

# Legislative CSAM Framework for Country Members of INHOPE



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The INHOPE network in 2017

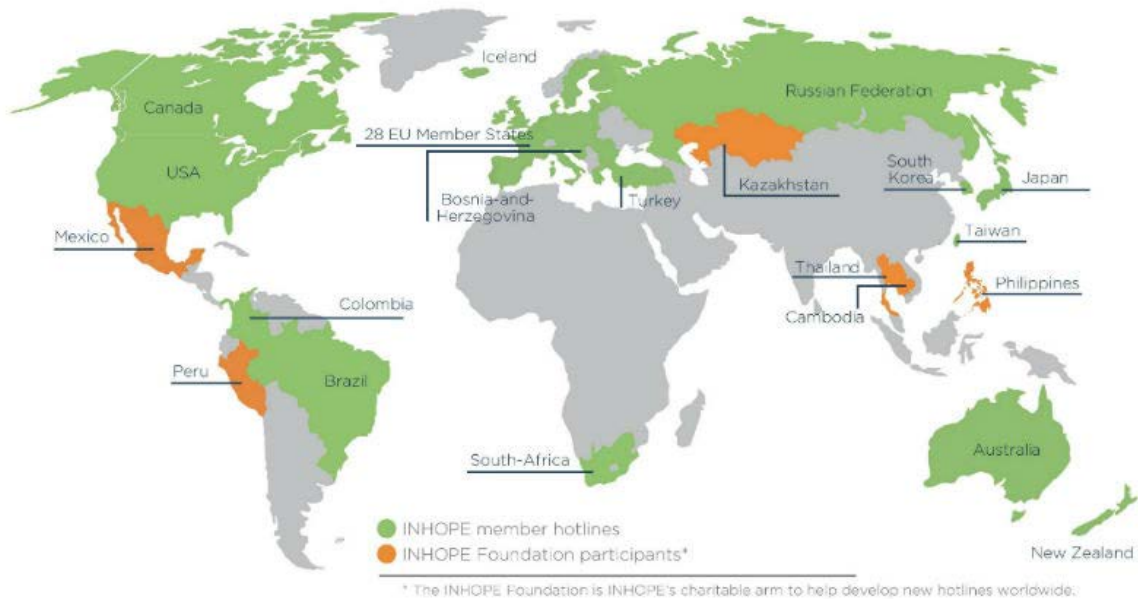


Fig. 1 Country members of INHOPE

### Introduction

The term “child sexual abuse material” defines any image or depiction that portrays a child engaging in sexual activity, appearing as being engaged or forced to sexual activity, or a child the genitalia of which are depicted on an item for primarily sexual purpose. The term “Child Sexual Abuse Material” is being used more frequently as more appropriate than the term “child pornography”, since porn is a notion mostly used for adults’ consensual sexual acts, which usually are legally disseminated. Using the term “porn” in order to describe this crime reduces the seriousness of the act, where children without being able to give their consent are victims. Nonetheless, some legislations still use the term child pornography.

Child Pornography is a crime with different legal definitions in each country. The European directive 2011/92/EU of 13 December 2011 aimed at the harmonization of criminal offences related to child sexual abuse, sexual exploitation of children and child pornography across the European Union (Directive\_EU, 2011). In accordance with this Directive, custodial sentences at national level must cover at least certain limits depending on the severity of the crime. Notwithstanding that the age threshold under which a child is illegally appearing in sexual abuse material is agreed to be 18 years almost everywhere in European Union, the age of sexual consent under which the sexual intercourse constitutes a crime still varies.

