[217] With regard to the latter type of content, while it does not involve real children, it creates an environment conducive to child exploitation. Therefore, it is punished. As a result, the Greek definition is in line with the provisions laid down in supranational legal instruments.

[214] Art. 337-339-348B of the Greek Criminal Code.
[215] Art. 337 of the Greek Criminal Code.
[216] Art. 339 of the Greek Criminal Code.
[217] Art. 348A-348C of the Greek Criminal Code.

Subrequirement 3.b – Criminalisation of producing CSAM

Pursuant to the Greek Criminal Code, anyone who intentionally produces, offers, sells or in any way disposes, distributes, transmits, buys, procures or possesses child pornography material, or disseminates information regarding the commission of such acts through information systems, is punished by imprisonment of at least 2 years and a fine.[218] As a result of the transposition of Directive 2011/93/EU in the national law, the Greek Criminal Code foresees now the punishment by imprisonment of up to 3 years and a fine for whoever intentionally gains access to CSAM through information and communication technologies.[219] As regards the acquisition of CSAM, as well as its distribution, dissemination, transmission, offering, supplying or making available, all the acts in question are included in the provision of the Greek Criminal Code generally criminalizing CSAM.[220]

This is currently article 348B of the penal code and it is described as follows: *"Whoever knowingly produces, distributes, publishes, displays, imports into or exports from the Territory, transfers, offers, sells or otherwise disposes, purchases, procures, acquires or possesses child pornography material or disseminates or transmits information relating to the commission of the above acts, shall be punished by imprisonment of at least one (1) year and a fine."*

In the next paragraph of the same article it is foreseen that: *"Anyone who intentionally produces, offers, sells or in any way disposes, distributes, transmits, buys, procures or possesses child pornography material or disseminates information regarding the commission of the above acts, through information systems, shall be punished by imprisonment of at least two (2) years and a fine."*

Requirement 4 – Aggravating circumstances applicable to grooming

As regards the use of tortures or serious violence in the context of grooming, Greek legislation provides for an article of general application concerning whoever coerces another person into intercourse or other lewd act.[221] Such provision, which provides for the punishment to be imprisonment, is also applicable to cases of grooming, when the act is carried out by means of violent behaviors. The Greek Criminal Code also provides for a general provision regulating the circumstance where an adult commits lewd acts against a minor, when the adult is in a position of trust or supervision, even if temporary. If the victim has not yet reached the age of 14, the punishment is imprisonment of at least 10 years and a fine. The term of imprisonment can be lower in case the victim has reached the age of 18. Furthermore, the penalty can be more severe when specific roles are played by the criminal in the life of the victim, for example if he or she is a person living with the child, a psychologist, a teacher or a clergymen with whom the child has a spiritual

[218] Art. 348B of the Greek Criminal Code.
[219] Art. 348A of the Greek Criminal Code.
[220] Art. 348A of the Greek Criminal Code..
[221] Art. 336 of the Greek Criminal Code..

relationship.[222] It can be concluded that relevant national laws only partially transpose the aggravating circumstances applicable to the act of grooming as established in supranational legal instruments.

Requirement 5 – Punishments of attempt, aiding or abetting of grooming

The attempt to commit any crime is generally punished with regard to any offense pursuant to the Greek Criminal Code. In particular the attempt is punished if it led to no results[223], or if was withdrawn before completing the criminal act.[224] Thus, such provisions are also applicable to grooming. With regard to the attempt to solicit a child to provide CSAM by means of information and communication technologies, Greek legislation also established a specific provision criminalising it.[225]

With regard to the aiding of abetting of criminal offenses, it is generally punished by the Greek Criminal Code.[226] Therefore, the aiding and abetting of grooming is also punished in the national legislation, as well as the aiding and abetting of any offense related to CSAM.

Requirement 6 – The safeguarding of consensual sharing of images and videos, and the protection of victims of grooming

Greek legislation does not provide for a specific legal exception to prohibitions related to producing and sharing of explicit images and videos, when such content is shared consensually among peers. However, the Code establishes in a general provision that lewd acts among children with less than 15 years of age are not punished when the age difference between them is less than 3 years. If the age difference amounts to more of 3 years, the children in question can be subject to reformative measures or treatment.[227] Should the sharing of explicit images and videos fall under the national definition of "lewd acts", Greek legislation can be considered as complying with the recommendation in supranational legal instruments in this regard.

The national legal framework does not criminalise victims of CSEA crimes.

7.7 United Kingdom

Requirement 1 – Addressing grooming

Subrequirement 1.a – Definition and criminalisation of grooming

The Sexual Offences Act provides various specific provisions regarding grooming related offences.

[222] Art. 342 of the Greek Criminal Code.
[223] Art. 42 of the Greek Criminal Code.
[224] Art. 43 of the Greek Criminal Code.
[225] Art. 348A of the Greek Criminal Code.
[226] Art. 45-46-47-48 of the Greek Criminal Code.
[227] Art. 339 of the Greek Criminal Code.

Section 14 makes it an offence to arrange or facilitate a meeting with any child under the age of 16 where there is an intention by an individual to sexually abuse the child or there is an intention for another person to sexually abuse them.[228] A person guilty of this offence is liable to the penalty to which the person would be liable on conviction of an offence under any of sections 5 to 13.

Section 15 makes it a criminal offence to intentionally meet a child under 16 (or if the offender does not reasonably believe that the victim is 16 or over) following the process of grooming. A maximum sentence of six months in prison and/or a fine applies if the offender is found guilty in a magistrates' court. There is a maximum prison sentence of 10 years if the offender is convicted in the crown court.

Section 15A punishes the conduct of an adult having any sexual communication with a child under 16 (or if the offender does not reasonably believe that the victim is 16 or over) whether the conversation takes place in an online or offline environment. A maximum sentence of six months in prison and/or a fine applies if the offender is found guilty in a magistrates' court. There is a maximum prison sentence of 2 years if the offender is convicted in the crown court.

Subrequirement 1.b – Definition of child

UK legislation does not include a definition of 'child' as such. However, having ratified the UN Convention on the Rights of the Child, the UK recognises the definition of child under Article 1 of the Convention on the Rights of the Child.

Subrequirement 1.c – Definition of age of sexual consent

UK legislation sets the age of sexual consent at 16.[229] Additional protection is given to all under-18-year-olds, regardless of whether or not they are over the age of consent, if the perpetrator is a person in a position of trust or a family member.[230]

Subrequirement 1.d – The legal status of online grooming, when not followed by material acts

While the groomer would have to do more than propose said meeting and actually attempt to meet with victim, the legislation does not require said meeting to actually take place for the Section 15 of the Sexual Offences Act to apply.[231]

Section 15A of the Sexual Offences Act creates an offence if an adult has any sexual communication with a child under 16 (or if the offender does not reasonably believe that the victim is 16 or over) whether the conversation takes place in an online or offline environment.

[228] Section 14 refers to Sections 5 to 13 of the Sexual Offences Act 2003.
[229] Sections 9 to 15A and 74 of the Sexual Offences Act 2003 and The Crown Prosecution Service (21 May 2021). Legal Guidance on Rape and Sexual Offences - Chapter 6: Consent. https://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-6-consent.
[230] Sections 16 to 29 of the Sexual Offences Act 2003.
[231] See for example R v Jibran 2019 EWCA Crim 1007.

Requirement 2 – Criminalisation of engaging in sexual activities with a child who has not yet reached the age of consent

The Sexual Offences Act provides various specific provisions which criminalise sexual activities with a person who has not attained the age of sexual consent. Most notably, Section 9 makes it a criminal offence to intentionally touch, and the touching is sexual, a child under 16 (and the offender does not reasonably believe that the victim is 16 or over) or under 13. A maximum sentence of six months in prison and/or a fine applies if the offender is found guilty in a magistrates' court. There is a maximum prison sentence of 14 years if the offender is convicted in the crown court. Other relevant provisions are: Section 5 (rape of a child under 13) and Section 7 (assault of a child under 13).

Requirement 3 – Addressing CSAM

Subrequirement 3.a – Definition of CSAM

While UK legislation does not give an explicit definition of CSAM, various laws and statutes address the creation, distribution, possession, and viewing of *"indecent images of children"*.[232]

Subrequirement 3.b – Criminalisation of CSAM

Section 1 of the Protection of Children Act 1978 makes it an offence for a person to take (or permit to be taken), to distribute or show, or to have in his possession (with a view to distributing or showing by himself or others) any indecent (pseudo)-photograph of a child. It also make it an offence for a person to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent (pseudo)-photographs, or intends to do so.

This means that UK legislation is more or less line with what is established by relevant supranational legal instruments, except that obtaining access, by means of information and communication technology, to CSAM is not explicitly criminalised.

Requirement 4 – Aggravating circumstances applicable to grooming

The Sentencing Council provides guidelines for sentences handed down in the UK and the Commonwealth Judges.[233] These guidelines take a two-step approach.[234] The first step is to determine the offence category by means of an assessment of the offender's culpability and the harm caused. The guidelines then in the second step specify a category range for each offence category, after which it provides a non-exhaustive list of aggravating and mitigating factors relating to the context of the offence and to the offender.

[232] See the Protection of Children Act 1978, the Criminal Justice Act 1988, and the Sexual Offences Act 2003. Also the Online Safety Act offers some guidance here.
[233] See Section 59(1) of the Sentencing Code.
[234] Sentencing Council. Using Sentencing Council guidelines. https://www.sentencingcouncil.org.uk/explanatory-material/magistrates-court/item/using-the-mcsg/using-sentencing-council-guidelines/.

In the context of grooming, to determine the offence category, several factors indicating raised harm and raised culpability are given.[235]

Factors indicating raised harm:

- Continued contact despite victim's attempts to terminate contact
- Sexual images exchanged
- Victim exposed to extreme sexual content
- Child is particularly vulnerable due to personal circumstances

Factors indicating raised culpability:

- Offender acts together with others to commit the offence
- Communication indicates penetrative sexual activity is intended
- Offender lied about age/persona
- Use of threats (including blackmail), gifts or bribes
- Abuse of trust
- Specific targeting of a particularly vulnerable child
- Abduction/detention
- Commercial exploitation and/or motivation
- Offence racially or religiously aggravated
- Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity)
- Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)

The non-exhaustive list of aggravating factors in the context of grooming are:

- Previous convictions having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail
- Failure to comply with current court orders
- Offence committed whilst on licence
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence
- Victim encouraged to recruit others

[235] Sentencing Council. Meeting a child following sexual grooming. https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/meeting-a-child-following-sexual-grooming/.

Notably, only the first two aggravating factors (previous convictions and offence committed whilst on bail) are statutory aggravating factors.[236]

Therefore, the aggravating circumstances applicable to grooming in the UK differ from and only partially transpose those enshrined in the supranational instruments of reference.

Requirement 5 – Punishments of attempt, aiding or abetting of grooming

UK legislation punishes attempts, as long as the act was more than merely preparatory to the commission of the offence and that the accused intended to commit the offence.[237] Moreover, UK legislation enshrines a general provision punishing the aiding or abetting of any indictable offence, stating that an accessory shall be treated in the same way as if he had actually committed the offence himself.[238] It can be concluded that such provisions are applicable to the case of grooming.

Requirement 6 – The safeguarding of consensual sharing of images and videos, and the protection of victims of grooming

Section 1A of the Protection of Children Act (1978) allows children older than 16 to possess images of each other if at the time they were obtained they were:

1) Married to each other (or civil partners), or

2) Living together as parents in an enduring family relationship.

Furthermore, the child must have consented to the taking and possession of this image, and the image may not be distributed or shown to a third party.

Other than this provision, the UK does not explicitly exclude the criminalisation of victims or foresees in the safeguarding of self-generated sexual images and/or videos. This means that children who distribute or transmit their own self-generated sexual images and/or videos have technically committed offences. However, the Home Office launched guidance rules for officers, which advises to record these crimes, but to not prosecute them.[239]

[236] Section 64 of the Sentencing Code.
[237] Criminal Attempts Act 1981.
[238] Section 8 of the Accessories and Abettors Act 1861.
[239] UK Home Office (2023). Crime Recording Rules for frontline officers & staff, 47-48. https://assets.publishing.service.gov.uk/media/6579e94d254aaa000d050cb9/crime-recording-rules-for-frontline-officers-and-staff-v6-final-published__.pdf.

8 Conclusion

8.1 Recommendations regarding the international and EU legal framework

The report commenced with an analysis of the international and EU legal framework. Following this analysis, preliminary conclusions can be drawn.

First of all, it is important to note certain aspects regarding terminology. The term 'child sexual abuse material' is to be preferred as it more aptly describes the true nature and extent of materials depicting acts of sexual abuse of children and/or depicting the sexual organs of the child victim, to which children can never consent.[240] Nonetheless, the term 'child pornography' is still used in both the Lanzarote Convention as well as in Directive 2011/93/EU. Likewise, both use the term 'child prostitution', while the term 'exploitation of children in/for prostitution' is preferred as to not stigmatise or otherwise harm the child.[241] Furthermore, the Lanzarote Convention and Directive 2011/93/EU do not use the term 'grooming' as such. Instead, another term is used: 'solicitation of children for sexual purposes'. Amendments to the terminology used in the legal instruments could better align the legislative framework with the factual reality of CSEA crimes. On the EU level, the European Commission has adopted a proposal to update the criminal law rules on CSEA[242], which includes proposals for these necessary changes in terminology.

Furthermore, some legal gaps and possible legal uncertainties can be identified.

1. Legal uncertainty on the scope of CSAM provisions: AI-generated images

Article 20(3) of the Lanzarote Convention grants Party States the discretion to determine whether simulated representations or realistic images of non-existent children and images involving children who have reached the age of sexual consent should be included in the definition of CSAM. The EU legislator incorporates in the definition of "child pornography" any realistic image of a child engage in sexually explicit conduct or realistic images of the sexual organs of a child.[243] While a broad interpretation of this provision can be taken in order to encompass AI-generated images in the scope of the Directive, a more explicit reference to the element of depicting non-existent children in realistic images would sort out any doubts about the matter. Notably, the European

[240] Interagency Working Group on Sexual Exploitation of Children (2016). Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, 35-40. Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse (ecpat.org)

[241] Ibid, 29-30.

[242] European Commission (6 February 2024). Proposal for a Directive of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child sexual abuse material and replacing Council Framework Decision 2004/68/JHA, COM(2024) 60 final. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2024%3A60%3AFIN.

[243] Art. 2(c)(iv) of Directive 2011/93/EU.

Commission's proposal to update the criminal law rules on CSEA also consist of proposed changes to Article 2(3)(d) of Directive 2011/93/EU as to ensure that the definition of CSAM covers deep fakes and AI-generated material. Therefore, the proposal highlights the intention of the EU legislator to avoid future legal uncertainties and adapt the legal instruments to the latest technological developments.

2. Legal gaps on the scope of grooming provisions

Both the Lanzarote Convention[244] and Directive 2011/93/EU[245] address grooming. However, both only refer to engaging in sexual activities with a child that has not reached the age of sexual consent[246] and the production of CSAM[247]. While other unlawful behaviours may be covered and criminalised under other provisions, it does indicate that to be able to categorise and punish a certain unlawful behaviour as grooming, it must be committed for the purpose of engaging in sexual activities with a child that has not reached the age of sexual consent or for the purpose of producing CSAM. Moreover, both address the grooming of a child who has not reached the age of sexual consent. It should be suggested to encompass the grooming of all children, irrespective of the age of sexual consent.

Also, both the Lanzarote Convention and Directive 2011/93/EU include in their articles on grooming a reference to information and communication technologies. This indicates that only online grooming is included in the scope. However, grooming may happen outside of the context of internet or through the use of information and communication technology. Furthermore, in both legal instruments, grooming is only made punishable where that proposal was followed by material acts leading to such a meeting. However, sexual abuse of a child may be committed exclusively online, without material acts leading to a meeting in person.

It is recommended to address these legal gaps, as to include all kinds of grooming, whether (fully) committed online or offline, in the scope. On the EU level, the European Commission's proposal foresees to slightly remedy these gaps. Firstly, by adding to Article 6 of Directive 2011/93/EU references to the other offences in Article 3, instead of merely referring to the paragraph on engaging in sexual activities with a child.[248] Secondly, by expanding the scope of Article 6 of Directive 2011/93/EU through adding *"either online or in person"* to explicitly acknowledge the need to also combat grooming outside the context of the Internet, when it is not carried out by using information and communication technology. Also, the proposal clarifies that *"by means of information and communication technology"* should be understood in a sufficiently broad manner as to cover not only voice, text or mail conversations, but also contacts or exchanges through new

[244] Art. 23 of the Lanzarote Convention.
[245] Art. 6 of the Directive 2011/93/EU.
[246] Art.18 of the Lanzarote Convention. Art. 3(4) of the Directive 2011/93/EU.
[247] Art. 20.1(a) of the Lanzarote Convention. Art. 5(6) of the Directive 2011/93/EU
[248] See proposed changes for Article 3 and 6 of Directive 2011/93/EU. Note that Article 3 is also broadened and the punishments are set higher.

technological developments, such as in augmented extended or virtual reality settings, or through chat-bots. Lastly, the proposal deletes the reference to the age of sexual consent, meaning that the scope now includes the grooming of anyone under the age of 18, irrespective of the age of sexual consent.

3. Legal gap in EU regarding criminalisation of attempt grooming

While the Lanzarote Convention states that Party States should criminalise attempts to commit the CSEA offences established in it, it also leaves the option for Party States to make an exception for grooming.[249] It seems that the EU legislator has favoured this route, as it does not include a reference to grooming in Article 7 of Directive 2011/93/EU, which addresses punishable attempts.

