



Council of the European Union
General Secretariat

Brussels, 19 September 2023

Interinstitutional files:
2022/0066 (COD)

WK 11717/2023 INIT

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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

The aim of this Note is twofold:

- a) to report on the progress of the negotiations with the European Parliament (EP) on the VAW proposal, following the launch of the interinstitutional negotiations in July, and
- b) to consult delegations on a possible compromise text for Chapter 3 (Protection of victims and access to justice).

The Presidency takes the opportunity to thank delegations for their replies to the Presidency questionnaire of 27 July 2023.

After the first political trilogue, held in Strasbourg on 13 July 2023 and the first interinstitutional technical meeting, held in Brussels on 18 July 2023, the Presidency held productive and intensive informal meetings with the EP on 31 August, 5, 7 and 13 September 2023. During the informal meetings, the EP and Spanish Presidency teams discussed and negotiated every line in Chapter 3. In general, there was some convergence in the respective positions and the discussions have been held in a positive spirit,

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although the initial positions were very far apart. During the meetings, several lines could be 'greened', because the EP accepted the Council position.

With a view to preparing the next political trilogue on 3 October 2023, the Presidency would like to submit a series of questions to delegations. The relevant questions are set out in the Annex, together, where appropriate, with some explanation. In order to enhance readability, the points are taken following the "lines" in the 4 column table.

In all cases where Member States consider that a suggestion is not acceptable, they are kindly invited to briefly state the reasons thereof, so that the Presidency can use these in the negotiations with the EP.

The Presidency invites delegations to show flexibility, taking also into account the constructive attitude taken by the Parliament. This said, the Presidency understands that the text should remain balanced and of high quality, and that the Directive should fit in the national legal orders. The Presidency is also fully aware that on various points, the text of the general approach is already a huge step forward for Member States.

"Nothing is agreed until everything is agreed".

Questions and explanatory information for delegations in view of the JHA Counsellors meeting on 25 September

*All changes in the drafting proposals reflect changes compared to the GA.

Article 16

1) Article 16(1) (line 181)

In replies to Presidency questionnaire of 27 July 2023 delegations expressed flexibility to include the possibility to report crimes online as long as a subsequent "formalisation" of the report in person is required, through the usual channels, as established in national law. This was proposed by the Presidency as a compromise between the general approach (GA) and the Commission's and the EP proposal.

1. In addition to the rights of victims when making a complaint under Article 5 of Directive 2012/29/EU, Member States shall ensure that victims can report acts of violence against women or domestic violence to the competent authorities through accessible, easy-to-use, safe and readily available channels. This ~~may~~ includes the possibility of reporting such acts online or through other accessible and secure information and communication technologies, without prejudice to national procedural rules regarding formalisation of such online reporting. The possibility to report online or through other accessible and secure information and communication technologies shall include ~~shall include the possibility of reporting criminal offences online or through other information and communication technologies, including~~ the possibility to submit evidence through such means, in particular ~~concerning reporting of criminal offences where the reporting concerns acts~~ of cyber violence without prejudice to national procedural rules regarding the formalization of the submission of such evidence.

2) Article 16(1a) (line 181a)

The EP proposes to add a new paragraph for the provision of free legal aid and assistance for victims when reporting criminal offences and during judicial proceedings. The Presidency acknowledges the budgetary impact of adopting this measure indiscriminately, without taking into account the financial situation of the victims. In replies to Presidency questionnaire of 27 July 2023 delegations rejected this idea. In addition, the Victims' Rights Directive provides for access to legal aid, where victims have the status of parties to criminal proceedings (but not when they report criminal offences). Therefore, the Presidency proposes a compromise text that follows the text of the Victims' Rights Directive and allows for the possibility to extend legal aid to victims reporting criminal offences (which would not be compulsory).

