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Online sexual exploitation of children

International and regional legal and policy framework



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Content notice

This report deals with the topic of online sexual exploitation of children (OSEC) and includes reference to abuses experienced by children in this context. The report does not recount the specific experiences involved in OSEC cases. However, it does describe types and patterns of behaviour associated with OSEC in general terms.

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Table of abbreviations

ASEAN	Association of Southeast Asian Nations
CoE	Council of Europe
CSAM	Child sexual abuse material
CSEA	Child sexual exploitation and abuse
EU	European Union
ICT	Information and communications technologies
IHP	Internet host providers
ILO	International Labour Organisation
INTERPOL- ICSE	INTERPOL International Child Sexual Exploitation
ISP	Internet service provider
NGO	Non-governmental organisation
OPSC	Optional Protocol to the CRC on the sale of children, child prostitution and child pornography
OCSEA	Online child sexual exploitation and abuse
OSEC	Online sexual exploitation of children
UNCRC	United Nations Convention on the Rights of the Child
WFCLC	Worst Forms of Child Labour Convention



1. International legal instruments relevant to OSEC

In the international sphere, there are several legal and policy instruments that can be invoked to tackle online sexual exploitation of children (OSEC). These are summarised in the Table below and their relevance to OSEC is analysed in this section.

Instruments	Year adopted	Provisions relevant to OSEC	# of State Parties
United Nations Convention on the Rights of the Child (UNCRC)	1989	Articles 19, 34, and 35	196 countries
Optional Protocol to the UNCRC on the sale of children, child prostitution and child pornography	2000	Articles 2 and 3	178 countries
International Labour Organisation Convention No. 182 (Worst Forms of Child Labour Convention)	2000	Article 3	187 countries
UN General Assembly Resolution A/RES/74/174 on countering child sexual exploitation and sexual abuse online	2020	All text	N/A

It should be noted that international legal and policy instruments do not automatically translate into domestic legal frameworks. In order to be given effect to these instruments, states should take necessary legislative steps to implement them at the domestic level.

1.1. UN Convention on the Rights of the Child (UNCRC)

The United Nations Convention on the Rights of the Child (UNCRC) is one of the most widely adopted international human rights treaties in the world. The UNCRC recognises the inherent dignity and worth of all children, regardless of their race, religion, or gender, and sets out a range of civil, political, economic, social, and cultural rights that should be respected and protected. It is a legally binding international agreement that establishes a comprehensive set of rights for all children, including their right to protection from all forms of abuse, neglect, and exploitation. The UNCRC also explicitly prohibits all forms of sexual exploitation and abuse of children, including the sale and trafficking of children, child prostitution, and the involvement of children in the production of pornographic materials. It states that governments must take all necessary measures to prevent these crimes and punish those responsible. Further, it requires governments provide appropriate assistance to victims of sexual abuse and exploitation, including counselling, legal aid, and medical care.

Articles 19, 34, and 35 of UNCRC are specifically relevant to the protection of children from sexual exploitation and abuse. Sections 1.1.1 and 1.1.2 explain the measures taken under the Convention to protect children from sexual abuse and exploitation, and the importance of these measures for child protection.

Article 19 UNCRC

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 19 of the UNCRC is a powerful tool for protecting children from sexual abuse and exploitation. This article outlines the right of a child to be protected from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment, or exploitation, including sexual abuse (Committee on the Rights of the Child, 2011). It is a fundamental human right for a child to live in an environment that is free from any form of abuse or exploitation.

The UNCRC, through Article 19, recognises that sexual abuse and exploitation of children is a serious violation of the child's rights and must not be tolerated in any form. It outlines the responsibility of governments to protect children from all forms of abuse, including sexual abuse and exploitation, and to take all necessary measures to ensure that children are protected from such practices (Tobin & Cashmore, 2019). It also requires that governments take all appropriate measures to promote physical and psychological recovery and social reintegration of children who have been victims of abuse, exploitation, or neglect (ibid).

In its comment on Article 19, the Committee on the Rights of the Child (2011, p.10) defines sexual abuse and exploitation against children:

Sexual abuse and exploitation includes:

- (a) The inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity;
- (b) The use of children in commercial sexual exploitation; and
- (c) The use of children in audio or visual images of child sexual abuse;
- (d) Child prostitution, sexual slavery, sexual exploitation in travel and tourism, trafficking (within and between countries) and sale of children for sexual purposes and forced marriage.

Although there are no direct references to OSEC, Article 19 of the UNCRC is applicable to this form of child sexual exploitation because sexual abuse and exploitation is interpreted as 'use of children in commercial sexual exploitation' and 'use of children in audio or visual images of child sexual abuse'.

The Committee also elaborates on the use of information and communications technologies (ICTs) in the context of Article 19. According to the Committee on the Rights of the Child (2011, p.11), violence committed through ICTs includes:

- (a) Sexual abuse of children to produce both visual and audio child abuse images facilitated by the Internet and other ICT;
- (b) The process of taking, making, permitting to take, distributing, showing, possessing or advertising indecent photographs or pseudophotographs¹ (“morphing”) and videos of children and those making a mockery of an individual child or categories of children.