4. Legal gaps on safeguarding the consensual sharing of self-generated images and videos and the protection of victims of grooming

Adolescents themselves create and share content of themselves and peers. While this makes them more vulnerable for exploitation and abuse, the consensual sharing of explicit self-generated sexual images and/or videos between peers is also part of the adolescent sexual development and should not be criminalised. Both Article 20(3)of the Lanzarote Convention and Article 8(3) of Directive 2011/93/EU leave it to the Member States' discretion to decide whether to criminalise or not the production, acquisition or possession of material involving children who have reached the age of sexual consent if this material is produced and possessed with the consent of those children and is meant only for their private use. However, given the importance of safeguarding the consensual sharing of self-generated images and videos, it would be preferable to harmonise this matter and not leave it up to Member States' discretion.

Furthermore, the applicable legal instruments at the international and EU level do not provide for a specific article on the prohibition to criminalise victims of grooming. Directive 2011/93/EU slightly addresses the issue in its Article 14 and Recital 24. According to these, in Member States where prostitution or the appearance in pornography is punishable, a child that has been compelled to participate in one of the two activities should not be criminalised. However, it is crucial to prioritize the protection of victims, ensuring that they are not inadvertently subjected to further harm by being at risk of criminalisation for any involvement in crimes related to CSEA.

8.2 Summary on the national legal frameworks

Based on the analysis of the international and EU legal framework, this report set out fundamental requirements that a model legislation should entail. The report examined how the national legislations addressed these requirements.

[249] Article 24(2) and (3) Lanzarote Convention.

Table 1: Global Legislative Overview of Model Framework Requirements and National Legislation[250]

	Belgium	France	Italy	Lithuania	Greece	UK
Defining and criminalising grooming	✓	±	✓	±	✓	✓
Definition of child	✓	✓	✓	✓	✓	✓
Definition of age of sexual consent	✓	✓	✓	✓	✓	✓
Addresses gap of 'followed by material acts'	±	✓	✓	X	±	±
Criminalisation of engaging in sexual activities with a child	✓	✓	✓	✓	✓	✓
Addressing CSAM	✓	✓	✓	±	✓	±
Aggravating circumstances applicable to grooming	±	±	±	±	±	±
Punishments of attempt, aiding or abetting of grooming	±	±	✓	✓	✓	✓
Safeguarding of self-generated sexual images and/or videos and protection of victims	✓	X	±	✓	±	±

First of all, the term **'grooming'** does not seem to appear in legislative frameworks as such. Instead, other terms are used to define grooming, such as 'approaching a minor for sexual purposes'[251]. In France, several criminal offences are established to address behaviours that correspond to grooming.[252]

[250] ✓ = yes, fully adhering to requirement
± = partial, requirement not fully fulfilled (i.e. not fully in line with supranational legislation)
X = no, requirement is not encompassed in national legislation

[251] Article 417/24 of the Belgian Criminal Code.

[252] Article 227-22 of the French Criminal Code ('corruption of minors'), Article 227-22-1 of the French Criminal Code ('sexual propositions to a minor'), Article 227-22-2 of the French Criminal Code ('incitement by an adult of a minor'), and 227-23-1 of the French Criminal Code ('soliciting of a minor to distribute or transmit pornographic images, videos or representations of the minor').

Some countries have addressed the gaps that were identified in the international and supranational framework. This is the case, for example, for the legal gap no. 2, as identified above. The grooming definition in Belgium and Italy refers to a wide range of CSEA crimes, instead of only to providing CSAM and engaging in sexual activities with a minor. The Belgian definition also includes both online and offline grooming in its scope, and refers to any child below the age of 18 (regardless of the age of sexual consent). Also, France and Italy have explicitly addressed the 'followed by material acts'-gap. Similarly, the Belgian, UK and Greek Criminal Codes provide for offenses encompassing behaviours that could constitute online grooming even in the absence of subsequent material actions leading to a physical meeting. In Lithuania, this gap remains unaddressed.

Furthermore, all the national legislations define **'child'** as any person under the age of 18 years old. The **age of sexual consent** differs per national jurisdiction. It is 16 in Belgium[253], the UK[254], and Lithuania[255], 15 in France[256] and Greece[257], and 14 in Italy[258].

Nearly all the examined countries comprehensively tackle **CSAM**. While the definitions of CSAM differ (for instance, French legislation uses open terms simply referring to images of *"pornographic nature"* and Lithuanian legislation defines *"pornography"*, but not *"child pornography"*), they nearly all punish CSAM in line with the relevant supranational legal provisions. Only the UK legislation does not explicitly foresee in the criminalisation of obtaining access, by means of information and communication technology, to CSAM. Additionally, Belgium, France and Greece addressed the possible legal uncertainty as identified under point 1 above by including AI-generated material in their definition of CSAM.

Notably, across all the analysed countries, there is a lack of harmonisation regarding the **aggravating circumstances** applicable to grooming, with differences observed compared to the supranational instruments.

Italy, Greece, the UK, and Lithuania punish **attempts, aiding, or abetting of grooming**. While the French Criminal Code criminalizes the attempt to promote the corruption of a minor under Article 227-22, it does not explicitly address attempts, aiding, or abetting of grooming otherwise. In Belgium, aiding and abetting of all CSEA crimes, including grooming, is punishable, but attempted grooming is not explicitly punishable, as it is considered the preparatory phase of other crimes. Therefore, in France and Belgium a legal gap is identified with regard to criminalising the attempt of

[253] Article 417/6 §1 Belgian Criminal Code.
[254] Sections 9 to 15A and 74 of the Sexual Offences Act 2003 and The Crown Prosecution Service (21 May 2021). Legal Guidance on Rape and Sexual Offences - Chapter 6: Consent. https://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-6-consent.
[255] Art. 151 of the Lithuanian Criminal Code.
[256] However, the age of sexual consent is raised to 18 if the abuser had some sort of authority over the victim. French law n° 2021-478 from 21st of April 2021 added Articles 222-23-1, 222-29-2 and 227-25 to the Criminal Code and was aimed at protecting minors from sexual crimes and incest.
[257] Art. 337-339-348B of the Greek Criminal Code.
[258] Art. 609-quater of the Italian Criminal Code.

grooming. This legal gap is analogous to that already noted with regard to supranational legislation in the legal gap no. 3.

Lastly, both Belgium and Lithuania explicitly protect the **consensual sharing of self-generated images and videos**. Belgium, Lithuania and Italy refrain from punishing **victims of CSEA crimes** for their involvement in those offenses. Italian and Greek legislation do not provide for a specific legal exception for the consensual sharing of self-generated images and videos. However, the Greek Code establishes in a general provision that lewd acts among children with less than 15 years of age are not punished when the age difference between them is less than 3 years. If the age difference amounts to more of 3 years, the children in question can be subject to reformative measures or treatment.[259] While in practice children are not prosecuted when they possess the self-generated sexual images and/or videos of another child if these images were obtained with the consent of the latter and are for private use only, the UK and French national legislation does not explicitly foresees in the safeguarding of self-generated sexual images and/or videos. In the UK, there is a provision which allows children older than 16 to possess sexual images of each other if they are married or civil partners, or living together as parents in an enduring family relationship.[260] Other than this provision, the UK legislation does not explicitly exclude the criminalisation of victims or foresees in the safeguarding of self-generated sexual images and/or video. However, in practice children will not be prosecuted for these crimes.[261]

[259] Art. 339 of the Greek Criminal Code..
[260] Section 1A of the Protection of Children Act (1978).
[261] UK Home Office (2023). Crime Recording Rules for frontline officers & staff, 47-48. https://assets.publishing.service.gov.uk/media/6579e94d254aaa000d050cb9/crime-recording-rules-for-frontline-officers-and-staff-v6-final-published__.pdf.

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Annexes

Annex 1: Template checklist + guidance note

Research report on legislation

Template checklist and guidance note

About CESAGRAM & our research

While the ever-evolving digital landscape affords new opportunities for the realisation of children's rights, it also exposes them to potential risks that, if not effectively managed, can jeopardise their health and well-being. These risks include falling victim to sexual exploitation and abuse, such as child sexual abuse material (CSAM) and (online) grooming.

The CESAGRAM project works towards a Comprehensive European Strategy Against Grooming and Missing children, and more particularly the way it is facilitated by technology and how it can lead to child sexual abuse and missing by conducting a range of separate yet interconnected activities: Research, Training and Awareness Raising, the creation of a set of A.I. Tools, and Advocacy. It is a two-year project (January 2023 to December 2024) coordinated by Missing Children Europe, with eleven project partners from all over Europe.

The development of an advanced and uniform legislation is an essential step for states to end child sexual exploitation and abuse (CSEA), including grooming, and protect children online. Therefore, one of the research goals of the CESAGRAM project is to shed light on the legal landscape regarding the protection of children against all forms of CSEA, such as (tech-facilitated) grooming, both on the EU level as on a national level.

To gather this information on national legal frameworks, a checklist was created, which can be used by all relevant stakeholders (such as project partners, NGOs, law enforcement authorities,… who wish to provide information on their national legal framework). Once all relevant information has been assembled through the checklists, a report will be created that summarises all the findings and juxtapose them with the international and EU legal framework, and with each other. The report will set out recommendations for a comprehensive approach in legislation and policies against (tech-facilitated) grooming. The findings of the report will be used to support analysis and advocacy in the EU, to improve the legal and policy frameworks to address CSEA, with a focus on (tech-facilitated) grooming of children, more effectively.

More information on the CESAGRAM project can be found on our website and our social media (LinkedIn, X and Facebook).

Guidance note for checklist

This guidance note is meant to provide guidance to relevant stakeholders in the analysis and use of the checklist, which is based on the international and EU legal framework (such as the Lanzarote Convention and Directive 2011/93/EU) that sets out obligations for Member States, but also leaves room for national transpositions and deviations.

Terminology

The term 'child sexual exploitation and abuse' (CSEA) is understood as the broader term for any kind of exploitative or abusive situation or activity involving a child relating to his or her sexuality,

sexual intimacy, or sexual integrity. It encompasses different forms of conduct, such as grooming, exploitation of children in/for prostitution and CSAM.

While the term 'child pornography' is often still used in both national as international legislation, the term 'child sexual abuse material' (CSAM) is to be preferred as it more aptly describes the true nature and extent of materials depicting acts of sexual abuse of children and/or depicting the sexual organs of the child victim, to which children can never consent. Likewise, while several legal instruments use the term 'child prostitution', the term 'exploitation of children in/for prostitution' is preferred as to not stigmatise or otherwise harm the child. Consequently, we have made the decision to use the terms 'CSAM' and 'exploitation of children in/for prostitution' within the checklist.

In the context of CSEA, 'grooming' is the term used for the solicitation of children for sexual purposes. It refers to the process of establishing and building a relationship with a child either in person or through the use of the internet or other digital technologies to facilitate either online or in-person sexual contact with that child.

How to use the checklist

The checklist sets out 42 national legislative/policy responses to CSEA, with a focus on CSAM and grooming. The point of the checklist is to research if the national state meets the actions described in the 42 checklist points. The answer is 'yes' if the action if fully met, 'partial' if the action is only partially met, and 'no' if it is not met at all. Achieving a 'yes' on each check represents positive progress in ending CSEA.

When answering, an explanation should be given as well. This should in any case include a reference to the national legal basis, but preferably also refers to upcoming legislative proposals, case law, jurisprudence, data from government ministries, etc. if possible. Please also be as complete as possible. For example, when asked if the national legislation criminalises certain behavior, also clarify the punishment given.

Example

	The national legislation ensures consistency in the definition of a 'child' as anyone below the age of eighteen for all crimes of CSEA.	YES	The national legislation defines a child as any person below eighteen for any crime, see *(insert legal basis)*.
		PARTIAL	The national legislation defines a child as any person below eighteen only for some crimes, being *(insert information and legal basis*); OR The legislation includes loopholes or different laws are inconsistent *(insert information and legal basis)*, OR The legislation provides a definition that is differently interpretated in case law *(insert information and legal basis and cases)*; OR The definition of a child differs for some crimes (for example defining victims as children of a certain age and/or sex) *(insert information and legal basis)*; …
		NO	The national legislation does not define a child as any person below eighteen *(insert information and legal basis if possible*).

Template checklist

		YES/NO/ PARTIAL[262]	Explanation[263]
1	The national legislation foresees a **definition of a 'child'**, without any exceptions or differentiations.	Choose an item.	
2	The national legislation ensures consistency in the **definition of a 'child'** as anyone below the age of **eighteen** for all crimes of CSEA[264].	Choose an item.	
3	The national legislation has defined an **age of sexual consent**.	Choose an item.	
4	The national legislation makes **no differentiation** regarding the age of sexual consent **based on gender**.	Choose an item.	
5	The national legislation **allows consensual, voluntary, well-informed and mutual sexual contact between peers** who are close in age and degree of psychological and physical development or maturity.	Choose an item.	
6	The national legislation gives a **definition or explanation** of what is understood as '**sexual activities**'.	Choose an item.	
7	The national legislation criminalises **causing**, for sexual purposes, a child who has not reached the age of sexual consent to **witness sexual activities and abuse**, even without having to participate.	Choose an item.	
8	The national legislation criminalises **engaging in sexual activities with a child** who has not reached the age of sexual consent.	Choose an item.	
9	The national legislation criminalises **coercing, forcing or threatening a child into sexual activities.**	Choose an item.	
10	The national legislation criminalises engaging in **sexual activities with a child** when the abuser is someone in a **recognised position of trust, authority or influence** over the child, including within family.	Choose an item.	
11	The national legislation criminalises engaging in **sexual activities with a child** if the abuse is made of a **particularly vulnerable situation of the child**, in particular because of a mental or physical disability or a situation of dependence.	Choose an item.	
12	The national legislation gives a **definition or explanation** of what is understood as '**pornographic**'.	Choose an item.	

[262] See guidance note.

[263] See guidance note. Please refer to legislation, upcoming legislative proposals, case law, jurisprudence, data from government ministries, etc. Please be as complete as possible. For example, when asked if the national legislation criminalises certain behavior, also clarify the punishment given.

[264] See crimes mentioned in checklist points 7, 8, 9, 10, 11, 13, 14, 15, 16, 18, 19, 20, 21, 23, 24, 25, 26, 27, 31 and 32.

13	The national legislation criminalises **causing or recruiting a child to participate in pornographic performances.**	Choose an item.	
14	The national legislation criminalises **profiting from or otherwise exploiting a child for pornographic purposes**.	Choose an item.	
15	The national legislation criminalises **coercing or forcing a child to participate in pornographic performances**, or **threatening** a child for such purposes.	Choose an item.	
16	The national legislation criminalises **knowingly attending pornographic performances involving the participation of a child**.	Choose an item.	
17	The national legislation foresees a **definition** of **'exploitation of children in/for prostitution'**.	Choose an item.	
18	The national legislation criminalises **causing or recruiting a child to participate in the exploitation of children in/for prostitution.**	Choose an item.	
19	The national legislation criminalises **profiting** from **exploitation of children in/for prostitution.**	Choose an item.	
20	The national legislation criminalises **coercing or forcing a child into exploitation in/for prostitution**, or **threatening** a child for such purposes.	Choose an item.	
21	The national legislation criminalises **engaging in sexual activities with a child, where recourse is made to the exploitation of children in/for prostitution**.	Choose an item.	
22	The national legislation foresees a **definition of CSAM.**	Choose an item.	
23	The national legislation criminalises **acquiring or possessing CSAM**.	Choose an item.	
24	The national legislation criminalises **obtaining access, by means of information and communication technology, to CSAM**.	Choose an item.	
25	The national legislation criminalises **distributing, disseminating or transmitting CSAM**.	Choose an item.	
26	The national legislation criminalises **offering, supplying or making available CSAM**.	Choose an item.	
27	The national legislation criminalises **producing CSAM**.	Choose an item.	
28	The national legislation also criminalises the CSAM offences mentioned above[265] where the person appearing to be a child **was in fact 18 years of age or older** at the time of depiction.	Choose an item.	

[265] See checklist points 23, 24, 25, 26 and 27.

29	The national legislation foresees **exemptions or defences** as to only criminalise the CSAM crimes mentioned above[266] when they are **committed without right**.[267]	Choose an item.	
30	The national legislation foresees a **definition of grooming**.	Choose an item.	
31	The national legislation criminalises grooming, **even if the proposal to meet was not followed by material acts** leading to such a meeting.	Choose an item.	
32	The national legislation criminalises **an attempt made by an adult through the means of information and communication technology to solicit a child to provide CSAM** depicting that child.	Choose an item.	
33	The national legislation punishes **attempt** CSEA crimes[268].	Choose an item.	
34	The national legislation punishes **aiding and abetting to CSEA crimes**[269].	Choose an item.	
35	The national legislative framework treats CSEA that takes place online as **equally serious** as that which takes place in person.	Choose an item.	
36	The national legislation **allows** technology companies (such as service providers) to deploy tools and mechanisms to **detect, report** (to law enforcement or to some other agency) **and remove CSAM** from their networks.	Choose an item.	
37	The national legislation establishes **mandatory requirements** for technology companies (such as service providers) to **detect, report** (to law enforcement or to some other agency) **and remove CSAM** from their networks.	Choose an item.	
38	The national legislation **allows** technology companies (such as service providers) to deploy tools and mechanisms to **detect and report** (to law enforcement or to some other agency) **grooming** on their networks.	Choose an item.	
39	The national legislation establishes **mandatory requirements** for technology companies (such as service providers) to **detect and report** (to law enforcement or to some other agency) **grooming** on their networks.	Choose an item.	
40	The national legislation does **not** criminalise **child**	Choose an	

[266] See checklist points 23, 24, 25, 26 and 27.
[267] This could include for example allowing legitimate possession of CSAM for medical or scientific purposes, or possession of CSAM by authorities in order to conduct criminal proceedings or to prevent, detect or investigate crime.
[268] See crimes mentioned in checklist points 7, 8, 9, 10, 11, 13, 14, 15, 16, 18, 19, 20, 21, 23, 24, 25, 26, 27 and 31.
[269] See crimes mentioned in checklist points 7, 8, 9, 10, 11, 13, 14, 15, 16, 18, 19, 20, 21, 23, 24, 25, 26, 27, 31 and 32.

	victims for their involvement in CSEA.	item.	
41	The national legislation provides a **legal exception** for children who have reached the age of sexual consent taking, sharing or keeping sexual images and videos of **themselves, if this is done consensually**.	Choose an item.	
42	The national legislation takes **aggravating circumstances** into account, such as repeat offenders, organized crime participants, particular vulnerability of the child, offence committed by someone in a position of trust, etc.	Choose an item.	