1a. Member States shall ensure that victims have access to free legal aid and assistance, in a language they can understand, where they have the status of parties to criminal proceedings and according to the conditions or procedural rules determined by national law. Member States may extend legal aid to victims reporting criminal offences, when provided by national law

3) Article 16(1b) (line 181b)

The EP suggests to add a new paragraph that reads as follows: Member States shall ensure that the competent authorities take all the necessary measures to ensure that all evidence is secured from the earliest possible moment, including by appropriate technical means. The Presidency suggests moving the content of this paragraph to Article 17, adding a new paragraph 3bis.

4) Article 16(1c) (line 181c)

The EP suggests to add a new paragraph that reads as follows: *Member States shall ensure that victims are referred to a specialised contact person within the competent authority irrespective of whether a criminal complaint is filed.* The Presidency suggests moving the content of this Article to a Recital. For instance, it could be added to Recital 27.

Victims should be referred to a trained investigator, as provided for in this Directive, where possible, irrespective of whether a criminal complaint is filed.

5) Article 16(3a) (line 183a)

In exchange of accepting the GA with respect to paragraph 3, the EP stressed the importance of deleting the reference to clergy penitent privilege as proposed in paragraph 16(3a) of the GA. The Presidency suggests to accept this deletion.

3bis Member States shall ensure that, where the victim is a child, without prejudice to rules on legal professional privilege ~~or, where provided for under national law, clergy penitent privilege or equivalent principles,~~ professionals subject to confidentiality obligations under national law are able to report to the competent authorities if they have reasonable grounds to believe that serious physical harm has been inflicted on the child as a result of violence against women or domestic violence.

6) Article 16(4) (line 184)

The EP stressed the importance of ensuring that professionals trained to work with children assist in reporting procedures. The Council expressed concerns on the fact that, as it appears in the EP position, parental consent is generally exempted, even where there may be no justifiable reasons for doing so. The Presidency suggests to accommodate the concerns of the EP about children, and to narrow the exemption of parental consent to those cases where the holder of parental responsibility is involved in the act of violence.

4. Where children report acts of violence against women or domestic violence to the competent authorities, Member States shall ensure that the reporting procedures are safe, confidential, designed and accessible in a child-friendly manner and language, in accordance with their age and maturity. ~~If the offence involves the holder of parental responsibility,~~ Member States shall ensure that professionals trained to work with children assist in reporting procedures to ensure that they are in the best interests of the child. Member States should ensure that reporting is not conditional upon ~~this person's consent~~ consent of the holder of parental responsibility and that the competent authorities do not immediately inform the holder of parental responsibility of the reporting, if the latter is involved in the act of violence.

7) Article 16(5) (line 185)

The Presidency expressed the legal difficulties of including this paragraph related to delaying the transfer of victims' data to migration authorities in the proposal. However, the EP and the Commission insisted in keeping a reference. The Presidency suggests a new paragraph and recital, as a compromise, that can be accepted by the EP.

The new paragraph in the operative provision would ensure that also victims who are irregular migrants benefit from the specialised individual assessment and that such victims can then also benefit from protection and support measures, in order to protect their safety, irrespective of whether return procedures are carried out. In this regard, it may be noted that Article 1(1) of the Victims Rights Directive 2012/29 already provides that "The rights set out in this Directive [which include the general individual assessment and the general protection measures] shall apply to victims in a non-discriminatory manner, including with respect to their residence status."

Concerning the new recital, the objective here is to specify how the respective obligations of the Return Directive 2008/115 and the Victims Rights Directive 2012/29 are to be articulated, and notably that victims should be heard, irrespective of their residence status. This implicitly builds on principles following from Article 1(1) of the Victims Rights Directive 2012/29.

New paragraph:

5. Competent authorities shall carry out the individual assessments under Articles 18 and 19 of this Directive regardless of the victim's residence status. Any procedure under Directive 2008/115/CE shall not constitute a reason to delay such assessments.