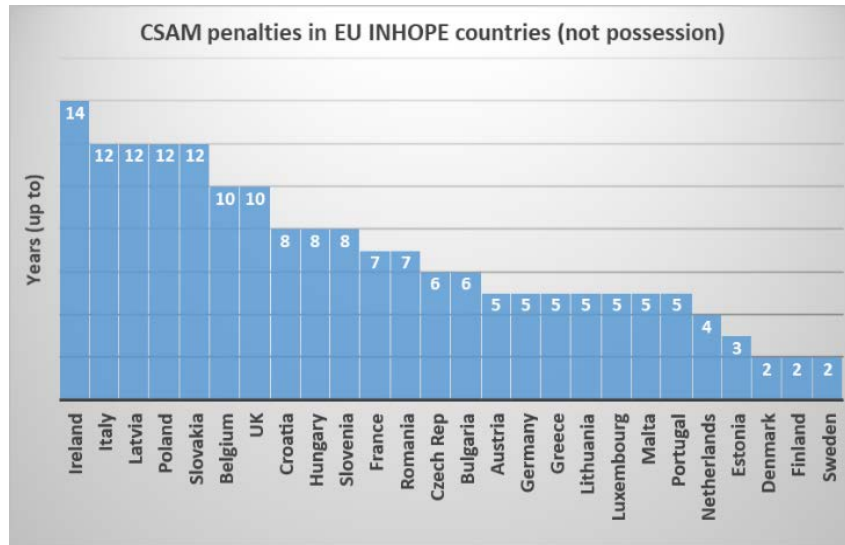
## EU-country members of INHOPE

Concerning the penalties of imprisonment imposed by countries in European Union for the crime of child pornography, some countries impose the same penalties for all the offences of child pornography, while others are making legislative differentiations depending on each particular act. For example, in some countries production, dissemination, transport, possession, publication or sell of child sexual abuse material are punishable by the same penalties, whereas in other countries possession and accessing child sexual abuse material are punished by lower penalties. At the same time, the definition of the crime of possession of child sexual abuse material varies from country to country.

Under this study, only the maximum penalty limits of CSAM (Child Sexual Abuse Material) offences are listed, without taking under consideration any fines imposed to the offenders, or any aggravating circumstances. At the same time, any comparison concerning countries' different legislations is made on the basis of the maximum penalties provided by each legislation. Additionally, it should be noted that the following information result from the study on penal codes' articles which form the constituent elements of CSAM crimes and not the articles providing for the offence of pornographic performances of minors. In any case where CSAM crimes carry harsher penalties when committed through the use of technology, those sentences are listed as the maximum ones in the following analysis. The most lenient penalties of imprisonment imposed for most of the CSAM offences, excluding the crime of possession and without taking under consideration any aggravating circumstances, are provided by Denmark, Finland and Sweden. Those three legislations provide penalties for up to 2 years for the offenders. Equally lenient penalties are provided by Estonia where the penalty of imprisonment can reach up to 3 years. Under the law of the Netherlands, the offenders are subject to not really tough sentences of imprisonment which can reach up to 4 years. Stricter penalties for most of the offences of child pornography are provided by the laws of Greece, Portugal, Malta, Lithuania, Austria, Luxembourg and Germany where custodial sentences can reach up to 5 years. In Romania and in France imprisonment can reach up to 7 years, while in Bulgaria and Czech Republic up to 6 years.

In Croatia, Slovenia and Hungary custodial sentences for most of the CSAM crimes can reach up to 8 years, while stricter penalties are provided by Italy, Slovakia and Poland where imprisonment can reach 12 years. Under the Latvian legislation, some CSAM crimes can lead to conviction of imprisonment for up to 12 years, while under the Irish law, custodial sentences can reach 14 years. Harsh penalties are also imposed by the United Kingdom and Belgium's laws where CSAM offences are punishable by up to 10 years. Fig. 2 shows the maximum penalties for CSAM in EU countries members of INHOPE without taking under consideration any aggravating circumstances.

Concerning the crime of simple possession (simple/mere possession is the possession without any intent to commit other CSAM crimes) of child sexual abuse material, among the most lenient legislations are those of Belgium, Bulgaria and Finland where imprisonment can reach up to 1 year. Quite favorable criminal laws against the crime of simple possession of child sexual abuse material are met under Austrian, French and Swedish criminal provisions where custodial sentences can reach up to 2 years. Countries such as Hungary and Luxembourg have chosen to impose penalties of imprisonment for up to 3 years in case of conviction of mere possession.



**Fig. 2** CSAM penalties in EU-country members of INHOPE

Under Irish law, knowingly possessing child sexual abuse material for the purpose of distribution, exporting or committing other CSAM offences is punishable for up to 14 years of imprisonment on conviction on indictment, whereas simple possession of such material can be punishable for up to 5 years of imprisonment. The intent of committing other CSAM offences while possessing such material makes the offender liable to prosecution in Portugal, where a sanction of up to 5 years of imprisonment can be imposed. Simple acquisition of child sexual abuse material under Portuguese law is punishable for up to 2 years of imprisonment. Greece and Poland provide for maximum sentences of up to 5 years of imprisonment in case of simple possession, while under Romanian laws, possession through a computer system is punishable for up to 7 years of imprisonment. Under the law of the Netherlands, the crime of simple possession carries a sentence of up to 4 years in case of conviction. It is worthy to mention that only in a few countries, simple CSAM possession is punished by the same penalties as the other offences of child pornography which constitute more severe acts. For instance, countries with such legislation are the Netherlands and Greece and such a provision can be criticized while aggravating circumstances that result to more severe custodial sentences are also applicable to simple possession crimes.

