QUESTIONNAIRE

BELGIUM

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1. Introduction

Please read carefully before answering the questionnaire

The RAYUELA project is aimed at protecting children in their online interactions. For this purpose, the project will develop a "game", which will present the children with realistic scenarios relating to the following cybercrimes/cyber-facilitated crimes:

- ***Online grooming*** (further: OG) is the crime where the perpetrator (usually an adult) uses electronic communication services, including social media, to contact a minor and build rapport with the aim of eventually meeting in person for the purposes of sexual activity. The perpetrator may employ various strategies (deception, romantic/emotional attachment, promise of material or other benefits, blackmail, coercion, etc.) to lower a child's inhibitions, heighten their curiosity about sexual experiences, or otherwise convince them to meet up.
- ***Cyber bullying*** (further: CB) is a broad term that includes all types of bullying behaviour online. This includes cyber stalking and cyber harassment, and any other type of behaviour online aimed at hurting the victim. Cyber bullying may also have a sexual component.
- ***Misinformation and deception*** (further: MD) is a behaviour that may or may not be punishable by law depending on the context. It involves all kinds of information sharing that is fake, or deceptive. For a criminal qualification to apply, typically the behaviour will need to be intentional and there will need to be material consequences to this intention.
- ***Human trafficking with a cyber component*** (further: HT) is the online facilitation of human trafficking by grooming and attracting potential victims for human trafficking.

The purpose of the game is to teach children how to remain safe online, while the obtained insights will be used to provide policy recommendations and educational tools.

The game does not focus solely on the threats of potentially falling victim to one of these four crimes. It also aims to raise awareness about the general threats of using IT, such as the Internet and connected devices, and minors' capacity to make responsible choices in this regard.

A particular point of interest is understanding whether minors are aware of when they, or someone else, is crossing the line in becoming offenders themselves, as this an important aspect of protecting children online. Due to the nature of online communication, inhibitions may be lowered, and certain actions may feel more innocent or less "real" than in real life. In addition, a perception may exist that what happens on the Internet has little or no impact beyond the digital world. This creates situations where minors engage in what they perceive to be relatively innocent behaviour ("everyone does this on the internet"), that may however have serious legal consequences.

One of the goals in RAYUELA is to ensure that minors realize when their behaviour may turn into actions that are punishable by law.

The present study and questionnaire are set up in the context of the RAYUELA project in order to provide an overview of the **legislative framework and relevant policies** in a number of countries, both in the EU and beyond, in relation to:

- How the main crimes of OG, CB, MD and HT are dealt with by the legal system i.e., which behaviours are punishable and under which conditions?
- How cybercrime and cyber-facilitated crime perpetrated by minors is dealt with in the legal system (both in general and specifically in relation to the crimes in focus)?
- What international instruments and cooperation mechanisms are available in dealing with cybercrime perpetrated by minors?

Importantly, we want to know both the legal rules and policies which are implemented in practice, and their effect on the **real enforcement situation**. If you have knowledge about the effects of current policies on crime rates by minors and on the crime rates for OG, CB, MD and HT, this would be of interest.

We are specifically interested in **case law** that illustrates the "why and how" of certain legal rules, principles and policies in practice. Case law will help us illustrate the similarities and differences between jurisdictions and is therefore *essential***.** Please ensure to have a good amount of case law processed in your answers.

In addition, we want input on **international legal instruments and international cooperation** relevant for cybercrime, and in particular for cybercrime perpetrated by minors. What happens when cybercrimes is perpetrated in a cross-border context? What are the legal rules in place for cooperation with authorities from other countries, and how does this work out in practice (issues, problems, etc.)?

Lastly, we are interested in some **statistical information on cybercrime** in your country and cybercrime by minors specifically.

The purpose of this questionnaire is to help you provide this information for your jurisdiction.

2. Questions relating to OG, CB, HT and MD with minors as victims

In this section, we will ask questions to understand how to main 4 crimes in focus in RAYUELA are regulated in your jurisdiction. In this section, the focus is on adult perpetrators with victims that are minors. We are interested in both the general rules, and whether the fact that the victim is a minor has an influence on the application of the law. We are also in particular interested in your thoughts on whether the scope of the law affects the number of cases that are brought before the courts, in other words, are the current provisions sufficient to prosecute the diverse forms of crime present in reality? And are cases effectively prosecuted in practice or are there obstacles (e.g., lack of resources)?

Preliminary Notes:

- Belgian sexual criminal law is being thoroughly reformed by an act of 21 March 2022 which will enter into force on 1 June 2022. When discussing sexual criminal offences below, we will solely focus on the new legislation.

- Lower court case law is very limited available in Belgium. We therefore also refer to cases which were mentioned in regular press but stress that this source is of course only indirect and thus less reliable.

Question 1: Is online grooming punishable by law in your country?

Answer:

Please explain the applicable rules (all applicable legal qualifications/ articles, conditions for application, prescriptive period, and the range and types of punishment that may be imposed and jurisdictional aspects in cross-border cases) and applicable policy.

Please provide case law to illustrate the application of the rules in practice.

Please provide details on known issues of application.

The Belgian Criminal Code defines **grooming** in art. 417/24 Belgian Criminal Code (as of 1 June 2022).

Grooming is the proposal to meet a minor with the purpose of committing specific sexual offences, which is punishable if this proposal has been followed by material acts which may lead to such a meeting.

The grooming offence criminalises the acts of influencing or convincing a minor in order to meet him/her in the real world, as far as it is followed by acts which may lead to such a meeting. The fact that the offender did already meet the child beforehand (even on several occasions) is irrelevant (Gent 19 October 2018, *RW* 2019-20, afl. 17, 670).

A related offence is **cyber luring**, which is defined by art. 433bis/1 of the Belgian Criminal Code as follows:

An adult who communicates with an apparent or probable minor by means of information and communication technologies to facilitate the commission of a crime or misdemeanour against this minor while (i) concealing or lying about his identity, age or capacity; (ii) emphasizing the confidential nature of the conversation; (iii) offering or holding up the prospect of a gift or other advantage or (iv) tricking the minor in any other way.

Both in case of grooming and cyber luring, the offender must act with the specific intent to commit the sexual offence (grooming) or to facilitate the commission of a crime or misdemeanour against the minor (cyber luring). The content of the conversation will in principle proof the fact that the offender had this intent. The Court of Appeal in Gent did consider the offence of grooming not present where a 46 year old repeatedly had sent declarations of love and virtual kisses to a twelve-year-old girl, without explicit sexual insinuations (Gent 19 October 2018, *RW* 2019-20, alf. 17, 670).

As far as the knowledge of the age of the victim is concerned, negligence is sufficient to be punishable.

Both grooming and cyber luring can be sanctioned with imprisonment up to 5 years. Instead of an imprisonment, the judge could also decide to impose a community service up to 300 hours or a sanction of electronic surveillance up to 1 year or the obligation to comply with specific conditions for a certain period of time.

In case of grooming, art. 417/50 of the Criminal Code states that, while determining the severity of the applicable sanction, the court shall – amongst others - take into account the fact that

- the offence was committed by a person in a recognised position of trust, authority or influence over the minor;
- the offence was committed on a minor below the age of ten years;
- …

In case of grooming, the criminal court may also impose a temporary ban from professions or certain positions or activities that presuppose contact with minors. It may also impose a ban from living, residing or being present in a designated area. The judge may furthermore impose a ban to have contact with specific individuals. The court may also order the transmission of the criminal part of the decision to the relevant employer, legal person or disciplinary authority if the perpetrator, by virtue of his position or profession, has contact with minors and the employer, legal person or authority exercising disciplinary authority over him is known. The sanction of deprivation of certain civil rights furthermore applies (for instance the right to hold public office, to be elected, to have custody over children (except over their own children), to carry weapons etc.).

For all offences, confiscation is also a possible sanction (of the object/means/product/illegally obtained assets).

Depending on the used strategies, other criminal offences may also apply. If the offender for instance creates a fake profile posing as a minor, a conviction on grounds of IT-forgery may be possible (*infra* answer to question 3*,* Cass. 12 February 2013, *TJK* 2013, 286. Corr. Antwerp 2 April 2015). Threatening under an order or condition to commit certain serious offences which entail an attack on persons or property also constitutes a criminal offence (art. 327 and 330 Criminal Code). The minimum sanction will be doubled if the person who is being threatened is vulnerable due to (amongst others) his/her age.

The grooming offence will not be time-barred. The prescriptive period for the cyber luring offence is five years.

In Belgium, the principle of territoriality applies. The territoriality principle assigns jurisdiction to the State in which the criminal offence, or an element of it, is considered to be committed (*infra* answer to question 15 for more details on territorial and extraterritorial jurisdiction).

Further to Art. 10ter of the preliminary title to the Belgian Code of Criminal Procedure, the principle of universality applies to the grooming offence. As a result, anyone who commits an online grooming offence abroad can be prosecuted for this offence in Belgium when the perpetrator can be found in Belgium (article 12 of the Preliminary Title to the Code of Criminal Procedure), regardless of the nationality of the perpetrator or the victim. A cyber luring offence committed abroad can, on the contrary, not be prosecuted further to the universality principle.

Examples of relevant cases reported in the press:

- Press article 7/7/2020: a 53-year-old convicted of facts of grooming vis à vis several minors. Sanction imposed: 12 months of imprisonment.

- Press article 5/10/2021 concerning a case in Bruges: 30–year-old convicted of grooming, incitement of sexual immorality of a minor and rape. Sanction imposed: 2 years of imprisonment, which had been suspended subject to conditions of, amongst others, treatment.
- Press article 16/12/2021 concerning a case in Antwerp: 44-year-old convicted of grooming, cyber luring and violation of sexual integrity. Sanction imposed: 30 months of imprisonment, which is suspended subject to conditions of treatment and a ban from approaching the victim.
- Press article 21/1/2022 concerning a case before the Court of Appeal of Antwerp: 26-year-old sport director of a soccer club convicted of violation of sexual integrity, obtaining of sexual acts by a minor by providing advantages, grooming, cyber luring and stalking (>15 victims). Sanction imposed: 5 years of imprisonment and ten years under supervision of the court of execution of sanctions. He was prohibited from working in the educational sector or participating in activities with minors for ten years.
- Press article 8/3/2022 concerning a case in Antwerp: 32-year-old teacher convicted of stalking, possession of child pornography, grooming and violation of sexual integrity of a minor. Sanction imposed: 40 months of imprisonment and five years under supervision of the court of execution of sanctions. He was prohibited from working in the educational sector or participating in activities with minors for ten years.

Question 2: Is cyberbullying punishable by law in your country? Please take into account a broad understanding of cyberbullying (cyber/online stalking, harassment, sexual harassment)?