New Recital 26bis:

It is important that Member States ensure that victims which are third-country nationals, irrespective of their residence status, are not discouraged from reporting and are treated in a non-discriminatory manner as regards their residence status in line with Article 1 of Directive 2012/29/EU. To protect all victims of violence against women and domestic violence from repeated violence, a victim-centred approach should prevail. In particular, it must be ensured that victims are not prevented from being heard pursuant to Article 10 of Directive 2012/29/EU and it is important that Member States ensure that proceedings under Directive 2008/115/EC do not prevent the full implementation of their obligations under Article 10 of Directive 2012/29/EU.

Q1: Member States are invited to indicate whether these changes in Article 16 and the relevant recitals are acceptable.

Article 17

1) Article 17(1) (line 187)

The EP accepts the GA, as long as it includes their suggestion to add the expertise must be “specialised”. The Presidency suggests to add this reference as a compromise.

1. Member States shall ensure that persons, units or services investigating and prosecuting violence against women or domestic violence have adequate and specialised expertise and effective investigative tools to effectively investigate and prosecute such acts, especially to gather, analyse and secure electronic evidence in cases of cyber violence.

2) Article 17(3) (line 189)

In its questionnaire of 27 July 2023 the Presidency asked delegations if they would accept a reference to the preservation of evidence in this paragraph, even when the investigation is no longer carried out, in line with the EP position. In their replies, delegations indicated that they would like the reference to the "relevant" nature of the evidence to be added, to leave the investigators and the judicial authority free to determine the elements likely to contribute to the investigation or to a future investigation, and to avoid unnecessary procedural burdens. In addition, delegations asked that to add time limitations. However, the EP insists in not including time limitations as they want to avoid that authorities discard records that may be useful in the event of relapse. The EP has suggested, as a compromise, to preserve the record concerning the evidence, which will normally take the form of documents or data.

3. Where ~~there is~~ the competent authorities have reasonable grounds to ~~suspect~~ believe that a criminal offence may have been committed, ~~the competent authorities~~ they shall, without undue delay, effectively investigate, upon a complaint or ex officio, acts of violence against women or domestic violence. They shall ensure that an official record is filed in all cases and that a relevant evidence record is preserved, whether or not the investigation proceeds.

3) Article 17(4) (line 190)

The EP agrees to accept the GA as long as there is a reference to inform the victim of the importance of the immediate collection of evidence. “Without undue delay” is replaced.

In order to assist in the voluntary securing of evidence, in particular in cases of sexual violence, the competent authorities shall ~~without undue delay,~~ inform victims of the importance of collecting such evidence without undue delay, and direct them to relevant health care professionals or to the support services referred to in Articles 27, 28 and 29, specialised in assisting in securing of evidence.

4) Article 17(5) (line 191)

The EP requests to add a reference to female genital mutilation and to emphasise that criminal proceedings should not be discontinued solely because the report is withdrawn, when there is other evidence available. The Presidency suggests to accept this compromise language, with the addition of a recital that refers to the discretion of the prosecuting authorities.

5. Member States shall ensure that investigations into or prosecution of acts of rape and female genital mutilation are not ~~shall not be~~ dependent on reporting or accusation by a victim or by their representative, and that criminal proceedings are not discontinued solely because ~~may continue even if~~ the report or accusation has been withdrawn.

New Recital 27a:

This is without prejudice to the discretion of the prosecuting authorities to discontinue criminal proceedings for other reasons, for example where they conclude that there is not sufficient evidence to continue criminal proceedings.

Q2: Member States are invited to indicate whether these changes in Article 17 and the relevant recitals are acceptable.

Article 18

1) Article 18(1) (line 193)

As explained in the Presidency Flash of 26 July 2023, the EP position emphasises that the individual assessment to identify victims' protection needs should be applied to all victims covered by the Directive. In their replies to the Presidency questionnaire of 27 July 2023, delegations indicated that they would not want to expand the Article to other victims beyond the GA, due to lack of sufficient resources. Moreover, delegations raised that the more general question of this assessment may be addressed in the context of the proposal for a directive amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime. Therefore, in negotiations with the EP, the Presidency insisted in keeping the GA. The EP seems to accept this approach, while it requests that the assessment is defined as "specialised individual assessment".