Regarding the definition of CSAM possession, it varies considerably within European Union. Searching for CSAM content online may be punishable under some legislations, while after simply loading a page on Internet with illegal content the results are stored in a directory for temporary Internet files and such an action may be a crime under some legislations. On the contrary, in other countries, simply visiting a URL which contains illegal content is not prosecuted due to the fact that only permanent storage on the hard drive constitutes digital possession.

The European Directive provides also for the criminalization of the access to CSAM material. Article 5 of the Directive states that knowingly accessing child sexual abuse material through means of information and communication technology shall be punishable by a maximum term of imprisonment of at least 1 year (Directive\_EU, 2011). An overview of the European legislations proves that according to some countries' laws, possession and knowingly acquiring access to child sexual abuse material are offences punishable by the same



prescribed penalties. This is the case of the legislation of Belgium, Bulgaria, Finland, France, Malta, the Netherlands and Poland. On the contrary, other countries criminalize the access to child sexual abuse material by imposing more lenient penalties than those imposed to the offenders of mere CSAM possession. One such example is the legislation of Romania.

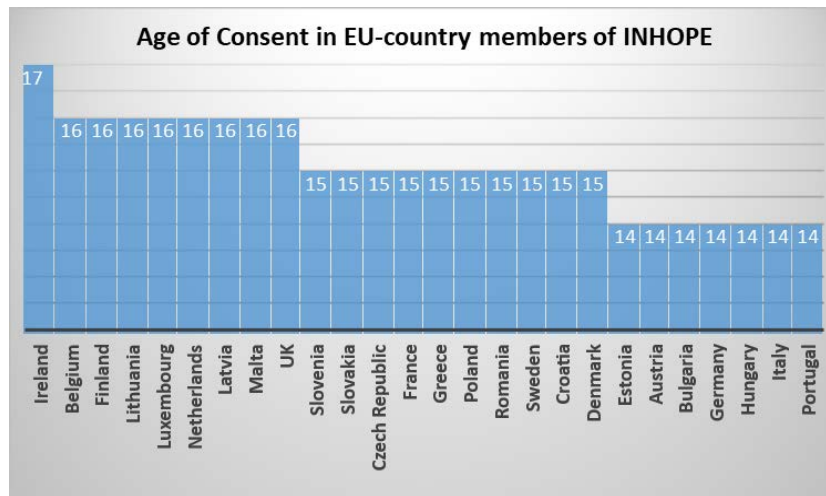
Child pornography crimes committed by an organized group constitute an aggravating circumstance for the offender, which is specifically addressed by the European Directive. Under the Directive's statement, in case where the aforementioned circumstance does not form part of the constituent elements of CSAM offences, member States should take the necessary measures in order for CSAM crimes committed within the framework of a criminal organization to be considered as aggravating circumstances (Directive\_EU, 2011). According to the European Directive, the meaning of an offence committed within the framework of a criminal organization results from the definition given by the Council Framework Decision 2008/841/JHA of October 2008 on the fight against organized crime. Among the most favorable sentences of imprisonment for the CSAM offences committed by an organized criminal group are those of Finland, Sweden, Slovenia, Malta and Bulgaria. Stricter penalties are imposed under the Austrian, French and German legislation, where custodial sentences can reach up to 10 years. Conviction for CSAM offences committed by an organized criminal group can reach imprisonment for up to 15 years in Belgium and Latvia.

A synopsis of the European legislation discloses that in some countries there have been put in place legislative provisions which impose stricter penalties when the victim is a prepubescent minor or a child who has not reached the age of sexual consent. At the same time, offenders committing CSAM crimes through the use of technology are subject to an increased penalty under some countries' laws.

Another crucial issue on child pornography legislation is whether an actual child has to be displayed in order for the material to be considered as illegal or artificially made-up images can constitute illegal content as well. According to the article 2(c) iv of the European Directive, child pornography definition includes realistic images of a child engaging in sexual conduct or realistic images focusing on the genitalia of a child for primarily sexual purposes (Directive\_EU, 2011). For instance, images such as drawings or paintings, which do not portray a real child but they give the impression that sexual activity with minors is actually taking place are also considered illegal.