Given OSEC is a crime committed over the internet and through ICTs, it falls into the scope of Article 19 the UNCRC as interpreted by the Committee on the Rights of the Child. OSEC can be considered as a form of violence and sexual abuse committed through ICTs since it includes the production of visual and audio child abuse materials, as well as taking, making, permitting to take, distributing, showing, possessing or advertising indecent photographs and videos of children.

Article 19 of the UNCRC is an important tool in the fight to protect children from sexual abuse and exploitation. It provides a legal framework for governments to protect children and ensure that perpetrators of such crimes are held accountable. It also provides a set of standards for governments to ensure that children are protected from all forms of abuse and exploitation. As such, it is a critical component of any effort to ensure the safety and well-being of children around the world.

Article 34 UNCRC

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- The inducement or coercion of a child to engage in any unlawful sexual activity;
- The exploitative use of children in prostitution or other unlawful sexual practices;
- The exploitative use of children in pornographic performances and materials.

One of the most important provisions of the UNCRC for tackling OSEC is Article 34, which states that ‘States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse’. Article 34 of the UNCRC protects children against sexual exploitation, and sets out measures to prevent it. Article 34 is relevant to OSEC despite not making explicit references to online exploitation. It does not refer to sexual exploitation of children through ICTs or on the internet, but refers to pornographic performances and materials which can be considered as inclusive of OSEC and other sexual exploitation and abuse of children online (Dushi, 2019).

¹ A ‘pseudophotograph’ is an image, created by computer graphics or any other means, that resembles a photograph and can include electronically stored data that can be converted into such images (Oxford Reference, n.d.).

Article 34 is considered ‘a milestone in international legislation as regards the protection of children from sexual exploitation’ (Dushi, 2019, p. 61). It recognises the vulnerability of children to exploitation and abuse and lays out a number of specific legal obligations for state parties. The implications of Article 34 are far-reaching and have a significant impact on the protection of children from sexual exploitation and abuse. The article sets out a clear framework for the protection of children from exploitation and abuse, and provides a strong legal basis for the prevention of such exploitation.

States parties commit to take measures to prevent the use of children in prostitution or other sexual practices, as well as preventing the use of children in pornographic performances and materials under Article 34. It is clear from the language of Article 34 that the focus is on prevention rather than punishment. This is an important distinction, as it emphasises the need for proactive measures to protect children from sexual exploitation and abuse. Article 34 requires States take all appropriate national, bilateral, and multilateral measures to prevent the inducement or coercion of a child to engage in any unlawful sexual activity.

1.2. Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (OPSC)

The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC) is a landmark document in international law on the protection of children. The OPSC aims to prevent and protect children from exploitation and abuse by criminalising the sale of children, child prostitution, and child pornography, providing an international legal framework to monitor and enforce these laws (Tobin, 2019). It requires states criminalise the sale of children, child prostitution, and child pornography in their domestic law. It also requires states provide protection and assistance to victims, including the provision of health, psychological, social, and legal services. States are encouraged to cooperate with each other to prevent and combat the sale of children, child prostitution, and child pornography (Vandenhoe, Türkelli, & Sara, 2019). This includes taking measures to prevent the trafficking of children for these purposes, and to investigate, prosecute, and punish offenders.

Article 1 of the OPSC requires States to prohibit the sale of children, child prostitution, and child pornography. Article 2 defines sale of children, child prostitution, and child pornography.

Article 2 of the Optional Protocol

For the purposes of the present Protocol:

- Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;
- Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Article 2 is relevant to OSEC because it provides a definition of child pornography. The term ‘by whatever means’ in this definition is comprehensive, covering a broad range of means or mediums including representation of a child engaged in sexual activities through ICTs. This broad language is meant to provide flexibility to legislators and law enforcement officials, who are increasingly challenged to keep up with the ever-evolving digital landscape (Dushi, 2019, p. 65). This flexibility enables them to effectively address the new kinds of digital threats posed by the rapid development of digital technologies, including addressing OSEC.

The phrase ‘any representation’ taken in tandem with the phrase ‘by whatever means’ can be construed to include the live representation (live streaming) of a child engaging in real or simulated explicit sexual activities, or any depiction of the sexual parts of a child for primarily sexual purposes. This wider interpretation of the definition allows for the inclusion of live representation through the use of ICTs and other digital technologies of a child participating real-time in sexually explicit activities (Dushi, 2019, p. 65). Since the term ‘representation’ of child pornography does not refer to just static, non-moving material of child pornography (such as photographs), it may be interpreted as covering moving representations, such as videos and live streaming of sexually explicit activities.

The expansive understanding of the definition—recognising new and emerging forms of child exploitation including live representation of a child engaging in sexually explicit activities, which may be facilitated by digital technologies—is confirmed by Article 12 of the Revised Guidelines for reporting on the Optional Protocol. The Guidelines require States report ‘live performances’ of sexual activities of children (Committee on the Rights of the Child, 2006).

The Revised Guidelines explicitly mention ‘live performances’, thereby requiring State to identify and address forms of live streaming of child sexual exploitation and abuse. Although the Guidelines do not explicitly mention the live streaming of child sexual abuse as one of the forms of child pornography, the word ‘including’ demonstrates that the list of offences is not limited to those mentioned and States must also be able to report other forms of child pornography, such as the live streaming of sexual abuse of a child (ibid). This illustrates the importance of monitoring live streaming activities, as it is becoming an increasingly common medium of communication for those who commit these crimes against children.