1. In addition to the requirements of the individual assessment under Article 22 of Directive 2012/29/EU, Member States shall ensure that, at least in respect of victims of sexual violence and domestic violence, the requirements ~~as~~ set out in this Article are fulfilled (the "specialised individual assessment").

2) Article 18(2) (line 194)

The EP accepts the GA, including to drop the verification by judicial authorities, in exchange of referring to “specialised individual assessment” for the sake of consistency with the previous paragraph; replacing “at the earliest possible stage after the first contact” by “upon the first contact”, to avoid giving the impression that the assessment does not start with the authority that first assist the victim; and adding that the assessment shall be concluded “without undue delay”. As part of the compromise, the EP proposes to amend Recital 28 and to add a new Recital 28bis, with a differentiated approach depending on the situation: in case of imminent risk for the victim, a shorter version of the specialised individual assessment should be carried out immediately, in order to allow for immediate protection measures. The authorities will then carry out the more thorough individual assessment when the circumstances permit. The Presidency believes that the compromise solution for this Article is reasonable and could be accepted by delegations.

This specialised individual assessment shall be initiated ~~at the earliest possible stage after~~ upon the first contact of the victim with the competent authorities, and shall be concluded without undue delay.

Changes to Recital 28, and New Recital 28a:

28) Victims of domestic violence, sexual violence and violence against women are typically in need of immediate protection ~~or~~ and specific support, for example in the case of intimate partner violence, where the rate of recidivism tends to be high. Therefore, ~~an~~ a specialised individual assessment to identify the victim's protection and specialist support needs should be ~~conducted upon the very~~ initiated without undue delay at the first contact of ~~competent authorities~~ the victim with the ~~victim~~ competent authorities, or as soon as suspicion arises that the person is a victim of violence against women or domestic violence. This can be done before a victim has formally reported an offence or proactively if a third party reports the offence.

(New Recital 28a) Where, upon the first contact of the victim with the competent authorities, there are indications of an imminent risk for the physical integrity of the victim or the safety of the victim's child dependents, the competent authorities should immediately carry out a shorter version of the specialised individual assessment for the purpose of quickly gaining an understanding of the victim's protection needs. At a subsequent stage of the procedure and without undue delay, the competent authorities should carry out the full specialised individual assessment / [complete the specialised individual assessment]."

3) Article 18(3) (line 195)

The EP is willing to accept the use of “which may include” from the GA (instead of “including” from the Commission proposal), as long as additional elements are included. The Presidency believes that, as long as “may” is maintained, Member States will have sufficient discretion to consider the elements added.

3. The specialised individual assessment shall focus on the risk emanating from the offender or suspect, which may include the risk of repeated violence, the degree of control exercised by the offender or suspect over the victim and its potential effect on the preservation of evidence, the risk of bodily or psychological harm, the possible use of and access to weapons, the offender or suspect living with the victim, an offender or suspect's drug or alcohol misuse, child abuse, mental health issues or behaviour of stalking.

4) Article 18(4) (line 196)

The EP insists in keeping the reference to “including” from the Commission’s proposal, instead of changing to “which may include” as in the GA. In their replies to the Presidency questionnaire of 27 July 2023, delegations insisted that the EP approach is too detailed and the individual assessment should remain as flexible as possible in order to help the competent authorities in going through the process and not bringing excessive administrative burden. The Presidency thus proposed to move the details suggested by the EP position to a recital. The EP would accept to remain less detailed, as long as “including” is kept. As a compromise, the Presidency asks delegations whether they could be flexible in this provision, taking into account the overall content of Article 18, and the flexibility shown by the EP in this and other paragraphs.

The reference to “gender” will be discussed as a horizontal issue, thus it remains, for the moment, between brackets.

