



Council of the European Union
General Secretariat

Brussels, 25 January 2023

WK 1062/2023 INIT

LIMITE

**JAI
FREMP
COHOM
COPEN
EDUC
MIGR**

**SOC
ANTIDISCRIM
GENDER
JEUN
DROIPEN
CODEC**

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

NOTE

From: General Secretariat of the Council
To: Delegations

Subject: Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence
- Comments submitted by Member States following the COPEN meeting on 13 January 2023

Delegations will find attached the above mentioned comments, which concern Articles 1-15.

Contents

FINLAND	2
FRANCE	6
GERMANY	14
IRELAND	16
POLAND	19
PORTUGAL	21
ROMANIA	25
SLOVENIA	27



FINLAND

Proposal for a Directive on combating violence against women and domestic violence (document WK 17827/2022)

- Comments by Finland

The Finnish delegation thanks the Presidency for the opportunity to provide written comments on the draft Directive. At this point, we present the following views.

General

- Finland generally thinks that the Presidency document WK 17827/2022 improves the text considerably and goes to the right direction.
- Finland still has a scrutiny reservation concerning the adequacy of the legal bases of the proposed Directive (TFEU Articles 82(2) and 83(1)). The views expressed below are without prejudice to our subsequent positions regarding the legal bases.

Article 4 - Definitions

- In para c, Finland proposes removing the text concerning child witnesses of domestic violence (“including child witnesses of domestic violence”). Because of the nature of some of the victims’ rights set out in the Directive, applying all of the provisions to witnesses may be difficult or impractical. Reference to such child witnesses could, instead, be added directly to the articles that should apply also to child witnesses. Such a solution has, for example, been adopted in the Istanbul Convention (see the articles 26 and 56).
- In para d, we support the Presidency’s proposal. It is important that the concept “computer crime” is not used in a wider sense than what is meant in Article 83(1) TFEU.

Article 5 - Rape

- Finland can broadly support keeping this Article in the text.
- Finland considers that the current legal basis, TFEU Article 83(1) is sufficient, primarily on the grounds that have been expressed by the Council Legal Service and the Commission.
- Finland generally supports changing the definition of rape gender neutral.
- The scope should be limited to acts that are commonly considered as sexual intercourse. Therefore at least oral penetration (even if it is of a sexual nature) with an object or with a non-sexual bodily part, such as finger, should be excluded from the scope.

Article 6 - Female genital mutilation

- The scope seems too broad and unclear. It would be better to clarify the provision by limiting the wording to acts committed with the purpose of controlling the person's sexuality.
- In recital 16 of the proposal it is stated that: "this offence should be specifically and adequately addressed in the criminal laws." It is not entirely clear what is meant by this but Finland considers this kind of wording problematic and not necessarily in accordance with Article 6 nor TFEU Article 288(3)¹. Article 6 requires that the conduct in question is punishable as a criminal offence but does not prescribe the way this should be done in the domestic criminal legislation. Furthermore, detailed rules on how to implement the provision would seem to deprive the national authorities of the choice of form and methods, as set out in Article 288(3). Finland prefers this wording in recital 16 to be deleted.

Articles 7 to 10 – General remarks

- Given the nearly unlimited possibilities of information technology, it should be made clear that the legal basis for computer crime does not apply to all offences that can also be committed on a computer-assisted or -enabled basis. There are also other prerequisites that the acts specified in Articles 7-10 must fulfil. This should be specified in the recitals, at least. Otherwise, the legal basis could be interpreted too extensively and uncontrollably, and the Directive will set an unwelcome precedent.
- Accordingly, we propose that the offences to be possibly included in Articles 7-10 meet the following criteria (as well as the other criteria set out in TFEU Article 83(1)), and in the recitals are characterised as follows²:

"cyber-enabled offences where the involvement of information systems substantially changes the characteristics and escalates the harmful impact of the offences"

Articles 7 - Non-consensual sharing of intimate or manipulated material

- subparagraph a: We consider the Presidency's proposals sensible
- subparagraph b: We propose adding, in the same way as in paragraph a, the following: "or similar material".

¹ "A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods."

² See also Council document 9117/22, paragraph 9, regarding "EU position for the participation in the negotiations for a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes".

Article 8 - Cyber stalking

- subparagraph b: We consider the Presidency's proposals sensible. It is indeed important that the googling or tracking of another person on social media is not an offence as such.
- However, the wording "to violate that person's peace" is unclear to us, and it seems to possibly cover very minor acts. We propose the following alternative wording: "to cause substantial psychological harm".

Article 9 - Cyber harassment

- subparagraphs a-b: we are still assessing these. In principle, the Presidency's proposals seem to go in the right direction.
- subparagraph a: We are not convinced that the legal basis is sufficient for a. Such an act takes place between two people, and it does not seem to be essential to its nature whether it is committed by computers or by other means.
- subparagraph c: We consider that the essential elements are still inaccurate. The concept of personal data is not defined in the Directive. Does it cover just the name of person? What kinds of expressions could be considered as causing significant psychological harm - how would the distinction be made, for example, between permissible criticism (which can be mentally crushing for someone)? We are concerned about the unclarity of this type of provision and its relation to the freedom of expression. It could be better deleted, as subpara b could suffice.

Article 10 - Cyber incitement to violence or hatred

- Finland is still considering its position on this provision. The scope seems broad and unclear. If this Article is retained, however, paragraph 2 proposed by the Presidency appears to be a step in the right direction.

Article 12 – Penalties

- As is known, national legal systems have specific features and the systems must be maintained coherent. Effective, proportionate and dissuasive sanctions can be ensured in many ways in the systems. The Directive should not go beyond minimum rules and therefore leave sufficient flexibility in determining the best way to ensure effective, proportionate and dissuasive sanctions in the implementation.
- We are not in favour of the minimum rules in paragraphs 2 to 6 has. Sufficient need for such detailed rules has not been demonstrated in our view.
- We note that even without exact rules on minimum penalty levels, Member States are not entirely free to determine the penal scales in their laws. In our view, this is *inter alia* due to fundamental rights and the assimilation principle.

- In the Presidency document paragraphs 4 and 5 have been formulated better as such, because they include an important reference to serious cases, but as said, we do not see sufficient need for these rules.
- We doubt that participation in an intervention programme can be very beneficial, if it is not done on a voluntary basis.

Article 13 – Aggravating circumstances

- We consider it important that this Article is not linked to rules on maximum penalty levels. That would take away discretion that is necessary for the judge.
- In this regard, deviation should not be made from the Istanbul Convention and previous EU directives on criminal law: these instruments define circumstances that must be considered aggravating but they do not require a more severe penal scale in such circumstances.

Article 14 – Jurisdiction

- para 4: We support the Presidency's proposal.

Article 15 – Limitation periods

- Finland is not in favour of detailed and absolute provisions on limitation periods in the Directive and proposes the deletion of this Article, or at least paragraphs 2 to 5.
- It is generally better to allocate limited resources to investigating newer offences. It is typically very difficult to obtain reliable evidence of very old offences, especially sexual offences.

Instead of very long limitation periods, the focus should be on further encouraging and facilitating early reporting of the offences. This will better safeguard the success of the criminal procedure. It can also have immediate positive effects.

FRANCE

NOTE DES AUTORITÉS FRANÇAISES

Objet : Commentaires des autorités françaises sur les articles 1 à 15 de la proposition de directive sur la lutte contre la violence à l'égard des femmes et la violence domestique – Note des autorités françaises.

Réf. : WK 17827/2022

Lors de la réunion du groupe COPEN du 13 janvier 2023, la Présidence a sollicité les Etats membres en vue de transmettre des commentaires sur les articles 1 à 15 de la proposition de directive sur la lutte contre la violence à l'égard des femmes et la violence domestique. En réponse, les autorités françaises souhaitent faire part des éléments suivants.

Sur l'article 1 relatif à l'objet :

Les autorités françaises sont favorables à la nouvelle formulation proposée par la Présidence, formulation qui laisse aux Etats membres la possibilité d'apprécier la période appropriée après la procédure pénale mentionnée au *littera* (b).

Courtesy translation

The French authorities are in favor of the new wording proposed by the Presidency, which leaves it to the Member States to determine the appropriate time after criminal proceedings referred to in paragraph (b).

Sur l'article 2 sur les victimes exposées à un risque accru de violences et risques spécifiques :

Les autorités françaises sont favorables à l'option proposée par la Présidence de déplacer le libellé de l'article 2 dans un considérant, notamment au vu des difficultés que pourrait poser la transposition de cet article en l'état en raison, notamment, de la généralité des formulations telles que « *shall take into consideration* » (prennent en considération) ou « *particular attention is paid* » (§2) (une attention particulière [est] accordée).