Annex 2: Checklist Belgium

		YES/NO/ PARTIAL	Explanation
1	The national legislation foresees a **definition of a 'child'**, without any exceptions or differentiations.	YES	Yes. According to art 100ter Criminal Code, a child is "any person who has not yet reached the age of 18".
2	The national legislation ensures consistency in the **definition of a 'child'** as anyone below the age of **eighteen** for all crimes of CSEA.	YES	Yes. : Grooming : art. 417/24 CC CSAM: art. 417/43 CC
3	The national legislation has defined an **age of sexual consent**.	YES	Art. 417/5 and art. 417/6 CC §1. A minor who has not attained the age of 16 years is not deemed to have the possibility of freely expressing his or her consent. §2. A minor who has reached the age of 14 years but not the age of 16 years may consent freely if the difference in age with the other person is not more than three years. There is no offence between minors who have reached the age of 14 who act with mutual consent when the difference in age between them is more than three years.
4	The national legislation makes **no differentiation** regarding the age of sexual consent **based on gender**.	YES	
5	The national legislation **allows consensual, voluntary, well-informed and mutual sexual contact between peers** who are close in age and degree of psychological and physical development or maturity.	YES	art. 417/6 CC (see 3.)
6	The national legislation gives a **definition or explanation** of what is understood as '**sexual activities**'.	NO	See explanations below
7	The national legislation criminalises **causing**, for sexual purposes, a child who has not reached the age of sexual consent to **witness sexual activities and abuse**, even without	YES	Art. 417/25-26 CC – punishable under incitation of a minor to engage in debauchery or prostitution : it consists of inducing, encouraging or facilitating the debauchery or prostitution of a minor. This offence is punishable by ten to fifteen years' imprisonment and a fine of between five hundred and fifty thousand euros.

	having to participate.		If the child is -16 y.o.: imprisonment for from fifteen to twenty years and a fine of from one thousand to one hundred thousand euros
8	The national legislation criminalises **engaging in sexual activities with a child** who has not reached the age of sexual consent.	YES	Art. 417/16: Non-consensual sexual acts committed to the detriment of a minor under the age of sixteen are punishable as follows: - violation of sexual integrity is punishable by imprisonment for a term of fifteen to twenty years; - voyeurism is punishable by ten to fifteen years' imprisonment; - the non-consensual dissemination of sexual content is punishable by imprisonment for a term of fifteen to twenty years; - the non-consensual distribution of sexual content with malicious intent or for profit is punishable by imprisonment for a term of fifteen to twenty years and a fine of between two hundred and ten thousand euros; - rape is punishable by a prison sentence of between twenty and thirty years. Art.417/17 CC: Non-consensual sexual acts committed to the detriment of an accomplished minor over the age of sixteen Non-consensual sexual acts committed to the detriment of a minor over the age of sixteen are punishable as follows: - violation of sexual integrity is punishable by ten to fifteen years' imprisonment; - voyeurism is punishable by five to ten years' imprisonment; - non-consensual dissemination of sexual content is punishable by ten to fifteen years' imprisonment; - the non-consensual distribution of sexual content with malicious intent or for profit is punishable by ten to fifteen years' imprisonment and a fine of between two hundred and ten thousand euros; - rape is punishable by a prison sentence of between fifteen and twenty years.
9	The national legislation criminalises **coercing, forcing or threatening a child into sexual activities.**	YES	- In case of participation : art. 66 and 67 CP combined with 417/16-17 CC - In case of exploitative goals: art. 417/7-28 and 417/33-34 (and if trafficking art. 433quinquies CC)
10	The national legislation criminalises engaging in **sexual activities with a child** when the abuser is someone in a **recognised position of trust, authority or influence** over the child,	YES	Art. 417/6, §3, 2° combined with art. 417/16-17 CC (see 8.) Art.417/6, §3, 2° stipulates : A minor is never deemed to have had the opportunity to express his or her consent freely if the act was made possible by the perpetrator's use of a recognised position of trust, authority or influence over the minor

	including within family.		
11	The national legislation criminalises engaging in **sexual activities with a child** if the abuse is made of a **particularly vulnerable situation of the child**, in particular because of a mental or physical disability or a situation of dependence.	YES	Yes : Art. 417/5 combined with art. 417/16-17 CC. Art. 417/5 stipulates: There is no consent if the sexual act was committed by taking advantage of the victim's vulnerability, due in particular to a state of fear, the influence of alcohol, narcotics, psychotropic substances or any other substance with a similar effect, an illness or a situation of disability, altering the victim's free will.
12	The national legislation gives a **definition or explanation** of what is understood as '**pornographic**'.	NO	
13	The national legislation criminalises **causing or recruiting a child to participate in pornographic performances.**	PARTIAL	Not in that exact wording ("pornographic"), but presumably falls under the umbrella term of "debauchery" in Art. 417/25 to 417/28 and 417/33-34 CC
14	The national legislation criminalises **profiting from or otherwise exploiting a child for pornographic purposes**.	PARTIAL	See no. 13
15	The national legislation criminalises **coercing or forcing a child to participate in pornographic performances**, or **threatening** a child for such purposes.	PARTIAL	See no. 13
16	The national legislation criminalises **knowingly attending pornographic performances involving the participation of a child**.	PARTIAL	See no. 13
17	The national legislation foresees a **definition** of **'exploitation of children in/for prostitution'**.	NO	No explicit definition. Seen as 'debauchery or prostitution of a minor'.
18	The national legislation criminalises **causing or recruiting a child to participate in the**	YES	Art. 417/25 to 417/28 and 417/33-34 CC

	exploitation of children in/for prostitution.		
19	The national legislation criminalises **profiting** from **exploitation of children in/for prostitution.**	YES	Art. 417/35. Obtaining the debauchery or prostitution of a minor Procuring the debauchery or prostitution of a minor consists of obtaining the debauchery or prostitution of a minor by giving, offering or promising a material or financial advantage. This offence is punishable by ten to fifteen years' imprisonment and a fine of between one thousand and one hundred thousand euros. The fine is applied as many times as there are victims
20	The national legislation criminalises **coercing or forcing a child into exploitation in/for prostitution**, or **threatening** a child for such purposes.	YES	Art. 417/33-34 Art. 417/33. Exploitation of the debauchery or prostitution of a minor Exploitation of the debauchery or prostitution of a minor consists, without prejudice to the cases referred to in Article 433quinquies, in exploiting in any way whatsoever the debauchery or prostitution of a minor. This offence is punishable by ten to fifteen years' imprisonment and a fine of between five hundred and fifty thousand euros. The fine is applied as many times as there are victims Art. 417/34. Exploitation of the debauchery or prostitution of a minor under sixteen years of age Without prejudice to the cases referred to in Article 433quinquies, exploitation of the debauchery or prostitution of a minor under the age of sixteen shall be punishable by imprisonment for a term of fifteen to twenty years and a fine of one thousand to one hundred thousand euros. The fine is applied as many times as there are victims
21	The national legislation criminalises **engaging in sexual activities with a child, where recourse is made to the exploitation of children in/for prostitution**.	YES	Art. 417/35. Obtaining the debauchery or prostitution of a minor Procuring the debauchery or prostitution of a minor consists of obtaining the debauchery or prostitution of a minor by giving, offering or promising a material or financial advantage. This offence is punishable by ten to fifteen years' imprisonment and a fine of between one thousand and one hundred thousand euros. The fine is applied as many times as there are victims
22	The national legislation foresees a **definition of CSAM.**	YES	Art. 417/43 CC Definition of images of sexual abuse of minors Images of sexual abuse of minors are defined as - any material that visually depicts, by any means whatsoever, a minor engaged in real or simulated sexually explicit conduct, or depicts the sexual organs of a minor for primarily sexual purposes; - any material that visually depicts, by any means whatsoever, a person who appears to be a minor engaged in real or simulated sexually explicit conduct, or depicts the

			sexual organs of that person, for primarily sexual purposes; - realistic images representing a minor who does not exist, engaged in sexually explicit conduct, or representing the sexual organs of this minor for primarily sexual purposes. Note: this includes AI-generated images, as stated by Minister of Justice Van Quickenborne: https://www.thebelgianhouse.be/doc/CCRI/pdf/55/ic1157.pdf
23	The national legislation criminalises **acquiring or possessing CSAM**.	YES	Art. 417/46 CC Possession and acquisition of images of sexual abuse of minors The possession and acquisition of images of sexual abuse of minors consists of holding or acquiring images of sexual abuse of minors for a third party or otherwise. This offence is punishable by a prison sentence of between one and five years and a fine of between five hundred and ten thousand euro.
24	The national legislation criminalises **obtaining access, by means of information and communication technology, to CSAM**.	YES	Art. 417/47 CC Access to images of sexual abuse of minors Accessing images of sexual abuse of minors consists of accessing images of sexual abuse of minors by means of information and communication technologies. This offence is punishable by a prison sentence of between one and three years and a fine of between five hundred and ten thousand euros.
25	The national legislation criminalises **distributing, disseminating or transmitting CSAM**.	YES	Art. 417/44 and 417/45 Art. 417/44. Production or dissemination of images of sexual abuse of minors The production or dissemination of images of sexual abuse of minors consists in exhibiting, offering, selling, renting, transmitting, supplying, disseminating, making available, handing over, manufacturing or importing images of sexual abuse of a minor, by any means whatsoever. This offence is punishable by five to ten years' imprisonment and a fine of between five hundred and ten thousand euros. Art. 417/45. Production or dissemination of images of sexual abuse of minors by an association Where the production or dissemination of images of sexual abuse of minors constitutes an act of participation in the main or ancillary activity of an association, whether or not the perpetrator is a manager, this offence is punishable by ten to fifteen years' imprisonment and a fine of one thousand to one hundred thousand euros.
26	The national legislation criminalises **offering, supplying or making available CSAM**.	YES	Art. 417/44-45 CC
27	The national legislation criminalises **producing CSAM**.	YES	Art. 417/44-45 CC

28	The national legislation also criminalises the CSAM offences mentioned above where the person appearing to be a child **was in fact 18 years of age or older** at the time of depiction.	YES	Art. 417/43 Images of sexual abuse of minors are defined as - any material that visually depicts, by any means whatsoever, a person **who appears to be a minor** engaged (…)
29	The national legislation foresees **exemptions or defences** as to only criminalise the CSAM crimes mentioned above when they are **committed without right**.	YES	Art. 417/48 CC foresees the possibility for justifications of right to receive, analyse and transmit CSAM. An organisation recognised by the King may legitimately receive reports which may contain CSAM, analyse their content and origin and transmit them to the police services and judicial authorities.
30	The national legislation foresees a **definition of grooming**.	YES	Art. 417/24. Approaching a minor for sexual purposes Approaching a minor for sexual purposes consists of offering, by any means whatsoever, to meet a minor with the intention of committing an offence referred to in this chapter, if this offer is followed by material acts that may lead to the said meeting. This offence is punishable by three to five years' imprisonment.
31	The national legislation criminalises grooming, **even if the proposal to meet was not followed by material acts** leading to such a meeting.	PARTIAL	Art. 417/24 & case law[270] & preparatory legislative work[271] Merely having a sexually charged conversation is not punishable. There must be a proposal to meet with the intent to commit the crime of grooming. An effective physical encounter does not have to take place, but there must be material acts that may lead or are capable of leading to it, such as buying train tickets or cinema tickets.
32	The national legislation criminalises **an attempt made by an adult through the means of information and communication technology to solicit a child to provide CSAM** depicting that child.	YES	Art. 433bis/1 CC A person of full age who uses information and communication technologies to communicate with an actual or presumed minor with a view to facilitating the commission of a crime or misdemeanour shall be liable to imprisonment for a term of three months to five years: 1° if they have concealed or lied about their identity, age or status; 2° if they have insisted on discretion in their dealings; 3° if they offer or dangle a gift or any other advantage; 4° used any other tactic.
33	The national legislation punishes **attempt** CSEA crimes.	PARTIAL	Overall, yes, through Art. 52CC: Attempted crime is punishable by the penalty immediately below that of the crime itself, in accordance with Articles 80 and 81. Attempted crimes punishable by life imprisonment or life imprisonment shall, however, be punishable by imprisonment

[270] Court of Appeal Gent 19 October 2018, *Rechtskundig Weekblad* 2019-20, no. 17, p. 670.
[271] Explanatory Memorandum of the Chamber of Representatives, 2020-21, no. 55-2141/001, p. 54 and 55.

			for twenty to thirty years or imprisonment for twenty to thirty years respectively. However, attempted grooming is not punishable, as the crime, in essence, visions the preparatory phase of other crimes.
34	The national legislation punishes **aiding and abetting to CSEA crimes**.	YES	Art. 66 to 69 CC
35	The national legislative framework treats CSEA that takes place online as **equally serious** as that which takes place in person.	YES	When comparing Art. 417/24 CC with its predecessor (old Art. 377quater CC), it is notable that the old Art. 377quater CC limited the grooming offence to grooming via information and communication technology. The legislator meant to target both online and offline grooming with Art. 417/24 CC.[272]
36	The national legislation **allows** technology companies (such as service providers) to deploy tools and mechanisms to **detect, report** (to law enforcement or to some other agency) **and remove CSAM** from their networks.	Choose an item.	See DSA
37	The national legislation establishes **mandatory requirements** for technology companies (such as service providers) to **detect, report** (to law enforcement or to some other agency) **and remove CSAM** from their networks.	Choose an item.	See DSA
38	The national legislation **allows** technology companies (such as service providers) to deploy tools and mechanisms to **detect and report** (to law enforcement or to some other agency) **grooming** on their networks.	Choose an item.	See DSA
39	The national legislation establishes **mandatory requirements** for technology companies	Choose an item.	See DSA

[272] Explanatory Memorandum of the Chamber of Representatives, 2020-21, no. 55-2141/001, p. 54 and 55.

	(such as service providers) to **detect and report** (to law enforcement or to some other agency) **grooming** on their networks.		
40	The national legislation does **not** criminalise **child victims for their involvement in CSEA**.	PARTIAL	Legislation does not specifically address this matter (except for children + 16 who exchange images with mutual consent – see Art. 417/49 CC : It is not an offence for minors over the age of sixteen to make their own sexual content with their mutual consent, to send such self-made sexual content to each other and to possess it. Mutual consent is required for the creation, possession and mutual transmission of such content. This justification does not apply if: - the sexual content is shown or distributed to a third party; - a third party attempts to obtain the sexual content; - the perpetrator is a parent or relative in the direct ascending line, or an adopter, or a parent or relative in the collateral line up to the third degree, or any other person occupying a similar position within the family, or any person habitually or occasionally cohabiting with the minor and having authority over him or her, or if; - the act was made possible by the perpetrator's use of a recognised position of trust, authority or influence over the minor.
41	The national legislation provides a **legal exception** for children who have reached the age of sexual consent taking, sharing or keeping sexual images and videos of **themselves, if this is done consensually**.	YES	See Nr.40
42	The national legislation takes **aggravating circumstances** into account, such as repeat offenders, organized crime participants, particular vulnerability of the child, offence committed by someone in a position of trust, etc.	YES	Art. 417/45. Production or dissemination of images of sexual abuse of minors by an association Where the production or dissemination of images of sexual abuse of minors constitutes an **act of participation in the main or ancillary activity of an association**, whether or not the perpetrator is a manager, this offence is punishable by ten to fifteen years' imprisonment and a fine of one thousand to one hundred thousand euros. Also 417/50 → "aggravating factors". When choosing the penalty or measure and its severity for an offence referred to in this section, the judge shall take particular account of the fact that: - the offence was committed by a person holding a public office in the exercise of that office;

			- the offence was committed by a person in a recognised position of trust, authority or influence over the minor; - the offence was committed against a minor under the age of ten; - the offence was committed against a minor under the age of sixteen and was preceded by the perpetrator approaching the minor with the intention of subsequently committing the acts referred to in this section; - the offence was committed in the name of culture, custom, tradition, religion or so-called "honour” And repeat offenders: Art. 54 – 57bis CC.