4. The specialised individual assessment shall take into account the victim’s individual circumstances, ~~which may include~~ including whether they experience discrimination based on a combination of sex, [gender] and other grounds of discrimination, such as those referred to in Article 21 of the Charter and therefore face a heightened risk of violence, as well as the victim’s own account and assessment of the situation. It shall be conducted in the best interest of the victim, paying special attention to the need to avoid secondary or repeated victimisation

Addition to Recital 29:

Circumstances requiring special attention should include the fact that the victim is pregnant, the victim’s dependence on or relationship to the offender, the risk of the victim returning to the offender or suspect, recent separation from an offender or suspect, the possible risk that children and companion animals are used to exercise control over the victim and the risks for victims with disabilities.

5) Article 18(5) (line 197)

In their replies to the Presidency questionnaire of 27 July 2023, delegations clearly stated that arrest and detention are not, as such, protection measures, and should therefore not be mentioned in this provision. Besides, these measures could be considered as covered in point (c) “measures to manage the offender or suspect’s behaviour”. The Presidency has pointed out to the EP that including arrest and detention as a measure of protection could raise serious concerns as to the legal basis. The EP could accept to not refer to arrest and detention, as long as these are mentioned in a recital as measures that can be taken if needed and if the legal system of Member States allows for it. In discussions with the EP, it was raised that an addition would be needed in case there are measures already in place (orders in Article 21). In addition, the EP has requested a stronger language to replace “taking into account” by “with due regard”.

5. Member States shall ensure that the competent authorities take adequate protection measures, in case measures are not already in place, with due regard to ~~taking into account~~ the specialised individual assessment. Those measures may include:

- (a) measures under Articles 23 and 24 of Directive 2012/29/EU;
- (b) the granting of emergency barring and restraining or protection orders pursuant to Article 21 of this Directive;
- (c) further measures to manage the offender or suspect's behaviour, in particular under Article 38 of this Directive.

6) Article 18(6) (line 201)

The EP is willing to accept the flexibility of the GA and keep “when appropriate”, as long as other authorities are added to the list.

6. When appropriate, the specialised individual assessment shall be undertaken in collaboration with ~~all~~ **other** relevant competent authorities depending on the stage of the proceedings, and relevant support services, such as victim protection centres ~~and~~, women's and children's specialised services, shelters, social services, child protection or welfare services, ~~and~~ healthcare professionals, specialist support services and other relevant stakeholders.

7) Article 18(7) (line 202)

The positions of the EP and the GA are close and the Presidency suggests a compromise text that does not alter the intention of the GA.

7. Competent authorities shall review the specialised individual assessment at regular intervals and, where relevant, take new or update ongoing protection measures to ensure that they address ~~es to~~ the victim's current situation ~~and, where relevant, take new or update ongoing~~. This shall include an assessment of whether protection measures, in accordance with paragraph 5 ~~need to be adapted or taken~~.

Revised Recital 30, in fine:

The specialised individual assessment should be reviewed by competent authorities at regular intervals to ensure that no new or modified protection or support needs of the victim remain unaddressed. In particular, such review should take place at important junctures in the process, such as the commencement of a Court case, the handing down of a judgment or discussions as to the revision of custody arrangements or rights of access.

8) Article 18(8) (line 203)

The EP accepts the text of the GA, with minor changes.

The mention to dependants “Under the age of 18, and other dependants where provided by national law” is a horizontal issue and remains, for now, between brackets.

8. Victims’ dependants [under the age of 18, and other dependants where provided by national law], shall be presumed to have specific protection needs without undergoing ~~the~~ a specialised individual assessment ~~referred to in paragraphs 1 to 6~~, unless there are indications that these dependants do not have specific protection needs.

Q3: Member States are invited to indicate whether these changes in Article 18 and the relevant recitals are acceptable.

Article 19

1) Article 19(1) (line205)

The EP accepts the text of the GA, with minor changes. The mention to dependants “Under the age of 18, and other dependants where provided by national law” is a horizontal issue and remains, for now, between brackets.