Courtesy translation

The French authorities are in favor of the option proposed by the Presidency of moving the wording of Article 2 to a recital, particularly in view of the difficulties that could arise from transposing this Article as it stands, linked to the generality of wording such as "shall take into consideration" or "particular attention is paid" (§2).

Sur l'article 3 sur le champ d'application :

Les autorités françaises considèrent qu'il est nécessaire que puisse être identifié le champ d'application de la directive au-delà de son seul objet, visé à l'article 1, pour des questions de sécurité juridique. Ainsi, elles estiment que devrait demeurer, au-delà des seules définitions visées à l'article 4, une référence explicite aux infractions visées par le chapitre 2 ou aux violences domestiques et à l'égard des femmes.

Courtesy translation

The French authorities consider necessary to identify the scope of the Directive beyond its sole subject matter, referred to in Article 1, in order to provide legal certainty. They therefore consider that, in addition to the definitions in Article 4, there should be an explicit reference to the offences referred to in Chapter 2 or to domestic violence and violence against women.

Sur l'article 4 sur les définitions :

Sur l'article 4, littéra a) relatif à la définition de « violences à l'égard des femmes », les autorités françaises sollicitent la suppression de la mention « *irrespective of the gender of the victim* », qui est contradictoire avec le terme même de « violences à l'égard des femmes » qui est défini. Si les autorités françaises soutiennent le principe d'une large définition des violences afin que le maximum de victimes soient protégées au sens des chapitre 3 et suivants de la proposition de directive, il convient, pour des raisons de clarté et de sécurité juridiques, d'assurer la cohérence entre la dénomination d'un concept et sa définition.

Courtesy translation

With regard to Article 4(a) on the definition of "violence against women", the French authorities request the deletion of the wording "irrespective of the gender of the victim", which is contradictory to the notion of "violence against women" that is defined. While the French authorities support the principle of a broad definition of violence in order to ensure that as many victims as possible are protected within the meaning of Chapter 3 et seq. of the proposal, for reasons of clarity and legal certainty, it is necessary to ensure consistency between the name of a concept and its definition.

Sur l'article 4, littéra b) sur la définition de « violence domestique » : les autorités françaises considèrent que la notion de « violences sexuelles » (« *sexual harm or suffering* ») est une composante à part entière des violences domestiques définies et sollicitent par conséquent sa réintroduction. Plus largement, les autorités françaises considèrent que le concept de violences à l'égard des femmes inclut nécessairement les violences sexuelles et que cet état de fait doit être explicite. Le maintien de cette notion permettrait d'être parfaitement précis tout en conservant une conception large de cette définition des violences domestiques. Les autorités françaises ne sont pas opposées au surplus des modifications proposées par la présidence pour cette définition.

Courtesy translation

With regard to Article 4(b) on the definition of "domestic violence": the French authorities consider that the notion of "sexual harm or suffering" is a component, in itself, of domestic violence and request its reintroduction. More generally, the French authorities consider that the concept of violence against women necessarily includes sexual violence and that this fact must be made explicit. Maintaining this notion would make it possible to be perfectly precise while maintaining a broad conception of this definition of domestic violence. They are not opposed to the others changes proposed by the Presidency to this definition.

Sur l'article 4, litera d) sur la définition de « *cyber violence* », les autorités françaises privilégient le maintien de la définition proposée par la Commission. Le simple renvoi à des articles de la directive pour définir certaines notions employées dans la même directive ne lui semble pas pertinent.

Courtesy translation

With regard to Article 4(d) on the definition of "cyber violence", the French authorities prefer to maintain the definition proposed by the Commission. The reference to articles of the Directive to define the notions used in the same Directive does not seem relevant to the French authorities.

Sur l'article 4 (da), les autorités françaises proposent la suppression de cette définition, qui répète en des termes différents la même idée.

Courtesy translation

With regard to Article 4(da), the French authorities propose the deletion of this definition, which repeats in different terms the same idea.

Sur l'article 4, litera g), les autorités françaises proposent de supprimer la définition de « *harcèlement sexuel au travail* ». Cette définition pourrait en effet poser des difficultés importantes de transposition, alors même que le texte de la directive, sur ce sujet, traite majoritairement de l'aspect relatif à la prise en charge des victimes et non du harcèlement sexuel au travail de façon générale. En effet, seuls les articles 30 relatif au soutien spécialisé aux victimes de harcèlement sexuel au travail, 36 alinéa 8 sur les mesures préventives et 37 relatif à la formation des professionnels, traitent de cette notion. Ces derniers pourraient être modifiés afin de renvoyer à la définition du harcèlement sexuel au travail applicable en droit national. Dans ces articles, il pourrait utilement être renvoyé au droit national s'agissant de la notion de harcèlement sexuel au travail: "**as defined by national law**".

Courtesy translation

*With regard to Article 4 (g), the French authorities propose to delete the definition of "sexual harassment at work". This definition, could represent major transposition difficulties, even though the text of the directive, on this subject, deals mainly with the aspect relating to the care of victims and not with sexual harassment at work in general. Indeed, only Article 30 on specialist support for victims of sexual harassment at work, Article 36, paragraph 8 on preventive measures and Article 37 on training and information for professionals deal with this notion. These articles could be amended to refer to the definition of sexual harassment at work applicable in national law" **as defined by national law** ».*

Sur l'article 5 sur le viol :

Les autorités françaises partagent l'avis du service juridique du Conseil, qui relève qu'une interprétation trop extensive de la notion d'« exploitation sexuelle des femmes et des enfants » présenterait postérieurement un risque contentieux devant la CJUE en cas de contestation de la compétence de l'UE à légiférer sur l'infraction de viol. En conséquence, les autorités françaises ne sont pas opposées à la suppression de cet article au vu de son inadéquation avec la base juridique de la directive. Au regard de l'importance que constitue la lutte contre toutes les formes de violences, et en particulier les violences sexuelles dont le viol constitue l'une des formes les plus graves, les autorités françaises sont ouvertes à travailler à une alternative ambitieuse et juridiquement solide.

Courtesy translation

The French authorities share the opinion of the Council's Legal Service, which notes that an overly broad interpretation of the concept of "sexual exploitation of women and children" would subsequently present a risk of litigation before the CJEU in the event of a dispute over the EU's competence to legislate on the offence of rape. As a consequence, they are not opposed to the deletion of this article, given its inadequacy with the legal basis of the Directive. Considering the importance of the fight against all forms of violence, especially sexual violence and rape as one of its most serious forms, the French authorities are open to work on an ambitious and legally robust alternative.

Sur l'article 6 sur les mutilations génitales féminines :

Les autorités françaises rejoignent l'avis du service juridique du Conseil en ce que les mutilations génitales féminines peuvent être considérées comme relevant de « l'exploitation sexuelle des femmes et des enfants » visé à l'article 83 du TFUE. Elles sollicitent toutefois qu'il soit laissé une souplesse aux Etats membres sur la qualification par laquelle ils répriment les faits visés par cet article, lorsque leur législation prévoit déjà une répression de ces infractions par le biais d'une qualification plus générale.

Courtesy translation

The French authorities agree with the opinion of the Council's Legal Service that female genital mutilation can be considered as "sexual exploitation of women and children" as referred to in Article 83 TFEU. However, they consider that Member States should have flexibility regarding the classification by which they punish the acts referred to in this article, where their legislation already provides a more general classification for the punishment of these offences.

Sur l'article 7 sur le partage non consenti de matériels intimes ou manipulés :

Les autorités françaises proposent d'introduire un renvoi au droit national pour fixer les conditions auxquelles il serait possible de justifier les actes visés par leurs finalités ou d'autres circonstances dont, notamment, les activités de sensibilisation et la liberté d'expression.

Cet article est en effet susceptible de viser des vidéos et images réelles d'une personne, qui seraient diffusées sans son consentement. Or dans cette hypothèse, la seule dimension artistique ou satirique ne saurait, pour les autorités françaises, constituer un élément exonératoire de responsabilité pour l'auteur des faits.

L'article 7 pourrait être rédigé ainsi :

Member States shall ensure that the following intentional conduct is punishable as a criminal offence, **without prejudice to exemptions provided by their national law:**"

(a) making ~~intimate~~ images, or videos or ~~other~~ similar material depicting sexually explicit conduct activities or the intimate parts of a person, of another person without that person's, without their consent accessible to a multitude of end-users by means of information and communication technologies, ~~unless the act was justifiable in view of its purpose and other circumstances;~~

(b) producing or ~~manipulating~~ altering and subsequently making accessible to a multitude of end-users, by means of information and communication technologies, images, videos or other material, making it appear as though another person is engaged in sexual activities, without that person's consent, ~~unless the act was justifiable in view of its purpose and other circumstances;~~

Courtesy translation

On Article 7 on non-consensual sharing of intimate or manipulated material, the French authorities propose to introduce a reference to national law to set out the conditions under which it would be possible to justify the acts covered by their purposes or other circumstances including, inter alia, awareness raising activities and freedom of expression.

