[BE] New criminal provisions for online solicitation for sexual purposes and cyberluring

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On 10 April 2014 two new (complementary) acts were adopted in Belgium that amend the Criminal Code in order to protect minors against solicitation for sexual purposes through ICT (information and communication technologies) 'grooming', on the one hand, and 'cyberluring' ('cyberlokken'), on the other hand.

The first act introduces a new article 377quater in the Criminal Code, which criminalises the proposal, through information and communication technologies, of an adult to meet a child who has not reached the age of 16, for the purpose of committing any of the offences established in the sections 'Indecent assault and rape', 'Depravity of youth and prostitution' or 'Public indecency', against him or her, where this proposal has been followed by material acts leading to such a meeting. This act can be punished with a prison sentence between 1 to 5 years. Additionally, an increase of the penalty has been integrated in article 377quater of the Criminal Code when sexual abuse is preceded by online or offline grooming.

Adopting a clear and explicit legislative provision with regard to the solicitation of children for sexual purposes by means of ICT is in line with article 23 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and article 6 of the EU Directive on combating the sexual abuse and sexual exploitation of children and child pornography.

The second act inserts a new section in the Criminal Code, titled 'Luring of minors on the internet with a view to committing a crime or a misdemeanour'. According to the new article 433bis/1 of the Criminal Code, adults that communicate by means of information and communication technologies with an apparent or probable minor to facilitate the commission of a crime or offence against that minor will be punished with a prison sentence between 3 months and 5 years, 1) if they have concealed or lied about their identity, age or capacity, 2) if they have emphasised the confidential nature of their conversations, 3) if they have offered or held up the prospect of a gift or other advantage, 4) if they have tricked the minor in any other way. This article has a broader scope of application than the new article 377quater. The preparatory works of the act on cyberluring indicate that the communication through ICT between the perpetrator and the minor should not necessarily result in a proposition or meeting in order to be able to apply the new article 433bis/1, and that for instance manipulating a child to send child pornography images (without intending to meet that child) could fall within

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the scope. Moreover, 'cyberluring' could also have other goals, aside from the commission of sexual offences, such as luring children to a sect. Finally, it was clarified that the four conditions mentioned in the article should not be considered cumulative.

Wet van 10 april 2014 betreffende de bescherming van minderjarigen tegen benadering met als oogmerk het plegen van strafbare feiten van seksuele aard

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2014041024&table_name=wet

Act of 10 April 2014 regarding the protection of minors against solicitation with the purpose of committing criminal offences of a sexual nature, Official Gazette 30 April 2014

Wet van 10 april 2014 tot wijziging van het Strafwetboek teneinde kinderen te beschermen tegen cyberlokkers

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2014041025&table_name=wet

Act of 10 April 2014 amending the Criminal Code with a view to protect children against cyberlurers, Official Gazette 30 April 2014

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