Article 3 of the Optional Protocol

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:
 - a. In the context of sale of children as defined in article 2:
 - i. Offering, delivering or accepting, by whatever means, a child for the purpose of:
 - Sexual exploitation of the child;
 - Transfer of organs of the child for profit;
 - Engagement of the child in forced labour;
 - ii. Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
 - b. Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;
 - c. Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.
2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.
3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.
4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.
5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

Article 3 of the OPSC addresses the issue of criminalisation of the sale of children, child prostitution, and child pornography. It requires States criminalise the intentional involvement of a person in the sale of a child, and the use of children in the prostitution of children, as well as the production, and distribution of child pornography.

The criminalisation of the sale of children, child prostitution, and child pornography is essential for the protection of children from sexual exploitation and abuse (Maxwell, 2023). Criminalisation serves as a deterrent to potential offenders and creates a legal framework that allows for the prosecution and punishment of those who violate these laws (ibid). Further, the criminalisation of the sale of children, child prostitution, and child pornography

is especially important due to the fact that these activities are often linked to other forms of exploitation and abuse, including human trafficking, labour exploitation, and sexual exploitation of children.

1.3. Worst Forms of Child Labour Convention (ILO Convention No. 182)

In 1999, the International Labour Organisation (ILO) adopted Convention No. 182—the Worst Forms of Child Labour Convention (WFCLC)—to address the issue of child labour in its worst forms. The purpose of ILO Convention No. 182 is to provide a minimum level of protection to children, who are especially vulnerable to exploitation and abuse.

Article 3 of the WFCLC

For the purposes of this Convention, the term the worst forms of child labour comprises:

- all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

The WFCLC classifies sexual exploitation of children as one of the worst forms of child labour. Article 3 of the Convention includes within its scope the ‘use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances’, as well as any work likely to harm a child’s health, safety, or morals. Such activities are deemed as intolerable, as they are not only detrimental to a child’s physical, psychological, and emotional well-being, but also impede their ability to lead a life free from exploitation and abuse.

The inclusion of pornographic performances in the worst forms of child labour addresses OSEC. OSEC is unquestionably detrimental to the physical and mental well-being of the child, and to their morals, making it eligible for consideration under both paragraphs (b) and (d) of Article 3 (Dushi, 2019, p. 70). OSEC, particularly live streaming of OSEC, involves the child victim performing pornographic acts in front of a webcam, often directed and/or viewed by one or more individuals. The effects of this type of crime are far-reaching and long-lasting, and as such, it can be considered within the scope of Article 3.

1.4. UN General Assembly Resolution A/RES/74/174 on countering child sexual exploitation and sexual abuse online

In 2020, the UN General Assembly adopted Resolution A/RES/74/174 on countering child sexual exploitation and sexual abuse online. The General Assembly noted that advances in ICTs present unprecedented opportunities for child sex offenders to access, produce, and distribute CSAM, and enable harmful online contact with children, irrespective of their physical location or nationality. It was underlined that encryption capability and anonymising tools are being frequently misused to commit crimes involving child sexual exploitation and sexual abuse.

Article 1: UN General Assembly Resolution A/RES/74/174

Urges Member States to criminalize child sexual exploitation and sexual abuse, including child sexual exploitation and sexual abuse online, allowing for the prosecution of perpetrators, to grant law enforcement agencies appropriate powers and to provide tools to identify perpetrators and victims and effectively combat child sexual exploitation and sexual abuse.

Through the Resolution, the General Assembly called upon Member States to criminalise online sexual exploitation of children. It also requests Member States raise public awareness of the serious nature of child sexual exploitation and child sexual abuse materials. Member States are asked to take legislative or other measures to facilitate the detection by internet service and access providers of child sexual exploitation and sexual abuse materials and to ensure their removal. It is further emphasised that Member States should work with private sector actors to facilitate the reporting and tracing of suspicious financial transactions involved in child sexual exploitation and sexual abuse online.

2. Council of Europe legal and policy instruments relevant to OSEC

At the European level, the Council of Europe (CoE) has taken initiatives to address sexual exploitation of children. The CoE adopted a specific convention on protection of children against sexual exploitation and sexual abuse (Lanzarote Convention). Further, the CoE included relevant provisions in its convention on cybercrime. The table below summarises the European legal and policy instruments relevant to OSEC at the level of the CoE.

Instruments	Year adopted	Provisions relevant to OSEC	# of State Party
Convention on Cybercrime (Budapest Convention)	2001	Article 9	68 countries
Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)	2007	Articles 18-21	46 countries
Council of Europe Recommendation (2001) ¹⁶ on the protection of children against sexual exploitation	2001	Article 2	47 CoE countries (not binding)



2.1. Convention on Cybercrime (Budapest Convention)

The Convention on Cybercrime, also known as the Budapest Convention, is a multilateral treaty developed by the Council of Europe. It was signed in Budapest on 23 November 2001 and came into effect on 1 July 2004, making it one of the earliest international agreements to harmonise standards on cybercrime. As a binding international treaty, the Budapest Convention is the first international treaty on this issue, and is designed to promote the effective implementation of domestic laws to protect computers and networks from illegal activities. It also seeks to facilitate international cooperation in investigating and prosecuting cybercrime.