Answer:

Please explain the applicable rules (all applicable legal qualifications/ articles, conditions for application, prescriptive period, and the range and types of punishment that may be imposed and jurisdictional aspects in cross-border cases) and applicable policy.

Please provide case law to illustrate the application of the rules in practice.

Please provide details on known issues of application.

The criminal offence of **online stalking** is defined by art. 145 §3bis Act on Electronic Communication:

"*the person, who uses an electronic communication network or service or other electronic communication means to cause nuisance to his correspondent or to cause damage […] as well as an attempt to commit it*."

Both the notions nuisance and damage are not defined by law. One should have the intention to cause nuisance *to his correspondent*, meaning the offence presupposes contacts between the offender and the victim. The constitutional court clarified that the aim of causing damage should be understood as causing damage to telecommunication means (Consitutional Court 14 juin 2006, 98/2006).

Contrary to the offline stalking offence, the behaviour causing nuisance or damage does not have to be recurrent. One act may suffice.

The online stalking offence was for instance committed by a psychologist who copied a telephone number of a minor from his file and used it to incite the minor to perform sexual acts (Corr. Turnhout, 16 May 2012, *unpublished*).

It should be noted that the **'classical' stalking offence** may also apply in an online context. Article 442bis, paragraph 1, of the Criminal Code punishes the assault on a person when the perpetrator knew or should have known that by his behaviour he would seriously disturb that person's peace and quiet. This provision punishes a person who, by persistent or recurring conduct, seriously affects someone's privacy by annoying him in a way that he does not want to be bothered while the perpetrator knew or should have known this. The Court of Cassation accepted in a case concerning the online publication of a video, that also a single act of conduct which has unwavering or recurrent consequences which

seriously affects someone's privacy, may constitute the criminal offence of stalking (Cass. 29 October 2013, AR P.13.1270.N).

If the bullying takes place in 'public', meaning - in the context of this questionnaire - via writings, images or videos which are made available to the public or are sent to several people, the offences related to hate speech, sexism and the offences of slander and defamation or insult may also be relevant.

At the federal level, **hate speech offences** can be found in three different acts: the Antiracism Act, the Antidiscrimination Act and the Gender Act. All three laws provide protection against hate speech on the basis of a number of criteria. The Antiracism Act refers to race, skin colour, descent, national or ethnic origin and nationality. The Anti-Discrimination Law refers to the following list of criteria: age, sexual orientation, marital status, birth, wealth, religion or belief, political opinion, language, health, disability, physical or genetic characteristic, social origin and synodical affiliation. The Gender Act protects against hate speech on the grounds of gender, gender identity, gender expression and gender characteristics. All acts sanction the public (cfr. supra) "incitement to discrimination, segregation, hatred or violence" against a person or a group, a community or its members because of one of the above protected criteria.

According to the case law of the Constitutional Court, it does not suffice to incite feelings of hate. It should be shown that the offender had the intention to incite discriminatory, hateful or violent behaviour (see Constitutional Court 6 October 2004, nr. 157/2004; Constitutional Court 12 February 2009, nr. 17/2009; Constitutional Court 11 March 2009, nr. 40/2009). The Court of Cassation on the other hand accepts the application of a hate speech offence as soon as one inspires others to a strong dislike or a general negative attitude (Cass.19 May 1993, *RVR* 1993, 171). According to the Court of Cassation a general intent (inciting knowingly and willingly) suffices (Cass. 29 October 2013, AR P.13.1270.N). Further to this divergent case law, the case law of lower courts is also divided on this topic.

Sexism refers to any public (cf. above) gesture or action which is manifestly intended to express contempt for a person because of his or her sex, or, for the same reasons, consider him or her inferior or reduce him or her to his or her sexual dimension, while seriously attacking the dignity of said person. While the legislator clearly wanted to target, amongst others, verbal and written sexually harassing expressions, the choice of the words 'gesture or action' is rather confusing. The criminal offence requires the harassment of a specific person/specific persons. Disrespectful behaviour vis à vis an abstract group of persons does not constitute sexism.

Art. 443 Criminal Code defines **slander and defamation**:

"*He who […] maliciously charges a person with a particular fact which may injure his honour or expose him to public contempt, and for which there is no legal proof, shall be guilty of defamation if the law permits proof of the offence charged, and of defamation if the law does not permit such proof*."

If the accusation affecting the dignity of the person does not contain a specific fact but is rather vague in terms, the **insulting offence** will apply (art. 448 Criminal Code).

For both slander and defamation and the insulting offence, the offender should have the intention to harm the person concerned (*animus iniuriandi*).

Specific forms of **threatening behaviour** do also constitute a criminal offence under Belgian law. Threatening to commit certain serious offences (crimes and misdemeanours punishable by at least 3 months) which entail an attack on persons or property constitutes a criminal offence if the threat is expressed verbally or in writing under an order or condition (art. 327 and 330 Criminal Code). The same is true for threats in writing to commit a crime (most serious category of offences) which is not subject to an order or condition.

Specific criminal offences do apply in the **professional environment**. Further to the Act concerning welfare of employees and the Social Criminal Code, violence (including threats), harassment and sexual

harassment in a professional context are considered criminal offences under Belgian law. The scope of these provisions is very broad: they concern employers, employees, assimilated persons and anyone who gets into contact with employees (e.g. suppliers, clients, pupils, patients, etc.). It furthermore includes online acts.

Applicable sanctions are:

- Online stalking: imprisonment of 6 months to 3 years and/or a fine of 50 to 50,000 EUR (to be multiplied by 8 in order to accommodate for the currency depreciation).

- Stalking: imprisonment of 15 days to two years and a fine of 50 to 300 EUR (to be multiplied by 8). The minimum sanction will be doubled if the person who is being threatened is vulnerable due to (amongst others) his/her age.

- Hate speech: imprisonment of one month to one year and a fine of 50 to 1,000 EUR (to be multiplied by 8).

- Sexism: imprisonment of one month to one year and/or a fine of 50 to 1,000 EUR (to be multiplied by 8).

- Slander and defamation: imprisonment of 8 days to one year and/or a fine of 26 to 200 EUR (to be multiplied by 8).

- Insult: imprisonment of 8 days to two months and/or a fine of 26 to 500 EUR (to be multiplied by 8).

- threatening behaviour: depending on the circumstances, sanctions could go up to imprisonment of 5 years and a fine of 500 EUR (to be multiplied by 8). Minimum sanction will be doubled if the person who is being threatened is vulnerable due to (amongst others) his/her age.

- Violence, harassment and sexual harassment in a professional context: 6 months to 3 years and/or a fine of 600 to 6,000 EUR (to be multiplied by 8) or an administrative sanction of 300 to 3,000 EUR (to be multiplied by 8).

Instead of an imprisonment, the judge could also decide to impose a community service up to 300 hours or a sanction of electronic surveillance up to 1 year or the obligation to comply with specific conditions for a certain period of time.

For all offences, confiscation is also a possible sanction (of the object/means/product/illegally obtained assets).

The **prescriptive period** is five years for all offences listed above.

It should however be noted that illegal expression of opinions in a text which are publicly posted online do in practice not lead to prosecution since those types of criminal behaviour should be dealt with by a jury. Article 150 of the Constitution more specifically states that the jury shall be established for all press offences, except for press offences motivated by racism or xenophobia. A press offence requires the criminal expression of opinions in a text that has been reproduced by a printing press or a similar process, such as digital distribution (see Cass. 29 October 2013, AR P.13.1270.N). The multiplication of punishable spoken or audio-visual expressions of opinion (recordings, videos, images) does however not constitute a press offence and can thus be tried before the correctional court.

We refer to our answer to question 15 in relation to jurisdictional aspects in cross-border cases.

Depending on the harassment strategy, specific sexual offences may also apply, such as the violation of sexual integrity (art. 417/7 Criminal Code) which includes forcing someone to witness sexual acts or sexual abuse or having a sexual act performed by a person who does not consent thereto. Other relevant

criminal offences may be the incitement of a minor to sexual immorality or non-consensual distribution of sexual content (see *infra* question 8 for more details concerning these offences).

Question 3: When would misinformation and deception online constitute a criminal offence in your country? In other words, what potential qualifications could apply to wilful misinformation and deception on the internet?

Answer:

Please explain the applicable rules (all applicable legal qualifications/ articles, conditions for application, prescriptive period, and the range and types of punishment that may be imposed and jurisdictional aspects in cross-border cases) and applicable policy.

Please provide case law to illustrate the application of the rules in practice.

Please provide details on known issues of application.

Further to art. 210bis of the Criminal Code **IT-forgery** is a crime under Belgian law: "*entering into a computer system, altering, deleting or by any other technological means changing the legal meaning of such data which are stored, processed or transferred by means of a computer system*".

The constituent elements of the crime of forgery are the following:

- a disguise of the truth,
- by entering, altering or deleting data,
- which led to an alteration of the legal scope of said data, meaning that misuse had been made of "the reasonable and credible appearance" of said data;
- with a potential damage;
- and with fraudulent intent or the intention to harm.

The **use of forged data** constitutes a separate offence. It is not clear whether a general intent suffices for the offence 'use of forged data'. Doctrine is divided on this topic. Lower courts did already accept general intent to be sufficient (Corr. Dendermonde 25 mei 2007, *TGR-TWVR* 2007, nr. 5, 351). The use of the data should be aimed at giving effect to the untruthful content thereof.

The Court of Cassation considered IT-forgery to exist in a case concerning a person who created a Netlog and Hotmail profile under a false name, who had used these profiles to contact a minor and who proposed to this minor during a chat session to have sex with him in return for payment (Cass. 12 February 2013, *TJK* 2013, 286).

Also lower courts considered IT-forgery to exist in cases concerning:

- the creation of a fake Facebook-account and fraudulently posting messages on behalf of another person (Corr. Gent 21 September 2011, *T. Strafr.* 2012, afl. 2, 104 and Corr. Dendermonde 8 April 2013)

- the creation of a fake Facebook-, Twitter- and blog-account and fraudulently spreading information on behalf of an association (Council Chamber Bruges, 24 October 2017)

- the creation of a fake dating profile while using the phone number and contact details of another person (Corr. Luik 18 November 2002, *Computerr.* 2003, afl. 2, 181).

The simple use of a fake account does in itself not suffice. The account should be created with a fraudulent intent or intent to harm and should allow to abuse the credible appearance of the profile (See Gent 15 September 2017, *RW* 2018-19, 351.)

If the IT-forgery is aimed at obtaining illegal economic advantages for oneself or for another person, the criminal offence of **IT-fraud** applies (art. 504*quater* Criminal Code).

The public **use of a fake surname** (including a surname which belongs to another person) is a criminal offence further to art. 231 Criminal Code.