Annex 3: Checklist France

		YES/NO/ PARTIAL	Explanation
1	The national legislation foresees a **definition of a 'child'**, without any exceptions or differentiations.	NO	National law does not include a definition of 'child' as such. However, having ratified the Convention on the Rights of the Child (CRC) on the 7th of August 1990, France recognizes the definition of child under Article 1 of the CRC which states: 'For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier' . Article 2.1 also specifies this should be done without any exceptions or differentiations by stating '1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic, or social origin, property, disability, birth or other status.' Additionally, a law proposal was presented to the Senate the 23rd of June 2021 to create the national Children's Code in which Article 1 defined the judicial definition of 'child' and Article 2 defined the rights and liberties of the child as directly translated from the above-mentioned articles from the CRC. However, the proposal was lapsed.
2	The national legislation ensures consistency in the **definition of a 'child'** as anyone below the age of **eighteen** for all crimes of CSEA.	NO	Not clearly worded, in that it's understood that anyone under the age of 18 is a 'child' under the CRC.
3	The national legislation has defined an **age of sexual consent**.	YES	The law n°2021-478 from the 21st of April 2021 (Articles: 222-23-1; 222-29-2; 227-25) aimed at protecting minors from sexual crimes and incest sets the age of sexual consent at 15 (and 18 for cases of incest). Example: Article 227-25 CC states: "Except in cases of rape or sexual assault provided for in section 3 of chapter II of this title , **the fact, for an adult, of sexually engaging with a minor under fifteen years of age is punishable** by seven years of imprisonment and a fine of €100,000." This threshold i**s raised to 18 years old** when: "1° When they are committed by any adult having legal or de facto authority over the victim; 2° When they are committed by an adult who abuses the authority conferred on him by his functions."
4	The national legislation makes **no differentiation** regarding the age of	YES	The law n°2021-478 from the 21st of April 2021 (Articles: 222-23-1; 222-29-2; 227-25) aimed at protecting minors from sexual crimes and incest sets the age of sexual consent at 15 (and 18 for cases of incest) and **does not differentiate based**

	sexual consent **based on gender**.		**on gender.**
5	The national legislation **allows consensual, voluntary, well-informed and mutual sexual contact between peers** who are close in age and degree of psychological and physical development or maturity.	PARTIAL	The **law does not address it**, which means it is not prohibited; Sexual relations between children under the age of 15 are not prohibited by law and **cannot be prosecuted provided that there is no assault within the meaning of the law** (no violence, coercion, threats or surprises). Sexual relations between children age 15 to 18 are allowed, provided there is an uncoerced consent. Sexual relation between under 15 and adults are prohibited [cf sexual consent] but are allowed for minors 15 to 18 and an adult, following Art 227-27 CC.
6	The national legislation gives a **definition or explanation** of what is understood as '**sexual activities**'.	PARTIAL	Sexual activities are only defined in the context of rape within the Criminal Code. Article 222-23-1 states: 'Any act of sexual penetration of any kind whatsoever or any oral or genital act committed against another person by violence, coercion, threat or surprise is rape.' Besides rape and sexual aggressions on minors, article 225-7 of the Criminal Code punishes proxenetysm on minors, article 225-4-1 of the Criminal Code punishes human trafficking on minors and article 227-2-2 punishes the incitation of a minor by an adult through electronic communication to commit an act of sexual nature as well as the detention, diffusion, capture or downloading the image of a minor that presents a pedo-pornographic character. Article 227-23-1 punishes the solicitation of a minor by and adult for the diffusion or transmission of images of pornographic character. Question is really penetration versus non penetration France: no legislation on this
7	The national legislation criminalises **causing**, for sexual purposes, a child who has not reached the age of sexual consent to **witness sexual activities and abuse**, even without having to participate.	PARTIAL	Article 227-22 CC states: "**Facilitating or attempting to encourage the corruption of a minor** is punishable by five years' imprisonment and a fine of 75,000 euros. These penalties are increased to seven years of imprisonment and a fine of 100,000 euros when the minor has been put in contact with the perpetrator [...]; **The same penalties are particularly applicable to the act, committed by an adult, of organizing meetings involving exhibitions or sexual relations in which a minor attends or participates** or of knowingly attending such meetings. The penalties are increased to ten years of imprisonment and a fine of 150,000 euros when the **acts were committed against a minor aged fifteen**" It seems there is **no distinction** between sexual activities and sexual abuse.

			Hence, it might be encompassed under Article 227-22 CC. However, having a child witnessing a rape/abuse is an aggravating circumstance - Article 222-24 and Article 222-28
8	The national legislation criminalises **engaging in sexual activities with a child** who has not reached the age of sexual consent.	YES	Article 227-25 states: "Except in cases of rape or sexual assault provided for in section 3 of chapter II of this title, the fact, for an adult, of **sexually engaging with a minor under fifteen years of age is punishable** by seven years of imprisonment and a fine of €100,000." Article 222-29-2 CC states: "**sexual assault is established** when committed by an adult on the person of a minor aged fifteen, when the **age difference between the adult and the minor is at least five years**." *Hence, if an adult engages in sexual activities with a child aged 15, while there is an age gape of at least 5 years, sexual assault is qualified without the need of an element of coercion or violence.*
9	The national legislation criminalises **coercing, forcing or threatening a child into sexual activities.**	YES	Article 222-29-1: "Sexual assaults other than rape are punishable by ten years' imprisonment and a fine of €150,000 when they are **imposed on a minor aged fifteen by violence, coercion, threat or surprise**." *Article 222-29, previously mentioned, consider the age as an aggravating circumstance of sexual assault, possibly including children* Article 222-22-2 states: "It also constitutes **sexual assault to impose on a person, by violence, coercion, threat or surprise, the fact of being sexually assaulted by a third party or to carry out such assault on oneself**. These acts are punishable by the penalties provided for in articles 222-23 to 222-30 [*rape and sexual assault*] depending on the nature of the attack suffered and according to the circumstances mentioned in these same articles. **Attempting** the offense provided for in this article **is punishable by the same penalties.**"
10	The national legislation criminalises engaging in **sexual activities with a child** when the abuser is someone in a **recognised position of trust, authority or influence** over the child, including within family.	YES	Article 227-6 states: "The offense defined in article 227-25 [*sexual activity other than rape and assault with a child aged 15*] is punishable by ten years' imprisonment and a fine of 150,000 euros; 1°When it is committed by an adult **having legal or de facto authority over the victim**; 2° When it is committed by a person who **abuses the authority** conferred on him by his functions; [...]" Article 227-27 states: "Except in cases of rape or sexual assault provided for in section 3 of chapter II of this title , engaging in sexual activities **with a minor aged over fifteen** years is punishable by five years' imprisonment and a fine of €45,000. 1° When they are committed by any **adult having legal or de facto authority over the victim**;

			2° When they are committed by an adult who **abuses the authority** conferred on him by his functions."
11	The national legislation criminalises engaging in **sexual activities with a child** if the abuse is made of a **particularly vulnerable situation of the child**, in particular because of a mental or physical disability or a situation of dependence.	PARTIAL	Article 222-29 states: "Sexual assaults other than rape are punishable by seven years' imprisonment and a fine of 100,000 euros when they are i**mposed on a person whose particular vulnerability due to age, illness, infirmity, physical or psychological deficiency or a state of pregnancy** or resulting from the precariousness of their economic or social situation is **apparent or known to its author.**" *It does not address children specifically.*
12	The national legislation gives a **definition or explanation** of what is understood as '**pornographic**'.	NO	Although there are references to criminalize the creation of pornographic images with minors (article 227-23 of the Criminal Code) or to criminalize the diffusion of pornographic messages when they are susceptible of being seen or perceived by a minor (article 227-24 of the Criminal code), there is **no legal definition or explanation of what is understood as 'pornographic'.**
13	The national legislation criminalises **causing or recruiting a child to participate in pornographic performances.**	YES	Article 227-23 states: "**The fact, with a view to its dissemination, of fixing, recording or transmitting the image or representation of a minor** when this image or this representation is of a pornographic nature is punishable by five years of imprisonment and 75,000 fine euros. When the image or representation **concerns a minor under fifteen years of age, these acts are punished even if they were not committed with a view to the dissemination** of this image or representation.[...]" *Pushing a child to participate in pornographic performances has the same penalty whether the child has reached the age of sexual consent or not.*
14	The national legislation criminalises **profiting from or otherwise exploiting a child for pornographic purposes**.	NO	There is no direct mention in national legislation criminalising profiting from or otherwise exploiting a child for pornographic purposes. **Article 227-23 para. 4 of the Criminal Code criminalizes** habitually consulting, or in return for payment, an online public communication service that makes images or representations of minors when the image or representation presents a pornographic nature, or acquiring or possessing such an image or representation by any means whatsoever, is punishable by five years' imprisonment and a fine of 75,000 euros. **Article 226-1 of the Criminal Code** criminalizes 'using the image of a person in a private place without their consent' by one year's imprisonment and a €45,000 fine. If the images are of a sexual nature, the penalties are increased to a €60,000 fine and two years' imprisonment. This is in the context of

			right to image (found in article 9 of the Civil Code) which applies generally and does not have specific provisions for children. Additionally, France has ratified in Lanzarote Convention on the 25th of October 2007 and published in the official national journal as Decree n°2011-1385 from the 27th of October 2011, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse in which Article 21 states: 'Offences concerning the participation of a child in pornographic performances: 1. Each Party shall take the necessary legislative or other measures to ensure that the **following intentional conduct is criminalised:** a. recruiting a child into participating in pornographic performances or causing a child to participate in such performances. b. **coercing a child into participating in pornographic performances or profiting from or otherwise exploiting a child for such purposes;** c. knowingly attending pornographic performances involving the participation of children.'
15	The national legislation criminalises **coercing or forcing a child to participate in pornographic performances** or **threatening** a child for such purposes.	YES	Encompassed under Article 227-23
16	The national legislation criminalises **knowingly attending pornographic performances involving the participation of a child**.	YES	Article 227-23-1 states: "The act of an adult **requesting from a minor** the distribution or transmission of images, videos or representations of a pornographic nature of said minor is punishable by seven years of imprisonment and a fine of 100,000 euros. The penalties are increased to ten years' imprisonment and a fine of 150,000 euros when the acts were **committed against a minor aged fifteen**."
17	The national legislation foresees a **definition** of **'exploitation of children in/for prostitution'**.	NO	Although the criminalization of exploitation of children in/for prostitution is enshrined in Articles 417/25 and following of the Criminal Code, there is no definition in national legislation of exploitation of children in/for prostitution. The exploitation of children in/for prostitution is only defined in the Lanzarote Convention as 'any form of child sexual exploitation whereby a child is recruited, coerced or caused to participate in prostitution in exchange for (the promise of) money or any other form of remuneration or benefit.' ratified by France the 27th of September 2010 and came into force the 1st of January 2011.
18	The national legislation	YES	Article 225-7 Criminal Code (CC) states: "Procuring is

	criminalises **causing or recruiting a child to participate in the exploitation of children in/for prostitution.**		punishable by ten years' imprisonment and a fine of 1,500,000 euros when it is committed: 1° **Towards a minor**;" [concerns individuals under 18] Article 225-7-1 CC states: "Procuring is punishable by twenty years of criminal imprisonment and a fine of 3,000,000 euros when **committed against a minor aged fifteen.**"
19	The national legislation criminalises **profiting** from **exploitation of children in/for prostitution.**	YES	Article 225-7 Criminal Code (CC) states: "Procuring is punishable by ten years' imprisonment and a fine of 1,500,000 euros when it is committed: 1° **Towards a minor**;" [concerns individuals under 18] Article 225-7-1 CC states: "Procuring is punishable by twenty years of criminal imprisonment and a fine of 3,000,000 euros when **committed against a minor aged fifteen.**"
20	The national legislation criminalises **coercing or forcing a child into exploitation in/for prostitution**, or **threatening** a child for such purposes.	YES	Article 225-7 states: "Pimping is punishable by ten years of imprisonment and a fine of 1,500,000 euros when it is committed: 1° With regard to a **minor**; 8° With the use of **coercion, violence or fraudulent manoeuvres;**" *[these aggravating circumstances are not cumulative]*
21	The national legislation criminalises **engaging in sexual activities with a child, where recourse is made to the exploitation of children in/for prostitution**.	YES	Article 225-12-1 states: "[...] The act of requesting, accepting or obtaining, in exchange for remuneration, a promise of remuneration, the provision of an advantage is punishable by five years of imprisonment and a fine of €75,000. in kind or the promise of such an advantage, relations of a sexual nature on the part of a person who **engages in prostitution**, including occasionally, **when this person is a minor or presents a particular vulnerability**, apparent or known to its author, due to an illness, an infirmity, a handicap or a state of pregnancy.
22	The national legislation foresees a **definition of CSAM.**	YES	Article 227-23 states: "The fact**, with a view to its dissemination, of fixing, recording or transmitting the image or representation of a minor when this image or this representation is of a pornographic nature** is punishable by five years of imprisonment and 75,000 fine euros. When the image or representation concerns a minor under fifteen years of age, these acts are punished even if they were not committed with a view to the dissemination of this image or representation." Also note: Article 227-23 **addresses IA generated images, and** uses the term "**minor**", which encompass both children under 15 and above 15.
23	The national legislation criminalises **acquiring or possessing CSAM**.	YES	Article 227-23 states, in its 4th §: "The fact of habitually consulting or in return for payment an online public communication service making such an image or representation available, **of acquiring or possessing such an image or representation by any means whatsoever** is

			punishable by five years of imprisonment and a fine of 75,000 euros."
24	The national legislation criminalises **obtaining access, by means of information and communication technology, to CSAM**.	YES	Article 227-23 previously mentioned: "The fact of **habitually consulting** or in return for payment **an online public communication service making such an image or representation available** [...]"
25	The national legislation criminalises **distributing, disseminating or transmitting CSAM**.	YES	Article 227-23, §2, states: "The fact of **offering, making available or disseminating such an image or representation**, by any means whatsoever, of **importing or exporting it**, of having it imported or having it exported, is punishable by the same penalties."
26	The national legislation criminalises **offering, supplying or making available CSAM**.	YES	See Article 227-23, § 2 and 3
27	The national legislation criminalises **producing CSAM**.	YES	Article 227-23, §1, states: "The fact, with a view to its dissemination, of **fixing, recording or transmitting the image or representation of a minor when this image or this representation is of a pornographic nature** [...]"
28	The national legislation also criminalises the CSAM offences mentioned above where the person appearing to be a child **was in fact 18 years of age or older** at the time of depiction.	YES	Article 227-23, last §, states: "The provisions of this article are a**lso applicable to pornographic images of a person whose physical appearance is that of a mino**r, **unless it is established that this person was eighteen years old** on the day of the fixation or of recording its image."
29	The national legislation foresees **exemptions or defences** as to only criminalise the CSAM crimes mentioned above when they are **committed without right**.	YES	See articles above
30	The national legislation foresees a **definition of grooming**.	NO	Grooming (or "*pédopiégeage*") is not addressed as such in the French legislative landscape. Article 227-22, previously mentioned, approaches the concept through the terminology **"corruption of minors"**. The term corruption is defined by the doctrine and the jurisprudence. Article 227-22-1 punishes grooming: "**The act of an adult making sexual propositions to a minor under fifteen years of age** or to a person presenting themselves as such using an electronic means of communication is punishable by two years' imprisonment and a fine of 30,000 euros. These penalties are increased to five years' imprisonment and

			a fine of 75,000 euros **when the proposals were followed by a meeting**." *It supposes that grooming cannot be characterised for children above 15. Their protection will be then ensured under Article 227-22 (if explicit sexual content) or Article 222-22 to 222-22-1 (if sexual aggression, where moral and physical coercion can result from the difference in age)*
31	The national legislation criminalises grooming, **even if the proposal to meet was not followed by material acts** leading to such a meeting.	YES	However, Article 227-22-1 states "These penalties are increased to five years' imprisonment and a fine of 75,000 euros **when the proposals were followed by a meeting**."
32	The national legislation criminalises **an attempt made by an adult through the means of information and communication technology to solicit a child to provide CSAM** depicting that child.	YES	Article 227-23-1 states: "If an adult solicits a minor to distribute or transmit pornographic images, videos or representations of the minor, the offence is punishable by seven years' imprisonment and a fine of 100,000 euros. The penalties are increased to ten years' imprisonment and a fine of €150,000 when the acts are committed against a minor aged under fifteen. They are increased to ten years' imprisonment and a fine of one million euros when the offences are committed by an organised gang." Also, Article 227-22-2 states: "Except in cases of rape or sexual assault, the act of an adult **inciting a minor, by means of electronic communication, to commit any act of a sexual nature, either on himself or on or with a third party**, including if this incitement is not followed by effect, is punishable by seven years of imprisonment and a fine of 100,000 euros. The **penalties are increased** to ten years of imprisonment and a fine of 150,000 euros when the acts were **committed against a minor aged fifteen**."
33	The national legislation punishes **attempt** CSEA crimes.	NO	There is no criminalization in national legislation which punishes **attempt CSEA crimes.** At national level France has made combating this scourge a fully-fledged **public policy. An Interministerial Mission for the Protection of Women against Violence and the Fight against Trafficking in Human Beings (MIPROF) was created in January 2013** with the aim of providing greater protection to trafficking victims. **Having adopted the first national action plan in 2014, France is now working to implement the** second national action plan against human trafficking for the 2019-2022 period. With 45 measures, this plan reiterates the French government's commitment to stepping up the fight against

			human trafficking. The main trends of the plan aim to: • Add the issue of human trafficking to the public debate and raise awareness among young people of the risks of exploitation; • Set out a strategy to identify trafficking victims so that they are effectively protected and cared for; • Guarantee unconditional protection to minors who are victims of trafficking; speed up the dismantling of criminal networks; • Coordinate public action at national and local level and finally further strengthen international cooperation. **Although there is no national legislation, France has ratified the Optional Protocol to the Convention on the Rights of the child on the sale of children, child prostitution and child pornography on the 5th of February 2003.**
34	The national legislation punishes **aiding and abetting to CSEA crimes**.	NO	No national legislation but ratified the Optional Protocol to the Convention on the Rights on the sale of children, child prostitution and child pornography on the 5th of February 2003.
35	The national legislative framework treats CSEA that takes place online as **equally serious** as that which takes place in person.	PARTIAL	**Online**: - **Child pornography**: 5 to 10 years imprisonment (YI) - **Soliciting CSAM**: 7 to 10 YI - **Rape**: facilitation through online communication is an aggravating circumstance, 20 YI - **Sexual assault**: facilitation through online communication is an aggravating circumstance, 7 YI - **Procuring**: facilitation through online communication is an aggravating circumstance, 10 YI **Offline**: - **Engaging in sexual activities with a minor under 15yo**: 7 to 10 YI - **Engaging in sexual activities with a minor above 15yo** (power relation): 5 YI - **Child prostitution**: 5 to 7 YI - **Rape**: 15 to 20 YI, depending on the age of the child, the age difference between the child and the abuser.
36	The national legislation **allows** technology companies (such as service providers) to deploy tools and mechanisms to **detect, report** (to law enforcement or to some other agency) **and remove CSAM**	Choose an item.	DSA