This article is likely to cover real videos and images of a person, which are disseminated without their consent. In this case, the French authorities consider that the artistic or satirical dimension alone does not exonerate the perpetrator from liability.

Article 7 could read as follows:

Member States shall ensure that the following intentional conduct is punishable as a criminal offence, **without prejudice to exemptions provided by their national law:**"

(a) making ~~intimate~~ images, or videos or ~~other~~ similar material depicting sexually explicit conduct activities or the intimate parts of a person, of another person without that person's, without their consent accessible to a multitude of end-users by means of information and communication technologies, ~~unless the act was justifiable in view of its purpose and other circumstances;~~

(b) producing or ~~manipulating~~ altering and subsequently making accessible to a multitude of end-users, by means of information and communication technologies, images, videos or other material, making it appear as though another person is engaged in sexual activities, without that person's consent, ~~unless the act was justifiable in view of its purpose and other circumstances;~~

Sur l'article 8 sur la traque furtive en ligne :

Les autorités françaises n'ont pas d'opposition au déplacement des litera (a) et (c) de l'article 8 dans l'article 9 sur le cyberharcèlement, dès lors que les comportements visés sont bien susceptibles de recouvrir cette qualification pénale.

S'agissant de l'article 8(b) les autorités françaises privilégient la notion initialement proposée par la Commission de « surveillance continue » plutôt que la notion de répétition proposée par la Présidence. Par ailleurs, la proposition d'ajout de « *when this is likely to violate that person's peace* » apparaît être tautologique avec le fait réprimé par ce texte et l'atteinte à la vie privée qui en résulte pour la victime. Les autorités françaises sont défavorables à l'ajout de cette mention qui introduit une notion floue et non objective.

Courtesy translation

The French authorities have no objection to moving litera (a) and (c) of Article 8 to Article 9 on cyber harassment, as these acts can indeed be classified as such.

With regard to Article 8(b), the French authorities prefer the concept initially proposed by the Commission of "continuous surveillance" rather than the notion of repetition proposed by the Presidency. Moreover, the proposed addition of the wording "when this is likely to violate that person's peace" appears to be tautological with the act punishable by this text and the resulting invasion of privacy for the victim. The French authorities are opposed to the addition of this reference, which introduces a vague and non-objective notion.

Sur l'article 9 sur le cyberharcèlement :

Concernant le nouvel article 9 (a), les autorités françaises sont favorables à la proposition de la Présidence visant à ce que le champ de l'infraction soit restreint aux menaces de « commettre des infractions pénales ». Elles sollicitent par ailleurs la suppression des ajouts de la Présidence « is likely to » et « seriously » pour des questions de sécurité juridique.

Elles considèrent que la rédaction initiale proposée par la Commission, du nouvel article 9 (b) était plus claire et sollicitent sa réintroduction.

Elles demandent en outre la réintroduction de l'ancien article 9 (b), dès lors que la participation collective aux actions de harcèlement lui semble également devoir être réprimée.

Courtesy translation

As regards the new Article 9 (a), the French authorities are in favour of the Presidency's proposal that the scope of the offence be restricted to threats to "commit criminal offences". They also request the deletion of the Presidency's additions "is likely to" and "seriously" for reasons of legal certainty.

They consider that the initial drafting proposed by the Commission of the new Article 9 (b) was clearer and request its reintroduction.

They also request the reintroduction of the former Article 9 (b), as they consider that collective participation in attacks referred by this article should also be punished.

Sur l'article 10 sur l'incitation à la violence ou la haine en ligne :

Les autorités françaises n'ont pas d'opposition à la restriction des cas incriminés visés au paragraphe 2. Elles indiquent cependant que, sous réserve de l'avis du Service juridique du Conseil, la formulation de ce type de clause devrait être calquée sur celle des articles 5 et 8 de la directive 2011/93/UE (« *It shall be within the discretion of Member States to decide whether this Article applies to cases...* ») plutôt que sur celle de l'article 1^{er} de la décision-cadre 2008/913/JAI.

Courtesy translation

The French authorities have no objection to the restriction of the incriminated cases referred to in paragraph 2. However, they indicate that, subject to the opinion of the Council Legal Service, the wording of this type of clause should be modelled on that of Articles 5 and 8 of Directive 2011/93/EU ("It shall be within the discretion of Member States to decide whether this Article applies to cases...") rather than on that of Article 1 of Framework Decision 2008/913/JHA.

Sur l'article 12 sur les sanctions :

Les autorités françaises sont favorables à la suppression du paragraphe 3 au regard des difficultés constitutionnelles que pourrait présenter l'introduction d'une peine obligatoire en droit français, s'il n'est pas laissé à la juridiction la possibilité de ne pas prononcer cette peine au vu des éléments de fait, de droit, ou de la personnalité de l'auteur.

Sur le paragraphe 4 de l'article, les autorités françaises privilégient le maintien de la rédaction initiale proposée par la Commission, l'ajout de la mention relative aux cas les plus graves n'étant pas assez précise.

Sur le paragraphe 5 de l'article, la délégation française appellera à réduire la peine minimale encourue à six mois pour faciliter la transposition en droit national.

Courtesy translation

The French authorities are in favour of deleting paragraph 3 in view of the constitutional difficulties that could be caused by the introduction of a mandatory penalty in French law if the court is not given the option of not imposing such a penalty in the light of the facts, the law or the personality of the offender.

With regard to paragraph 4 of the article, the French authorities prefer to retain the initial wording proposed by the Commission, as the addition of the reference to the most serious cases is not sufficiently precise.

With regard to paragraph 5 of the Article, the French delegation will call for the minimum penalty to be reduced to six months to facilitate transposition into national law.

Sur l'article 13 sur les circonstances aggravantes :

Les autorités françaises sont favorables à la seconde option présentée par la Présidence consistant à distinguer les circonstances aggravantes entre les infractions d'une part pour les articles 5 à 6 et d'autre part pour les articles 7 à 10. Elles expriment une réserve d'examen sur le contenu de l'article.

Courtesy translation

The French authorities are in favour of the second option submitted by the Presidency consisting in distinguishing aggravating circumstances between offences for Articles 5 to 6 on the one hand and Articles 7 to 10 on the other. They express a scrutiny reservation regarding the content of this article.

Sur l'article 14 sur la compétence :

Les autorités françaises sont favorables à la limitation de la section 4 aux infractions visées aux articles 5 et 6 et sollicitent que cette limitation soit également appliquée à la section 5 afin de s'assurer que l'exception relative à l'absence de nécessité d'un signalement de la victime ou d'une dénonciation officielle pour engager les poursuites ne s'applique qu'aux infractions les plus graves.

Courtesy translation

The French authorities are in favour of limiting Section 4 to the offences referred to in Articles 5 and 6 and request that this limitation also be applied to Section 5 in order to ensure that the exception relating to the absence of the need for a report made by the victim or an official denunciation to initiate proceedings applies only to the most serious offences.

Sur l'article 15 sur la prescription :

Les autorités françaises sont favorables à la première option proposée.

S'agissant de l'article 15§2 (viol), elles indiquent que, dans l'hypothèse où l'article 5 serait maintenu, elle sollicite le maintien de la période de 20 ans, qui lui apparaît plus protectrice des droits des victimes.

S'agissant de l'article 15§3 (mutilations génitales féminines) les autorités françaises sont en faveur, ainsi que le propose la Présidence, une réduction de la période de prescription à 5 ans.

Concernant les articles 15§4 et 15§5 (criminalité informatique), la délégation française prend acte du fait qu'il n'existe plus de période de prescription minimum pour les faits liés à la criminalité informatique.

Concernant l'article 15§6, la délégation française validera le fait que le point de départ de la prescription à la majorité de la victime ne concernerait que les faits de viol et de mutilation génitale féminine.

Courtesy translation

The French authorities are in favor of the first option proposed.

With regard to Article 15§2 (rape), they indicate that, if Article 5 is maintained, they request that the 20-year period to be maintained, as they consider it to be more protective of victims' rights.

With regard to Article 15§3 (female genital mutilation), the French authorities favor, as proposed by the Presidency, that the limitation period be reduced to 5 years.

Concerning Articles 15§4 and 15§5 (computer crime), the French authorities note that there is no longer a minimum limitation period for acts related to computer crime.

With regard to Article 15§6, the French delegation will support the fact that the starting point of the limitation period at the age of majority of the victim would only concern acts of rape and female genital mutilation.