The applicable **sanctions** for IT-forgery, the use of forged computer data and IT-forgery is imprisonment of six months to five years and/or a fine of 26 to 100,000 EUR (to be multiplied by 8).

The applicable sanctions for the use of a fake surname is imprisonment of 8 days to 3 months and/or a fine of 25 to 300 EUR (to be multiplied by 8).

Instead of an imprisonment, the judge could also decide to impose a community service up to 300 hours or a sanction of electronic surveillance up to 1 year or the obligation to comply with specific conditions for a certain period of time.

For all offences, confiscation is also a possible sanction (of the object/means/product/illegally obtained assets).

A professional prohibition (i.e. the prohibition to exercise management functions in certain companies) may also be imposed when one is convicted for IT-forgery (Cass. 13 December 2016, AR P.15.1117.N).

The **prescriptive period** is five years for all offences listed above.

We refer to our answer to question 15 in relation to jurisdictional aspects in cross-border cases.

The public **use of the title of lawyer** while not being admitted to the bar or included in the list of trainees is punishable by a fine of 200 to 1000 EUR (to be multiplied by 8) (art. 227ter Criminal Code). A fine of 200 to 20,000 EUR (to be multiplied by 8) applies to the **public use of the title of authorised intermediary** while not being authorised (art. 227quater Criminal Code). A fine of 200 to 1,000 EUR (to be multiplied by 8) applies to the illegal **public use of a title of nobility** (art. 230 Criminal Code). A fine of 200 to 1,000 EUR (to be multiplied by 8) also applies to unlawfully assuming the title or rank of a person participating in the exercise of public power or holding a civilian or military public office (art. 227bis Criminal Code).

Question 4: What constitutes human trafficking and how is human trafficking facilitated by electronic means punished in your country? Are online grooming activities to find victims (e.g. lover boys) before the actual human trafficking punishable in itself? In addition, are these activities punishable as a separate crime if human trafficking does take place afterward?

Answer:

Please explain the applicable rules (all applicable legal qualifications/ articles, conditions for application, prescriptive period, and the range and types of punishment that may be imposed and jurisdictional aspects in cross-border cases) and applicable policy.

Please provide case law to illustrate the application of the rules in practice.

Please provide details on known issues of application.

Article 433quinquies, §1 of the Criminal Code stipulates that the offence of human trafficking is punishable when committed in view of: 1° sexual exploitation, 2° the exploitation of begging, 3° exploitation in working conditions contrary to human dignity, 4° organ trafficking, 5° the act of forcing someone to commit an offence against their will.

This offence is punished with imprisonment for 1 – 5 years and with a fine of 500 – 50,000 EUR (to be multiplied by 8). The fine is multiplied with the number of victims (article 433quinquies, §4 Criminal Code).

Aggravating circumstances are provided for by the articles 433sexies-433octies of the Criminal Code:

- Article 433sexies: 1° the offender abused his/her authority over the victim; 2° the offence is committed by a public official who uses the authority inherent to his functions.

  → Punishment: imprisonment of 5 years – 10 years and a fine of 750 – 75,000 EUR, multiplied by 8 and by the number of victims. In practice, a conversing mechanism is applied which lowers the sanctions and allows the case to be brought before the criminal court (instead of a jury). This means in practice an imprisonment of one month to 5 years and a fine of 750 to 75,000 EUR (to be multiplied by 8 and by the number of victims) applies.

- Article 433septies: 1° the victim is a minor; 2° the offender abused the particularly vulnerable situation of the victim (amongst others because of his age); 3° the offender made use, directly or indirectly, of force, violence, threats, any form of coercion, abduction, abuse of power or fraud; 3bis° the offender offered or accepted payments or any other benefit to receive permission from the person who holds the authority over the victim 4° the offence has intentionally or negligently jeopardised the life of the victim; 5° the offence has led to an incurable disease the disability to work for at least four months or the complete loss of an organ or use of an organ, or serious mutilation; 6° the criminal activity constitutes an habitual activity; 7° the criminal activity constitutes participation in the activity of an association.

  → Punishment: imprisonment of 10 years – 15 years (in practice: imprisonment of six months to ten years) and a fine 1,000 – 100,000 EUR, multiplied by 8 and by the number of victims.

- Article 433octies: 1° the criminal activity caused death of the victim without the intention the kill ; 2° the criminal activity constitutes participation in a criminal organisation.

  → Punishment: imprisonment of 15 years – 20 years (in practice: imprisonment of one year to 15 years) and a fine of 1,000 – 150,000 EUR, multiplied by 8 and by the number of victims.

Instead of an imprisonment, the judge could also decide to impose a community service up to 300 hours or a sanction of electronic surveillance up to 1 year or the obligation to comply with specific conditions for a certain period of time.

Confiscation (of the object/means/product/illegally obtained assets) is also a sanction to be taken into account.

The court furthermore has the possibility to order the closure of business in the framework of which facts of human trafficking have been established (article 433novies, §4 Belgian CC).

A deprivation of civil rights will also be imposed (for instance the right to hold public office, to be elected, to have custody over children (except over their own children), to carry weapons etc.) (article 433novies, §1and article 31, 1 paragraph Belgian CC).

The criminal court may also impose a temporary ban from professions or certain positions or activities that presuppose contact with minors. It may also impose a ban from living, residing or being present in an area designated by the court (382bis Criminal Code). The court may furthermore impose a temporary ban to take part in specific business areas (Art. 382 Criminal Code). The court may also order the transmission of the criminal part of the decision to the relevant employer, legal person or disciplinary authority if the perpetrator, by virtue of his position or profession, has contact with minors and the employer, legal person or authority exercising disciplinary authority over him is known.

As an exception to the principle of territoriality (*infra* question 15), anyone who has committed the offences contained in article 433quinquies, 433sexies, 433septies and 433octies Criminal Code outside Belgian territory, can be prosecuted in Belgium (article 10ter, 1° of the Preliminary Title to the Code of Criminal Procedure) when the perpetrator can be found in Belgium (article 12 of the Preliminary Title to the Code of Criminal Procedure).

Facts of human trafficking have a prescriptive period of five years, unless they are committed against a minor. In those circumstances, the facts will never be time barred.

Facilitating human trafficking by electronic means is covered by the cyber luring offence. Reference can be made to our answer to question one. These activities are punishable as a separate criminal offence, even if human trafficking does take place afterward.

We furthermore refer to the specific offence of recruiting a minor for sexual immorality or prostitution (art. 417/27 and 417/28 Criminal Code), which refers to the recruitment, taking, transporting or keeping of a minor for the purpose of committing acts of sexual immorality or prostitution. The applicable sanctions are imprisonment of 10 to 15 years (In practice converted to six months to 10 years) and a fine of 500 to 50,000 EUR (to be multiplied by 8 and by the number of victims). If the minor victim did not reach the age of 16, the applicable sanctions are 15 to 20 years of imprisonment (in practice: 1 year to 15 years) and a fine of 1000 to 100,000 EUR (to be multiplied by 8 and by the number of victims). For all possible additional sanctions we refer to our answer to question 8 in relation to sexual offences committed against minors.

Anyone who has committed this offence can be prosecuted in Belgium when the perpetrator can be found in Belgium (article 10ter and 12 of the Preliminary Title to the Code of Criminal Procedure). These offences will never be time barred (art. 21bis 2° Preliminary Title to the Code of Criminal Procedure)

3. Questions regarding cybercrime or cyber-facilitated crime committed by minors

This section is aimed at understanding how cybercrime or cyber-facilitated crime committed by minors is dealt with in your jurisdiction. In particular, we are trying to assess to what extent the rules and policies in place create leeway for minors who may not always be aware of when their behaviour is crossing a line. We are also interested to know the real enforcement situation. In addition to the general rules on the juvenile justice system and the punishment of minors, the 4 crimes of focus of RAYUELA are addressed, as well as two particularly relevant crimes committed by minors online: online piracy and hacking.

Question 5: How is crime committed by minors dealt with in your country, in general? Is there a specific juvenile justice system? If yes, please explain in detail how this works.

Answer:

Please explain the applicable rules, the conditions for application (general age limit, limits for certain crimes), the range and types of punishment that may be imposed on minors, rules about mitigating/attenuating circumstances, and jurisdictional aspects in cross-border cases) and applicable policy.

Please provide case law to illustrate the application of the rules in practice.

Please provide details on known issues of application.

In Belgium, the criminal age of individuals has been set at 18 years old. Any person beneath this age who violates criminal norms is qualified as a person having committed an offence qualified as a criminal offence (i.e. juvenile offence) for which the juvenile court is competent. The law considers that, in principle, a minor cannot be held criminally responsible. The juvenile delinquency regime is therefore mainly aimed at imposing measures of protection, preservation and education. In the Flemish community, the juvenile court can also impose specific sanctions. (*infra*)

A minor brought before the juvenile court can however be tried as an adult if he was over the age of 16 at the time the offence has been committed. This will be the case if the court considers custodial, preventive or educational measures to be inadequate and if specific conditions related to the seriousness of the offence and the previous application of measures are met. This regime of "handing over" the minor however remains the exception. The juvenile court will refer the case to the public prosecutor's office with a view to proceedings before the competent court (this will in general be a specific criminal chamber within the juvenile court). The general rules on criminal law apply and the same criminal sanctions may thus be imposed as those which apply to adults. Life imprisonment can however never be imposed to a minor.

Since the sixth Belgian State-reform (2013-14) the matter of juvenile delinquency falls within the competence of the Communities. For Belgium, the exact rules will thus differ depending on the place of residence of the minor. We hereinafter provide a more detailed overview of the possible outcome of a case in which a juvenile criminal offence has been committed, except for the possibility as described above to hand over the minor and treat him or her like an adult.

An important issue of application is that, in practice, it is often impossible to apply specific measures (such as ambulant care or entrusting minors to youth institutions) because of a substantial lack of means.

1. Flemish community

The Flemish decree on juvenile delinquency of 15 February 2019 applies to minors between 12 and 18 years. Below the age of 12, there is a general and non-refutable presumption of non-responsibility. Minors below the age of 12 may only be referred to youth care (art. 4).

Prosecutor level

The Prosecutor can decide to:

- dismiss the case (art.8);
- propose a mediation (art.12);
- propose a positive project (art.13);
- prosecute in front of the juvenile court (art. 14);

Court level

In the preliminary phase, the juvenile court can decide to (art.20):

- propose a restorative mediation or group counselling (art.22);
- impose a positive project of at most 60 hours (art. 23) ;
- impose ambulatory measures (art.24);
- impose conditions (art.25);
- entrust the minor to a forensic child and adolescent psychiatric ward of a psychiatric hospital, if deemed necessary after a psychiatric evaluation (art.25/1);
- entrust the minor to a community institution for a closed orientation for a period up to 1 month (art.26);
- entrust the minor to a community institution for a closed counselling for a period up to 3 consecutive months (art.27).

