

Sexting between children in Europe – within or outside the scope of criminal legislation?

Research project “Minors and online sexual acts: a study of legal qualifications and regulatory approaches from a children’s rights perspective”
Promoter: Prof. Dr. Eva Lievens

setting the scene...

As they advance through childhood, the shaping of children’s sexual identity may be also facilitated by digital means. Sexual behaviour and sharing of sexual(ly suggestive) expressions (for instance pictures and text messages) increasingly occur on online communication platforms or through mobile app(lication)s. In this context, online acts and behaviours of a sexual nature are often associated with negative connotations or consequences. Since the early 2010s, however, social science scholars have found that young adolescents, from the ages of 11–12, are engaging with technology to establish and maintain romantic or sexual encounters and intimate relationships and develop their identity, including sexual aspects thereof.

The widespread phenomenon of “**sexting**” is one of the ways in which this exploration materialises.

sexting – the creating, sharing and forwarding of sexually suggestive or explicit images, videos or messages through electronic means

Sexting is associated with the notions of risk and harm and has been attracting considerable public anxiety. Risks that may arise are, for instance, coercion to produce such pictures, further distribution of intimate images without the consent of the person who is pictured, and, subsequently, the inclusion thereof in the corpus of circulating child sexual abuse material.

However, sexual acts or expressions may constitute a part of children’s legitimate exploration of their sexual identity and a way to express their sexual individuality.

diverse national legislative approaches across Europe...

- * explicit exemption
- * implicit exemption
- * no exemption, yet age of criminal liability might play a role

DIRECTIVE 2011/93/EU of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children, and child pornography **ART. 8**

European (Union) legal framework:

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, “**LANZAROTE CONVENTION**” (LC) **ART. 20 (3) SECOND INDENT**

Member States are required to criminalise the production, possession, acquisition and dissemination of “child pornography” (child sexual abuse/exploitation material – CSAM/CSEM)

However, Member States are afforded the possibility to decriminalise the production, possession and/or acquisition of pornographic material involving children who have reached the age of sexual consent [as set by the national legislator] and where these images are produced and possessed by them with their consent and only for their own private use [Art. 8 (3) Directive 2011/93, Art. 20 (3) second indent LC]

observations...

absence of explicit (national) legislation: not always interpreted by states in the same way

most countries seem to grasp the need to adapt to new trends of digitally mediated sexual behaviour of young people

most countries **do not explicitly exempt this type of behaviour from criminalisation**, yet clarify that **in practice children shall not be prosecuted**

the **limited (explicit) transposition** of either articles gives rise to **legal uncertainty**, both for citizens and law enforcement authorities

take aways...

need for **legal certainty**, and **foreseeable** and **clear national regulatory frameworks**

if the age of criminal liability is lower than the age of sexual consent, children of certain ages will (at least in theory) not be able to rely on explicit exemptions when producing or possessing such material under the age of consent

educating and cultivating awareness on the importance of **consent** as a fundamental element for the **legitimate online sexual exploration** is crucial