The Convention defines cybercrime as any criminal offense committed using computers or networks. It includes crimes such as computer fraud, copyright infringement, computer-related forgery, child pornography, and violations of network security. It seeks to address the challenges posed by cybercrime by establishing a framework for international cooperation and coordination. It requires signatory countries establish domestic laws that criminalise certain cybercrimes and provide for extradition and mutual legal assistance in investigating and prosecuting cybercrime. It also requires signatory countries to create a central point of contact to facilitate international cooperation in cybercrime investigations. Further, the Convention provides for the implementation of technical measures to prevent and detect cybercrime, and requires signatory countries to establish procedures to protect the confidentiality of personal data.

Article 9 – Offences related to child pornography

1. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:
 - a. producing child pornography for the purpose of its distribution through a computer system;
 - b. offering or making available child pornography through a computer system;
 - c. distributing or transmitting child pornography through a computer system;
 - d. procuring child pornography through a computer system for oneself or for another person; e possessing child pornography in a computer system or on a computer-data storage medium.
2. For the purpose of paragraph 1 above, the term “child pornography” shall include pornographic material that visually depicts:
 - a. a minor engaged in sexually explicit conduct;
 - b. a person appearing to be a minor engaged in sexually explicit conduct;
 - c. realistic images representing a minor engaged in sexually explicit conduct.

3. For the purpose of paragraph 2 above, the term “minor” shall include all persons under 18 years of age. A Party may, however, require a lower age-limit, which shall be not less than 16 years.
4. Each Party may reserve the right not to apply, in whole or in part, paragraphs 1, subparagraphs d and e, and 2, sub-paragraphs b and c.

The Budapest Convention is considered as the pioneering international treaty that addresses issues pertaining to online child pornography, and the first treaty of its kind. The Convention employs clear terminology in relation to child pornography and provides a comprehensive breakdown of online child pornography at each stage of the chain (Dushi, 2019, p. 72). In addition, it acknowledges the universally accepted definitions of online child pornography and encourages signatories to incorporate them into their domestic laws. The emphasis on ‘online abuse’—requiring such be done ‘through a computer system’—illustrates the dramatic shift of child pornography from the traditional, real-world environment to the more modern, digital landscape (BeSmart, n.d.). Given this emphasis, the Budapest Convention can be invoked to address OSEC.

The Philippines is also a signatory to the Budapest Convention. The Philippines’s commitment to the Budapest Convention is considered a positive step towards addressing online child sexual exploitation and abuse, including OSEC. A representative from the Department of Information and Communication Technology in the Philippines reported to ECPAT that the Philippines’ commitment to this convention gives ‘another venue for collaboration among law enforcement agencies’ (ECPAT, INTERPOL, and UNICEF, 2022, p. 24).

2.2. Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)

The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, also referred to as the Lanzarote Convention, was opened for signature in Lanzarote, Spain in October 2007. It entered into force on 1 July 2010 and has been signed by all 47 Council of Europe Member States, with 46 ratifying.

The Lanzarote Convention is the first international treaty to comprehensively define and criminalise the sexual exploitation of children (Rutai, 2020). It seeks to harmonise the best practices of Member States by incorporating four key elements: prevention of violence; protection of child victims; prosecution of offenders; and promotion of national and international cooperation (García, 2022). The Convention covers a wide range of sexual offences against minors, including sexual abuse, exploitation through prostitution, child pornography, and grooming and corruption of children through exposure to sexual content and activities. Notably, it recognises child pornography as a form of sexual abuse, which had been previously viewed as a distinct type of crime by existing international and regional conventions.

Article 18: Sexual abuse

1. Each party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised:
 - engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities;
 - engaging in sexual activities with a child where:
 - use is made of coercion, force or threats; or
 - abuse is made of a recognised position of trust, authority or influence over the child, including within the family; or
 - abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence.
2. For the purpose of paragraph 1 above, each Party shall decide the age below which it is prohibited to engage in sexual activities with a child.
3. The provisions of paragraph 1.a are not intended to govern consensual sexual activities between minors.

Article 20: Offences concerning child pornography

1. Each party shall take the necessary legislative or other measures to ensure that the following intentional conduct, when committed without right, is criminalised:
 - producing child pornography;
 - offering or making available child pornography;
 - distributing or transmitting child pornography;
 - procuring child pornography for oneself or for another person;
 - possessing child pornography;
 - knowingly obtaining access, through information and communication technologies, to child pornography.
2. For the purpose of the present article, the term “child pornography” shall mean any material that visually depicts a child engaged in real or simulated sexually explicit conduct or any depiction of a child’s sexual organs for primarily sexual purposes.
3. Each party may reserve the right not to apply, in whole or in part, paragraph 1.a and e to the production and possession of pornographic material:
 - consisting exclusively of simulated representations or realistic images of a non-existent child;
 - involving children who have reached the age set in application of Article 18, paragraph 2, where these images are produced and possessed by them with their consent and solely for their own private use.
4. Each party may reserve the right not to apply, in whole or in part, paragraph 1.f.

Article 21: Offences concerning the participation of a child in pornographic performances

1. Each party shall take the necessary legislative or other measures to ensure that the following intentional conduct is criminalised:
 - recruiting a child into participating in pornographic performances or causing a child to participate in such performances;
 - coercing a child into participating in pornographic performances or profiting from or otherwise exploiting a child for such purposes;
 - knowingly attending pornographic performances involving the participation of children.
2. Each party may reserve the right to limit the application of paragraph 1.c to cases where children have been recruited or coerced in conformity with paragraph 1.a or b.