1. Member States shall ensure that, taking into account the specialised individual assessment referred to in Article 18, the competent authorities assess the victim’s and their dependant’s, [under the age of 18, and other dependants where- provided by national law], individual needs for support under Chapter 4.

2) Article 19a (line205a)

The Presidency has pointed out to the EP that the contents of this line is already metioned in Article 27(1) or the GA. The EP agrees to delete this line.

3) Article 19(2) (line 206)

The positions of the EP and the GA are close. The Presidency is of the view that the addition of a reference to 18(6) can be accepted, as the latter applies only “when appropriate”.

2. Article 18(4), (6) and (7) applies mutatis mutandis to the individual assessment of victims’ support needs under paragraph 1 of this Article.

Q4: Member States are invited to indicate whether these changes in Article 19 and the relevant recitals are acceptable.

Article 20

1) Article 20(1) (line 208)

The EP suggests mentioning women's specialist support services and a reference to the safety of the victim. The Presidency suggests a compromise text that does not alter the intention of the GA.

1. If the assessments referred to in Articles 18 and 19 have identified specific support or protection needs or if the victim requests support, Member States shall ensure that support services, including women's specialist support services, in cooperation with the competent authorities, contact victims to offer support, with due regard to their safety. Member States may make the contact subject to the victim's consent.

2) Article 20(3) (line 210)

The EP agrees with the text of the GA. The mention to child witnesses remains between brackets, as it is a horizontal issue.

3) Article 20(4) (line 211)

Whereas the GA made the transmission of relevant data concerning the victim subject to the latter's consent, the EP insisted that this transmission should be automatic. The Presidency suggests, as a compromise, to accept that the transmission of data shall not depend of the victim's consent, but to narrow the data transmitted to the contact details and a description of the needs stemming from the situation.

4. Member States shall ensure that the competent authorities transmit contact details and a description of the needs stemming from the situation of ~~relevant personal data concerning~~ the victim ~~and their situation~~ to the relevant support services, where this is necessary to ensure that the victim receives appropriate support and protection. Such transmission shall be confidential. ~~Member States may make the transmission subject to the victim's consent.~~

Q5: Member States are invited to indicate whether these changes in Article 20 and the relevant recitals are acceptable.

Article 21

1) Article 21(1) (line 214)

The reference to dependants is kept in brackets provided that the reference to dependants and its definition is to be agreed at a subsequent stage as a horizontal issue.

The EP accepts the Council's proposal not to delete *immediate* danger. To accommodate the Council's concern to ensure judicial discretion to assess the risk and necessity of issuing such orders, which is reflected in the GA by the inclusion of the term *can*, a compromise is offered by including "are granted the power to", which also aligns the text with the Istanbul Convention (Article 52). The Presidency also considers accepting the issuing of these orders "without undue delay", what encompasses the objective behind their issuance and also for matters of consistency throughout the text.

Concerning the examples of the measures mentioned in this Article, the Presidency considers accepting "or coming closer than a prescribed distance from". The Presidency accepts, subject to further consideration by Member States, and thus reflected between brackets, the provision "such orders may be complementary to orders as set out in paragraphs 2 and 2 a".

1. Member States shall ensure that, in situations of immediate danger for the health or safety of the victims [or] their dependants [under the age of 18 and other dependants where provided by national law], the competent authorities are granted the power to issue orders without undue delay addressed at an offender or suspect of violence covered by this Directive to vacate the residence of the victim or their dependants for a sufficient period of time and to prohibit the offender or suspect from entering, or coming closer than a prescribed distance from, that residence or ~~the residence or to enter~~ the victim's workplace or from contacting the victim, their dependants or their ~~dependants~~ workplace in any way. Such orders shall have immediate effect and not be dependent on a victim reporting the criminal offence. Such orders may be complementary to orders as set out in paragraphs 2 and 2a.

2) Article 21(2) (line 215)

The EP accepts the Council's wording as for the time limit of the orders and to issue them for as long as necessary, since the order has to be adopted for the appropriate period of time.