GERMANY

Federal Republic of Germany
Federal Ministry of Justice – II A 7

Berlin, 19th of January, 2023

Proposal for a Directive on Combating Violence against Women and Domestic Violence

Position statement by Germany following the COPEN Council Working Group Meeting on 13 January 2023:

Germany thanks the Swedish Council Presidency for its impressive early revision of Chapters 1 and 2 (Articles 1 – 15) and its submission of the new text proposal before the end of the year. In Germany's view, it is also important that adequate time is set aside for the discussion of the in-depth opinion of the Legal Service of the Council and the consequences to be drawn from it. We therefore emphatically support the approach of the Swedish Council Presidency in this regard too. The opportunity to contribute a position statement on the provisions discussed in the Council Working Group meeting of 13 January 2023 is gratefully accepted:

- Germany welcomes the Swedish proposal to move Article 2 to the recitals. However, reference to the terms "risk of retaliation, secondary and repeat victimisation" should be removed from Article 2(2). These terms are alien to German Civil Law; they are too imprecise, vague and potentially boundless. We do not see a specific need for protection that justifies such a far-reaching provision. The reference to the protection of dignity and physical integrity should remain in place, however.
- We have no objection to incorporating the content of **Article 3** in Article 4, as this change streamlines the Directive and makes the reference clearer.
- We welcome the restriction/clarification in Article 4(a) "which constitutes a criminal offence in national or Union law".
- Insofar as the addition in parentheses "[irrespective of the gender of the victim]" in Article 4(a) is intended – as explained in the corresponding comment – to include all genders (i.e. female, male, trans, intersex and non-binary people) in the provision's scope of protection, we support it. It may however be structurally clearer and therefore preferable to include this phrase in an additional sentence following the passage on "violence against women" rather than merely appending it to the crime's impact on victims. If protection is not to extend to all persons regardless of their gender, then we request clarification as to who exactly is to be included.
- In **Article 4(a) and (b)** the words "or are likely to result in" should be removed. They are superfluous, and not found in the Victims' Rights Directive mentioned in the corresponding comment.
- The definition of "victim" provided in **Article 4(c)**, which differs from that of the Victims' Rights Directive and the Istanbul Convention, is **too broad**. Not every child who witnesses domestic violence is a victim. This is **not an automatic conclusion**. Wherever children do have a specific need for protection, they already fall under the term "victim" as defined in the Istanbul Convention. It must therefore be made clear that a violation of their own legal interests is required in order for children to be considered victims. We offer the following proposed wording: "c) "victim" means any person, including child witnesses of violence covered under this Directive, regardless

of gender, unless specified otherwise, who has suffered harm, which was directly caused by acts of violence covered under this Directive”.

- The proposed restriction in **Article 4(d)** seems appropriate.
- The term “**dependants**” in **Article 4(j)** is too broad and should be **removed**. Automatically extending the scope of application of the (civil law) protection against violence to include such “dependants” would be a mistake: Either they are victims in their own right, in which case they will, as a result thereof, be entitled to protection in their own right, or they are not, in which case they will not have the same need for protection as the actual victim. We do not see any specific need for protection for “dependants” that would go beyond the definition of the victim.
- In light of the expert opinion of the Legal Service of the Council, the broad interpretation of Article 83(1), first and second subparagraph of the TFEU upon which the proposed directive is based involves **substantial risks in terms of EU law**. Considering the strict reasoning followed by the expert opinion, it cannot be ruled out at present that the CJEU might adopt the same reasoning and declare the provision contained in **Article 5 null and void** due to a lack of legal basis. The potential **gender-neutral alternative wording (“persons”)** would include “men” in the crime area “exploitation of women”, thereby making the **wording even further removed** from the legal basis. What is more, aside from giving rise to the legal risks highlighted by the Legal Service of the Council in an unusually forceful manner, retaining Article 5 would also set a **precedent** for a very broad interpretation of the TFEU as a basis for criminal law, with currently unforeseeable consequences. Additionally, it could give rise to constitutional difficulties in Germany. Against this backdrop, it seems most coherent to advocate the removal of Article 5. A definitive assessment of this matter has yet to be carried out, however.
- As regards **female genital mutilation** under **Article 6**, Germany has not yet concluded its examination concerning the legislative competence of the EU in this matter. We therefore maintain our **scrutiny reservation**.
- In relation to the **area of computer crime** (Article 83(1), second subparagraph TFEU) the Legal Service of the Council has a more open and broader interpretation. It is nevertheless conspicuous that the reasoning provided in this matter is noticeably less comprehensive and convincing than the remainder of the expert opinion. It should therefore be borne in mind that the proposed provisions of Article 7 to 11 of the draft directive are formulated very extensively, and therefore no longer (only) concerned with particularly serious crime. Germany therefore has **doubts** here too as to whether the **limits of the legal basis** provided by Article 83(1), first and second subparagraphs TFEU have been observed. A definitive assessment of this matter has yet to be carried out, however.

IRELAND

Ireland thanks the Swedish Presidency for their work on the redraft of chapters 1 and 2 and we wish the team well for their Presidency term.

- Article 1 (b) – we welcome the alignment of the text with that of the Victims Rights Directive.
- We are flexible on Article 2 but consider it would work better in a recital.
- For Article 3, we consider the text as it reads now would be better in the definitions but agree with other MS who raised that there should be an article on the scope in line with standard practice for Directives.

Article 4

- We do not have an issue with including child witnesses in Article 4 (c)
- On Article 4(da) we consider the new definition of “multitude of end users” as a significant number of end-users is circular and adds no real value. We question why this qualification is necessary – it should be illegal to take/make intimate images without consent full stop; and sharing them with one other person should be as illegal as sharing them with a multitude of other people.
- Article 4 (e) – we welcome the alignment of the text with that of the Child Sexual Abuse Directive.
- We are flexible on the rest of Article 4.

Article 5

We recognise the importance of this Article in the Directive, and understand the Commission’s reasoning on the legal basis. However, in the absence of any process to so expand the offences listed in Article 83(1) TFEU, we consider that the substantive offence of Rape in Article 5 is not comprehended by the existing “Euro-crimes” in that provision of ‘sexual exploitation of women and children’. Therefore we are in agreement with the opinion of the Council Legal Service that the legal risk is too great.

In addition to the very clear legal opinion provided by the CLS we also note from the judgment of the CJEU in *Opinion 1/19*, that the CJEU has rejected the contention that serious crimes of violence against women and children could be subsumed into the umbrella offence of “sexual exploitation of women and children”. A ruling on Article 5 could have a negative effect on the Directive as a whole and diminish the improvements in the area of Violence against Women and Domestic Violence to be achieved by the rest of the articles. In order to avoid legal challenge, the euro-crime list should be extended if this article is to comply with the legal basis.

On the suggestion to replace “women” with “persons”, we consider that this would move the article even further away from the proffered legal base.

Article 7

At the meeting on 31st January, we would welcome further reasoning and exploration of the addition in Article 7 (a) and (b) of “*unless the act was justifiable in view of its purpose and other circumstances*” which the Presidency has indicated is to allow for legitimate forms of expression, such as satirical or artistic material.

We recognise that there may be a need to have some form of exception so that innocent cases are not caught up. The Irish legislation achieves this by specifying that the privacy or peace of the person depicted has to be interfered with or there has to be an intent to cause harm.

Article 8

We consider the addition of “when this is likely to violate that person’s peace” in Article 8(b) is acceptable.

Article 9

In the new Article 9(a) we think the meaning of “*at least when this conduct involves threats to commit criminal offences*” is unclear. As it is proposed to delete “*or intimidating*”, this sub-section will be therefore limited to threatening conduct. We are not convinced that the addition is necessary but would be open to hearing the Presidency’s explanation and views of other Member States. We can support the other changes in this paragraph.

We still have reservations about Article 9(b), previously 9(a) but consider the changes an improvement. As indicated above, we do not think that the ‘multitude of end users’ qualification should form part of the elements of this offence. It should be illegal to make intimate images without consent full stop. Sharing them with one other person should be as illegal as sharing them with a multitude of other people. We would welcome further information on the thinking behind the ‘multitude’ qualification is.

Article 12

We would welcome further clarity on the link between this article and the PIF Directive as it is not entirely clear to us.

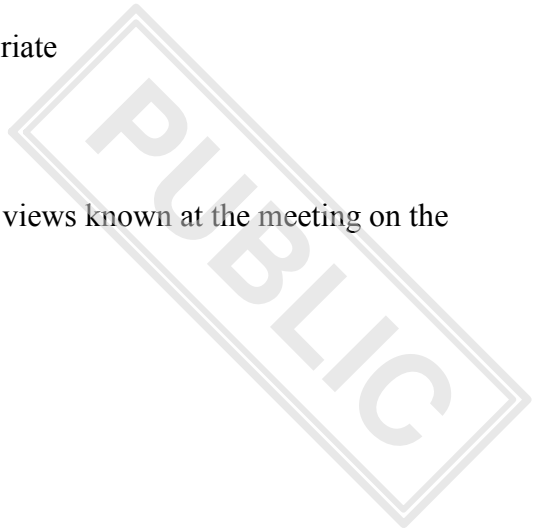
Pending a clear decision on Article 5, paragraphs 2 and 3 should be in square brackets.