The temporary measures can have effect up to the age of 23 years.

In the jurisdictional phase, the juvenile court can decide to propose a restorative mediation or group counselling or impose one or more of the following sanctions (art.29):

- reprimand (art.31);
- a positive project of at most 220 hours (art.32) ;
- ambulatory care (art.33);
- conditions (art. 34) ;
- entrust the minor to a forensic child and adolescent psychiatric ward of a psychiatric hospital, if deemed necessary after a psychiatric evaluation, for a closed orientation for a period up to 1 month (art. 34/1);
- entrust the minor to a community institution for a closed counselling for a period up to 3, 6 or 9 months (art. 35);
- entrust the minor to a community institution for a closed counselling for a period up to 2, 5 or 7 years (art. 36).

The court can also decide not to impose sanctions, if the imposed preliminary measures have been implemented correctly or are in progress of being implemented.

The court takes into account (art.16):

- the gravity of the facts, the damage and the consequences for the victim;
- the personality and maturity of the minor;
- recidivism, or the risk of recidivism
- the safety of society;
- the living environment of the minor;
- the safety of the minor.

Sanctions imposed on minors can have effect until the age of 23, and in some circumstances 25 (art. 6).

2. French community

In the French community, the decree of 18 January 2018 on the code for prevention, assistance and youth protection (specifically book 5) applies to the prosecution of juvenile delinquency.

These rules applies to natural persons that have committed a criminal offence before reaching the age of 18 years.

Prosecutor level

The prosecutor can:

- propose a restorative mediation (art.97);
- dismiss the case and give a warning;
- give a reminder of the applicable law;
- prosecute the minor in front of the juvenile court.

Court level

In the preliminary phase, the court can decide to (art.101):

- subject the minor to the supervision of the youth protection service;
- impose a service of general interest up to 30 hours;
- impose a (specialised) supervision;
- impose conditions while letting the minor remain in his living environment;
- remove the minor from his living environment.

The temporary measures can have effect up to the age of 20 years.

In the jurisdictional phase, the court can decide to:

- propose a restorative mediation (art.115);
- reprimand;
- subject the minor to the supervision of the youth protection service (art.119);
- impose an educational service in the general interest for a period of at most 150 hours;
- subject the minor to guidance or specialised counselling (art.120);
- impose conditions on the minor while letting him remain in his living environment (art.121);
- remove the minor from his living environment (art.122).

For minors below the age of 12, the court can only reprimand the minor (art.109).

The court takes into account (art.98):

- the interest of the minor;
- the personality and degree of maturity of the minor;
- the living environment of the minor;
- the seriousness of the offences, their repetition and date, the circumstances in which they occurred, as well as the damage and consequences for the victim;
- the measures taken in advance with regard to the young person and his conduct during the execution of these measures;
- the public safety.

The imposed sanctions on a minor can have effect up to the age of 20 years.

3. Brussels Capital Region

Application

In the Brussels Capital Region, the ordinance of 16 may 2019 on youth help and youth protection applies to minors which have committed a criminal offence between the age of 12 and 18 years. Minors below the age of 12 are presumed non-responsible for their acts. This presumption is non-refutable. For minors below the age of 12, the only possible measure is a referral to youth care (art.17)

Prosecutor level

The prosecutor can decide to:

- Dismiss the case, possibly with a warning (art.23);

- Propose a mediation (art.26);
- Propose the participation of the minor's parents to a support group (art.33);
- Prosecute the minor in front of the juvenile court.

Court level

In the preliminary phase, the juvenile court can propose a restorative mediation or group counselling or impose one of the following measures (art.64):

- placing the minor under the supervision of the competent social service (art.66);
- requiring the minor to perform a service of general benefit, in proportion to his age and skills, of at least 15 and not exceeding 30 hours;
- subjecting the minor to a follow-up by a professional counsellor, a mental health centre, a recognised psycho-medical-social service or a centre competent in the field of addictions;
- requiring the minor to follow an intensive educational guidance or other guidance that the judge determines or to follow a guidance with the aim of observation by the service that the judge designates;
- imposing conditions on the minor with a view to maintaining him in his living environment (art. 67);
- imposing on the minor to participate in a training or awareness module on the consequences of the committed acts and their impact on the victims, of maximum 30 hours;
- entrusting the minor to a foster carer;
- entrusting the minor to an institution suitable in view of his education;
- entrusting the minor to an appropriate open-ended institution for the purposes of his treatment (art.68);
- entrusting the minor to a public institution by way of a detention measure (Art.69).

The temporary measures can have effect up to the age of 20 years.

In the jurisdictional phase, the juvenile court can decide to (art.36):

- Propose a restorative mediation;
- Agree to a project proposed by the minor;
- Impose the following measures (art.77) :
    - Reprimand (art.79);
    - place the minor under the supervision of the competent social service (art.80);
    - require the minor to perform a service of an educational nature and of general benefit of a minimum of thirty hours and a maximum of 150 hours;
    - oblige the minor, if he is at least fifteen years old, to perform remunerated labour for the compensation of the victim, amounting to a maximum of 150 hours;
    - require the minor to follow an intense educational guidance or other guidance determined by the court or to follow a guidance of the service designated by the court;
    - impose the following of medical and/or psychological directives of a professional counsellor, a mental health centre, a recognised psycho-medical-social service or a centre competent in the field of addictions;

- require the minor to participate in one or more training modules or modules designed to raise awareness of the consequences of the acts performed and of their impact on possible victims;
- require minor to participate in one or more accompanied sporting, social or cultural activities;
- require the minor to regularly attend school for ordinary or special education;
- impose conditions on the minor, which may be cumulative if necessary, with a view to keeping the minor in his living environment (art.81);
- oblige the minor to follow a post-institutional guidance course;
- entrust the minor to a foster carer;
- entrust the minor to an appropriate institution with a view to his education;
- entrust the minor to an appropriate institution with an open department for the purpose of his treatment if the therapeutic need has been established on the basis of a medical certificate (art.82);
- place the minor in a public institution (art.83).

Sanctions imposed by the juvenile court can have effect up to the age of 23 years.

The court takes into account (art.39):

- the interest of the minor;
- the personality and degree of maturity of the minor;
- the living environment of the minor;
- the seriousness of the offences, their repetition and their date, the circumstances in which they were committed, the damage and the consequences for the victim;
- the previous measures taken with respect to the minor and his conduct during the execution thereof;
- the safety of the minor;
- the public safety.

Question 6: Are there specific rules or is there a specific policy that deals with cybercrime by minors as a special topic, acknowledging the special characteristics of crime by minors in the cyber environment, and the fact that minors may not knowingly or intentionally break rules (issues with criminal intent)? Even absent a written policy, are minors prosecuted for cybercrime in practice?

Answer:

Please explain the applicable rules or policies, if any, and their impact in practice.

Please provide details on known issues of application.

To our knowledge, no specific rules or policies exist, nor are data available concerning the prosecution of minors for cybercrime offences in practice.

Complaints are treated by the public prosecutor's office on a case by case basis. We understand that in cases concerning non-consensual distribution of sexual content and cyber bullying reparative mediation is pursued as much as possible where appropriate, because this allows parties to be involved in the search for solutions. In more serious cases or if there is moral or psychological damage, the case will be referred to the juvenile court and measures are imposed, such as participation in a training on sexuality and

relationships or community service. The juvenile court can also award compensation to the victim. Relevant factors which will be taken into account when deciding how to handle the case are the age of the victim and offender, whether there was pressure, coercion or threats, the nature of the pictures, the consequences, the seriousness of the criminal offence etc.

Question 7: Can minors be punished for online grooming in your country? I.e. the situation of a minor capable of providing sexual consent (e.g. 17 year-old) grooming a minor who has not reached the age of sexual consent (e.g. 13 years old) to meet up with the intent to perform sexual activities? Please focus not only on the specific crime of online grooming (which, if present as a separate crime in your jurisdiction, often requires an adult perpetrator), but also on other crimes that would punish the activities that constitute online grooming (i.e. the use of different strategies to force a meeting with the minor victim with the intent to perform sexual activities). If criminal sanctions could apply, are minors prosecuted in practice?

Answer:

Please explain the applicable rules (all applicable legal qualifications/ articles, conditions for application, prescriptive period, and the range and types of punishment that may be imposed and jurisdictional aspects in cross-border cases) and applicable policy.

Please provide case law to illustrate the application of the rules in practice.

Please provide details on known issues of application.

We refer to our answer to question 1.

The grooming offence is part of the thorough reform of Belgian sexual criminal law. Before this reform, the grooming offence referred to an adult perpetrator. As of June 1, 2022 the offence is no longer limited to adult perpetrators. Anyone who proposes to meet a minor with the purpose of committing specific sexual offences is punishable if this proposal has been followed by material acts which may lead to such a meeting.

The general rules on criminal liability of minors, as explained in our answer to question 5, will therefore apply. These rules also apply for other offences that would punish the activities that constitute online grooming.

The offence of cyber luring is however still limited to adult perpetrators.

As mentioned above, grooming refers to a proposal to meet someone in person with a view to *commit sexual offences*. In relation to these sexual offences, it should however be noted that the concept of 'sexual consent' differs depending on the age of the people involved in the sexual behaviour.

In principle, a minor who has not reached the full age of sixteen is deemed incapable of giving sexual consent. Exceptions however exist:

- A minor who has reached the full age of fourteen years but has not reached the full age of sixteen years is capable of giving sexual consent if the age difference with the other person is not more than three years.
- There is no offence between minors who have reached the full age of fourteen years and who act with mutual consent when the age difference between them is more than three years.

A minor can however never freely consent if:

- the perpetrator is a blood relative or a relative to a certain degree, adopter or any other person who has a similar position in the family or any other person who habitually or occasionally lives with the minor and has custody of that minor, or who has authority over that minor, or

- the act was made possible because the perpetrator made use of a recognised position of trust, authority or influence in relation to the minor
- the act is deemed to be an act of sexual immorality or prostitution.

Taking these rules into account, we may conclude that a 20-year-old who proposes a 15-year-old to meet with a view to perform sexual acts, will be committing a grooming offence if this proposal is followed by material acts which may lead to such a meeting since a 15-year-old is never capable of giving sexual consent to a 20-year-old. A 17-year-old who proposes a 15-year-old to meet with the same intentions will not necessarily commit a grooming offence, since in those circumstances the meeting up and sexual acts may be performed with mutual consent.

Question 8: Can minors be punished for purely online behaviour with a sexual intent when other minors are the victim? E.g. the situation where a minor perpetrator obtains sexually explicit material from the minor victim in order to sell this or to force the victim to do something. If criminal sanctions could apply, are minors prosecuted in practice?