The reference of dependants "under the age of 18 and where provided by national law" is kept between brackets, to be agreed at a subsequent stage as a horizontal issue.

The EP stresses that Istanbul Convention refers in this point to victims and persons at risk, which would be broader than GA wording. The Presidency suggests, as a compromise, to include a reference to the risk linked to dependants, to align the wording with the Istanbul Convention.

2. Member States shall ensure that the competent authorities can issue restraining or protection orders to provide protection for as long as necessary for victims or their dependants ~~f~~[under the age of 18 and other dependants where provided by national law] at risk against any acts of violence covered by this Directive.

3) Article 21(2a) (line 215a)

The EP wishes to include a new paragraph on the use of monitoring or other supervision measures. The Presidency stressed the need to find a text that does not oblige Member States to put in place electronic monitoring, offering as an alternative a compromise text that EP accepts, and which would be accompanied by a relevant Recital.

New Article 21(2a):

Member States shall ensure *that electronic monitoring, where available, or other supervision measures are used* to ensure the enforcement of the orders referred to in paragraphs 1 and 2 and to increase the victim's protection.

New Recital 35bis:

Where available, electronic monitoring should be used to ensure the enforcement of emergency barring, restraining and protection orders. Electronic monitoring makes it possible to ensure compliance with emergency barring, restraining and protection orders, to record evidence of breaches of such orders and to enhance the supervision of offenders. Victims should always be informed about the capabilities and limitations of electronic monitoring. Nothing in this Directive should be construed as obliging Member States to purchase electronic monitoring devices, but consideration should be given by Member States to its use.

4) Article 21(2 bis) (line 215 b)

The EP accepts the Council's wording.

5) Articles 21(2b) and 21(2c) (lines 215c and 215d)

The EP agrees to delete these two paragraphs, which mention arrest and detention as protection measures, after having heard the Member States' reasons, as expressed in their answers to the Presidency Flash. As a compromise, though, the EP suggests amending Recital 34, so that it mentions arrest and detention in relation to emergency barring, restraining and protection orders. Indeed, the EP feels that given the seriousness of the offenses in question, this will often be the most relevant measure, and not mentioning it would be difficult to understand politically.

New amendments to Recital 34:

Member States should ensure that emergency barring, restraining and protection orders may be issued in situations of immediate danger, such as where harm is imminent or has already materialised and is likely to be inflicted again. Emergency barring, restraining and protection orders are much less restrictive than other types of measures which separate the victim and the perpetrator, for example arrest and detention, and do not provide effective protection in cases of severe violence. Therefore, it is important that emergency barring, restraining and protection orders not be used as a substitute for arrest and detention where there is a risk of repeated and severe violence, including a lethal threat. They could be used, however, as a complementary measure to ensure that victims are protected once perpetrators are released.

6) Article 21(2d) (line 215e)

The EP stresses the importance of this paragraph to protect the victims by way of informing them of the release of the offender, in case the latter is subject to detention. The Presidency brings this proposal to the consideration of Member States.

2d. Where an offender or suspect of violence covered by this directive is subject to detention, the competent authorities shall ensure that the victim is informed when the person is released.

7) Article 21(3) (line 216)

The EP accepts the Council's wording in line 216. As a compromise, the EP proposes changes in the relevant Recital.

New amendments to Recital 34 (Member States are reminded that an amendment to this Recital is also suggested in relation to Article 21 (21(2) b and 21(2) c):

(34) Member States should ensure that emergency barring, restraining and protection orders may be issued in situations of immediate danger, such as where harm is imminent or has already materialised and is likely to be inflicted again. *Member States should ensure that, in such relevant situations, the competent authorities inform victims of the possibility to apply for emergency barring orders.*

8) Article 21(4) (line 217)

The EP proposes an addition to the Council's wording. The Presidency brings this addition to the consideration of Member States.