Article 19 of the Lanzarote Convention provides the first definition of sexual abuse of children codified in an international treaty. Article 20 of the Lanzarote Convention is similar to Article 9 of the Budapest Convention. However, it extends its scope by utilising the broader term ‘information and communication technologies’ (ICTs) instead of only restricting coverage to ‘computer systems’. This revision is a forward-thinking approach, allowing for the provision to remain applicable even in light of potential advancements in the field, including with regards to internet service providers, mobile phone network operators, and search engines (Council of Europe, 2007, para 69). This ensures that the regulation will not become outdated due to the ever-growing and changing nature of technology.

Article 20(1)(f) of the Lanzarote Convention is also significant, adding a new offence to the catalogue of child pornography: ‘knowingly obtaining access, through information and communication technologies, to child pornography’. This new offence explicitly criminalises ‘obtaining access’ to child pornography, even if it is not downloaded. As such, this provision provides a useful tool for law enforcement in cases where the offender has encrypted downloaded files, thus presenting evidentiary problems (BeSmart, n.d.). Article 20(1)(f) provides the most comprehensive list of offences relating to child pornography, allowing for the prosecution of those who access such material. This addition to the catalogue of offences highlights the importance of understanding and utilising information and communication technology in the fight against child exploitation.

Article 21 of the Lanzarote Convention requires the criminalisation of participation of a child in pornographic performances. This provision is also relevant to OSEC because it covers both the demand and supply sides of such activities (Dushi, 2019, p. 93). Article 21 provides that the acts of ‘knowingly attending pornographic performances involving the participation of children’ should be criminalised. However, it does not specifically determine the environment or methods of accessing such pornographic performances. This is a deliberate decision intended to cover the situation of persons attending a pornographic performance involving the participation of children through webcams (Council of Europe, 2007, para 148). Therefore, live streaming of the involvement of children in pornographic performances including OSEC falls within the scope of Article 21.

2.3. Council of Europe Recommendation (2001)16 on the protection of children against sexual exploitation

The objective of Recommendation (2001)16 is to ensure the safety, well-being, and best interest of any child by promoting their physical, mental, moral, and social development. It seeks to protect children from sexual abuse, violence, and exploitation by encouraging member states to implement measures and policies that consider the views and experiences of children themselves. Further, the Recommendation seeks to eliminate child pornography, prostitution, and trafficking, within and outside of the country, by any person, with or without the child's consent.

Article 2: For the purposes of this recommendation the following definitions are employed:

- a child is any person under the age of 18;
- the term sexual exploitation is a comprehensive term which mainly includes: child pornography, prostitution and sexual slavery as well as trafficking in children for such purposes;
- the term child pornography shall include material that visually depicts a child engaged in sexually explicit conduct, a person appearing to be a child engaged in sexually explicit conduct or realistic images representing a child engaged in sexually explicit conduct. Child pornography includes the following conducts committed intentionally and without right, by any means:
 - producing child pornography for the purpose of its distribution;
 - offering or making available child pornography;
 - distributing or transmitting child pornography;
 - procuring child pornography for oneself or for another;
 - possessing child pornography.
- the term child prostitution means offering, obtaining, providing, procuring or using a child for sexual activities for remuneration or any other kind of consideration;
- the term trafficking in children includes recruiting, transporting, transferring, harbouring, delivering, receiving or selling of children for purposes of sexual exploitation.

Recommendation (2001)16 calls on Member States to criminalise child pornography, child prostitution, and child trafficking regardless of whether these offences are committed within or outside their territory (Article 28).

To effectively combat sexual exploitation of children, Recommendation (2001)16 requires Internet service providers take initiatives to raise awareness about sexual exploitation and its risks, especially on the internet and through the use of modern communication technologies (Article 22). Further, internet service providers are urged to work alongside the authorities to identify and to combat the various means through which the internet can be used for the purpose of sexual exploitation of children (Article 23). This requires law enforcement agencies to use data to trace suspicious content and subsequently locate, identify, and question those who edit or disseminate child sexual exploitation materials online (Article 25). Internet service providers are also encouraged to develop their codes of conduct to prevent the sexual exploitation of children, identify abuses, and take measures to inhibit and suppress abuses (Article 24).



3. European Union legal and policy instruments relevant to OSEC

The European Union (EU) has addressed the sexual exploitation and abuse of children. The table below shows the most relevant legal instruments of the EU to addressing OSEC.

Instruments	Year adopted	Provisions relevant to OSEC
Council Decision of 29 May 2000 to combat child pornography on the Internet	2000	Article 2; Article 4
Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography	2011	Article 2; Article 4
European Parliament Resolution on Child Sexual Abuse Online: Fight against child sexual abuse on the Internet	2015	All text

3.1. Council Decision of 29 May 2000 to combat child pornography on the internet

On 29 May 2000, the Council of the European Union adopted the Council Decision to combat child pornography on the internet. The decision consists of both legislative and non-legislative measures. The legislative measures aim to criminalise the production, distribution, and possession of child pornography, and to establish a system for the reporting, investigating, and prosecuting such offenses. The non-legislative measures are focused on increasing public awareness of the dangers of child pornography on the internet, as well as on the development of technologies to prevent access to child pornography sites.