Article 13

Flexible but think separate lists may be more appropriate

Article 15

We are still reviewing this article and will make our views known at the meeting on the 31st January.



POLAND

Poland's comments on the Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence - WK. 17827/22

We would like to thank for the possibility to provide written comments on the proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence.

Comments of the Polish Government to Articles 1-15 of the working document of the directive which are the subject of the meeting held on 13.01.23 and future meetings of the COPEN group:

- if the opinion of the Council's Legal Service (14277/22) is to be taken into account, then the appropriate procedure for adopting the draft directive in question would be the advance issuance of a Council decision on extending the catalogue of so-called Eurocrimes defined in Article 83(1) of TFEU to include the acts provided for in Articles 5-10 of the draft directive – under the unanimity procedure.
- as regards **Article 2** of the working document:
Recitals 11 to 12 of the draft directive concerning the protection of dignity and the physical integrity of victims, including those exposed to multiple discrimination, are of an evaluative nature, which raises doubt as to their normative value and the possibility of their implementation
- as regards **Article 4(a)**:
It is incomprehensible why, according to the first part of the sentence after the proposed amendment, the victim is to be a woman or a girl, and in the second part the phrase „regardless of the gender of the victim” is added in parentheses. After all, this provision is supposed to define „violence against women”. If it applies regardless of the gender of the victim, it is redundant;
- as regards **Article 4(b)**:
The words “which constitutes a criminal offence in national or Union law”, if they are to be added, they should be placed at the beginning of the definition, after the words “acts of violence”. When placed at the end of the sentence, they refer in grammar terms to the word „victim”.
It should be noted that in Polish law domestic violence (economic, mental, physical) does not constitute a crime – however, crimes include, *inter alia*, abuse, insulting, stealing things from the closest person. Chapter 2 of the draft directive also does not introduce a common definition of the crime of domestic violence at EU level
- as regards **Article 4(c)**:
As a consequence of the proposed amendments to Article 4(a), (b) and (ba) of the draft directive, the definition of „victim” would be narrowed down to persons harmed by a crime. It is doubtful whether it could include children being witnesses of violence (as it is demanded at the end of the provision) in the absence of such national regulation.
- as regards **Article 4(da)**:
The proposed addition of an explanation for the word “multitude” using the words “significant number” is an *idem per idem* definition and does not explain anything.
- as regards **Article 7(a)**:
The proposed amendment consisting in replacing the “content other than” photographs or videos by “similar content” seems groundless. This amendment would call into question the liability of perpetrators sharing, against the victim's will, this victim's image, either nude or during sexual activity, in the form of drawings, paintings, computer graphics, holograms, sculptures, 3D printouts, etc.

In addition, in the proposed definition, the word „their” refers in grammar terms to the intimate parts of the body. The previous version, i.e. „that person’s consent”, was better.

The wording of the draft definition after the proposed amendment suggests that the requirement of the lack of consent is to apply only to showing the intimate parts of the body, but not to showing „sexually explicit conduct”,

The proposed exclusion of criminal liability if the act was „justifiable in view of its purpose and other circumstances”, as proposed in the working document, raises serious doubt. First, this exclusion is by no means identical to the exclusion of criminal liability of an act relating to materials disseminated for “satirical or artistic purposes”, to which the author of the draft amendment refers, since it goes far beyond such purposes. Second, sharing material containing intimate information regarding a specific, identified person with a significant number of users without that person’s consent should be completely unlawful, regardless of the purposes to which the perpetrator refers – even if these are “satirical or artistic” purposes. This comment refers to an equal extent to the exclusion of criminal liability on the same grounds as proposed in Article 7(b) of the draft directive.

as regards **Article 8 in general:**

the proposed provision does not clarify whether the definition of cyberstalking will include equipping a child, without their express consent or legal authorisation, with a telephone showing parents or guardians their whereabouts, tracking their activity on the Internet or monitoring the vital functions of ill, elderly or disabled people. This gap should be filled in by clarifying the provision and introducing potential exceptions.

as regards **Article 8(b):**

Clarification is required for the use of two features “track or monitor”, whose semantic scope is very similar, in the proposal for the amendments to the provision.

as regards **Article 9(b):**

The representative of Poland will point to a linguistic error contained in the proposed amendment: instead of the adverb „visibly”, referring to the verb (engage), it would be better to include the adjective „visible”, referring to the noun (conduct),

Incomprehensible is the proposal to add the feature „with other persons”, without which an act will not meet the whole definition of a crime – does it apply to the fact that the perpetrator acts jointly with other co-perpetrators, the fact that the end users to whom the material is made available are different persons than the perpetrator, or anything else? It should be necessary to avoid adding these incomprehensible words to the provision.

as regards **Article 10:**

The relation between the subject of Article 10 of the draft directive concerning incitement to hatred by means of information and communication technologies and Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law is unquestionable. However, this document does not use the concept of “social and cultural gender”, which is an additional argument against using the term “gender”, which is unknown to the Treaties, in the draft directive.

as regards **Article 15:**

Without reference to the acceptability of the regulation of limitation periods for crimes based on the current legal basis of the Directive and the compliance of Article 15 with the principle of subsidiarity, the second, shorter proposal for amending the provision seems to be more flexible and therefore – worthy of approval.

PORTUGAL

Proposal on combating violence against women and domestic violence

Portuguese comments

Article 2 (Victims at higher risk of violence and specific risks)

We disagree with the deletion of this article, as gender-based violence justifies the differentiation identified in the proposal in paragraph 2.

Article 3 (Scope)

The transposition to article 4 does not seem adequate to us.

Article 4 (Definitions)

a) Violence against women

By reference to the Victim Directive and other relevant legal instruments in this area of analysis and to the very crime that is the object and scope of treatment, it would be useful to include the definitions of particularly vulnerable victim, particularly defenseless person, violent crime and especially violent crime, even by reference to the aggravating circumstances foreseen in Article 13 of the proposal.

It is also considered that the combination of the concept of "violence against women" with the principle of equality is not yet sufficiently achieved. Maybe it could be useful to have an article only with on the equality principle.

It should be clear that the concept of violence against women is a manifestation of gender-based violence; Using the concepts of the Istanbul Convention would eliminate this risk.

The same applies to the first sentence "means all forms...", it would perhaps be useful to return to the wording of the Istanbul Convention, which reads "coercion, deprivation or threatened deprivation of arbitrary liberty".

b) Domestic violence

The definition of domestic violence does not expressly include specific protection of personal liberty (which may be relevant in order to include in maltreatment conduct that may include crimes of threat and kidnapping). We would argue for more approximation to national rules and to the rules of the Istanbul Convention.

Istanbul Convention has a different definition than the one proposed here: "domestic violence" shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim. Thus, the context of the crime - relationship/family (domestic unit - in Istanbul, occurs within the family - should be included as an element of the type. Finally, note that the reference to another family member, without delimitation, seems overly broad.

ba) violence which constitutes a criminal offense under national or Union law

We have reservations about this new definition. This clarification would perhaps make more sense in a recital. For example, in the interest of legal certainty, a list could also be introduced with references to the legislation covered.

(da) multitude of end-users

The proposed amendment translates into a vague and indeterminate concept. It does not resolve it.

(f) providers of intermediary services

The amendment as it stands is undoubtedly a minor update as mentioned. However, one wonders if, substantively to the appropriate mention, another services (with all the necessary safeguards) should not be included, such as interpersonal communication services or computer applications.

f) Sexual harassment at work.

Substantively, we consider that the new wording does not allow us to identify what is intended, since we are defining the behavior in the text, but at the same time we refer to the configuration of a crime in national terms.

This means that the directive might not be applicable to MS where harassment at work is not a crime - for example, it might be a misdemeanor - although without prejudice to possible criminal liability under the law.

On the other hand, we would like to understand why the reference to self-employment.

~~(i) "age of sexual consent" means the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child;~~

PT agrees with the deletion of this paragraph. We strongly disagree with the introduction of Article 45.

Article 5 (Rape)

The final solution of the directive should not be weakened by a legal basis that may be contested and we believe it would be preferable to be coherent with article 83.2 of the TFEU.

If this hypothesis is accepted, and if it is understood that the article should be eliminated, we consider that at least the reason for this amputation should be explained in the preamble.

It would make sense that the protection of victims could continue to be assured by the directive.