	from their networks.		
37	The national legislation establishes **mandatory requirements** for technology companies (such as service providers) to **detect, report** (to law enforcement or to some other agency) **and remove CSAM** from their networks.	Choose an item.	DSA
38	The national legislation **allows** technology companies (such as service providers) to deploy tools and mechanisms to **detect and report** (to law enforcement or to some other agency) **grooming** on their networks.	Choose an item.	DSA
39	The national legislation establishes **mandatory requirements** for technology companies (such as service providers) to **detect and report** (to law enforcement or to some other agency) **grooming** on their networks.	Choose an item.	DSA
40	The national legislation does **not** criminalise **child victims for their involvement in CSEA**.	YES	On this, France pointed at the age of criminal responsibility (13 years old) below which children cannot be held criminally liable for acts they commit to demonstrate compatibility with the exclusion of criminal liability for the production and possession of CSGSIV. The Committee however highlights that reliance upon the age of criminal responsibility alone to exclude criminal responsibility does not correspond to a situation of full compliance with paragraphs 3-6 of the 2019 Opinion, since older children (those above the age of criminal responsibility) cannot avail themselves of this exemption.
41	The national legislation provides a **legal exception** for children who have reached the age of sexual consent	YES	Children are potentially liable for the distribution or transmission of their own CSGSIV in France. In addition, in France, criminal law does not explicitly exclude the possibility of prosecuting a child for the possession of CSGSIV of another child even if the depicted child consented to share such

	taking, sharing, or keeping sexual images and videos of **themselves, if this is done consensually**.		images and/or videos for private use only. However, in practice, the public prosecutor can assess whether follow-up is to be given to such facts. To this end, he/she notably assesses the seriousness of the facts and the context in which they occurred. Thus, where it is evident that the possession of the sexual images was consensual and for private use only, the public prosecutor's office may close the case and prosecution will thus not take place. In practice children are not prosecuted when they possess the CSGSIV of another child if these images were obtained with the consent of the latter and are for private use only. Finally, the Committee observes that France has rules that lead to the criminalisation of the distribution by children of self-generated sexual images and/or videos of other children. France pointed at the age of criminal responsibility (13 years old) below which children cannot be held criminally liable for acts they commit to demonstrate compatibility with the exclusion of criminal liability for the production and possession of CSGSIV. The Lanzarote Committee however highlights that reliance upon the age of criminal responsibility alone to exclude criminal responsibility does not correspond to a situation of full compliance with paragraphs 3-6 of the 2019 Opinion, since older children (those above the age of criminal responsibility) cannot avail themselves of this exemption. See: https://rm.coe.int/opinion-of-the-lanzarote-committee-on-child-sexually-suggestive-or-exp/168094e72c
42	The national legislation takes **aggravating circumstances** into account, such as repeat offenders, organized crime participants, particular vulnerability of the child, offence committed by someone in a position of trust, etc.	NO	The national legislation takes only certain aggravating circumstances into account. For instance, Article 222-30-1 of the Criminal Code criminalizes administering a person, without their knowledge, a substance that can alter their discernment or their control to commit rape or a sexual aggression is punished by five years in prison and 75 000 euros of fine. If the person is **less than 15 or particularly vulnerable,** the punishment is increased to seven years in prison and 100 000 euros of fine.

Annex 4: Checklist Italy

		YES/NO/ PARTIAL	Explanation
1	The national legislation foresees a **definition of a 'child'**, without any exceptions or differentiations.	YES	National legislation protects children as subjects under the age of 18. In some cases, children under the age of 14 are distinguished from children between the ages of 14 and 18.
2	The national legislation ensures consistency in the **definition of a 'child'** as anyone below the age of **eighteen** for all crimes of CSEA.	YES	For all crimes of CSEA national legislation ensures uniformity in the definition of a child as a minor under 18 years, although for some cases of crime makes specific reference to children under 16 or children under 14 years.
3	The national legislation has defined an **age of sexual consent**.	YES	According to Italian law the age at which a person is considered capable of giving conscious consent to sexual relations is 14 years. Art. 609-quater Penal Code: whoever performs sexual acts with a person who is under the age of 14, is punished for sexual violence (pursuant to Art. 609-bis Penal Code). From this provision it can be implied that the age of consent is 14 years old.
4	The national legislation makes **no differentiation** regarding the age of sexual consent **based on gender**.	YES	
5	The national legislation **allows consensual, voluntary, well-informed and mutual sexual contact between peers** who are close in age and degree of psychological and physical development or maturity.	YES	Outside the hypothesis of sexual violence, a minor who performs sexual acts with a minor who has reached the age of 13 is not punishable if the age difference between the subjects does not exceed 4 years. Art. 609-quater Penal Code: the minor that has performs sexual acts with another minor above the age of 13 is not punishable, if the age difference between the two is of not more than 4 years (unless it is sexual violence, in this case it is punished pursuant to Art. 609-bis Penal Code).
6	The national legislation gives a **definition or explanation** of what is understood as '**sexual activities**'.	NO	National legislation does not provide a definition of sexual acts. The concept of sexual act has been defined by jurisprudence as: "all acts which, according to common sense and jurisprudential elaboration, express the sexual impulse of the agent with invasion of the sexual sphere of the passive subject." This definition includes "touching, groping and rubbing on the intimate parts of the victims, likely to excite sexual

			concupiscence even in an incomplete and/or short-term manner, it being irrelevant, for the purposes of committing the crime, that the active subject achieves erotic satisfaction." Italian Court of Cassation 2005 (Cass. Pen., Sez. III, n. 44246 18.10.2005).
7	The national legislation criminalises **causing**, for sexual purposes, a child who has not reached the age of sexual consent to **witness sexual activities and abuse**, even without having to participate.	YES	The art. 609 quinquies of the Criminal Code provides that: "Whoever carries out sexual acts in the presence of a person under the age of fourteen, in order to have them witnessed, is punished with imprisonment from one to five years. Unless the fact constitutes a more serious crime, anyone who causes a person under the age of fourteen to witness sexual acts, or shows them pornographic material, in order to induce them to perform or undergo sexual acts is subject to the same penalty referred to in the first paragraph."
8	The national legislation criminalises **engaging in sexual activities with a child** who has not reached the age of sexual consent.	YES	The art. 609 quater of the Criminal Code applies the penalty established for the crime of sexual violence to anyone who carries out sexual acts with a person who, at the time of the crime: 1. has not reached the age of fourteen; 2. has not reached the age of sixteen, when the culprit is the ascendant, the parent, including adoptive parent, or his/her cohabitant, the guardian, or another person to whom, for reasons of care, education, instruction, supervision or custody, the minor is fostered or has a cohabitation relationship with the minor.
9	The national legislation criminalises **coercing, forcing or threatening a child into sexual activities.**	YES	National legislation punishes coercion, forcing or threatening a child in sexual acts. This situation is regulated by Art. 609-bis of the Criminal Code (sexual violence). Performing sexual acts with a child under 14 is punished as a sexual violence (which entails violence or threats in order to have sexual relationships. Therefore, in the case of sexual acts on children under 14, there is an assumption of violence or threat). There is no separate provision about violence and threats playing a role in sexual acts with children under the age of consent.
10	The national legislation criminalises engaging in **sexual activities with a child** when the abuser is someone in a **recognised position of trust, authority or influence** over the	YES	Again art. 609 quater of the Criminal Code provides that "anyone who carries out sexual acts with a minor who has reached the age of fourteen, abusing the trust gained from the minor or the authority or influence exercised on the minor due to his/her quality or of the office held or of family, domestic, work, cohabitation or hospitality relationships, is punished with imprisonment of up to four years".

	child, including within family.		
11	The national legislation criminalises engaging in **sexual activities with a child** if the abuse is made of a **particularly vulnerable situation of the child**, in particular because of a mental or physical disability or a situation of dependence.	NO	There are no specific provisions relating to minors with disabilities or in dependent situations.
12	The national legislation gives a **definition or explanation** of what is understood as '**pornographic**'.	YES	National legislation defines child pornography as "any depiction, by any means, of a minor under the age of eighteen engaged in explicit sexual activity, real or simulated, or any depiction of the sexual organs of a minor under the age of eighteen for sexual purposes". Art. 600-ter Criminal Code, section 7 (this is the definition of CSAM - see below. There is not a separate definition for pornography in general).
13	The national legislation criminalises **causing or recruiting a child to participate in pornographic performances.**	YES	The art. 600 ter of the criminal code punishes "with imprisonment from six to twelve years and a fine of between 24,000 and 240,000 euros anyone who: 1) uses minors under the age of eighteen, carries out pornographic exhibitions or shows or produces pornographic material; 2) recruits or induces minors under the age of eighteen to participate in pornographic exhibitions or shows or otherwise profits from the aforementioned shows".
14	The national legislation criminalises **profiting from or otherwise exploiting a child for pornographic purposes**.	YES	Always the art. 600 ter of the penal code in the second and third paragraphs punishes those who trade, distribute, disclose, disseminate or advertise child pornography material.
15	The national legislation criminalises **coercing or forcing a child to participate in pornographic performances**, or **threatening** a child for such purposes.	YES	National legislation punishes all forms of recruitment of minors for the production of pornographic material, with or without resorting to the use of force or threats. Art. 600-ter Criminal Code, section 2(2). The article does not uses the expression "coercing, forcing, threatening" specifically, it refers to the act of recruiting only.
16	The national legislation criminalises **knowingly attending pornographic**	YES	The art. 600 ter paragraph 6 of the penal code provides that "Unless the fact constitutes a more serious crime, anyone who attends pornographic exhibitions or shows involving minors under the age of eighteen is punished with

	performances involving the participation of a child.		imprisonment of up to three years and a fine of 1,500 euros to 6,000 euros.”
17	The national legislation foresees a **definition** of **‘exploitation of children in/for prostitution’**.	NO	
18	The national legislation criminalises **causing or recruiting a child to participate in the exploitation of children in/for prostitution.**	YES	The art. 600 bis penal code punishes "with imprisonment from six to twelve years and with a fine of between 15,000 and 150,000 euros anyone who recruits or induces a person under the age of eighteen into prostitution".
19	The national legislation criminalises **profiting** from **exploitation of children in/for prostitution.**	YES	The art. 600 bis penal code also punishes those who "favor, exploit, manage, organize or control the prostitution of a person under the age of eighteen, or otherwise profit from it".
20	The national legislation criminalises **coercing or forcing a child into exploitation in/for prostitution**, or **threatening** a child for such purposes.	YES	National legislation punishes all forms of exploitation of child prostitution, with or without resorting to the use of force or threats. Art. 600-bis Criminal Code (prostitution of minors).
21	The national legislation criminalises **engaging in sexual activities with a child, where recourse is made to the exploitation of children in/for prostitution**.	YES	National legislation distinguishes the crime of sexual acts with a minor from the crime of exploitation of child prostitution. This answer is partial. Art. 600-bis Criminal Code (prostitution of minors), section 3, establishes that, unless it amounts to a more serious offence, whoever performs sexual acts with a minor between 14 and 18 years old, in exchange for a price or other economic gain, even if just promised, is punished with reclusion from 1 to 6 years and a fine between 1500 and 6000 Eur.
22	The national legislation foresees a **definition of CSAM.**	YES	National legislation defines child pornography as “any depiction, by any means, of a minor under the age of eighteen engaged in explicit sexual activity, real or simulated, or any depiction of the sexual organs of a minor under the age of eighteen for sexual purposes”. Art. 600-ter Criminal Code, Section 7 (as anticipated, the definition of pornography only exists in the legislation in relation to child pornography).
23	The national legislation criminalises **acquiring or possessing CSAM**.	YES	The art. 600 quater penal code provides that "Whoever, outside of the cases provided for in article 600ter, knowingly procures or possesses pornographic material created using minors under the age of eighteen is punished with

			imprisonment of up to three years or with a fine of no less than euro 1,549.”
24	The national legislation criminalises **obtaining access, by means of information and communication technology, to CSAM**.	YES	The third paragraph of the art. 600 quater of the Criminal Code provides that "Except for the cases referred to in the first paragraph, anyone who, through the use of the internet or other networks or means of communication, intentionally and without justified reason accesses pornographic material created using minors under the age of eighteen is punished with imprisonment of up to two years and a fine of no less than €1,000.”
25	The national legislation criminalises **distributing, disseminating or transmitting CSAM**.	YES	Always the art. 600 ter of the penal code in the second and third paragraphs punishes those who trade, distribute, disclose, disseminate or advertise child pornography material.
26	The national legislation criminalises **offering, supplying or making available CSAM**.	YES	The art. 600 ter paragraph 4 of the penal code punishes with imprisonment up to three years and a fine ranging from 1,549 euros to 5,164 euros anyone who offers or transfers child pornography material to others, even free of charge.
27	The national legislation criminalises **producing CSAM**.	YES	The art. 600 ter of the criminal code punishes with imprisonment from six to twelve years and a fine of between 24,000 and 240,000 euros anyone who uses minors under the age of eighteen, carries out pornographic exhibitions or shows or produces pornographic material.
28	The national legislation also criminalises the CSAM offences mentioned above where the person appearing to be a child **was in fact 18 years of age or older** at the time of depiction.	NO	Italian legislation does not punish crimes relating to child pornography material if the subject is an adult.
29	The national legislation foresees **exemptions or defences** as to only criminalise the CSAM crimes mentioned above when they are **committed without right**.	NO	Italian legislation does not provide exemptions.
30	10 The national legislation foresees a **definition of grooming**.	YES	The art. 609 undecies penal code defines solicitation as "any act aimed at stealing the trust of the minor through tricks, flattery or threats also implemented through the use of the

			internet or other networks or means of communication".
31	The national legislation criminalises grooming, **even if the proposal to meet was not followed by material acts** leading to such a meeting.	YES	The art. 609 undecies penal code punishes the solicitation of minors aimed at committing crimes of child prostitution, child pornography, sexual acts with a minor and sexual violence, only if these crimes are not committed. If, following solicitation, the crimes of child prostitution, child pornography, sexual acts with a minor and sexual violence are committed, the most serious penalties foreseen for these crimes will be applied. Therefore, there is a criminal offense for solicitation, and a separate (more serious and more severely punished) one if material acts follow the solicitation.
32	The national legislation criminalises **an attempt made by an adult through the means of information and communication technology to solicit a child to provide CSAM** depicting that child.	YES	The legislation punishes attempted solicitation. General provision about attempt to conduct a crime (Art. 56.1 Criminal Code). It applies to any crime.
33	The national legislation punishes **attempt** CSEA crimes.	YES	The legislation punishes the attempt. Same as above
34	The national legislation punishes **aiding and abetting to CSEA crimes**.	YES	Anyone who aids or abets the commission of crimes relating to the sexual exploitation and abuse of minors is punished as an accomplice to the crime. Art. 600-ter Criminal Code (prostitution of minors), Section 1(2), punishes who favours, exploits, manages or controls prostitution of minors. Abetting a crime for which reclusion is provided, in general, is punished by Art. 378 Criminal Code, Section 1. So this article also applies here. When someone in general aids (participates) in a crime (in general), he or she is punished pursuant to Art. 110 Criminal Code. So the provision also applies here.
35	The national legislative framework treats CSEA that takes place online as **equally serious** as that which takes place in person.	PARTIAL	National legislation does not punish crimes relating to child sexual exploitation and abuse committed online as seriously as those committed in person. Art. 600-ter of the Criminal Code establishes in Section 1 that whoever realizes pornographic shows or exhibitions involving children under 18, or produces pornographic material, or recruits or induces minors to participate in them, or has any other economic gain from them, is punishable with reclusion

			from 6 to 12 years and a fine from 24000 to 240000 Eur. Outside of these scenarios (which apply equally when these acts are carried out online, so in this case they are treated the same), the same article, Section 3 punishes who spreads CSAM, or material aimed at recruiting or entices children into sexual exploitation, also via telematic means. This act is punished with reclusion from 1 to 5 years, or fine from 2582 to 5164 Eur. So the **production** of CSAM is treated equally online and offline, while the **diffusion** is punished less severely.
36	The national legislation **allows** technology companies (such as service providers) to deploy tools and mechanisms to **detect, report** (to law enforcement or to some other agency) **and remove CSAM** from their networks.	YES	National legislation allows technology companies to implement tools and mechanisms to detect, report and remove child sexual abuse material. DSA
37	The national legislation establishes **mandatory requirements** for technology companies (such as service providers) to **detect, report** (to law enforcement or to some other agency) **and remove CSAM** from their networks.	NO	National legislation does not establish mandatory requirements, but allows the voluntary reporting of child pornography material. DSA
38	The national legislation **allows** technology companies (such as service providers) to deploy tools and mechanisms to **detect and report** (to law enforcement or to some other agency) **grooming** on their networks.	YES	National legislation allows technology companies to implement tools and mechanisms to detect and report solicitation activities. DSA
39	The national legislation establishes **mandatory requirements** for technology companies	NO	National legislation does not establish mandatory requirements, but allows voluntary reporting of soliciting activities.

	(such as service providers) to **detect and report** (to law enforcement or to some other agency) **grooming** on their networks.		DSA
40	The national legislation does **not** criminalise **child victims for their involvement in CSEA**.	NO	National legislation does not criminalize child victims for their involvement in child sexual exploitation and abuse.
41	The national legislation provides a **legal exception** for children who have reached the age of sexual consent taking, sharing or keeping sexual images and videos of **themselves, if this is done consensually**.	NO	National legislation does not expressly provide for this exception.
42	The national legislation takes **aggravating circumstances** into account, such as repeat offenders, organized crime participants, particular vulnerability of the child, offence committed by someone in a position of trust, etc.	YES	There are specific aggravating circumstances if the crimes of solicitation of minors and sexual abuse are committed by repeat offenders, participants in criminal associations or by someone in a position of trust. Art. 609undecies (inticing of minor) of the Criminal Code provides for aggravating circumstances for crimes related to CSEA and CSAM when a) more people are involved in committing the crime, b) there are organized crime participants c) a serious damage is derived from the act for the victim, d) the minor's life is in danger because of the act. In case of sexual violence, Art. 609-ter, points 5-sexies and 5-septies, provides for aggravating circumstance if it is an act of particularly serious violence, if it causes a severe damage to the victim, and if it endangers the life of the minor. In case a relative of someone in a position of trust perform a sexual act against a minor, punishment is still reclusion from 6 to 12 years, but the age of consent is 16, instead of 14 (Art. 609-quater Criminal Code).