Answer:

Please explain the applicable rules (all applicable legal qualifications/ articles, conditions for application, prescriptive period, and the range and types of punishment that may be imposed and jurisdictional aspects in cross-border cases) and applicable policy.

Please provide case law to illustrate the application of the rules in practice.

Please provide details on known issues of application.

Minors may be punished (or measures may be imposed) according to the general principles of juvenile criminal responsibility as explained in our answer to question 5.

We furthermore refer to the principles of possible sexual consent by minors, as explained in our answer to question 7.

We hereinafter provide you with an overview of the most relevant criminal offences:

1. Offences against sexual integrity

- **Violation of sexual integrity** (art. 417/7 Criminal Code): performing a sexual act on a person who does not consent, with or without the help of a third person who does not consent, or having a sexual act performed by a person who does not consent. The offense also includes causing a person who does not consent to witness sexual acts or sexual abuse, even without having to participate. An attempt is equated with the accomplished offence.
- **Voyeurism** (art. 417/8 Criminal Code): observing a person or having a person observed, or making a video or audio recording or having it made of that person, directly or by means of any technical or other device, without that person's consent or without his/her knowledge while that person is naked or commits an explicit sexual act, and while that person is in circumstances in which he can reasonably expect to be protected from unwanted looks. The term 'naked person' refers to a person who, without consent or without his knowledge, displays any part of his body which, on the grounds of his sexual integrity, would have remained concealed if that person had known that he was being observed or that an image or sound recording was being made of him. An attempt is equated with the accomplished offence.
- **Non-consensual distribution of sexual content (**art. 417/9 and 417/10 Criminal Code**):** the displaying, accessing or disseminating of visual or audio content of a naked person or a person performing an explicit sexual act, without their consent or without their knowledge, even if they have consented to the creation of the content. An attempt is equated with the accomplished offence.

- **Rape** (art. 417/11 Criminal Code): Any act consisting of sexual penetration of any type and by any means, committed against or with the help of a person without his or her consent. The offence of rape does not require any physical contact with the victim, meaning the rape offence will also be committed if the offender induces a minor who is not capable of consenting or forces a minor to penetrate himself or herself with objects in front of a webcam.

Applicable sanctions:

- **Violation of sexual integrity**: This offence is punishable by imprisonment of six months to five years.
- **Voyeurism:** This offence is punishable by imprisonment of six months to five years.
- **Non-consensual distribution of sexual content:** This offence is punishable by imprisonment of six months to five years. If it is committed with a fraudulent intent or with the intent to make profit, the offence is punishable by imprisonment of one year to five years and/or a fine of 200 to 10,000 EUR (to be multiplied by 8).
- **Rape:** imprisonment of ten to fifteen years (but in practice a mechanism is applied which lowers the possible sanctions to imprisonment of six months to ten years and a fine of 26 to 1,000 EUR (to be multiplied by 8).

Belgian Criminal law provides for several aggravating circumstances, amongst which:

- the fact that the victim was a minor (art. 417/17 Criminal Code):
    - **Violation of sexual integrity**: imprisonment of ten to fifteen years (in practice converted to six months to ten years and a fine of 26 to 1,000 EUR (to be multiplied by 8)).
    - **Voyeurism:** imprisonment of five to ten years (in practice converted to one month to five years and a fine of 26 to 1,000 EUR (to be multiplied by 8)).
    - **Non-consensual distribution of sexual content:** imprisonment of ten to fifteen years (in practice converted to six months to ten years and a fine of 26 to 1,000 EUR (to be multiplied by 8)). If it is committed with a fraudulent intent or with the intent to make profit, the offence is punishable by imprisonment of ten to fifteen years and/or a fine of 200 to 10,000 EUR. (in practice converted to imprisonment of six months to ten years and a fine of 200 to 10,000 EUR (to be multiplied by 8)).
    - **Rape:** imprisonment of fifteen to twenty years (in practice converted to one year to fifteen years and a fine of 26 to 1,000 EUR (to be multiplied by 8)).
- the fact that the victim did not reach the age of 16 years (art. 417/16 Criminal Code):
    - **Violation of sexual integrity**: imprisonment of fifteen to twenty years (in practice converted to one year to fifteen years and a fine of 26 to 1,000 EUR (to be multiplied by 8)).
    - **Voyeurism:** imprisonment of ten tot fifteen years (in practice converted to six months to ten years and a fine of 26 to 1,000 EUR (to be multiplied by 8)).
    - **Non-consensual distribution of sexual content:** imprisonment of fifteen to twenty years (in practice converted to one year to fifteen years and a fine of 26 to 1,000 EUR (to be multiplied by 8)). If it is committed with a fraudulent intent or with the intent to make profit, the offence is punishable by imprisonment of fifteen to twenty years and/or a fine of 200 to 10,000 EUR. (in practice converted to one year to fifteen years and a fine of 200 to 10,000 EUR (to be multiplied by 8)).
    - **Rape:** imprisonment of twenty to thirty years (in practice converted to three years to thirty years and a fine of 26 to 1,000 EUR (to be multiplied by 8)).
- The fact that the facts were committed with the aid or in presence of others (417/22 Criminal Code):

- **Violation of sexual integrity**: imprisonment of ten to fifteen years (in practice converted to six months to ten years and a fine of 26 to 1,000 EUR (to be multiplied by 8)).
- **Voyeurism:** imprisonment of five to ten years (in practice converted to one month to five years and a fine of 26 to 1,000 EUR (to be multiplied by 8)).
- **Non-consensual distribution of sexual content:** imprisonment of ten to fifteen years (in practice converted to six months to ten years and a fine of 26 to 1,000 EUR (to be multiplied by 8)). If it is committed with a fraudulent intent or with the intent to make profit, the offence is punishable by imprisonment of ten to fifteen years and/or a fine of 200 to 10,000 EUR. (in practice converted to imprisonment of six months to ten years and a fine of 200 to 10,000 EUR (to be multiplied by 8)).
- **Rape:** imprisonment of fifteen to twenty years (in practice converted to one year to fifteen years and a fine of 26 to 1,000 EUR (to be multiplied by 8)).

According to art. 417/23 Criminal Code, the court shall, when choosing the (severity of the) penalty or measure, take into account, amongst others, the fact that:

- the offence was committed on a minor below the age of ten years;
- the offence was committed on a minor below the full age of sixteen years and was preceded by an approach of that minor by the perpetrator with a view to committing at a later date the offences provided for in this section;
- the offence was committed in the presence of a minor.

2. Sexual exploitation of minors

- **Inciting, furthering or facilitating sexual immorality or the prostitution of a minor** (art. 417/25 Criminal Code). The offence does not require any effect or consequence. The punishable acts consist of incitement, furthering or facilitation. The term "incitement" is defined as the attempt of the offender to incite the minor into committing the qualified behaviour in the absence of any initiative deriving from the minor. "Furthering" is to encourage an inclination already present in the minor's head to proceed with the qualified behaviour. The term "facilitating" refers to helping the minor to commit the qualified behaviour, even if the minor has taken the initiative. Every form of unacceptable sexual expression is considered sexually immoral. It concerns acts of grave indecency that are considered to be excessive, taking into account the age of the other party involved (Cass. 17 January 2012, *RW* 2012-13, 944). Prostitution presupposes payment for sexual acts.
- **Obtaining the sexual immorality or prostitution of a minor** (art. 417/36 Criminal Code).
- **Witnessing the sexual immorality or prostitution of a minor** (art. 417/38 Criminal Code). Persons who are spectators of sexual immoral acts with a minor or prostitution of a minor are punishable, also if they witness these acts through information and communication technologies.
- **Facts of child pornography** (art. 417/43-417/50 Criminal Code). Child pornography refers to visual material of real minors, fictitious minors or people looking like minors engaging in real or simulated sexually explicit conduct or depicting sexual organs of real or fictitious minors or people looking link minors for primarily sexual purposes. The production, distribution, possession, obtaining of or taking access to child pornography is criminalised under Belgian law.

Art. 417/49 Criminal Code clarifies that no offence exists if minors of at least 16 years old create their own sexual content with mutual consent and share and possess this self-created sexual content.

Mutual consent is required for the creation, possession and sharing 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 oriented content;

- the perpetrator is a blood relative or relative in the direct ascending line or an adopter or a blood relative or relative in the side line up to the third degree or any other person who has a similar position in the family or any person who habitually or occasionally lives with the minor and has authority over that minor, or;

- the act was made possible by the perpetrator using a recognised position of trust, authority or influence over the minor.

Applicable sanctions:

- **inciting, furthering or facilitating sexual immorality or the prostitution of a minor:** Punishable with imprisonment of ten to fifteen years and a fine of 500 to 50,000 EUR (in practice converted to six months to ten years and a fine of 500 to 50,000 EUR (to be multiplied by 8)). If the offence is committed against a minor who did not reach the age of sixteen years (art. 417/26 Criminal Code), the applicable sanction is imprisonment of fifteen to twenty years and a fine of 1000 to 100,000 EUR (in practice converted to one year to fifteen years and a fine of 1000 to 100,000 EUR). Incitement in public is punishable with imprisonment of six months to three years and a fine of 26 to 500 EUR (to be multiplied by 8) (art. 417/41 of the Criminal Code).
- **Obtaining the sexual immorality or prostitution of a minor:** punishable with imprisonment of fifteen to twenty years (in practice converted to imprisonment of one year to fifteen years) and a fine of 1,000 to 100,000 EUR to be multiplied by 8 and by the number of victims.
- **Witnessing the sexual immorality or prostitution of a minor:** punishable with imprisonment of three to five years and a fine of 500 to 10,000 EUR to be multiplied by 8 and the number of victims.
- **Child pornography:**
    - Production or distribution: imprisonment of five to ten years (in practice: one month to five years) and a fine of 500 to 10,000 EUR (to be multiplied by 8)
    - Production or distribution committed in association: imprisonment of ten to fifteen years (in practice: six months to ten years) and a fine of 1,000 to 100,000 EUR (to be multiplied by 8)
    - Possession and obtaining: imprisonment of one year to five years and a fine of 500 to 10,000 EUR (to be multiplied by 8)
    - Getting access: imprisonment of one year to three years and a fine of 500 to 10,000 EUR (to be multiplied by 8).

According to art. 417/50 Criminal Code, the court shall, when choosing the (severity of the) penalty or measure, take into account, amongst others, the fact that:

- the offence was committed on a minor below the age of ten years;
- the offence was committed on a minor below the full age of sixteen years and was preceded by an approach of that minor by the perpetrator with a view to committing at a later date the offences provided for in this section.