As for the content of article 5, we argue for the semi-public nature of this crime.

Finally, we would like to add that if this crime remains in the proposal, solution that PT would not object to, we would like to add the crime of sexual coercion, under the title "rape and sexual coercion".

Article 6 (Female Genital Mutilation)

The same type of considerations made regarding article 5 should apply.

Articles 7 (non-consensual sharing of intimate or manipulated material) and 8 (cyber-stalking):

We express our support in principle.

Globally, we would like to draw attention to the content of the document currently under negotiation at the United Nations, A/Ac.291/16 (Consolidated negotiating document on the general provisions and the provisions on criminalization and on procedural measures and law enforcement of a comprehensive international convention on countering the use of information and communications technologies for criminal purposes), which contemplates the regulation of situations that the directive also intends to contemplate. PT would think it would be interesting to know what the EU's position is regarding these negotiations.

Regarding article 7(b) and the last sentence, "another person is engaged in sexual activities, without that person's consent, unless the act was justifiable in view of its purpose and other circumstances" it would be useful to simplify by an explicit reference to the artistic purpose or to qualify the sharing (illegal, illicit, without right).

As for Article 8(b), one wonders if it is necessary to include "repeatedly", considering also that the expression 'violate that person's peace' seems vague and indeterminate.

Article 11 (Instigation, aiding, abetting and attempt)

It is suggested to include also the concept of co-authorship and the extension of the typicity.

Article 12 (Penalties)

Article 12 should include accessory sanctions, namely those related to accessory incapacities (unworthiness, prohibition to exercise functions or activities involving regular contact with children, inhibition of parental responsibility);

para. 3: the model of program attendance based on the rule of compulsion seems inconsistent since participation in any program depends on the internal adherence of the person concerned; it would be more useful if MS undertook to encourage convicted persons to attend this type of training;

para. 4: we disagree with the expression "most serious", which does not seem adequate to the characterization of crimes.

Article 13 (Aggravating Circumstances)

Bearing in mind that the question is only whether the list of aggravating circumstances should be single or separate, we believe that it can be single. We suggest alignment with the wording retained in the Environmental Protection through Criminal Law Directive: one list of aggravating circumstances (eliminating redundancies), relevance in context.

For the effects of sub-paragraph b), the concept of "particularly defenseless person" should be integrated; We would add that we have reservations regarding the use of generic concepts of "extreme gravity" (sub-paragraph f), serious physical and psychological harm (sub-paragraph i)); We agree with sub-paragraph l), but if the requirement is that the aggressor must be a family member living with the victim, there is an aggravating exclusion for the cases in which the aggressor, despite being a family member, does not live with the victim.

It should also contain a rule providing that in case of aggravating circumstances, the one with the stronger aggravating effect should be considered for purposes of determining the applicable penalty, and the other or others should be considered when determining the penalty.

Article 14 (Jurisdiction)

We disagree with limiting the rules of jurisdiction only for the purposes of Articles 5 and 6.

Article 15 (Statute of limitations)

It is also suggested to anchor limitation periods in the national systems of MS (Directive 2011/92 solution). It should always be favorable to limit the scope of this provision, relatively innovative in terms of EU substantive criminal law instruments (PIF Directive, Article 12) to the most serious crimes.

ROMANIA

Proposal for a Directive on combating violence against women and domestic violence

RO comments on articles 1, 4, 5, 6, 8, 9 and 13

Art. 1 letter b)

In RO's view, the phrase is not clear and would generate problems for the transposition of the provisions into national law. There is, moreover, a precedent set in this sense, regarding the provisions of Directive 2017/541 (terrorism) dedicated to victims of terrorism, where COM argued that the terminology must be taken over into national legislation as such in order to accurately transpose the provisions so that victims can benefit from protection and support for as long as necessary.

In this context, in our opinion, a clarification in the recitals is required in what concerns the phrase *for an appropriate time*, especially that the conjunction *or* has been replaced by *and*, becoming now cumulative conditions.

Art. 4 letter a)

In RO's view, there is a contradiction in terms, although the name of the article is that of Violence against women, the definition itself refers to violence against a person of any sex.

It is our understanding that the meaning of the paragraph would be as follows:

- Acts of violence that are usually committed against women and girls will be considered violence against women even when committed against men or boys.

If this in the meaning of the article, in our view, it contains a contradiction in terms, and the definition seems to be rather unclear. We understand the text is trying to satisfy both the requirement of art. 83 of TFEU and the non-discrimination principle, but we are not sure if this is the best approach.

- If the intention of the COM was to define indirect victims, e.g. the child of the direct victim, then clarifications are still needed in this regard. When reading the definition provided by letter a) together with that set out in letter c), it appears to confirm that approach, namely that the parenthesis also refers to indirect victims.

Art. 5

As mentioned previously, RO supports the opinion of the CLS with regard to art. 5.

So, we are of the opinion it is not advisable to draft the text accepting the premise that it may not have a legal basis. So, considering the fact that the opinion of the legal service was that the deeds provided for in article 5 are not among those listed in article 83 of the TFEU, we consider that at this moment the appropriate solution is the deletion of art. 5, possibly pending the extension of the list of euro-crimes.

Keeping the text and replacing the term "woman" with the term "person" may seem like a compromise option, in the way that it solves the problem of non-discrimination principle, but not that of the legal basis. Therefore, we are not convinced that it is an option to follow and we need an additional analysis at this time.

Art. 6 letter b)

RO reiterates its view that the means of achieving the objective of the incrimination of such acts should be left to the discretion of the Member States, that is, either through a specific offence or as part of other offences, as long as the overall objective shall be reached.

Thus, on the one hand, RO believes that the ultimate aim of the directive should be to criminalize the acts listed in the text of Article 6 and not necessarily to create separate criminal offences expressly referred to as 'female genital mutilation' or to describe as detailed as possible in the criminal legislation the ways in which this act is committed; on the other hand, not in all Member States, acts of genital mutilation constitute a widespread social phenomenon, that would require a specific state response consisting of separate, specific criminalization.

In support of our opinion, we quote para. 155 of the explanatory report of the Istanbul Convention, which criminalized for the first-time genital mutilation:

"155. The obligations contained in Articles 33 to 39 require the parties to the Convention to ensure that certain intentional conduct is criminalised.

The authors agreed on this wording in order to compel the parties to criminalize the conduct in question. However, the Convention does not oblige the Parties to necessarily introduce specific provisions criminalizing the conduct described by the Convention."

Art. 8

We are not sure about the purpose of the phrase "*when this is likely to violate that person's peace*".

On the one hand, we appreciate that the reference to "a person's peace" is not specific to criminal law, and on the other hand, in any case, we consider that the deeds provided for in this letter are sufficiently serious by themselves so that it is not necessary to condition the criminalization of creating a disturbance of the victim's peace. Perhaps an additional clarification of the content of the offense would be beneficial (possibly during the discussions on the preamble).

Art. 9 letter c)

The phrase "significant psychological harm", which is the immediate consequence of the crime, appears to lack the specificity of a criminal law provision, entailing its lack of predictability. A clarification in the recitals might help.

Art. 13

RO supports the second option proposed by the PRES SE, more specifically, making a difference between on the one hand aggravating circumstances that are relevant to Articles 5 and 6 and on the other hand aggravating circumstances that are relevant to Articles 7–10. We are still examining the substance of the circumstances.

Art. 14 and 15

The aforementioned articles are still under scrutiny and a position will be provided at a later stage.

SLOVENIA

CHAPTER 1

GENERAL PROVISIONS

Article 1

Subject matter (Recitals 1–3, 9–10)

This Directive lays down rules to prevent and combat violence against women and domestic violence. It establishes minimum rules concerning:

(a) the definition of criminal offences and penalties in the areas of sexual exploitation [of women and children] and computer crime;

Paragraph b) Some Member States had concerns regarding “before, during or after” and we suggest changing that wording in line with Article 8 of the Victims Directive by adding “and for an appropriate time”.

(b) the rights of victims of all forms of violence against women or domestic violence before, during ~~or~~ and for an appropriate time after criminal proceedings;

(c) victims’ protection and victims’ support.

Article 2

~~Victims at an increased risk of violence and specific risks (Recitals 11–12)~~

Article 2: Considering that some Member States raised concerns on how to implement this Article the Presidency sees two possible solutions, on the one hand we could clarify what the Member States should do to transpose this provision, on the other hand we could move this wording to a recital.

~~1. When implementing the measures under this Directive, Member States shall take into consideration the increased risk of violence faced by victims experiencing discrimination based on a combination of sex and other grounds so as to cater to their enhanced protection and support needs, as set out in Article 18(4), Article 27(5) and Article 37(7).~~

~~2. Member States shall ensure that, in the application of this Directive, particular attention is paid to the risk of intimidation, retaliation, secondary and repeat victimisation and to the need to protect the dignity and physical integrity of victims.~~

~~Article 3~~

Scope (Recital 4)

Article 3: This Article relates to the provisions on the rights of victims, not the scope of the Directive in general. A solution could be to include this in the definitions in Article 4.