Article 4

Member States shall regularly verify whether technological developments require, in order to maintain the efficiency of the fight against child pornography on the Internet, changes to criminal procedural law, while respecting the fundamental principles thereof and, where necessary, shall initiate appropriate new legislation to that end.

The decision requires Member States consider setting-up specialised units within law enforcement authorities with the necessary expertise and resources to effectively deal with information on suspected production, processing, distribution, and possession of child pornography (Article 2). Member States are also urged to consider any advancements in technology to assess whether any changes to their criminal laws are required to respond to child pornography on the internet (Article 4).

3.2. Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography

Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography is an important piece of legislation to protect children from the harm of sexual abuse and exploitation. The Directive sets out a series of measures to protect children from these harms, as well as providing a framework for criminalising these acts. The Directive applies to all EU Member States, requiring they take measures to prevent and combat the sexual abuse and exploitation of children and child pornography. It requires Member States to criminalise such acts, as well as providing for sanctions against those who perpetrate them. It also sets out measures to protect victims and witnesses, as well as providing for international cooperation in combatting such crimes.

Article 2: Definitions

For the purposes of this Directive, the following definitions apply:

(...)

(c) ‘child pornography’ means:

- i. any material that visually depicts a child engaged in real or simulated sexually explicit conduct;
- ii. any depiction of the sexual organs of a child for primarily sexual purposes;
- iii. any material that visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appearing to be a child, for primarily sexual purposes; or
- iv. realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, for primarily sexual purposes;

(...)

(e) ‘pornographic performance’ means a live exhibition aimed at an audience, including by means of information and communication technology, of:

- v. a child engaged in real or simulated sexually explicit conduct; or
- vi. the sexual organs of a child for primarily sexual purposes;

Directive 2011/93/EU is the primary legal document within the European Union that sets forth regulations to combat and address the issue of child sexual abuse and exploitation. It provides core definitions for sex-based offenses against minors, outlines the minimum punishments that can be imposed for such crimes, and sets out provisions to protect the rights of child victims. Additionally, it provides guidance on the prevention of such offenses, such as the implementation of appropriate measures for victims and promotion of public awareness about the problem. By establishing these regulations, the Directive works to ensure that those who commit such offenses are held accountable, and that child victims are provided with the necessary protection and support (ECPAT France, 2022, p. 31).

Directive 2011/93/EU marks a significant development in the legal landscape by introducing a new term, ‘pornographic performance’, to the list of definitions. Although pornographic performances were criminalised by both the UN and Council of Europe conventions, neither had been able to provide a clear definition of what constitutes a ‘pornographic performance’. Consequently, the Directive is the first legal instrument to offer an explicit definition of the term, representing a major breakthrough in the field. This definition of ‘pornographic performance’ is also significant in the sense that it addresses the latest and most concerning trend of child sexual exploitation online, namely live-streaming abuse of children (Dushi, 2019, p. 108).

Article 4: Offences concerning sexual exploitation

1. (...)
2. Causing or recruiting a child to participate in pornographic performances, or profiting from or otherwise exploiting a child for such purposes shall be punishable by a maximum term of imprisonment of at least 5 years if the child has not reached the age of sexual consent and of at least 2 years of imprisonment if the child is over that age.
3. Coercing or forcing a child to participate in pornographic performances, or threatening a child for such purposes shall be punishable by a maximum term of imprisonment of at least 8 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age.
4. Knowingly attending pornographic performances involving the participation of a child shall be punishable by a maximum term of imprisonment of at least 2 years if the child has not reached the age of sexual consent, and of at least 1 year of imprisonment if the child is over that age.

Directive 2011/93/EU provides around 20 different criminal offences under four different categories: sexual abuse; sexual exploitation; child pornography; and solicitation of children online for sexual purposes. The Directive explicitly states in its provisions that certain offences can be committed using information and communication technologies (ICTs). This includes offences such as knowingly accessing child pornography, online solicitation of children for sexual purposes, and the act of causing a child to witness sexual abuse or sexual activities. The Directive recognises the reality of the internet and its ability to facilitate the commission of such offences. It also acknowledges that these offences can be committed through the use of live streaming, whereby a child can be forced to witness sexual abuse or sexual activities in real-time. These provisions demonstrate the need for greater precautions and awareness of the dangers of the internet, especially with regard to the exploitation of children (Dushi, 2019, p. 112).

3.3. European Parliament Resolution on Child Sexual Abuse Online: Fight against child sexual abuse on the internet ((2016/C 316/12))

In 2015, the European Parliament adopted a Resolution on the fight against child sexual abuse on the internet (2016/C 316/12). The European Parliament underlined that child exploitation and child sexual exploitation online constitutes an international problem that requires an international solution. It further noted that offenders are increasingly using the Darknet, encryption tools, and anonymous communities through hidden forums, website services, social networking platforms, and storage providers dedicated to child abuse material. The European Parliament indicated a number of measures and initiatives that can be taken by the Member States to combat child sexual abuse on the Internet.

Article 16

Notes with concern the development and expanding trends of commercial sexual exploitation of children online, including new means of distribution and transaction for child abuse materials, notably through the Deep Web and the Darknet, and in particular the phenomenon of live streaming of abuse for payment; calls on the Commission and the Member States, therefore, to further engage with representatives of alternative payment systems in order to identify opportunities for better cooperation with law enforcement authorities, including common training on better identification of payment processes linked to the commercial distribution of child abuse material.