At the same time, there is an opinion suggesting that the criminalization of virtual child pornography can lead to restriction of freedom of the expression as well as to criminalization of beliefs. It has been argued that such an aspect could be considered as accurate in cases where the material does not result to incitement to commit sexual abuse of minors. Another example of virtual child pornography which is listed as a crime under the article 2(c) iii of the European Directive is the utilization of an adult appearing to be a child in material of such a nature (Directive\_EU, 2011).

For combating child sexual abuse images online, the Notice and Takedown Procedure (NTD) is an effective element. The legal basis of this element is the Directive 2000/31/EU on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) and especially article 14 par. 1 (b) which obliges the Internet Service Providers (ISPs), in case they have knowledge or awareness of hosting illegal internet content, to act expeditiously to remove or to disable access to the information. The NTD procedure is not the same for all countries across Europe. There are significant differences from country to country based on the legal framework of each country.



**Fig. 3** Age of consent in EU-country members of INHOPE

**Table 1** References to national legislations for age threshold for sexual consent

<b>Austria</b> (Criminal Code of the Republic of Austria, section 206, 74)
<b>Belgium</b> (Criminal Code of the Kingdom of Belgium, article 372)
<b>Bulgaria</b> (Criminal Code of the Republic of Bulgaria, article 151)
<b>Croatia</b> (Criminal Code of the Republic of Croatia, article 158)
<b>Czech Republic</b> (Criminal Code of the Czech Republic, section 187)
<b>Denmark</b> (Criminal Code of Denmark, Chapter 24 § 222)
<b>Estonia</b> (Criminal Code of the Republic of Estonia Division 7 § 145 )
<b>Finland</b> (Criminal Code of Finland, Chapter 20, section 6(1))
<b>France</b> (Criminal Code of the French Republic article 227-25)
<b>Germany</b> (Criminal Code of the Federal Republic of Germany, section 176)
<b>Greece</b> (Greek Penal Code, article 339)
<b>Hungary</b> (Criminal Code of the Republic of Hungary section 198, Act No. C of 2012)
<b>Ireland</b> (Criminal Law (Sexual Offences) Act 2017, section17)
<b>Italy</b> (Penal Code of Italy article 609quater)
<b>Latvia</b> (Criminal Law of the Republic of Latvia, section 161)
<b>Lithuania</b> (Criminal Code of Lithuania, article 151.1)
<b>Luxembourg</b> (Criminal Code of the Grand-Duchy of Luxembourg, article 372)
<b>Malta</b> (Gender-Based Violence and Domestic Violence, Act 2018, article 203)
<b>The Netherlands</b> (Criminal Code of the Kingdom of Netherlands Part XIV, section 245, 247)
<b>Poland</b> (Criminal Code of the Republic of Poland article 200 § 1 )
<b>Portugal</b> (Portuguese Criminal Code, article 171)
<b>Romania</b> (Criminal Code of Republic of Romania, Chapter VII, article 220(1))
<b>Slovakia</b> (Criminal Code of the Republic of Slovakia, section 201)
<b>Slovenia</b> (Criminal Code of Republic of Slovenia, article 173)
<b>Sweden</b> (Criminal Code of the Kingdom of Sweden, Chapter 6, section 4)
<b>UK</b> (“Sexual Offences Act 2003, section 9”, “The Sexual Offences (Northern Ireland) Order 2008 Part 3 section 16”, “Sexual Offences (Scotland) Act 2009 section 29, 30, 31)

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### Non EU-country members of INHOPE

INHOPE countries outside European Union provide penalties for the offences of child pornography, excepting the crime of possession, which range from strict legislative frameworks to more lenient ones. More specifically, Iceland provides penalties with imprisonment for up to 2 years while on the other hand, using a child in the production of “obscene” material is punishable by deprivation of liberty for up to 10 years under the Turkish law. Despite the fact that every State and Territory of Australia has its own legislation on CSAM crimes, Commonwealth offences can be found when carriage services are used to commit such crimes. Consequently, committing CSAM crimes through the use of a carriage service can be punishable by up to 15 years of imprisonment under the Australian law. The same penalties are prescribed under Russian laws since the offender can be condemned to a custodial sentence for up to 15 years. A harsh sentence of imprisonment for up to 14 years can be issued under Canadian and New Zealand’s legislation. Under the Japanese law, the offenders of most of the crimes of child pornography may be subject to 5 years of imprisonment, whilst the same penalty may be imposed to offenders under Bosnia and Herzegovina’s legislation. Under Taiwan’s laws, the standard penalty provided for crimes related to child sexual abuse material can reach up to 7 years of imprisonment. Committing CSAM crimes with commercial purposes is also punishable by imprisonment with prison labor for up to 7 years under the laws of South Korea.