3. Public indecency

- **Production/distribution of content of an extreme pornographic or violent nature vis à vis a minor** (art. 417/52 Criminal Code): this offence refers to the displaying, offering, sale, renting, broadcasting, supplying, distribution, making available, handing over, manufacturing or

importing, by any means, of content of an extreme pornographic or violent nature. Extreme refers to any content that is so pornographic or violent that it causes traumatisation or has other psychologically damaging effects on a normal and reasonable person. If the victim is a minor, art. 417/52 of the Criminal Code applies. The applicable sanctions are imprisonment of one year to five years and a fine of 300 to 3,000 EUR (to be multiplied by 8).

- **Exhibitionism vis à vis a minor** (art. 417/54 Criminal Code): imposing one's own bare genitals or a sexual act on others in a public place or in a place visible to the public. If the victim is a minor, art. 417/54 of the Criminal Code applies. The applicable sanctions are imprisonment of six months to three years and a fine of 100 to 1,000 EUR.

According to art. 417/55 Criminal Code, the court shall, when choosing the (severity of the) penalty or measure, take into account, amongst others, the fact that:

- the offence was committed on a minor below the full age of sixteen years;
- the offence was committed on a minor below the full age of sixteen years and was preceded by an approach of that minor by the perpetrator with a view to committing at a later date the offences provided for in this section.

As far as the **additional sanctions** are concerned in relation to sexual offences vis à vis minors, we can add the following details which seem relevant in the framework of this questionnaire:

- In the event of sexual offences vis à vis minors, imprisonment cannot be transposed into a sanction of electronic surveillance, community service or the autonomous obligation to comply with certain conditions.
- Confiscation is a possible additional sanction (of the object/means/product/illegally obtained assets).
- The criminal court may also impose a temporary ban from professions or certain positions or activities that presuppose contact with minors.
- The judge may also temporarily prohibit living, residing or being present in a designated area or prohibit having contact with specific individuals.
- The court may also order the transmission of the criminal part of the decision to the relevant employer, legal person or disciplinary authority if the perpetrator, by virtue of his position or profession, has contact with minors and the employer, legal person or authority exercising disciplinary authority over him is known.
- The sanction of deprivation of certain civil rights furthermore applies (for instance the right to hold public office, to be elected, to have custody over children (except over their own children), to carry weapons etc.).
- In relation to some offences, the offender may also be convicted to a period of supervision by the court of execution of sanctions, more specifically in relation to the offences of violation of sexual integrity, non-consensual distribution of sexual content with fraudulent intent or the intent to gain profits, rape and offences with the aggravating circumstance of aid/presence of others. This sanction implies the possibility for the court to impose an additional imprisonment or release the person under conditions after the initial prison sentence has been served.

According to art. 21bis of the preliminary title to the code of criminal procedure, sexual offences vis à vis minors will never be time barred.

Further to art. 10ter of the preliminary title to the Belgian Code of Criminal Procedure, the principle of universality applies to the sexual offences committed against minors. As a result, anyone who commits such offence abroad can be prosecuted for this offence in Belgium when the perpetrator can be found in Belgium (article 12 of the Preliminary Title to the Code of Criminal Procedure), regardless of the nationality of the perpetrator or the victim.

Question 9: Can minors be punished for cyberbullying behaviour, without there being a physical component to the crime? This includes behaviours such as cyberstalking and cyberharassment. If criminal sanctions could apply, are minors prosecuted in practice?

Answer:

Please explain the applicable rules (all applicable legal qualifications/ articles, conditions for application, prescriptive period, and the range and types of punishment that may be imposed and jurisdictional aspects in cross-border cases) and applicable policy.

Please provide case law to illustrate the application of the rules in practice.

Please provide details on known issues of application.

All criminal offences which are enlisted in our answer to question 2 also apply to minor offenders. The general rules on criminal liability of minors, as explained in our answer to question 5, will therefore apply.

Press articles report on minors who had to appear before the juvenile court in a case were the bullied victim committed suicide afterwards. A sexual video and nudes which the victim had sent to her boyfriend were shared afterwards. An educational service of general interest had been imposed to one of the minor accomplices. The sanction imposed to the main offender has not been published.

Question 10: Can minors be punished for wilful misinformation or deception online (sharing false news, false information, pretending to be someone else, pretending to be an expert, etc.)? Which crimes/qualifications could possibly apply? If criminal sanctions could apply, are minors prosecuted in practice?

Answer:

Please explain the applicable rules (all applicable legal qualifications/ articles, conditions for application, prescriptive period, and the range and types of punishment that may be imposed and jurisdictional aspects in cross-border cases) and applicable policy.

Please provide case law to illustrate the application of the rules in practice.

Please provide details on known issues of application.

All criminal offences which are enlisted in our answer to question 3 also apply to minor offenders. The general rules on criminal liability of minors, as explained in our answer to question 5, will therefore apply.

Question 11: Can minors be punished for online actions facilitating human trafficking? Typically this includes the selection and grooming of victims (e.g. lover boy phenomenon). If criminal sanctions could apply, are minors prosecuted in practice?

Answer:

Please explain the applicable rules (all applicable legal qualifications/ articles, conditions for application, prescriptive period, and the range and types of punishment that may be imposed and jurisdictional aspects in cross-border cases).

Please provide case law to illustrate the application of the rules in practice.

Please provide details on known issues of application.

All criminal offences which are enlisted in our answer to question 4 also apply to minor offenders. The general rules on criminal liability of minors, as explained in our answer to question 5 will therefore apply.

Question 12: Can minors be punished for acts of online piracy in your jurisdiction, i.e. the illegal use and/or distribution of content protected by intellectual property rights? Please focus on the elements of criminal nature. If criminal sanctions could apply, are minors prosecuted in practice?

Answer:

Please explain the applicable rules (all applicable legal qualifications/ articles, conditions for application, prescriptive period, and the range and types of punishment that may be imposed and jurisdictional aspects in cross-border cases) and applicable policy.

Please provide case law to illustrate the application of the rules in practice.

Please provide details on known issues of application.

To our knowledge, no specific rules or policies exist for minors with regard to criminal sanctions for acts of online piracy in the Belgian jurisdiction. The general rules on online piracy, adopted in the Belgian Code of Economic Law ("BCEL"), therefore apply, as well as the general rules concerning juvenile criminal responsibility as explained in our answer to question 5.

Pursuant to article XI. 293 BCEL, a person is guilty of the criminal offence of counterfeiting when he or she *maliciously or fraudulently infringes copyright and related rights*. This also covers acts of online piracy. The criminal offence of counterfeiting is committed when two conditions are met:

- *Substantive element*: The existence of the substantive element of the criminal offence of "counterfeiting" in criminal law is equivalent to the definition of "infringement" under Belgian civil law. Therefore, any conduct prohibited under civil law would also entail the substantive element for the criminal offence of counterfeiting. This also means that where a person can invoke a fair dealing exception for the use of a third party's copyright, the condition of the substantive element is not met. Such fair dealing exceptions are adopted in the articles XI.189 to XI.192 BCEL and include, among others, specific exceptions for educational or scientific purposes.

- *Intentional element:* The application of article XI. 293 BCEL also requires an intentional element to establish the qualification of the criminal offence of counterfeiting. An offence should be committed with either *malicious* or *fraudulent* intent. We note that the explanatory memorandum of the Act introducing article XI. 293 BCEL adopts a very broad interpretation of *malicious* intent, essentially covering any aim to provide an unlawful, even non-financial and indirect benefit to oneself or a third party. Belgian case law confirms such broad interpretation of both forms of intent. For example, any profit-based intent – even if no actual profits are gained – suffices to meet the threshold in article XI. 293 BCEL.

With regard to the qualification of the criminal offence of counterfeiting, we conclude that the threshold to qualify is rather low. For example, any form of illegal downloading could be considered being committed with a malicious intent – that is, granting oneself a (non-)financial benefit – and would therefore constitute a criminal offence of counterfeiting.

Evidently, the Belgian prosecution has insufficient means to investigate all instances of online piracy and counterfeiting. Priority is therefore given to cases where perpetrators engage in commercializing or spreading illegally obtained content on a large scale.

In addition to the rules in article XI. 293 BCEL, the general rules in the Belgian Criminal Code are applicable in the event of online piracy and counterfeiting.

The criminal sanction related to article XI. 293 BCEL is incorporated in article XV. 104 BCEL which imposes a penalty consisting of imprisonment of one year to five years and/or a criminal fine of 500 to 100,000 euros (to be multiplied by 8).

Instead of an imprisonment, the judge could also decide to impose a community service up to 300 hours or a sanction of electronic surveillance up to 1 year or the obligation to comply with specific conditions for a certain period of time.

For all offences, confiscation is also a possible sanction (of the object/means/product/illegally obtained assets).

The **prescriptive period** is five years.

We refer to our answer to question 15 in relation to jurisdictional aspects in cross-border cases.

Question 13: Can minors be punished for acts of hacking (i.e., unauthorized access to a computer system)? In particular, would this also apply to various scenarios exploiting vulnerabilities in IoT and connected devices? If criminal sanctions could apply, are minors prosecuted in practice?

Answer:

Please explain the applicable rules (all applicable legal qualifications/articles, conditions for application, prescriptive period, and the range and types of punishment that may be imposed and jurisdictional aspects in cross-border cases) and applicable policy.

Please provide case law to illustrate the application of the rules in practice.

Please provide details on known issues of application.

Belgian hacking offences are not limited to adult offenders. The general rules on criminal liability of minors, as explained in our answer to question 5, will therefore apply.

The hacking offences are furthermore stipulated in rather broad terms.

Art. 550bis §1 of the Criminal Code defines the offence of external hacking:

"*A person who, while knowing that he is not entitled to do so, gains access to a computer system or maintains himself therein*".

Art. 550bis §2 of the Criminal Code defines the offence of internal hacking:

"*A person who, with fraudulent intent or with the intent to harm, exceeds his access rights to a computer system*"

Internal hacking refers to physically exceeding access rights to a computer system (meaning one takes access to data which he is not allowed to access in a computer system which he is allowed to access). The accessing of data with the intent to use them for a purpose for which the access was not intended, does not constitute a hacking offence but may qualify as the criminal offence of abuse of trust (Cass. 5 January 2011, AR P.10.1094.F; Cass. 24 January 2017, AR P.16.0048.N).

The following sanctions apply:

- External hacking: imprisonment of six months to two years and/or a fine of 26 to 25,000 EUR (to be multiplied by 8). If the offence is committed with fraudulent intent: imprisonment of six months to tree years and/or a fine of 26 to 25,000 EUR (to be multiplied by 8)..

- Internal hacking: imprisonment of six months to three years and/or a fine of 26 to 25.000 EUR (to be multiplied by 8).

The same sanctions apply in the event of an hacking attempt.

Due to the following aggravating circumstances, the applicable sanctions will be imprisonment of one year to five years and/or a fine of 26 to 50,000 EUR (to be multiplied by 8):

1° the copying of data;

2° making any use of a third-party computer system or using a computer system to gain access to a third-party computer system;

3° or causing any damage to the computer system or computer data.