The European Parliament specifically addressed the financial flows involved in the commercial distribution of child abuse material and live streaming of abuse for payment. In this respect, the European Parliament's resolution is particularly relevant to OSEC. The European Parliament requested Member States work closely with the ICT industry, internet service providers (ISPs), internet host providers (IHPs), social media companies, the banking sector, and NGOs to ensure the identification and removal of illicit content.

4. ASEAN legal and policy instruments relevant to OSEC

The Association of Southeast Asian Nations (ASEAN) has also taken initiatives to address OSEC. ASEAN has specifically developed two instruments to tackle online sexual exploitation and abuse of children by promoting a meaningful and coordinated action against all forms of child online exploitation and abuse in the region. These are a Declaration and a Regional Plan of Action on the Protection of Children from all Forms of Online Exploitation and Abuse in ASEAN. Through both the Declaration and the Regional Plan of Action, ASEAN aims to ensure that all its Member States adopt a coordinated approach to end all forms of child online exploitation and abuse.

4.1. Declaration on the Protection of Children from all Forms of Online Exploitation and Abuse in ASEAN

Adopted in 2019, the Declaration on the Protection of Children from all Forms of Online Exploitation and Abuse in ASEAN² is a key policy document to effectively address OSEC in the region (ASEAN, 2019). In this Declaration, ASEAN Member States recognise OSEC as a serious issue and commit to protect children from all forms of online exploitation and abuse. The Declaration identifies and prioritises seven measures as key elements to ensure a safer digital world for children in the ASEAN region and beyond (ASEAN, 2022).

Seven Key Measures to Tackle OSEC in ASEAN:

1. Promote, develop, and implement comprehensive national legal frameworks towards improving child protection standards and policies.
2. Enhance law enforcement, judicial and legal professional capabilities.
3. Encourage the establishment of a specialised national unit to lead, support and coordinate investigations.
4. Increase effectiveness of rights-based and gender-responsive child protection and support services, and social welfare programmes.
5. Strengthen data collection and monitoring, reporting and referral mechanisms.
6. Promote a national education programme and school curricula to raise awareness on all forms of child online exploitation and abuse.
7. Mobilise and enhance private sector engagement.

The first measure requires developing comprehensive legal systems at both national and regional levels. At the national level, ASEAN Member States will review, revise, and strengthen their legislation. At the regional level, ASEAN will develop guidelines and standards to ensure a coordinated approach in setting out and implementing national reforms.

The second measure is aimed at providing training courses, sharing of best practices and manuals to build and improve the capacities of law enforcement and the judiciary.

The third measure requires establishing specialised national units as points of contact to receive reports from institutions, NGOs, foreign governments, INTERPOL, and foreign law enforcement agencies.

The fourth measure intends to improve quality, inclusive, and accessible support services for children, taking into account their specific needs.

² ASEAN Member States include Brunei Darussalam, Cambodia, Indonesia, the Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Viet Nam.

The fifth measure focuses on data collection and monitoring, reporting and referral mechanisms. This requires Member States work closely with NGOs and the private sector to establish or strengthen hotlines, as well as to ensure that law enforcement has effective mechanisms in place to receive reports from hotlines and then prioritise, take action, and refer.

The sixth measure prioritises education and awareness in combatting OSEC. Member States are encouraged to develop cyber safety education curricula and awareness-raising campaigns about reporting mechanisms, to tackle child sexual exploitation and abuse online.

The final measure focuses on mobilising and enhancing private sector engagement to promote cooperation with governments, civil society organisations, and international organisations. To achieve this, ASEAN aims to bring together governments and non-governmental stakeholders with private sector actors at the global, regional, and national levels in its ASEAN-ICT Forum.

4.2. Regional Plan of Action for the Protection of Children from All Forms of Online Exploitation and Abuse in ASEAN

The Regional Plan of Action provides guidance for the implementation of the commitments undertaken by ASEAN Member States in the Declaration on the Protection of Children from all Forms of Online Exploitation and Abuse in ASEAN (ASEAN, n.d.). The Regional Plan of Action is designed for a period of five years between 2021 and 2025, with potential extension for five-year period from 2026 to 2030. The overarching aim of the Regional Plan of Action is to eliminate all forms of online exploitation and abuse of children, through the implementation of the Declaration.

‘Live streaming’ of child sexual abuse is a globally documented rising phenomenon, and the ASEAN region is home to one of the largest known global hubs for this crime, in which offenders may control the events, and transfer funds for the interaction via online payment platforms (ASEAN, n.d., p. 1).

ASEAN acknowledged that live streaming of sexual exploitation of children has become a serious and increasing issue in the ASEAN region as ‘one of the largest known global hubs for this crime’ (ASEAN, n.d., p. 1). To address online exploitation and abuse of children in ASEAN, the Regional Plan of Action indicates focus areas and activities to be taken by the Member States under each of the seven key measures adopted in the Declaration.