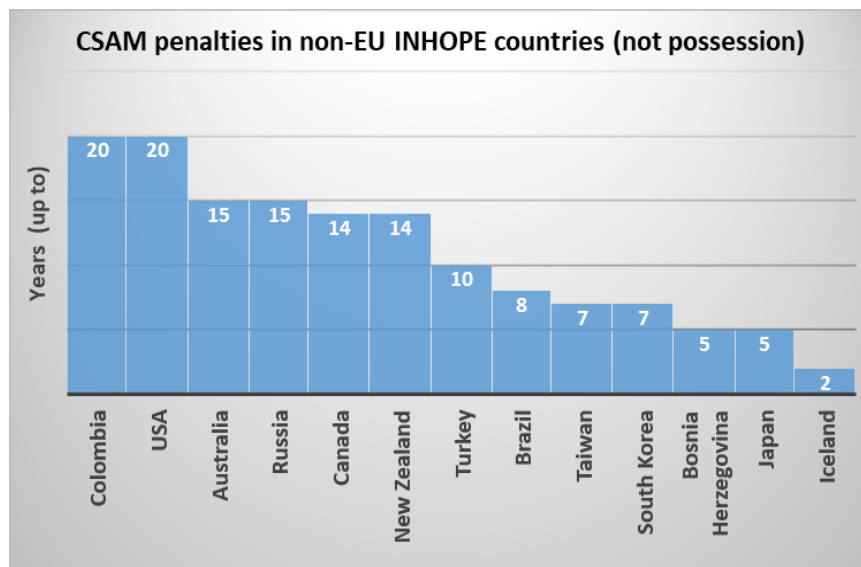


Fig. 4 CSAM penalties in non-EU country members of INHOPE

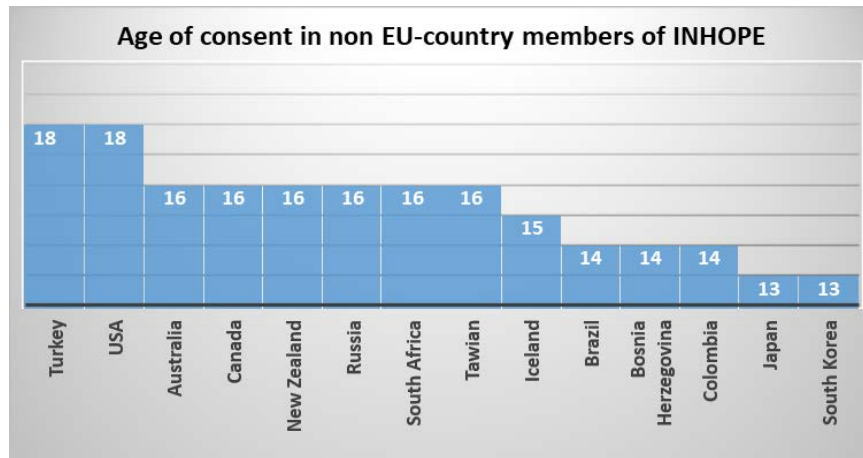
In Brazil, criminal sentences for the crime of child pornography may reach 8 years, while in Colombia committing offences of child pornography can reach a sentence of imprisonment for up to 20 years. Concerning the legislation of South Africa, it is worthy to mention that under “Films and Publications Act, 65 of 1996”, there are not any explicit penalties prescribed for the crimes of child pornography. Therefore, one can refer to sections 19 and 20 of the Criminal Law, while custodial sentences applicable to child pornography offences are listed in section 276A of the Criminal Procedure Act.

At last, the legislation of United States of America appears to be among the harshest in the world. In United States of America, an offender can be prosecuted under state child pornography laws in addition to federal law. Federal jurisdiction applies almost always when the Internet is used to commit crimes of child pornography. Most of the CSAM offences are punishable by up to 20 years of imprisonment under the United States’ Federal Law, without taking under consideration any prior convictions or any existing aggravating circumstances. In Fig. 4 we can see the maximum penalties for CSAM in non-EU countries members of INHOPE, without taking under consideration any aggravating circumstances.