Annex 5: Checklist Lithuania

		YES/NO/ PARTIAL	Explanation
1	The national legislation foresees a **definition of a 'child'**, without any exceptions or differentiations.	YES	The national legislation provides a similar definition of a child. (see paragraph 11 of Article 2 of *Law on Fundamentals of Protection of the Rights of the Child*; Article 27^1 of *Criminal Procedure Code of the Republic of Lithuania*). *The Criminal Code* distinguishes the concept of a minor (a child under 14) (paragraph 3 of Article 141).
2	The national legislation ensures consistency in the **definition of a 'child'** as anyone below the age of **eighteen** for all crimes of CSEA.	YES	The national legislation defines a child as any person below eighteen for any crime, see: (Chapter XXI of *The Criminal Code of Lithuania*).
3	The national legislation has defined an **age of sexual consent**.	YES	The national age of legal sexual consent to 16 years of age, as specified in Article 151 of the *Lithuanian Criminal Code*.
4	The national legislation makes **no differentiation** regarding the age of sexual consent **based on gender**.	YES	The national legislation makes no differentiation regarding the age of sexual consent based on gender.
5	The national legislation **allows consensual, voluntary, well-informed and mutual sexual contact between peers** who are close in age and degree of psychological and physical development or maturity.	YES	The national legislation allows consensual sexual contact between peers if there is no big age gap and huge difference between spiritual and physical maturity. It is regulated In paragraph 6 of Article 151^1 of the *Lithuanian Criminal Code*. The Supreme Court of Lithuania has clarified that the court, when assessing the age difference, must take into account signs of physical maturity, the nature of sexual behaviour, previous experience, and the visual compatibility of persons. (see Precedent *Bylos Nr. 2K-152-1073/2023*)
6	The national legislation gives a **definition or explanation** of what is understood as '**sexual activities**'.	PARTIAL	The national legislation separates *satisfaction of sexual desire*s and *sexual intercourse* as two different sexual activities. https://www.infolex.lt/ta/66150 Supreme Court of Lithuania has clarified that sexual intercourse is between persons of different sexes, that is, sexual intercourse between a man and a woman by inserting the man's penis into the woman's vagina. The satisfaction of sexual desires is acts of persons of the same or different sex, when sexual passion is satisfied orally, anal or other forms of physical contact. (see Precedent).

7	The national legislation criminalises **causing**, for sexual purposes, a child who has not reached the age of sexual consent to **witness sexual activities and abuse**, even without having to participate.	NO	The national legislation does not criminalises causing a child to witness sexual activities and abuse.
8	The national legislation criminalises **engaging in sexual activities with a child** who has not reached the age of sexual consent.	YES	The national legislation criminalises engaging in sexual activities with a child under 16. Article 151^1 of *Lithuania Criminal Code* provides different dispositions and sanctions of sexual intercourse with minor. If adult engages in sexual activities with a child, shall be punished by a fine or by restriction of liberty, or by arrest, or by deprivation of liberty for up to five years. If adult promised remuneration of sexual activities, shall be punished by public works or a fine, or restriction of liberty, or arrest, or deprivation of liberty for up to five years. If a parent or another legal representative of the child engages in sexual activities with a child, shall be punished by imprisonment for up to eight years.
9	The national legislation criminalises **coercing, forcing or threatening a child into sexual activities.**	YES	The national legislation criminalises threatening a minor into sexual activities. Article 151 of *Lithuania Criminal Code* provides punishment by imprisonment for up to eight years.
10	The national legislation criminalises engaging in **sexual activities with a child** when the abuser is someone in a **recognised position of trust, authority or influence** over the child, including within family.	YES	The national legislation criminalises engaging in sexual activities with a child when the abuser is a one of the parents, or other another legal representative of the child. In paragraph 3 of Article 151^1 of *Lithuania Criminal Code* foresees sanction by imprisonment for up to six years. If a child is under 16, it provides punishment by imprisonment for up to eight years.
11	The national legislation criminalises engaging in **sexual activities with a child** if the abuse is made of a **particularly vulnerable situation of the child**, in particular because of a mental or physical disability or a situation of dependence.	YES	The national legislation does not directly name a child mental or physical disability. Instead of this, *the Criminal Code of Lithuania* provides a concept of 'powerlessness'. If person raped or sexual assaulted a minor (under 14) by taking advantage of victim powerlessness *the Criminal Code of Lithuania* provides punishment by imprisonment from 3 to 15 years. If a child under 16 was raped or sexual assaulted law provides punishment by imprisonment from 2 to 10 years. In Article 151 of *Lithuania Criminal Code* is provided the 'situation of dependence' concept. If a person forced a minor to sexual activities by taking advantage of dependence, shall be punished by deprivation of liberty up to 8 years.
12	The national legislation	YES	*Law on the Provision of Information to the Public of the*

	gives a **definition or explanation** of what is understood as '**pornographic**'.		*Republic of Lithuania* (https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.280580 38 point - definition of pornographic content) gives a definition of pornographic content information. It is information that openly and in detail shows real or simulated sexual intercourse, genitals, defecation, masturbation or sexual perversions (pedophilia, sadism, masochism, zoophilia, necrophilia, etc.), and this is the main purpose of such information.
13	The national legislation criminalises **causing or recruiting a child to participate in pornographic performances.**	YES	The national legislation criminalises causing a child to participate in pornographic performances. In article 162 of *Lithuania Criminal Code* is provided a sanction of up to 8 years of imprisonment for it.
14	The national legislation criminalises **profiting from or otherwise exploiting a child for pornographic purposes**.	YES	The national legislation criminalises profiting from pornographic performances. In article 162 of *Lithuania Criminal Code* is provided a sanction of up to 8 years of imprisonment for it.
15	The national legislation criminalises **coercing or forcing a child to participate in pornographic performances**, or **threatening** a child for such purposes.	YES	The national legislation criminalises forcing a child to participate in pornographic performances. In article 162 of *Lithuania Criminal Code* is provided a sanction of up to 8 years of imprisonment for it.
16	The national legislation criminalises **knowingly attending pornographic performances involving the participation of a child**.	YES	The national legislation criminalises knowingly attending pornographic performances involving the participation of a child. In paragraph 2 of Article 162 of *Lithuania Criminal Code* is provided a sanction of a fine or arrest or imprisonment for up to 2 years.
17	The national legislation foresees a **definition** of **'exploitation of children in/for prostitution'**.	NO	The national legislation does not foresees a definition of 'exploitation of children in/for prostitution'.
18	The national legislation criminalises **causing or recruiting a child to participate in the exploitation of children in/for prostitution.**	YES	The national legislation criminalises causing a child to participate in prostitution. In paragraph 3 of Article 308 of *Lithuania Criminal Code* is provided a sanction from 3 to 10 years of imprisonment.
19	The national legislation criminalises **profiting**	YES	The national legislation criminalises profiting from children prostitution. In Article 307 of *Lithuania Criminal Code* is

	from **exploitation of children in/for prostitution.**		provided a sanction from 3 to 10 years of imprisonment.
20	The national legislation criminalises **coercing or forcing a child into exploitation in/for prostitution**, or **threatening** a child for such purposes.	YES	The national legislation criminalises coercing a child for prostitution. In paragraph 3 of Article 308 of *Lithuania Criminal Code* is provided a sanction from 3 to 10 years of imprisonment.
21	The national legislation criminalises **engaging in sexual activities with a child, where recourse is made to the exploitation of children in/for prostitution**.	YES	The national penal code regulates penalties for the rape of minors, involvement of children in sexual activities and pornography. Article 162 of the Penal Code states: Whoever recruits, forces or involves a child in events of a pornographic nature, or exploits a child for such purposes, or exploits a child for the production of pornographic material, or profits from such activities of a child, shall be punished by imprisonment for up to eight years, and Whoever participates in an event of a pornographic nature involving a child shall also be punished by imprisonment for up to eight years, shall be liable to a fine or arrest or to imprisonment for a term not exceeding two years. Article 152 of the Penal Code (enticement of a person under 16 years of age): Any adult who proposes to a person under 16 years of age to meet for the purpose of sexual intercourse or any other sexual gratification, or for the purpose of exploiting him or her for the purpose of producing pornographic material, and who, following the proposition, has taken concrete steps to ensure that the meeting takes place, shall be liable to a fine or to a restriction of liberty, or to detention in custody or to a custodial term of up to one year. Article 153 (defilement of a person under 16 years of age): Whoever commits defilement of a person under 16 years of age, shall be liable to restriction of liberty or arrest or to imprisonment for up to five years.
22	The national legislation foresees a **definition of CSAM.**	YES	The national legislation foresees a definition of CSAM. In Article 3 of *Law on Fundamentals of Protection of the Rights of the Child* is explained sexual violence against a child definition. First of all, it is all acts provided for in the section of the *Criminal Code of Lithuania* 'Crimes and misdemeanours against freedom of a person's sexual self-determination and inviolability'. Secondly, all kinds of pornography are indicated as CSAM.
23	The national legislation criminalises **acquiring or possessing CSAM**.	YES	The national legislation criminalises acquiring and possessing CSAM. In paragraph 2 of article 309 of *Lithuania Criminal Code* is provided punishment from fine to imprisonment for up to 4 years.
24	The national legislation	YES	The national legislation criminalises obtaining access, by

	criminalises **obtaining access, by means of information and communication technology, to CSAM**.		means of information and communication technology, to CSAM. In paragraph 2 of Article 309 of *Criminal Code* provides a sanction from fine to imprisonment for up to 4 years.
25	The national legislation criminalises **distributing, disseminating or transmitting CSAM**.	YES	The national legislation criminalises distributing CSAM. Given punishment is fine or imprisonment for up to 4 years. (Paragraph 1 of Article 309 of *Lithuania Criminal Code*). The national legislation criminalises producing CSAM. Given punishment is fine or imprisonment for up to 4 years. A person who, with the intent to distribute, has distributed a large quantity of pornographic material depicting a minor child, is punishable by imprisonment for up to 5 years. (In paragraphs 2 and 3 of Article 309 of *Lithuania Criminal Code*)
26	The national legislation criminalises **offering, supplying or making available CSAM**.	YES	The national legislation criminalises offering, supplying CSAM. Given punishment is fine or imprisonment for up to 4 years. (Paragraph 2 of Article 309 of *Lithuania Criminal Code*)
27	The national legislation criminalises **producing CSAM**.	YES	The national legislation criminalises producing CSAM. Given punishment is fine or imprisonment for up to 4 years. A person who, with the intent to distribute, has produced a large quantity of pornographic material depicting a minor child, is punishable by imprisonment for up to 5 years. (Paragraph 2 and 3 of Article 309 of *Lithuania Criminal Code*).
28	The national legislation also criminalises the CSAM offences mentioned above where the person appearing to be a child **was in fact 18 years of age or older** at the time of depiction.	YES	The national legislation criminalises the CSAM offences where the person presented as a child. Given punishment fine or imprisonment for up to 4 years. (Paragraph 2 of Article 309 2 of *Lithuania Criminal Code*)
29	The national legislation foresees **exemptions or defences** as to only criminalise the CSAM crimes mentioned above when they are **committed without right**.	NO	The national legislation does not foresees any exceptions.
30	The national legislation foresees a **definition of grooming**.	NO	The national legislation does not foresees a definition of grooming.
31	The national legislation criminalises grooming, **even if the proposal to meet was not followed by material acts**	NO	The national legislation criminalises grooming if the proposal to meet was followed by material acts. (Article 152^1 of *Lithuania Criminal Code*).

	leading to such a meeting.		
32	The national legislation criminalises **an attempt made by an adult through the means of information and communication technology to solicit a child to provide CSAM** depicting that child.	PARTIAL	The national legislation does not criminalises directly attempt to solicit a child to provide CSAM. However, the Article 22 of the *Criminal Code* foresees an attempt to commit a criminal act as a separate article that applies to all criminal acts. The most important thing is that the person who attempted to commit a criminal act did not complete it due to actions beyond his control. Thus, it can be concluded that a person can be punished for attempting to solicit a child to provide CSAM.
33	The national legislation punishes **attempt** CSEA crimes.	PARTIAL	(Article 22) foresees an attempt to commit a criminal act as a separate article that applies to all criminal acts. The most important thing is that the person who attempted to commit a criminal act did not complete it due to actions beyond his control. Thus, it can be concluded that a person can be punished for attempting to sexual exploit and abuse a child
34	The national legislation punishes **aiding and abetting to CSEA crimes**.	YES	The national legislation punishes complicity in a CSEA crimes. *The Criminal Code of Lithuania* (Article 16 to 24) foresees aiding and abetting as a separate article that applies to all criminal acts. In Article 26 of *Lithuania Criminal Code* it is explained that all accomplices shall be liable only for those criminal acts committed by the executor, which were covered by their intent.
35	The national legislative framework treats CSEA that takes place online as **equally serious** as that which takes place in person.	PARTIAL	*The Criminal Code* foresees severe penalties for child pornography. However, it should be noted that the legislation does not provide an explanation of sexual harassment in the digital space and *such acts* are not criminalized. *The Criminal Code* provides a penalty for grooming a person under the age of 16. Article 152^1 covers acts committed in both physical and digital space. However, the criminal law and judicial precedent does not provide a definition and content of grooming.
36	The national legislation **allows** technology companies (such as service providers) to deploy tools and mechanisms to **detect, report** (to law enforcement or to some other agency) **and remove CSAM** from their networks.	YES	In *Republic of Lithuania Law on Electronic Communications* is provided that electronic communications activities in the Republic of Lithuania shall be regulated by the Communications Regulatory Authority and other state institutions of the Republic of Lithuania within the scope of competence defined by this Law. Communications Regulatory Authority can detect CSAM and report it to law enforcement. Also, the Communications Regulatory Authority maintains an *Internet Hotline* that anyone who notices illegal content on the Internet can report it. Communications Regulatory Authority has right to give mandatory instructions to service providers to remove CSAM from their networks. (see paragraph 3 of Article 23^2 of *Education Law of the Republic of Lithuania*).
37	The national legislation establishes **mandatory**	PARTIAL	Service providers should terminate access to information on the service station in the following cases: if required by the

	requirements for technology companies (such as service providers) to **detect, report** (to law enforcement or to some other agency) **and remove CSAM** from their networks.		court; if the network service provider becomes aware of sensitive information stored on its service station, and it is technically possible to terminate access. (*Resolution of the Government of the Republic of Lithuania*: Resolution)
38	The national legislation **allows** technology companies (such as service providers) to deploy tools and mechanisms to **detect and report** (to law enforcement or to some other agency) **grooming** on their networks.	NO	The national legislation does not foresees allowances for technology companies to detect and report grooming on their networks.
39	The national legislation establishes **mandatory requirements** for technology companies (such as service providers) to **detect and report** (to law enforcement or to some other agency) **grooming** on their networks.	NO	The national legislation does not establish mandatory requirements for companies to detect and report grooming.
40	The national legislation does **not** criminalise **child victims for their involvement in CSEA**.	YES	The national legislation does not criminalise child victims for their involvement in CSEA.
41	The national legislation provides a **legal exception** for children who have reached the age of sexual consent taking, sharing or keeping sexual images and videos of **themselves, if this is done consensually**.	YES	The national legislation provides a legal exception for children from the age of 16 taking, sharing or keeping sexual images and videos of themselves, if this is done consensually. (The Criminal Code of the Republic of Lithuania stipulates that persons who commit acts of a criminal nature against children under the age of 16 (e.g. distribution of photographs) are liable to punishment. According to the legislation, persons aged 16 years and over may engage in sexual activity with their consent. This is also confirmed by the precedent set by the highest court. It is also pointed out that according to the constitution and established precedent, photographs and other material (videos, etc.) are personal property and can be distributed/used by the individual (an important point is that it is important that the material to be distributed should not

			be used by third persons).) *The Supreme Court of Lithuania* has clarified that sharing one's intimate photos with another person, if this person does not object to it and there is such communication between the persons, is part of the realization of the person's right to private life, so it cannot be restricted and criminalized in any way. (Case with a 16 years old child: *Baudžiamojibyla Nr. 2K-85-628/2023:* Precedent).
42	The national legislation takes **aggravating circumstances** into account, such as repeat offenders, organized crime participants, particular vulnerability of the child, offence committed by someone in a position of trust, etc.	YES	The national legislation foresees aggravating circumstances, when the act is committed by a recidivist, organized crime participants and someone in a position of child's trust (close relative, family member, etc.) (Article 60 of *Criminal Code of Lithuania*)