Table 1: Summary of ASEAN Regional Plan of Action

Focus Areas	Activity
Focus Area 1 Promote, develop, and implement comprehensive national legal frameworks	Activity 1.1: Undertake a legislative review Carry out a comprehensive legislative review on violence against children at the national level.
	Activity 1.2: Strengthen legislative frameworks <ul style="list-style-type: none"> • Criminalise possession, production, and dissemination of CSAM. • Categorisation of commercial transactions used for CSAM and live streaming for child sexual abuse. • Victim-centred approach for children in legislation and in investigation, prosecution, and judicial proceedings. • Provide emotional, psychological, and social support, as well as measures for the rehabilitation and reintegration of children into their families and communities. • Establish a legal requirement for private sector companies to report and remove CSAM from their platforms and services. • Establish a legal requirement for financial institutions to report suspicious transactions that may be linked to CSAM or live streaming. Consider criminal and civil liability and penalties for non-compliance.
	Activity 1.3: Adopt or strengthen national policies and plans of action <ul style="list-style-type: none"> • Adopt, strengthen, and ensure the implementation of a national policy or multi-sectoral national action plan. • Address cyberbullying in action plans. • Consider specific needs of vulnerable children in action plans.
Focus Area 2 Enhance law enforcement, judicial and legal professional capabilities	Activity 2.1: Build the capacity of law enforcement and the judiciary <ul style="list-style-type: none"> • Carry out a national assessment of law enforcement, judicial, and legal capacities related to online child sexual exploitation and abuse (OCSEA). • Develop standardised national and regional training courses and manuals for law enforcement, the judiciary, lawyers and prosecutors working on OCSEA.
	Activity 2.2: Ensure adequate mandate, guidance and tools for law enforcement and judiciary <ul style="list-style-type: none"> • Use INTERPOL International Child Sexual Exploitation (ICSE) to improve the efficiency and effectiveness of efforts to identify victims and offenders and to avoid duplication of efforts.
	Activity 2.3: Strengthen offender management systems <ul style="list-style-type: none"> • Consider creating an integrated national child sex offender registry. • Use existing systems and protocols to prevent convicted foreign child sex offenders from entering the country.
Focus Area 3 Encourage the establishment of a national specialised unit with an explicit remit to lead, support, and coordinate investigations	<ul style="list-style-type: none"> • Ensure the allocation of adequate human and financial resources for a national specialised law enforcement unit. • Ensure the unit is staffed by a multi-disciplinary team comprised of law enforcement officers trained in OCSEA investigations, including expertise in financial component and open web and the darknet. • Ensure a framework for international and regional cooperation for victim identification and the investigation and prosecution of child sex offenders.

<p>Focus Area 4 Increase effectiveness of rights-based and gender-responsive child protection and support services, and social welfare programmes</p>	<ul style="list-style-type: none"> • Identify and safeguard child victims of online sexual exploitation and abuse and ensure that child victims have access to quality support and recovery services³. • Ensure safe, appropriate, family-based, emergency, and longer-term care for OCSEA victims. • Strengthen the capacities, skills and knowledge of the social service workforce and key frontline workers. • Ensure effective responses of social service workforce and key frontline workers to child victims of online abuse and exploitation. • Consider improvements to the victim compensation mechanism for OCSEA victims. • Develop guidelines for protective and support services for all child victims of OCSEA.
<p>Focus Area 5 Strengthen data collection and monitoring, reporting and referral mechanisms</p>	<ul style="list-style-type: none"> • Establish an internet hotline or reporting portal, in collaboration with the private sector or NGOs, to report digital content suspected of depicting child sexual exploitation and abuse. • Implement robust and standardised law enforcement protocols for receiving, prioritising, actioning, and referring reports received via the hotline. • Ensure a toll free, accessible, anonymous, and confidential national child helpline. • Ensure a national system to collect, collate, and categorise data on prevalence, types and trends of online abuse, violence, and exploitation, as well as on victim and perpetrator profiles. • Encourage a regional coordination mechanism to control and prevent online child abuse crimes.
<p>Focus Area 6 Promote a national education programme and school curricula to raise awareness on all forms of child online exploitation and abuse</p>	<p>Activity 6.1: Strengthen and Expand Education on CSEA</p>
	<ul style="list-style-type: none"> • Integrate cyber safety education for children into school curricula. • Strengthen and raise awareness of reporting mechanisms for OCSEA through schools.
<p>Focus Area 7 Mobilise and enhance private sector engagement</p>	<p>Activity 6.2: Awareness raising</p>
	<ul style="list-style-type: none"> • Develop guidance documents on internet user safety. • Undertake both mass and targeted public campaigns to reach: a) children; b) parents and caregivers; c) educators; and d) communities with information on online risks and cyber safety. • Ensure targeted awareness-raising and digital literacy interventions for all vulnerable children. • Collaborate proactively with relevant private sector institutions to identify online risks for children. • Engage with relevant private sector institutions to ensure their active detection, removal, and reporting of CSAM. • Ensure mechanisms for private sector institutions to report illegal and suspicious activities and transactions related to OCSEA. • Develop protocols for relevant private sector institutions to adopt corporate policies or procedures on child protection. • Foster public-private partnerships bringing together government, law enforcement, and private sector institutions to facilitate sharing of financial intelligence to assist the financial industry to identify and report transactions suspected to involve purchases of CSAM and live streaming of child sexual exploitation.

³ It should be noted that the Action Plan does not indicate specific set of recovery services. Therefore, individual states should consider what appropriate recovery services would be to address the needs of child victims.

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