Concerning the crime of possession in countries of INHOPE outside European Union, some legislations criminalize only simple possession, whereas under some others, possessing child sexual abuse material with the intent to commit other CSAM crimes constitutes a criminal offence as well. In Taiwan, the offenders of CSAM possessing with the intent to commit other CSAM crimes are liable to imprisonment for not more than 2 years, while simple CSAM possession can lead to the imposition of a fine. According to the Japanese law, possession of child pornography for the purpose of “satisfying one’s sexual curiosity” is punishable by imprisonment with work for up to 1 year, while under the Icelandic law, offenders of the crime of possession are subject to imprisonment for up to 2 years in case of serious violations.

Under the Turkish law and the law of the Federation of Bosnia and Herzegovina, a custodial sentence for up to 5 years can be issued to the offenders in case of possession, while under Brazilian law imprisonment can be imposed to the offenders for up to 4 years. On the basis of South Korea’s criminal provisions, possessing child sexual abuse material for commercial purposes constitutes a crime that carries a custodial sentence for up to 7 years of imprisonment with prison labor, whereas simple possession under the same legislation is punishable by a fine. According to the law of the Commonwealth of Australia, CSAM possession committed through a carriage service is carrying a sentence for up to 15 years of imprisonment, while in Canada simple CSAM possession without any purpose of distributing, transmitting or committing another CSAM crime is punishable for up to 10 years. The aforementioned penalty is provided by the New Zealand’s laws in case of knowingly possessing CSAM material, without intending to commit other CSAM crimes, while possession with the purpose of supply or distribution can be punished by up to 14 years of imprisonment. Colombian laws are much stricter than the aforementioned ones while imprisonment for up to 20 years can be imposed in case of an offender committing the crime of simple CSAM possession. The same sentence can be issued to the offenders of knowingly possessing with the intent to view CSAM under the United States’ of America Federal Law. It is worthy to mention that under the Criminal Code of the Russian Federation, mere possession or otherwise said possession for personal use does not constitute a crime, despite the fact that CSAM storage which constitutes a crime may consist of the action of actual possession.





**Fig. 5** Age of consent in non-EU country members of INHOPE

**Table 2** References to national legislations for age threshold for sexual consent

<b>Australia (Criminal Code Act 1995, Division 272)</b> Note: Under the federal legislation that is applicable to all Australians, it is illegal for an Australian citizen while outside of Australia to have a sexual intercourse with a person under the age of 16. Each State of the Federation has its own regulations about the age of consent. In most of the States and Territories the age of consent is 16 years, and only in two States the age of consent is 17 years.
<b>Bosnia and Herzegovina</b> (Criminal Code of the Federation of Bosnia and Herzegovina, articles 2, 207)
<b>Brazil</b> (Brazilian Penal Code, article 217-A)
<b>Canada</b> (Criminal Code of Canada, section 151)
<b>Colombia</b> (Criminal Code of Colombia, article 208)
<b>Iceland</b> (Icelandic Penal Code, article 202)
<b>Japan</b> (Penal Code of Japan, article 176)
<b>New Zealand</b> (Crimes Act 1961, article 134)
<b>Russia</b> (Criminal Code of the Russian Federation, article 134)
<b>South Africa</b> (Criminal Law (Sexual Offences and related Matters) Chapter 3, section 15-16, Chapter 1, 1)
<b>South Korea</b> (Criminal Act of the Republic of Korea, article 305)
<b>Taiwan</b> (Criminal Code of the Republic of China, article 227)
<b>Turkey</b> (Turkish Criminal Code article 104)
<b>USA</b> – 16 to 18 depending on State Note: In the United States of America, laws on the age of sexual consent are different depending on each and every State. Thereafter, the age of consent ranges from 16 to 18 years of age accordingly to each State's laws.

## Reference

Parliament, E. (2011). 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. *Directive 2011/92/EU*. European Parliament.



Awareness action of the Greek Safer Internet Center



The Helpline of the Greek Safer Internet Center



The Hotline of the Greek Safer Internet Center  
for illegal Internet content



Συγχρηματοδοτείται από την Ευρωπαϊκή Ένωση  
Διευκόλυνση «Συνδέοντας την Ευρώπη»