Annex 6: Checklist Greece

		YES/NO/ PARTIAL	Explanation
1	The national legislation foresees a **definition of a 'child'**, without any exceptions or differentiations.	YES	↘ Law 2101/1992 (Official Journal Paper 192/A/2-12-1992)
2	The national legislation ensures consistency in the **definition of a 'child'** as anyone below the age of **eighteen** for all crimes of CSEA.	YES	↘ Penal Code, Art. 121 Definition: In this chapter, the term "minors" means those who, at the time of the act, are between the twelfth and eighteenth years of their full age.
3	The national legislation has defined an **age of sexual consent**.	PARTIAL	↘ The age of consent in Greece is 15. The general provision for age of consent in Greece is 15 as implied by Article 339, as well as Articles 337, 348B of the Greek Penal Code.
4	The national legislation makes **no differentiation** regarding the age of sexual consent **based on gender**.	NO	↘ Greek law distinguishes between gender harassment and sexual harassment. The Greek law is called: "Application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation - Harmonisation of existing legislation with Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 and other related provisions (Act 3896/2010)".This law provides the definitions of harassment and sexual harassment
5	The national legislation **allows consensual, voluntary, well-informed and mutual sexual contact between peers** who are close in age and degree of psychological and physical development or maturity.	YES	↘ Penal Code, Article 339(2) mentions that "lewd" actions between minors under the age of 15 are not punishable unless the age difference between them is more than 3 years. In the latter cases the children involved will be subject to "reformative" or "treatment" measures.
6	The national legislation gives a **definition or explanation** of what is understood as '**sexual activities**'.	PARTIAL	Penal Code ↘ Art. 336 Rape: 2. Sexual acts include sexual intercourse and acts of equal seriousness
7	The national legislation criminalises **causing**, for sexual purposes, a child who has not reached the age of sexual consent to **witness sexual activities and**	YES	↘ Penal Code, Art. 339 Genital acts with or in front of Minors Whoever compels or entices a minor, who has not reached the age of fifteen, to be present at a sexual act, among other things, without participating in it, shall be punished by imprisonment of at least two years and a fine if the minor is younger than fourteen years, and with imprisonment for up

	abuse, even without having to participate.		to three years or a fine if he has completed the fourteenth year of his age.
8	The national legislation criminalises **engaging in sexual activities with a child** who has not reached the age of sexual consent.	YES	↘ Penal Code, Art. 339 Genital acts with or in front of Minors Whoever performs a sexual act on a person younger than fifteen years of age or misleads him as a result of performing or undergoing such an act shall be punished, unless there is a case to be punished more severely under article 351A, as follows: a) if the victim did not reach the age of twelve years, with imprisonment, b) if the victim has reached the age of twelve but not fourteen years, with imprisonment up to ten years and c) if the victim has reached the age of fourteen but not fifteen, with imprisonment of at least two years. ↘ Law 3727/2008 as a result of the Convention of the Council of Europe for the protection of children against abuse. ↘ Law 4267/2014 as a result of the European Directive 2011/93/EE, which foresees the commitment of member states to protect children against any type of sexual abuse and exploitation.
9	The national legislation criminalises **coercing, forcing or threatening a child into sexual activities.**	YES	↘ Parliament Law 3500/2006, Art. 8 Rape and abuse in lewdness: 1. The para. 1 of Article 336 of the Criminal Code is replaced by the following: a. Whoever by physical force or by threat of great and imminent danger coerces another into intercourse or other lewd act or to tolerate it shall be punished with imprisonment. ↘ Art. 339 Genital acts with or in front of minors 1. Whoever performs a sexual act on a person younger than fifteen years of age or misleads him as a result of performing or undergoing such an act shall be punished, unless there is a case to be punished more severely under article 351A, as follows: a) if the victim did not reach the age of twelve years, with imprisonment, b) if the victim has reached the age of twelve but not fourteen years, with imprisonment up to ten years and c) if the victim has reached the age of fourteen but not fifteen, with imprisonment of at least two years. 2. Sexual acts between minors under the age of fifteen are not punishable, unless the age difference between them is more than three years, in which case only reformative or curative measures can be imposed. 3. Whoever compels or entices a minor, who has not reached the age of fifteen, to be present at a sexual act, among other things, without participating in it, shall be punished by imprisonment of at least two years and a fine if the minor is younger than fourteen years, and with imprisonment for up to three years or a fine if he has completed the fourteenth year of his age.

10	The national legislation criminalises engaging in **sexual activities with a child** when the abuser is someone in a **recognised position of trust, authority or influence** over the child, including within family.	YES	↘ Penal Code, Art. 333 Threatening: 2. Imprisonment of up to three years or a fine shall be imposed if the act is committed at the expense of a minor or a person who cannot defend himself, as long as these persons are under the custody or protection of the offender based on law, court decision or actual status, cohabit with him or have an employment or service relationship with him. The same penalty is imposed when the act is committed against a spouse during marriage or against a partner during cohabitation work, shall be punished by imprisonment for up to three years or a fine. A summons is required for criminal prosecution. ↘ Parliament Law 3500/2006, article 24: 1. Article 342 of the Criminal Code (abuse of minors in lewdness) is replaced by the following: 1. An adult who commits lewd acts with a minor entrusted to him or her to supervise or guard him, even temporarily, shall be punished as follows: a. if the injured party has not reached the age of fourteen years, with imprisonment of at least ten years; b. if the injured party has reached fourteen years, but not eighteen years, with imprisonment. 2. The commission of the conduct referred to in the first paragraph shall constitute an aggravating circumstance: a. by a household; b. by a person living with the minor or maintaining friendly relations with his or her relatives; c. by a teacher, educator, trainer or other person giving lessons to the minor; d. by a person receiving the services of the minor; e. by a clergyman with whom the minor maintains a spiritual relationship; f. by a psychologist, doctor, nurse or specialist providing services to the minor. 3. An adult who, by gestures, suggestions or by narrating, depicting or presenting acts concerning sexual life, insults the shame of a minor entrusted to him or her to supervise or guard him, even temporarily, is punishable by imprisonment for not less than six months and, if the act is habitually committed, by imprisonment for at least two years. Paragraph 2 shall apply mutatis mutandis in such cases.
11	The national legislation criminalises engaging in **sexual activities with a child** if the abuse is made of a **particularly vulnerable situation of the child**, in particular because of a mental or physical disability or a	YES	↘ Article 342 sexual exploitation with abuse of power on minors with disabilities

	situation of dependence.		
12	The national legislation gives a **definition or explanation** of what is understood as '**pornographic**'.	YES	↘ Penal Code, Art. 348A Child pornography 3. Child pornography material, in the sense of the previous paragraphs, is the representation of real or virtual depiction or recording on an electronic or other material form of the genitals or the body in general of the minor, in a way that obviously causes sexual stimulation, as well as of the actual or simulated sexual act performed by or with a minor. ↘ Law 4267/2014 as a result of the European Directive 2011/93/EE, which foresees the commitment of member states to protect children against any type of sexual abuse and exploitation.
13	The national legislation criminalises **causing or recruiting a child to participate in**	YES	↘ Penal Code, Art. 348A Child pornography[273] ↘ Art. 348B grooming of minors for sexual purposes (including CSAM production) ↘ Art. 348C Pornographic performances of minors[274]

[273] 1. Whoever knowingly produces, distributes, publishes, displays, imports into or exports from the Territory, transfers, offers, sells or otherwise disposes, purchases, procures, acquires or possesses child pornography material or disseminates or transmits information relating to the performance of the above acts is punishable by imprisonment of at least one year and a fine.
2. Anyone who intentionally produces, offers, sells or in any way disposes, distributes, transmits, buys, procures or possesses child pornography material or disseminates information regarding the commission of the above acts, through information systems, shall be punished with imprisonment of at least two years and a fine.
3. Child pornography material, in the sense of the previous paragraphs, is the representation of real or virtual depiction or recording on an electronic or other material form of the genitals or the body in general of the minor, in a way that obviously causes sexual stimulation, as well as of the actual or simulated sexual act performed by or with a minor.
4. The acts of paragraphs 1 and 2 are punished with imprisonment for up to ten years and a fine:
a. if performed professionally,
b. if the production of child pornography material is linked to exploiting the needs, mental or intellectual disability, or physical dysfunction due to an organic disease of the minor or through the use or threat of violence against the minor, or by using a minor who has not yet reached the age of fifteen, or if the production of child pornography material exposes the life of the minor to serious danger
c. if the perpetrator of the production of the child pornography material is a person to whom a minor has been entrusted to supervise or guard him, even temporarily.
5. If the production of the child pornography material is linked to the use of a minor who has not completed his twelfth year of age, a minimum of ten years' imprisonment and a monetary penalty shall be imposed. The same penalty is imposed if the act of cases b and c of the previous paragraph resulted in serious bodily harm to the victim, and if it resulted in death, life or temporary imprisonment of at least ten years and a monetary penalty is imposed.
6. Anyone who knowingly gains access to child pornography material through information systems shall be punished by imprisonment for up to three years or a fine.

[274] 1. Whoever exorcises or seduces a minor in order to participate in pornographic performances or organizes them, shall be punished as follows:
a) if the sufferer has not reached the age of twelve, with imprisonment,
b) if the sufferer has reached the age of twelve but not fourteen years, with imprisonment of up to ten years,
c) if the sufferer has reached the age of fourteen, with imprisonment of at least two years.
Anyone who knowingly, having paid a relevant fee, watches a pornographic performance in which minors participate is liable to imprisonment for at least two years in cases a) and b) of the previous paragraph and in case c) to imprisonment of at least one year.
2. If the acts of the previous paragraph were carried out with the use of violence or threats, in order for a minor to participate in pornographic performances or for the purpose of seeking financial benefit from them, the following shall be imposed:

	pornographic performances.		↘ Law 4267/2014 as a result of the European Directive 2011/93/EE, which foresees the commitment of member states to protect children against any type of sexual abuse and exploitation. The Law foresees the rephrasing of the paragraphs 2,3 and 4 of Article 348A, 348B and adds 348Γ of the Penal Code (available in Greek[275]).
14	The national legislation criminalises **profiting from or otherwise exploiting a child for pornographic purposes**.	YES	↘ Penal Code, Art. 348A Child pornography Art. 348C Pornographic performances of minors 2. Law 4267/2014 as a result of the European Directive 2011/93/EE, which foresees the commitment of member states to protect children against any type of sexual abuse and exploitation.
15	The national legislation criminalises **coercing or forcing a child to participate in pornographic performances**, or **threatening** a child for such purposes.	YES	↘ Penal Code, Art. 348A Child pornography Art. 348C Pornographic performances of minors ↘ Law 4267/2014 as a result of the European Directive 2011/93/EE, which foresees the commitment of member states to protect children against any type of sexual abuse and exploitation.
16	The national legislation criminalises **knowingly attending pornographic performances involving the participation of a child**.	YES	↘ Penal Code, Art. 348A Child pornography Art. 348C Pornographic performances of minors ↘ Law 4267/2014 as a result of the European Directive 2011/93/EE, which foresees the commitment of member states to protect children against any type of sexual abuse and exploitation.
17	The national legislation foresees a **definition** of **'exploitation of**	YES	↘ Penal Code, Art. 349 Pimping [276]

a) in case a) of the previous paragraph, imprisonment of at least ten years,
b) in case b) imprisonment,
c) in case c) imprisonment up to ten years.
3. A pornographic performance, in the sense of the previous paragraphs, is an organized direct exhibition, intended for viewing or hearing assistance, including using information and communication technology:
a) of a minor who engages in a real or simulated act of sexual nature or
b) the genitals or the body in general of the minor in a way that obviously causes genital stimulation.

[275] https://ministryofjustice.gr/wp-content/uploads/2022/05/doc6_N_42672014_FEK_A_137_12-06-2014.pdf

[276] 1. Whoever, in order to serve the debauchery of others, promotes or drives a minor into prostitution or supports or coerces or facilitates or participates in the prostitution of minors, shall be punished by imprisonment for up to ten years and a fine.
2. The culprit is punished with imprisonment and a fine if the crime was committed:
a) against a person under the age of fifteen,
b) by fraudulent means,
c) by a blood relative or by a step parent, spouse, guardian or by another to whom the minor has been entrusted for upbringing, teaching, supervision or custody, even if temporary,
d) by an employee who, in the exercise of his service or benefiting from his capacity, commits or participates in any way in the act,
e) by using electronic means of communication,
f) by offering or promising to pay money or any other consideration.

	children in/for prostitution'.		
18	The national legislation criminalises **causing or recruiting a child to participate in the exploitation of children in/for prostitution.**	YES	↘ Penal Code, Art. 349 Pimping
19	The national legislation criminalises **profiting** from **exploitation of children in/for prostitution.**	YES	↘ Penal Code, Art. 349 Pimping
20	The national legislation criminalises **coercing or forcing a child into exploitation in/for prostitution**, or **threatening** a child for such purposes.	YES	↘ Penal Code, Art. 349 Pimping
21	The national legislation criminalises **engaging in sexual activities with a child, where recourse is made to the exploitation of children in/for prostitution**.	YES	↘ Penal Code, Art. 351A Sexual intercourse with a minor for a fee: 1. Sexual intercourse with a minor performed by an adult for payment or other material consideration, or sexual intercourse between minors caused by an adult in the same way and performed in front of that or another adult shall be punished: a) if the victim has not reached the age of twelve, with imprisonment of at least ten years and a fine, b) if the victim turned twelve, but not fourteen, with imprisonment and a fine and c) if the victim turned fourteen, by imprisonment at least three years and a fine. 2. If the act of the first paragraph resulted in the death of the victim, life imprisonment or temporary imprisonment of at least ten years and a fine shall be imposed.
22	The national legislation foresees a **definition of CSAM.**	PARTIAL	Considered the same as child pornography. ↘ Child pornography is categorically defined by Greek law and encompasses a wide range of content that exploits minors. It includes, but is not limited to • Visual depictions: Images or videos of minors engaged in sexual activity. • Explicit material: Material that shows the genital organs of minors and is primarily intended for sexual arousal. • Online Content: Any form of child pornography distributed or made available over the Internet. • Simulated Activity: Content that depicts minors in explicit

			scenarios, even if the content is simulated or animated. ↘ The law distinguishes between real and virtual depictions of child pornography. Real depictions involve actual minors engaged in explicit conduct, while virtual depictions involve simulated or computer-generated imagery (CGI). The latter, although it doesn't involve real children, creates an environment conducive to child exploitation and is considered punishable under Greek law.
23	The national legislation criminalises **acquiring or possessing CSAM**.	YES	↘ Maximum sentences of up to 5 years of imprisonment in case of simple possession. Treated as child pornography (Penal Code, Art. 348A Child pornography) ↘ Law 4267/2014 as a result of the European Directive 2011/93/EE, which foresees the commitment of member states to protect children against any type of sexual abuse and exploitation. The Law foresees the rephrasing of the paragraphs 2,3 and 4 of Article 348A and adds paragraph 5: whoever intentionally gains access to material of child pornography through ICT is punished with at least one year imprisonment.
24	The national legislation criminalises **obtaining access, by means of information and communication technology, to CSAM**.	YES	↘ Law 4267/2014 as a result of the European Directive 2011/93/EE, which foresees the commitment of member states to protect children against any type of sexual abuse and exploitation: addition of paragraph 5 in Article 348A of the Penal Code "whoever intentionally gains access to material of child pornography through ICT is punished with at least one year imprisonment"
25	The national legislation criminalises **distributing, disseminating or transmitting CSAM**.	PARTIAL	Considered the same as child pornography. 348A
26	The national legislation criminalises **offering, supplying or making available CSAM**.	PARTIAL	Considered the same as child pornography. 348A
27	The national legislation criminalises **producing CSAM**.	PARTIAL	Considered the same as child pornography. 348A
28	The national legislation also criminalises the CSAM offences mentioned above where the person appearing to be a child **was in fact 18 years of age or older** at the time of depiction.	NO	
29	The national legislation foresees **exemptions or**	NO	It is not mentioned specifically anywhere, but prosecutors take into account the unique situation of each case

	defences as to only criminalise the CSAM crimes mentioned above when they are **committed without right**.		
30	The national legislation foresees a **definition of grooming**.	YES	↘ Penal Code, Art. 348B Attracting children for sexual reasons: Anyone who intentionally, through information systems, suggests to a minor who has not reached the age of fifteen, to meet him or a third party, with the aim of committing against the minor the offenses of articles 339 par. 1 and 2 or 348A, when the proposal this is followed by further acts leading to such a meeting, is punishable by imprisonment of at least two years and a fine. ↘ Law 4267/2014 as a result of the European Directive 2011/93/EE, which foresees the commitment of member states to protect children against any type of sexual abuse and exploitation. The Law foresees the rephrasing of the paragraphs 2,3 and 4 of Article 348A, 348B and adds 348Γ of the Penal Code (available in Greek[277]). Rephrasing of 348B by article 9: anyone with intention, through ICT, proposes to a minor of less than 15 years old to meet him/her or someone else with the intention to commit crimes as described in Article 339, paragraphs 1 and 2 or 348A, when the proposal is followed by further acts that lead to such a meeting, is punished with at least 2 years imprisonment and fine from 50.000€ to 200.000€.
31	The national legislation criminalises grooming, **even if the proposal to meet was not followed by material acts** leading to such a meeting.	PARTIAL	↘ No, but Penal Code, Art. 337 Offense of sexual dignity may be included in the process of grooming which is criminalized even if the victim never meets the offender: 3. An adult, who through the internet or other media or IT technologies, makes contact with a person who has not reached the age of fifteen and with gestures or suggestions, insults the honor of the minor in the field of sexual life, shall be punished by imprisonment of at least two years. If a meeting followed, the adult is punished with imprisonment of at least three years.
32	The national legislation criminalises **an attempt made by an adult through the means of information and communication technology to solicit a child to provide CSAM** depicting that child.	YES	↘ Articles 42 (Meaning of Attempt of a Crime) and 348A (regarding the production of CSE) of Penal Code
33	The national legislation	YES	As above, a combination of Penal Code Articles about CSE