Art. 550*bis* §5 Criminal Code criminalises any person who, unlawfully possesses, produces, sells, obtains with a view to its use, imports, distributes or in any other way makes available any instrument, including computer data, designed or adapted to commit hacking offences. The applicable sanction is imprisonment of six months to three years and/or a fine of 26 to 100,000 EUR (to be multiplied by 8).

Further to art. 550*bis* §6 of the Criminal Code the ordering or incitement of a hacking offence shall be punished with imprisonment of six months to five years and/or a fine of 100 to 200.000 EUR (to be multiplied by 8).

Further to § 7 any person who, knowing that data have been obtained through hacking, retains such data, discloses or disseminates them to another person, or makes any use of them, shall be sanctioned with imprisonment of six months to three years and/or a fine of 26 to 100,000 EUR (to be multiplied by 8).

Instead of an imprisonment, the judge could also decide to impose a community service up to 300 hours or a sanction of electronic surveillance up to 1 year or the obligation to comply with specific conditions for a certain period of time.

For all offences, confiscation is also a possible sanction (of the object/means/product/illegally obtained assets).

The **prescriptive period** is five years.

We refer to our answer to question 15 in relation to jurisdictional aspects in cross-border cases.

Question 14: Can minors be punished for acts of using Cybercrime as a Service? If yes, under what qualification? In particular, how would this apply to using such services for exploiting vulnerabilities in IoT and connected devices e.g., the device of a friend or acquaintance? Does it matter if the intent is somewhat innocent (i.e., the minor thinks it's a joke or a prank)? If criminal sanctions could apply, are minors prosecuted in practice?

Answer:

Please explain the applicable rules (all applicable legal qualifications/articles, conditions for application, prescriptive period, and the range and types of punishment that may be imposed and jurisdictional aspects in cross-border cases) and applicable policy.

Please provide case law to illustrate the application of the rules in practice.

Please provide details on known issues of application.

The minor may be prosecuted (or measures may be imposed) for the offence he is committing by using Cybercrime as a Service, according to the general principles of criminal liability of minors (question 5).

The required intent of the applicable offence will of course be relevant. Depending on the criminal offence in question a general intent may suffice. This is for instance true for the external hacking offence (*supra* answer to question 14). The hacking offence will therefore apply, even if the minor considers it to be a joke or prank. The motives are irrelevant.

As far as IT-forgery is concerned, a fraudulent intent or intent to harm is required. Using a fake profile for the sole purpose of an innocent prank will therefore not qualify as IT-forgery.

IT-fraud (504quater Criminal Code) presupposes one is aimed at obtaining illegal economic advantages for oneself or for another person. The successful obtaining of illegal advantages is not required for the offence of IT-fraud to be committed.

IT-sabotage is criminalised by art. 550ter Criminal Code and is punishable both if committed with a general or fraudulent intent. IT-sabotage is defined in very broad terms:

"*directly or indirectly entering data into a computer system, modifying or deleting data or altering the normal use of computer data by any other technological means while knowing that he is not entitled to do so*."

Applicable sanctions are:

- in case of a general intent: imprisonment of six months to three years and/or a fine of 26 to 25,000 EUR (to be multiplied by 8).

- in case of a fraudulent intent or when the sabotage is aimed at a critical infrastructure: imprisonment of six months to five years and/or a fine of 26 to 25,000 EUR (to be multiplied by 8).

The same sanctions apply in case of an IT-sabotage attempt.

The following aggravating circumstances apply:

- Causing damage to data: imprisonment of six months to five years and/or a fine of 26 to 75,000 EUR (to be multiplied by 8)
- Impeding the proper functioning of the targeted or any other computer system: imprisonment of one year to five years and/or a fine of 26 to 100,000 EUR (to be multiplied by 8)

Instead of an imprisonment, the judge could also decide to impose a community service up to 300 hours or a sanction of electronic surveillance up to 1 year or the obligation to comply with specific conditions for a certain period of time.

Confiscation is also a possible sanction (of the object/means/product/illegally obtained assets).

The **prescriptive period** is five years.

We refer to our answer to question 15 in relation to jurisdictional aspects in cross-border cases.

Some specific criminal provisions are furthermore relevant in the context of using Cybercrime as a Service:

Both in the framework of hacking an IT-sabotage, the law (art. 550bis §5 and 550ter §4 Criminal Code) mentions that it is a criminal offence to unlawfully obtain with a view to its use, any instrument, including computer data, designed or adapted to commit a hacking offence or IT-sabotage. The applicable sanction is imprisonment of six months to three years and/or a fine of 26 to 100,000 EUR (to be multiplied by 8).

Further to art. 550*bis* §6 of the Criminal Code the ordering or incitement of a hacking offence constitutes a separate offence, punishable with imprisonment of six months to five years and/or a fine of 100 to 200.000 EUR (to be multiplied by 8).

Instead of an imprisonment, the judge could also decide to impose a community service up to 300 hours or a sanction of electronic surveillance up to 1 year or the obligation to comply with specific conditions for a certain period of time.

For all offences, confiscation is also a possible sanction (of the object/means/product/illegally obtained assets).

The **prescriptive period** is five years.

We refer to our answer to question 15 in relation to jurisdictional aspects in cross-border cases.

4. General questions regarding cross border cybercrime, international legal instruments applicable to fighting cybercrime and regarding international cooperation

Question 15: How does your country deal with the cross-border nature of many cybercrimes? When is jurisdiction established? Can judgements have extra-territorial effect?

Answer:

Please explain the applicable rules or policies, if any, and their impact in practice.

If there is a specific impact on cybercrime committed by minors, please explain this as well.

Please provide details on known issues of application.

In Belgium, the principle of territoriality applies. The territoriality principle assigns jurisdiction to the State in which the criminal offence was committed. To determine whether a criminal offence may be located in Belgium, the theory of objective ubiquity applies. Belgium will have jurisdiction as soon as one of the objective elements of an offence as defined by Belgian law, can be located in Belgium. For the offence of computer forgery, Belgium will for instance have jurisdiction if the disadvantage caused is located on Belgian soil since the potential[1] causing of a disadvantage is an objective element of the offence (See Criminal Court of Liège, 17 September 2003, *JLMB* 2003, afl. 35, 1542 in relation to the similar offline offence of abuse of trust).

Next to the theory of objective ubiquity, the doctrine of indivisibility is also often used in Belgian jurisprudence to establish jurisdiction. Further to this doctrine, territorial competence will be established when an offence is indivisible with an offence committed in Belgium. Belgian courts will also assume jurisdiction when foreign criminal acts form an indivisible unity with criminal acts committed in Belgium. Further to this doctrine, claims of territorial jurisdiction have already been made based on the fact that inseparable aspects of a criminal offence are located within the territory of Belgium, even if this relates to effects of the criminal act which constitute an indivisible whole with the offence.

The combination of objective ubiquity theory with the doctrine of indivisibility may lead to the application of the 'effects' doctrine. Here, the criminal court also takes the effects of a criminal offence into consideration to establish jurisdiction, even if the effects are no constitutive element of the criminal offence. The criminal court of Dendermonde applied this doctrine in a hacking case in 2008 (Criminal

[1] According to the Court of Cassation, the localisation of a *potential harm* in Belgium does however not suffice to establish jurisdiction (see Cass. 7 June 2011, AR P.11.0172.N; S. DEWULF, "Grenzen aan de (extra)territoriale rechtsmacht van België" (note to Cass. 7 June 2011), *NC* 2012, afl. 1, 59-72.

Court of Dendermonde, 29 September 2008, *T. Strafr.* 2009, 111-112) The perpetrator was prosecuted for the offences of computer forgery (Article 210 bis Belgian CC) and hacking (Article 550 bis, §1 and §3, 3° Belgian CC). Although the servers which were hacked could not be located in Belgium, the court assumed jurisdiction based on the confrontation in Belgium of the victim with the impossibility to login and with changes which had been made to his online profile. The court considered this to form an indivisible whole with the criminal offence.

In Cybercrime cases, application of the effects doctrine allows to establish competence rather easily, as is shown in particular by a judgment of the Antwerp Court of Appeal of 5 May 2010. Said case concerned the offence of the illegal sale of medicines and hormones. Since the products were offered by the internet, the Court of Appeal considered the offence to be committed everywhere in Belgium. The Court considered the place of potential buyers relevant for establishing jurisdiction, which was, amongst others, Belgium.

It is questioned in doctrine, whether the application of the effects doctrine is really desirable in cybercrime cases since it will often lead to conflicts of jurisdiction (K. De Schepper, F. Verbruggen, "Belgian substantive and formal criminal jurisdiction in the case of prosecution of foreign electronic service providers for failure to cooperate - Can Alien Space Invaders evade the Belgian Pac-Man?", *B-CCENTRE Legal Research Report*, 2014, 82.).

Next to territorial jurisdiction, Belgian courts may also have extraterritorial jurisdiction (i.e. jurisdiction over criminal offences committed outside Belgian territory). This is however the exception. Extraterritorial jurisdiction only exist when it is explicitly provided for by law. Most exceptions are linked to the type of criminal offence. Relevant, specific exceptions concerning the criminal offences included in this questionnaire have been mentioned in the answers to the questions above.

Further to art. 7 of the preliminary title to the Code of Criminal Procedure, Belgian courts also have jurisdiction over crimes or misdemeanours committed by Belgians or Belgian residents outside Belgian territory in as far as the offence is also punishable by the law of the country where it has been committed (principle of active personality). If the offence is committed against a foreigner, prosecution may only take place at the request of the public prosecutor's office and must be preceded by a complaint from the aggrieved foreigner or his/her family or by an official notification to the Belgian authorities from the authorities of the country where the offence has been committed. The offender furthermore has to be found in Belgium. Fully in line with this provision, Belgium made a reservation in relation to art. 22, 1d of the Budapest Convention.

Further to art. 10, 5° and 12 of the preliminary title to the Code of Criminal Procedure, in some specific circumstances, Belgian authorities will be competent to investigate a criminal offence of which the victim is a Belgian citizen. This competence relates to offences punishable under the law of the country where they have been committed by a penalty exceeding a maximum of five years' deprivation of liberty.

Question 16: What international legal instruments (bi-lateral, multi-lateral) apply in your country to the fight against (cross-border) cybercrime and how have they been implemented in national law (if implementation is necessary)?

Answer:

Please explain the applicable legal instruments (Budapest Convention, bilateral treaties), if any, their implementation in national law (if necessary) and their impact in practice.

If there is a specific impact on cybercrime committed by minors, please explain this as well.

Please provide details on known issues of application.

Belgium is signatory to the **Budapest Convention on cybercrime**.