~~This Directive shall apply to the following criminal offences:~~

~~(a) criminal offences referred to in Chapter 2;~~

~~(b) acts of violence against women or domestic violence as criminalised under other instruments of Union law;~~

~~(c) any other acts of violence against women or domestic violence as criminalised under national law.~~

Article 4

Definitions (Recitals 4–8, 17–18)

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

Paragraph a) We suggest explaining both violence against women and the application in relation to the offences in this Directive, in Union law and in national law in this paragraph. This would be elaborated in a recital as well. It's important to make clear that Chapters 3-6 apply irrespective of the gender of the victim.

(a) “violence against women” means all forms of gender-based-violence, coercion or arbitrary deprivation of liberty, or threats thereof, that is directed against a woman or a girl because she is a woman or a girl or that affects women or girls disproportionately, including all acts of such violence that result in, or are likely to result in, harm, including physical, mental or emotional harm or economic loss [irrespective of the gender of the victim] which constitutes a criminal offence in national or Union law ~~physical, sexual, psychological or economic harm or suffering, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;~~

Paragraph b) Proposed changes aim to better align the wording with the Victims' Rights Directive. See for example Article 2(1)(a) of the Victims Rights' Directive and Recital 18 on "violence in close relationships". It builds on this definition by including "irrespective of biological or legal family ties".

(b) "domestic violence" means all acts of violence, that result in, or are likely to result in, harm, including physical, mental or emotional harm or economic loss ~~physical, sexual, psychological or economic harm or suffering,~~ committed by a person who is a current or former spouse, or partner or other family member of the victim that occur within the family or domestic unit, irrespective of biological or legal family ties, ~~or between former or current spouses or partners,~~ whether or not the offender shares or has shared a residence with the victim, which constitutes a criminal offence in national or Union law;

Paragraph bb) We propose a new definition to make it clear that this Directive is applicable to acts of violence criminalised in Chapter 2, acts of violence against women or domestic violence as criminalised under other instruments of Union law or any other acts of violence against women or domestic violence as criminalised under national law.

(ba) "violence which constitutes a criminal offense under national or Union law" means acts of violence criminalised in Chapter 2, acts of violence against women or domestic violence as criminalised under other instruments of Union law or any other acts of violence against women or domestic violence as criminalised under national law;

Paragraph c) Minor changes.

(c) "victim" means any person, regardless of ~~sex or~~ gender, unless specified otherwise, who has suffered harm, which was directly caused by acts of violence ~~covered under this Directive~~ against women or domestic violence, including child witnesses of ~~such~~ domestic violence;

Paragraph d) The definition seems too wide. As the wording is now, the article could cover all sorts of offences where computers are being used. We therefore propose changes.

(d) “cyber violence” means any act of violence covered ~~in Articles 7 to 10 by this Directive that is committed, assisted or aggravated in part or fully by the use of information and communication technologies;~~

Paragraph da) Some Member States asked for more clarity on “multitude of end-users”. We suggest adding a definition and to elaborate on this in a recital.

(da) “multitude of end-users” means a significant number of end-users of the systems in question;

Paragraph e) Member States raised concerns on how to make sure the text is in line with fast development of technology. We suggest deleting this definition: this is in line with Directive on combating the sexual abuse of children that uses the same wording without a definition.

~~(e) “information and communication technologies” means all technological tools and resources used to digitally store, create, share or exchange information, including smart phones, computers, social networking and other media applications and services;~~

Paragraph f) Minor updates.

(f) “providers of intermediary services” means providers of the services as defined in Article 32 point (gf) of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) Regulation (EU) YYYY/XXX of the European Parliament and of the Council 51 ~~[Regulation on a Single Market for Digital Services];~~

Paragraph g) Suggestion to use “acts” and relate to criminal offences to better link the Article with criminal law, in order to stay within the legal basis.

(g) “sexual harassment at work” means any ~~form~~ acts of unwanted verbal, non-verbal or physical conduct of a sexual nature, where it occurs in the course of, linked with, or arising in matters of employment, occupation and self-employment, with the purpose or effect of violating the dignity of the victim, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, which constitutes a criminal offense under national law;

(h) “child” means any person below the age of 18 years;

Paragraph i) The definition relates to Article 45. However, this definition is already included in the relevant Directive (2011/93, Article 2 b), which we are modifying with Article 45.

~~(i) “age of sexual consent” means the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child;~~

(j) “dependant” means a child of the victim or any person, other than the offender or suspect, living in the same household as the victim, for whom the victim is providing care and support.

CHAPTER 2

OFFENCES CONCERNING SEXUAL EXPLOITATION OF WOMEN AND CHILDREN AND COMPUTER CRIME

Article 5

Rape (Recitals 13–15)

With respect to this provision, following the discussions in November on the basis of the opinion of the Council Legal Service, it will be important that all the Member States express their position, in order to guide the work on the proposal. Member States are invited to indicate whether the Article should be kept as is, whether it should be changed in any way (for instance, by replacing “women” with “persons”) or whether it should be deleted at this stage, possibly pending the extension of the list of euro-crimes.

1. Member States shall ensure that the following intentional conduct is punishable as a criminal offence:

(a) engaging with a woman in any non-consensual act of of sexual intercourse or sexual conduct equivalent to sexual intercourse ;

(b) causing a woman to engage with another person in any non-consensual act of of sexual intercourse or sexual conduct equivalent to sexual intercourse .

2. Member States shall ensure that a non-consensual act is understood as an act which is performed without the woman's consent given voluntarily or where the woman is unable to form a free will due to her physical or mental condition, thereby exploiting her incapacity to form a free will, such as in a state of unconsciousness, intoxication, sleep, illness, bodily injury or disability.

3. Consent can be withdrawn at any moment during the act. The absence of consent cannot be refuted exclusively by the woman's silence, verbal or physical non-resistance or past sexual conduct.

Article 6

Female genital mutilation (Recital 16)

Member States shall ensure that the following intentional conduct is punishable as a criminal offence:

(a) excising, infibulating or performing any other mutilation to the whole or any part of the labia majora, labia minora or clitoris;

(b) coercing or procuring a woman or a girl to undergo any of the acts referred to in point (a).

Articles 7–10: Given the preliminary comments expressed by some of the Member States at the meeting in November we would like to continue the discussion on the legal basis in relation to cybercrimes.

Article 7

Non-consensual sharing of intimate or manipulated material (Recitals 17–19)

Member States shall ensure that the following intentional conduct is punishable as a criminal offence:

Paragraph a) Suggestions aim to make it a bit clearer that this Article is intended to cover both sexual activities and naked bodies. Moreover, a suggested addition in the end, to exclude legitimate forms of expression, such as satirical or artistic material.

(a) making ~~intimate~~ images, or videos or ~~other~~ similar material depicting sexually explicit conduct activities or the intimate parts of a person, of another person without that person's, without their consent accessible to a multitude of end-users by means of information and communication technologies, unless the act was justifiable in view of its purpose and other circumstances;

Paragraph b) Wording changed to “altering” in order to better cover “deepfakes”. Moreover, a suggested addition in the end, to exclude legitimate forms of expression, such as satirical or artistic material.

(b) producing or ~~manipulating~~ altering and subsequently making accessible to a multitude of end-users, by means of information and communication technologies, images, videos or other material, making it appear as though another person is engaged in sexual activities, without that person's consent, unless the act was justifiable in view of its purpose and other circumstances;

(c) threatening to engage in the conduct referred to in points (a) and (b) in order to coerce another person to do, acquiesce or refrain from a certain act.

Article 8

Cyber stalking (Recitals 17–18, 20)

Member States shall ensure that the following intentional conduct is punishable as a criminal offence:

Paragraph a) Moved to Article 9 (a) since the acts are harassment rather than stalking.

(a) ~~persistently engaging in threatening or intimidating conduct directed at another person, by means of information and communication technologies, which causes that the person fears for own safety or that the person fears for safety of dependants;~~

Paragraph b) The change from “persistently” to “repeatedly” is in line with the Istanbul Convention. Suggestion to limit the scope, otherwise googling a person repeatedly could be criminalised.

(b) repeatedly placing another person under ~~continuous~~ surveillance, without that person's consent or a legal authorisation to do so, by means of information and communication technologies, to track or monitor that person's movements and activities, when this is likely to violate that person's peace;

Paragraph c) Moved to Article 9 (c) since the acts are harassment rather than stalking.