[277] https://ministryofjustice.gr/wp-content/uploads/2022/05/doc6_N_42672014_FEK_A_137_12-06-2014.pdf

	punishes **attempt** CSEA crimes.		along with Article 42 and articles 43 (Attempt with no result) and 44 (Withdrawal of attempt)
34	The national legislation punishes **aiding and abetting to CSEA crimes**.	YES	↘ Penal Code Articles 45, 46, 47 and 48 set the base for criminalizing aiding and abetting behavior in general. ↘ More specific is Penal Code, Art. 348 Facilitation of offenses involving minors: 1. Anyone who, as a profession or for profit, attempts to facilitate, even covertly, the engagement in sexual acts with a minor by publishing advertisements, images, phone numbers, or by transmitting electronic messages or by any other means shall be punished with imprisonment of at least three years and a fine. 2. Whoever organizes, finances, directs, supervises, advertises or mediates in any way or means in carrying out trips with the purpose of the participants performing sexual acts against a minor, shall be punished by imprisonment for up to ten years. Anyone who, with the above purpose, participates in trips referred to in the previous paragraph is punished by imprisonment of at least one year, regardless of his responsibility for the commission of other criminal acts.
35	The national legislative framework treats CSEA that takes place online as **equally serious** as that which takes place in person.	YES	↘ Most of the Penal Code Articles criminalizing CSE do not differentiate online or in person ↘ Penal Code, Articles 5, 6, 7: In the case of crimes committed online, the venue of the committed crime can be considered either as the venue where the website can be accessed, i.e. any country where the users can have access to the internet, or the venue where the specific website is hosted by the internet provider. According to the new Penal Code, a punishable act committed online against a local is prosecuted according to Articles 6 and 7. However, for serious forms of internet maltreatment, such as child pornography offences, the Greek penal laws are imposed to both locals and foreigners, regardless of the venue where the act took place. ↘ Law 4267/2014, article 2, as paragraph 3 after paragraph 2 of Article 5 of the Penal Code: 3. When the act is taking place online or through another means of telecommunication, the Greek territory can also be considered as a venue, since through the territory there is access to the specific digital means, regardless of their venue of establishment. ↘ Sexual exploitation of minors in child pornography occurs in both real and virtual environments. Both forms of exploitation serve to devalue the dignity and intrinsic value of minors and violate their rights and well-being. The law seeks to encompass all possible avenues of exploitation and to ensure comprehensive protection of minors from sexual exploitation and abuse.
36	The national legislation	PARTIAL	↘ The big platforms foresee within their own regulations the

	allows technology companies (such as service providers) to deploy tools and mechanisms to **detect, report** (to law enforcement or to some other agency) **and remove CSAM** from their networks.		removal of such material ↘ Important note: the EU Digital Services Act will be into force from 01/01/2024
37	The national legislation establishes **mandatory requirements** for technology companies (such as service providers) to **detect, report** (to law enforcement or to some other agency) **and remove CSAM** from their networks.	NO	
38	The national legislation **allows** technology companies (such as service providers) to deploy tools and mechanisms to **detect and report** (to law enforcement or to some other agency) **grooming** on their networks.	PARTIAL	↘ The big platforms foresee within their own regulations the removal of such material Important note: the EU Digital Services Act will be into force from 01/01/2024
39	The national legislation establishes **mandatory requirements** for technology companies (such as service providers) to **detect and report** (to law enforcement or to some other agency) **grooming** on their networks.	NO	
40	The national legislation does **not** criminalise **child victims for their involvement in CSEA**.	PARTIAL	
41	The national legislation provides a **legal**	NO	

	exception for children who have reached the age of sexual consent taking, sharing or keeping sexual images and videos of **themselves, if this is done consensually**.		
42	The national legislation takes **aggravating circumstances** into account, such as repeat offenders, organized crime participants, particular vulnerability of the child, offence committed by someone in a position of trust, etc.	YES	These aggravating circumstances are taken into account in various Articles of the Penal Code considering CSE offenses (as stated in the detailed quote of articles so far)

Annex 7: Checklist UK

		YES/NO/ PARTIAL	Explanation
1	The national legislation foresees a **definition of a 'child'**, without any exceptions or differentiations.	YES	In England a child is defined as anyone who has not yet reached their 18th birthday in line with the UN Convention on the Rights of a Child which was ratified in 1990. Even if a child has reached 16 years and is living independently, in further education, have joined the armed forces, has a child or in custody they are still legally entitled to the rights and protection.
2	The national legislation ensures consistency in the **definition of a 'child'** as anyone below the age of **eighteen** for all crimes of CSEA.	YES	
3	The national legislation has defined an **age of sexual consent**.	YES	At the age of 16 years, a person can legally consent to sexual activity. Section 74 of the Sexual Offences Act 2003, is the primary legislation relating to this issue. Statutory guidance on same is readily available in guidance from the Crown Prosecution Service & explanatory notes.[278] However, please note that the Sexual Offences Act (Sections 16 to 29) prohibits a person in a position of trust or a family member from performing sexual activities with a child under the age of 18, regardless of the age of consent.
4	The national legislation makes **no differentiation** regarding the age of sexual consent **based on gender**.	YES	There are no legal differences regarding the age of consent based on gender or gender identity. However, the case of Gillick v West Norfolk & Wisbech health authority 1986 provides the precedent for children under the age of consent to make decisions regarding a number of circumstances relating to them. Often paired with the Fraiser Guidelines and used in medical settings but together to demonstrate flexibility in respect of practical efforts relating to minors and the age of consent.
5	The national legislation **allows consensual, voluntary, well-informed and mutual sexual contact between peers** who are close in age and degree of psychological and physical development or maturity.	PARTIAL	Guidance across the UK makes it clear that sexual activity between children close in age as well as understanding should not automatically result in prosecution. A range of factors will be considered to make a determination as to whether prosecution is in the public interest, including: 1) Whether sexual activity was entered into willingly. 2) Whether there was an imbalance of power, coercion or exploitation. 3) The children's relative age, maturity and level of development.

[278] https://www.cps.gov.uk/legal-guidance/rape-and-sexual-offences-chapter-6-consent

			Guidance is available to legal recourse under Outcome 21, statutory guidance in Keeping Children Safe in Education helps with the full systems approach needed in these instances with respect to the image related offences.
6	The national legislation gives a **definition or explanation** of what is understood as '**sexual activities**'.	YES	In Sexual offences act 2003- explanatory notes at paragraph 145. Relating to Section 78 of the act. The definition of 'sexual activity' is not limited to penetration, but can include kissing, groping, inappropriate touching and even virtual activity, such as encouraging a child to send intimate photographs of themselves via SMS or social media. Section 78 defines "sexual" for the purposes of this Part. This definition is relevant to many of the offences under this Part. For example, section 2(1)(b) refers to penetration which is sexual and section 3(1)(b) refers to touching which is sexual. There are two alternative limbs to the definition of "sexual activity" in section 78. Paragraph (a) covers activity that the reasonable person would always consider to be sexual because of its nature, such as sexual intercourse. Paragraph (b) covers activity that the reasonable person would consider, because of its nature, may or may not be sexual depending on the circumstances or the intentions of the person carrying it out, or both: for example, digital penetration of the vagina may be sexual or may be carried out for a medical reason. Where the activity is, for example, oral sex, it seems likely that the reasonable person would only need to consider the nature of the activity to determine that it is sexual. But where it is digital penetration of the vagina, the reasonable person would need to consider the nature of the activity (it may or may not be sexual), the circumstances in which it is carried out (e.g. a doctor's surgery) and the purpose of any of the participants (if the doctor's purpose is medical, the activity will not be sexual; if the doctor's purpose is sexual, the activity also is likely to be sexual). If, from looking at the nature of the activity, it would not appear to the reasonable person that the activity might be sexual, the activity does not meet the test in either paragraph (a) or (b), even if a particular individual may obtain sexual gratification from carrying out the activity. The effect of this is that obscure fetishes do not fall within the definition of sexual activity.
7	The national legislation criminalises **causing**, for sexual purposes, a child who has not reached the age of sexual consent to **witness sexual activities and abuse**, even without	YES	Sexual offences act 2003 S. 11 and 12 create offences for causing a child to witness a sexual activity or for engaging in sexual intercourse in the presence of a child. There are strict sentencing guidelines in place for persons found guilty of these offences and include R v Jakir Ahmed (2017) EWCA Crim 1158 and R v Baker (2014) EWCA Crim 2753.

	having to participate.		
8	The national legislation criminalises **engaging in sexual activities with a child** who has not reached the age of sexual consent.	YES	The substantive Sexual Offences Act 2003 criminalizes sexual activities with a person who has not attained the age of sexual consent including but not limited to: S.9, (S.5) Rape of a child under 13, (S.7) Assault of a child under 13 by penetration which includes the penetration of a vagina or anus of a 13 year old whether by a body part or an object. Causing or inciting a child under the age of sexual consent to engage in sexual activity is also criminalized under the criminal law for and in the cases above the 'consent' of the child is irrelevant.
9	The national legislation criminalises **coercing, forcing or threatening a child into sexual activities.**	YES	See above.
10	The national legislation criminalises engaging in **sexual activities with a child** when the abuser is someone in a **recognised position of trust, authority or influence** over the child, including within family.	YES	There is an entire sub-division in the Sexual offences act that relates to sexual abuse perpetrated by persons in a position of trust which includes a list of professions so categorised from S. 16-24. The following sub-category relates completely to child sex offences within a family setting and can be found from Section 25 to 29. Both in abuse of trust and abuse within the family setting have subsequent legislative guidance for more severe punishment due to these aggravating factors.
11	The national legislation criminalises engaging in **sexual activities with a child** if the abuse is made of a **particularly vulnerable situation of the child**, in particular because of a mental or physical disability or a situation of dependence.	PARTIAL	The Sexual Offences Act 2003 from section 30-33 outline offence against a person with a mental disorder impeding choice and includes engaging in sexual activity with said person, causing or inciting or causing them to witness or watch sexual activity. Section 34-37 of the said act include inducements, threats or deception of people with mental disorders and care workers of people with mental disorders. There is no specific reference made to the age of the person with the mental disability and can apply equally to children as well as vulnerable adults whose cognitive age can usually equate that to that of a child.
12	The national legislation gives a **definition or explanation** of what is understood as '**pornographic**'.	YES	Criminal Justice and Immigration Act 2008 S. 63 (3) which states that an image is "pornographic" if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.
13	The national legislation criminalises **causing or recruiting a child to participate in pornographic performances.**	YES	While a pornography review is currently in progress within the UK, both the Protection of Children Act 1978 which covers indecent images of children and the Sexual offences act 2003 would be used in cases that include circumstances such as recruiting a child to participated in pornographic performances.
14	The national legislation	YES	This would be classed as possession/distribution or creation

	criminalises **profiting from or otherwise exploiting a child for pornographic purposes**.		of child abuse material and prohibited under several pieces of national legislation.
15	The national legislation criminalises **coercing or forcing a child to participate in pornographic performances**, or **threatening** a child for such purposes.	PARTIAL	As a national pornography review is in progress current redress is applicable under the Sexual offences act 2003 in concert with the Protection of Children Act 1978.
16	The national legislation criminalises **knowingly attending pornographic performances involving the participation of a child**.	NO	A pornography review is in progress
17	The national legislation foresees a **definition** of **'exploitation of children in/for prostitution'**.	PARTIAL	The definition of a child exploitation of children for sexual purposes including prostitution is derived from the Lanzarote Convention and EU Directive 2011/93.
18	The national legislation criminalises **causing or recruiting a child to participate in the exploitation of children in/for prostitution.**	YES	This is covered in practice by the Sexual Offences Act as it relates to child sexual abuse.
19	The national legislation criminalises **profiting** from **exploitation of children in/for prostitution.**	YES	A number of national legislation criminalises profiting from the exploitation of children in or for prostitution as it is proceeds of criminal activity.
20	The national legislation criminalises **coercing or forcing a child into exploitation in/for prostitution**, or **threatening** a child for such purposes.	YES	This is child sexual abuse thus is covered by the Sexual Offences and Protection of Children Acts.
21	The national legislation criminalises **engaging in sexual activities with a child, where recourse is made to the exploitation of children**	YES	The Sexual Offences Act which prohibits sexual acts with children without prejudice to motive or intent also prohibits the sexual exploitation of children or engaging a child in prostitution- as a matter of fact, UK legislation have moved away from the term child prostitution as it is

	in/for prostitution.		
22	The national legislation foresees a **definition of CSAM.**	YES	While UK legislation does not explicitly define CSAM as such. various laws and statutes address the creation, distribution, possession, and viewing of indecent images of children, which encompass the concept of CSAM: see the Protection of Children Act 1978 and the Criminal Justice Act 1988, the Sexual Offences Act 2003. Also the Online Safety Act offers some guidance here.
23	The national legislation criminalises **acquiring or possessing CSAM**.	YES	Recourse available with multiple legislative avenues including Protection of Children Act, Sexual offences act, Online Safety Act
24	The national legislation criminalises **obtaining access, by means of information and communication technology, to CSAM**.	PARTIAL	Online Safety Act offers guidance here.
25	The national legislation criminalises **distributing, disseminating or transmitting CSAM**.	YES	The Protection of Children Act and the Criminal Justice Act deal specifically with image- based offending including distributing, disseminating or transmitting child sexual abuse material.
26	The national legislation criminalises **offering, supplying or making available CSAM**.	YES	This relates to indecent images of children and would be treated accordingly.
27	The national legislation criminalises **producing CSAM**.	YES	A number of national legislation would be applicable in this circumstance including the Sexual Offences Act, Protection of Children Act are mostly used here.
28	The national legislation also criminalises the CSAM offences mentioned above where the person appearing to be a child **was in fact 18 years of age or older** at the time of depiction.	YES	Sexual offences and Protection of Children Act are most relevant here.
29	The national legislation foresees **exemptions or defences** as to only criminalise the CSAM crimes mentioned above when they are **committed without right**.	YES	Coroners and Justice Act S. 64. Commonly used is a memorandum of Understanding which provides guidance to those who have a legitimate need to handle indecent images of children by setting out how the defence provided in section 1B of the Protection of Children Act 1978 may be applied. The Memorandum provides guidance to the Police Service, CPS and others involved in the internet industry, in order to create the right balance between protecting children and effective investigation and prosecution of offences. *R v Collier* [2005] can also be useful in appropriate

			circumstances.
30	The national legislation foresees a **definition of grooming**.	YES	Section 15A of the Sexual Offences Act 2003, creates an offence if an adult has any sexual communication with a child whether the conversation takes place in an online or offline environment. See also section 14 and 15.
31	The national legislation criminalises grooming, **even if the proposal to meet was not followed by material acts** leading to such a meeting.	PARTIAL	Section 15 of the Sexual Offences act covers meeting a child following sexual grooming and also covers an attempt to do so, the groomer would have to do more than propose said meeting and actually attempt to meet with victim, the legislation does not require said meeting to actually take place for the section to apply. Case examples include R v Jibran 2019 EWCA Crim 1007.
32	The national legislation criminalises **an attempt made by an adult through the means of information and communication technology to solicit a child to provide CSAM** depicting that child.	YES	This falls under Section 15A of the Sexual Offences Act. There are multiple case law examples that demonstrate the illegality of an adult attempting to solicit a child to provide or create child sexual abuse material such as R v Harris 2014 EWCA 2873.
33	The national legislation punishes **attempt** CSEA crimes.	YES	Usually, as long as the act was more than merely preparatory to the commission of an offence and that the accused intended to commit an offence. See Criminal Attempts Act 1981
34	The national legislation punishes **aiding and abetting to CSEA crimes**.	YES	Section 73 of the Sexual offences Act 2003 & Section 8 of the Accessories and Abettors Act 1861
35	The national legislative framework treats CSEA that takes place online as **equally serious** as that which takes place in person.	PARTIAL	There is often little mention of online harms in legislation which often has the effect of wide applicability. With the introduction of the Online Safety Act 2023 and upcoming legal reforms relating to keeping young people safe, this is expected to become more clear.
36	The national legislation **allows** technology companies (such as service providers) to deploy tools and mechanisms to **detect, report** (to law enforcement or to some other agency) **and remove CSAM** from their networks.	YES	Laws such as the Online Safety Act along with agreements between governmental and NGOs tackle these issues.
37	The national legislation	YES	Online Safety Act 2023, this is newly introduced coming into

	establishes **mandatory requirements** for technology companies (such as service providers) to **detect, report** (to law enforcement or to some other agency) **and remove CSAM** from their networks.		effect recently and will be moderated and enforced by OFCOM (Office of Communications). Historically, NGOs such as Internet Watch Foundation and InHope work closely with technology companies and law enforcement to bridge the gap to detect child sexual exploitation or abuse material not only in the UK but worldwide. The Online Safety Act will make these acts mandatory and with penalties for failures to comply. Voluntary guidance from the UK Home Office
38	The national legislation **allows** technology companies (such as service providers) to deploy tools and mechanisms to **detect and report** (to law enforcement or to some other agency) **grooming** on their networks.	PARTIAL	Through the implementation of the Online Safety Act, technology companies are allowed to deploy tools across their networks to actively detect and report grooming on their networks. Home Office provides voluntary guidance and supports entities acting in this endeavour.
39	The national legislation establishes **mandatory requirements** for technology companies (such as service providers) to **detect and report** (to law enforcement or to some other agency) **grooming** on their networks.	YES	The Online Safety Act 2023 has care and charge of this area, it is slowly making strides.
40	The national legislation does **not** criminalise **child victims for their involvement in CSEA**.	PARTIAL	The Home Office launched Outcome 21 as an additional method of recording the conclusion of a police investigation concerning IIOC where the images are self-generated. It is against the law to create, share and distribute indecent images of children. If this reaches the attention of the police, it will be recorded as a crime but no criminal entry recorded against the child, it is viewed as a safeguarding issue and subject to education intervention.
41	The national legislation provides a **legal exception** for children who have reached the age of sexual consent taking, sharing or keeping sexual images and videos of **themselves, if this is**	PARTIAL	Section 1A of the Protection of Children Act (1978) allows children older than 16 to possess images of each other if at the time they were consensually obtained they were: 1) Married to each other (or civil partners), or 2) Living together as parents in an enduring family relationship. And the child did consent to the taking and possession of this image, and the image is not being distributed or shown to a third party.

	done consensually.		
42	The national legislation takes **aggravating circumstances** into account, such as repeat offenders, organized crime participants, particular vulnerability of the child, offence committed by someone in a position of trust, etc.	YES	The Sentencing Council which provides guidelines for sentences handed down in the UK and the Commonwealth Judges take into account various factors when determining an appropriate sentence for a defendant.[279] These factors include the seriousness of the offence, the defendant's previous criminal record, and whether any aggravating or mitigating features are present. Abuse of trust can elevate the gravity of a criminal offence, leading to harsher sentences. This is because it represents a breach of faith and a betrayal of societal norms, making it more unacceptable than a similar offence committed without trust being involved. Part 2 of the Sexual offences act create provisions for the creation and management of tools such as the Sexual Offenders Registry which is an added measure that supports the aggravating factors relating to offences against vulnerable people. The exhaustive list of positions which were considered positions of trust was amended in 2008 to include religious and sports organisations which followed reports of abuse in those settings. Legislation is guided by current affairs.

[279] For example, for grooming: https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/meeting-a-child-following-sexual-grooming/.