Belgian law was at the time of the signing of the Budapest Convention already mostly in accordance with the convention but a few minor legal adjustments were implement by the law of 15 may 2006.

Belgium, as a member of the European Union, transposed the **European Investigation Order Directive** with the law of 22 May 2017 on the European Investigation Order in Criminal Affairs into Belgian Law. The **2000 EU-convention on mutual assistance** furthermore still applies for evidence gathering not covered by EIO, such as Joint Investigation teams. Belgium transposed the **framework decision concerning the European Freezing Order** with the law of 5 august 2006 on the application of mutual recognition of judicial decisions in criminal matters.

As a member of the Council of Europe, the **treaty on mutual assistance in criminal matters of 1959** applies when cooperation is needed from a non-EU member of the council of Europe.

As far as cooperation with the United States of America is concerned, the **agreement on mutual legal assistance between the EU and the US** is applicable. The agreement seeks to enhance cooperation between EU countries and the US and supplements the MLAT treaties concluded between EU countries and the US. EU countries and the US apply the conditions of this framework agreement to their bilateral mutual legal assistance treaties. In the event that existing bilateral treaties between EU countries and the US are not compatible with the agreement, the EU framework prevails. Belgium concluded a bilateral treaty with the US on mutual legal assistance in criminal matters on January 1st, 2000. The EU-US agreement entered into force on 1 February 2010.

The above mentioned instruments are the most important relevant instruments. Other bilateral agreement do however exists, such as an agreement with Tunisia, Thailand and other countries. To our knowledge, no bilateral agreements exist which are specifically aimed at tackling cybercrime.

As far as the application in practice is concerned, it should be noted that the Belgian legislation is very far-reaching in as far as cross border gathering of digital evidence is concerned. Belgian law allows copying data which are accessed from within Belgian boundaries by means of a transparent remote search or a covert computer search, but which are found not to be situated on Belgian territory. The law stipulates in relation to transparent remote searches that authorities of the state concerned should be notified, if this state can be reasonably identified. The preparatory works explain that the legislator wanted to enable a unilateral cross border search in order to be able to counter the risk of losing evidence. The preparatory works add, however, that if there is enough time and knowledge, traditional rules on international cooperation should be applied. We doubt whether the traditional rules are even considered in practice given the explicit competence provided by law to copy the data directly. In relation to covert computer searches, the legislation seems to link territorial competence of Belgian authorities to search for data to the location of the person who is the subject of the search. If the person subject to the covert search is in Belgium, Belgian authorities may search his data, irrespective of the place of storage.

Furthermore, Belgian law is also far reaching as to the possibility to compel foreign service providers to provide cooperation to a Belgian criminal investigation. In principle, service providers providing their services within Belgium, can be ordered directly to comply with a cooperation order of a Belgian authority further to art. 46*bis*, 88*bis* and 90*ter* CCP.

Given these far reaching aspects of Belgian law, international instruments will be less needed in Belgian in comparison to other states which have more restrictive legislation in relation to the 'cross border' gathering of data in the fight against Cybercrime. The instruments will of course be needed for all other kinds of searches (such as a home search, interrogation, etc.).

Question 17: What forms of international cooperation exist in your country to the fight against cross-border cybercrime? Please describe different routes/options/procedures and the measures that can be requested (e.g., asking for investigative actions, exchange of information/evidence, etc.)?

Answer:

Please explain the applicable rules or policies, if any, and their impact in practice. E.g. Mutual Legal Assistance (based on a specific bi-lateral treaty, or on the Budapest Convention and national law or purely on the basis of national law), EU instruments, participation in INTERPOL Cybercrime Information Sharing, etc.

If there is a specific impact on cybercrime committed by minors, please explain this as well.

Please provide details on known issues of application.

Council of Europe mutual assistance in criminal matters – 1959 treaty and additional protocols

- Cooperation is asked for by means of letters rogatory via diplomatic channels (allowing direct contact between ministries of justice). In case of urgency, letters rogatory may be addressed directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party.
- Spontaneous information when the disclosure is considered to assist the receiving Party in initiating or carrying out investigations or proceedings or when it might lead to a request by that Party under the Convention or its Protocols.
- Performing criminal investigative measures and transmitting evidence. Taking into account reservations, Belgium only accepts the use of cross-border observations, of controlled delivery, of covert investigations and of joint investigation teams for the following offences: trafficking in arms and drugs, trafficking in human beings, paedophilia and terrorism. The Federal Prosecutor is designated as the Belgian judicial authority responsible for the implementation of requests for assistance involving the use of these particular methods of research.
- Request for assistance may be forwarded through any electronic or other means of telecommunication.

EU – European Investigation Order:

- direct contact between judicial authorities.
- Procedure that allows an authority in one member state (the "issuing authority") to request all kinds of criminal investigative measures to be carried out by an authority in another member state. The EIO focuses on the investigative measure to be executed, rather than on the type of evidence to be gathered.

EU – Mutual Assistance 2000:

- still applies for evidence gathering not covered by EIO, such as:
    - Joint Investigation teams: Two or more member states can set up a JIT via a JIT agreement. A JIT is set up for a specific purpose and limited time. Each official leads the activities in the territory of its own member state, which means there will be no need for a European Investigation Order. A JIT can be set up in the event a member states' investigation requires difficult and demanding investigations having links with other member states or in the event a number of member states are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated action in the member states involved.
    - Spontaneous information sharing: competent authorities of the member states may exchange information, without a request to that effect, relating to criminal offences, the punishment or handling of which falls within the competence of the receiving authority at the time the information is provided.

EU – European Freezing Order:

- recognition and execution by an EU country of a freezing order in relation to property or evidence. It is a temporary order from a judicial authority to prevent criminals hiding, selling or using property, documents or data in relation to criminal activity.
- Immediate execution: the decision has to be made as soon as possible and, whenever feasible, within 24 hours of receipt of the freezing order.

Application in Belgium of EU instruments:

In principle, foreign EU authorities who are seeking to submit a request for legal assistance should transfer their request to the public prosecutor's office which is territorially competent. They can also submit their request at the federal prosecutor's office, as one of its duties is to ensure the facilitation of international cooperation.

Since Belgium is a member to the EU, it also gets the support of Europol and more specifically the European Cybercrime Centre (EC3). EC3 supports operations and investigations and serves as the central hub for criminal information and intelligence.

Budapest/Cybercrime convention:

- Art. 26 provides for spontaneous information sharing when it is considered that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request for co-operation by that Party under this chapter.
- Art. 27 provides for a basis for mutual legal assistance if no other treaty or arrangement applies.
- The convention explicitly takes into account the vulnerability and risk of loss of digital evidence by providing the possibility to cooperate in an expedited manner in urgent situations.
- Art. 35 provides for the setting up of a 24/7 network for ensuring speedy assistance among the Parties. Each Party shall designate a point of contact available on a twenty-four hours, seven-days-a-week basis, in order to ensure the provision of immediate assistance for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence.
- Belgium declared that the authority responsible for sending or receiving requests for mutual assistance, for their execution or for their transmission to the competent authorities for execution is the Federal Public Service for Justice, International Legal Assistance Division in Criminal Matters. In accordance with Article 35 of the Convention, the Belgian Government designated the following service as a 24/7 contact point: Federal Judicial Police - Direction for Combating Economic and Financial Crime - Federal Computer Crime Unit (FCCU).

US-BE MLAT:

- Requesting execution of specific measures: serving documents, providing information, taking testimony, executing requests for search and seizure, receiving information on bank accounts and bank transactions, assistance in locating, tracing, immobilizing, seizing proceeds of crime.
- EU countries' requests for assistance are transmitted by central authorities responsible for mutual legal assistance or by national authorities responsible for investigating or prosecuting criminal offences. The US transmits its requests for assistance via its national authorities responsible for investigating or prosecuting criminal offences and which are specifically designated pursuant to Article 15(2) of the agreement.
- The requesting country may use an expedited means of communication, such as fax or email, for the transmission of the request for assistance and the related communications, followed by a formal confirmation if required by the requested country.
- Possibility to set up a joint investigation team (JIT) to facilitate criminal investigations or prosecutions between one or more EU countries and the US.

Interpol

Belgium is furthermore a member of Interpol, which supports police services worldwide.

In close cooperation with member countries, the private sector and national Computer Emergency Response Teams (CERTs), Interpol helps coordinate transnational cybercrime investigations and operations.

Interpol furthermore ensures the sharing of globally sourced police information via secure information-sharing platforms. Two platforms have been created specifically in relation to Cybercrime: Cybercrime Knowledge workspace (including general information, know how) and Cybercrime Collaborative Platform - Operation (to support law enforcement operations by sharing intelligence).

Each country hosts an INTERPOL National Central Bureau (NCB), which links national police with the global Interpol network. The Belgian NCB is located in Brussels. It plays an important national role in tackling, amongst others, crimes against children, financial crime and trafficking in human beings. It is a regular partner in INTERPOL-led global police operations in these crime areas.

Question 18: Do the rules (national, international) and policies mentioned in your answers in this section have any particular effect or impact on cybercrime committed by minors?

Answer:

Please indicate relevant rules or policies, if any, and their impact on cybercrime committed by minors in practice.

Please provide details on known issues of application.

To our knowledge, the rules and policies mentioned above do not have a specific effect on cybercrime commited by minors. There are no specific rules or policies in Belgium. Cases involving minors are being treated on a case by case basis taking into account the specifics of the case (*supra* answer to question 6).

5. Other

Question 19: Do you have any information on the rates/statistics of cybercrime in your country and their recent evolution? Of particular interest would be statistics related specifically to the crimes covered in this questionnaire and statistics on cybercrime by minors (ideally also specifically for the crimes covered above)? If there were any (relatively) recent legislative or policy changes, please try to find statistical information on how this has impacted the incidence of cybercrime in practice, and in particular cybercrime by minors.

Answer:

Please provide us with any information from official sources you may have and, if possible, of the impact of any changes in legislation or policy.

Only the annual report of Child Focus gives some insights on matters in which minors are victim of criminal offences.

According to the annual report of 2021, the number of new files opened are the following:

- child pornography:
  - 2019: 1414
  - 2020: 2056
  - 2021: 2147
- Non-consensual distribution of sexual content:

    - 2019: 98
    - 2020: 135
    - 2021: 129
- Sextortion:
    - 2019: 55
    - 2020: 101
    - 2021: 91
- Grooming:
    - 2019: 34
    - 2020: 58
    - 2021: 43

Question 20: Do you have any other comments to make that may be relevant to your jurisdiction?

Answer:

Please provide us with any other comments you think are relevant for us to understand the legal and policy situation in your country.

In the event a person is being tried for several offences, the possible sanctions will not be accumulated but, in principle, the sanctions of the most serious offence will apply.