~~(c) making material containing the personal data of another person, without that person's consent, accessible to a multitude of end-users, by means of information and communication technologies, for the purpose of inciting those end-users to cause physical or significant psychological harm to the person.~~

Article 9

Cyber harassment (Recitals 17–18, 21)

Member States shall ensure that the following intentional conduct is punishable as a criminal offence:

Paragraph a) The change from “persistently” to “repeatedly” is in line with the Istanbul Convention.

~~(a) persistently~~ repeatedly engaging in threatening ~~or intimidating~~ conduct directed at another person, at least when this conduct involves threats to commit criminal offences, by means of information and communication technologies, which is likely to causes ~~that~~ the person seriously fears for their own safety or ~~that the person fears for~~ safety of dependants;

Paragraph b) Change in line with Article 9 a.

~~(b) engaging in threatening or insulting conduct, initiating an attack with third parties directed at another person, by making threatening or insulting material accessible~~ visibly to a multitude of end-users, with other persons, by means of information and communication technologies, with the effect of causing significant psychological harm to the attacked person;

~~(c) making material containing the personal data of another person, without that person's consent, accessible to a multitude of end-users, by means of information and communication technologies, for the purpose of inciting those end-users to cause physical or significant psychological harm to the person.~~

~~(b) participating with third parties in attacks referred to in point (a).~~

Article 10

Cyber incitement to violence or hatred (Recitals 17–18, 22–23)

Article 10: We propose a new second section in order to align the Article to the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

1. Member States shall ensure that the intentional conduct of inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to ~~sex or~~ gender, by public dissemination to the public of material containing such incitement by means of information and communication technologies is punishable as a criminal offence.

2. For the purpose of paragraph 1, Member States may choose to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting.

Article 11

Incitement, aiding and abetting, and attempt

Article 11: A minor change.

1. Member States shall ensure that inciting and aiding and abetting the commission of any of the criminal offences referred to in Articles 5 to ~~9~~10 are punishable as criminal offences.

2. Member States shall ensure that an attempt to commit any of the criminal offences referred to in Articles 5 and 6 is punishable as a criminal offence.

Article 12

Penalties (Recital 15)

Article 12: A suggestion to align Section 4 with the PIF-Directive, since not all aggravating circumstances are relevant to all offences. We also suggest having the same sanctions for offences under Articles 7–10.

1. Member States shall ensure that the criminal offences referred to in Articles 5 to 11 are punishable by effective, proportionate and dissuasive criminal penalties.

2. Member States shall ensure that the criminal offence referred to in Article 5 is punishable by a maximum penalty of at least 8 years of imprisonment and at least 10 years of imprisonment if the offence was committed under aggravating circumstances referred to in Article 13.

3. Member States shall ensure that an offender of the criminal offence referred to in Article 5, who has previously been convicted of offences of the same nature, mandatorily participates in an intervention programme referred to in Article 38.

4. Member States shall ensure that the criminal offence referred to in Article 6 is punishable by a maximum penalty of at least 5 years of imprisonment ~~and at least 7 years of imprisonment in the most serious cases of Article 6 as defined in their national law if the offence was committed under aggravating circumstances referred to in Article 13.~~

5. Member States shall ensure that the criminal offences referred to in Articles ~~8~~ 7 and 10 are punishable by a maximum penalty of at least 1/2 years of imprisonment.

~~6. Member States shall ensure that the criminal offences referred to in Articles 7 and 9 are punishable by a maximum penalty of at least 1 year of imprisonment.~~

Article 13

Aggravating circumstances

Article 13: Member States are invited to indicate if they support one list of aggravating circumstances that covers all offences or if there should be a difference between on the one hand aggravating circumstances that are relevant to Articles 5 and 6 and on the other hand aggravating circumstances that are relevant to Articles 7–10. Only minor changes suggested at this stage.

In so far as the following circumstances do not already form part of the constituent elements of the criminal offences referred to in Articles 5 to 10, Member States shall ensure that they may be regarded as aggravating circumstances in relation to those offences, where relevant:

(a) the offence, or another criminal offence of violence against women or domestic violence, was committed repeatedly;

(b) the offence was committed against a person made vulnerable by particular circumstances, such as a situation of dependence or a state of physical, mental, intellectual or sensory disability, ~~or living in institutions~~;

- (c) the offence was committed against a child;
- (d) the offence was committed in the presence of a child;
- (e) the offence was committed by two or more persons acting together;
- (f) the offence was preceded or accompanied by extreme levels of violence;
- (g) the offence was committed with the use or threat of using a weapon;
- (h) the offence was committed with the use of force or threats to use force, or coercion;
- (j) the offender has previously been convicted of offences of the same nature;
- (i) the offence resulted in ~~the death or suicide of the victim~~ or severe physical or psychological harm for the victim;
- (k) the offence was committed against a former or current spouse or partner;
- (l) the offence was committed by a member of the family or person cohabiting with the victim;
- (m) the offence was committed by abusing a recognised position of trust, authority or influence;
- (n) the offence was filmed, photographed or recorded in another form and made accessible by the offender;
- (o) the offence was committed by causing the victim to take, use or be affected by drugs, alcohol or other intoxicating substances.

Article 14

Jurisdiction

Article 14: A couple of Member States had concerns regarding Section 4 and we suggest limiting that Section to Articles 5 and 6.

1. Member States shall take the necessary measures to establish their jurisdiction over the criminal offences referred to in Articles 5 to 11 where:

- (a) the offence is committed in whole or in part within their territory;
- (b) the offence is committed by one of their nationals.

2. A Member State shall inform the Commission where it decides to extend its jurisdiction to criminal offences referred to in Articles 5 to 11 which have been committed outside its territory in any of the following situations:

- (a) the offence is committed against one of its nationals or habitual residents in its territory;
- (b) the offender is a habitual resident in its territory.

3. Member States shall ensure that their jurisdiction established over the criminal offences referred to in Articles 7 to ~~10~~ 11 includes situations where the offence is committed by means of information and communication technology accessed from their territory, whether or not the provider of intermediary services is based on their territory.

4. In cases referred to in paragraph 1, point (b), each Member State shall ensure that its jurisdiction established over the criminal offences referred to in Articles 5 and 6 is not subject to the condition that the acts are punishable as criminal offences in the country where they were performed.

5. In cases referred to in paragraph 1, point (b), Member States shall ensure that the exercise of their jurisdiction is not subject to the condition that a prosecution can be initiated only following a report made by the victim in the place where the criminal offence was committed, or a denunciation from the State of the place where the criminal offence was committed.

Article 15

Limitation periods

Article 15: We put forward two options with the aim of limiting the scope of application to the most serious cases.

1. Member States shall take the necessary measures to provide for a limitation period that enables the investigation, prosecution, trial and judicial decision of concerning criminal offences referred to in Articles 5 to 11 for a sufficient period of time after the commission of those criminal offences.

2. Member States shall take the necessary measures to provide for a limitation period for criminal offences referred to in Article 5 of at least 10/20 years from the time when the offence was committed.

3. Member States shall take the necessary measures to provide for a limitation period for criminal offences referred to in Article 6 of at least 5/10 years from the time when the offence was committed.

~~4. Member States shall take the necessary measures to provide for a limitation period for criminal offences referred to in Articles 7 and 9 of at least 5 years after the criminal offence has ceased or the victim has become aware of it.~~

~~5. Member States shall take the necessary measures to provide for a limitation period for the criminal offences referred to in Articles 8 and 10, of at least 7 years after the criminal offence has ceased or the victim has become aware of it.~~

6. If the victim is a child, the limitation period for offences referred to in articles 5 and 6 shall commence at the earliest once the victim has reached 18 years of age.

or

1. Member States shall take the necessary measures to provide for a limitation period that enables the investigation, prosecution, trial and judicial decision of concerning criminal offences referred to in Articles 5 to 11 for a sufficient period of time after the commission of those criminal offences, in order for those criminal offences to be tackled effectively. The limitation period should be commensurate with the gravity of the offence concerned.

~~2. Member States shall take the necessary measures to provide for a limitation period for criminal offences referred to in Article 5 of at least 20 years from the time when the offence was committed.~~

~~3. Member States shall take the necessary measures to provide for a limitation period for criminal offences referred to in Article 6 of at least 10 years from the time when the offence was committed.~~

~~4. Member States shall take the necessary measures to provide for a limitation period for criminal offences referred to in Articles 7 and 9 of at least 5 years after the criminal offence has ceased or the victim has become aware of it.~~

~~5. Member States shall take the necessary measures to provide for a limitation period for the criminal offences referred to in Articles 8 and 10, of at least 7 years after the criminal offence has ceased or the victim has become aware of it.~~

6. If the victim is a child, the limitation period for offences referred to in articles 5 and 6 shall commence at the earliest once the victim has reached 18 years of age.