4. Any breaches of emergency barring or restraining and protection orders shall be subject to effective, proportionate and dissuasive criminal or other legal penalties. *Member States shall ensure that the competent authorities inform the victims of any breach of such orders. Member States shall ensure that, where such a breach occurs, a revision of the individual assessment, as defined in Article 18 (7) takes place.*

9) Article 21(4a) (line 217a)

The EP proposes a new paragraph that aims to ensure that perpetrators subject to restraining or protection orders are informed of specialised programmes. The EP agrees to delete this paragraph from the operative part, but, as compromise, requests that new text is added to Recital 62.

New addition to Recital 62:

62) Intervention programmes should be set up to prevent and minimise the risk of (repeated) offences of violence against women or domestic violence. The programmes should specifically aim at teaching offenders or those at risk of offending how to adopt non-violent behaviour in interpersonal relationships and how to counter violent behavioural patterns. Programmes should encourage offenders to take responsibility for their actions and examine their attitudes and beliefs towards women. Information as regards intervention programmes should be given to an offender or suspect of violence covered by this Directive should they be subject to a barring, restraining or protection order.

Q6: Member States are invited to indicate whether these changes in Article 21 and the relevant recitals are acceptable.

Article 22

1) Article 22 Protection of victim's private life (lines 219 and 220)

The EP stresses the importance of this provision to avoid victim blaming. The Presidency explains that the changes in the wording of this provision were introduced to align it with Article 54 of the Istanbul Convention, which explicitly permits such evidence only when it is relevant and necessary. The EP accepts the wording of the GA, but as a compromise, the relevant Recital is reinforced, using as a basis the language of the explanatory report of the Istanbul Convention.

New amendments to Recital 37:

(37) Presenting evidence of past sexual behaviour, the sexual preferences of the victim and the attire or outfit of the victim to challenge the credibility and lack of consent of victims in sexual violence cases, especially rape cases, may reinforce the perpetuation of damaging stereotypes of victims and lead to repeat or secondary victimisation. Therefore, Member States should ensure that evidence concerning the past sexual conduct of the victim or other aspects of their private life connected thereto, is only admissible where the judge determines that it is relevant to a specific issue at trial and of significant probative value ~~should be permitted only when it is relevant and necessary.~~

Q7: Member States are invited to indicate whether these changes in Recital 37 are acceptable.

Article 23

1) Article 23 (Title) (line 221)

Changes to the title are introduced to reflect the personal scope of the guidelines.

Guidelines for law enforcement and prosecutorial authorities

2) Article 23, first paragraph (line 222)

The EP stresses the importance of issuing guidelines for judicial and other authorities. This issuing should be, in their view, compulsory. The Presidency points out that judicial authorities are independent and cannot be subject to guidelines. As for other authorities, Member States should be able to decide when to issue guidelines, and their content. As a compromise, the issuing of guidelines is kept as compulsory (*shall*), but Member States are granted flexibility to decide their content (*may include guidance on*). The term “non-binding” is replaced by “advisory in nature”. The deletion of judicial authorities is kept, at the request of the Presidency, and a reference to “gender sensitive” is introduced, at the request of the EP.

"Member States shall ~~may~~ ensure that ~~non-binding~~ guidelines ~~for the competent authorities acting in criminal proceedings~~ concerning cases of violence against women or domestic violence are issued for the competent authorities acting in criminal proceedings, including prosecutorial guidelines ~~concerning cases of violence against women or domestic violence~~. Those guidelines shall be gender sensitive and advisory in nature and may include guidance on:"

3) Article 23, first paragraph, points (a) to (h) (lines 223 to 229a)

The EP suggests amendments to lines 223 to 229a. The Presidency advises to accept those amendments, given the complete flexibility granted to Member States to decide if they issue guidelines on these subjects.

The term *gender* in paragraph (e) is kept between brackets, as it concerns a horizontal issue.

(a) *how to ensure the proper identification of all forms of such violence*

(a bis) how to the gather and preserve relevant evidence, including online evidence;

(b) how to conduct the specialised individual assessment under Articles 18 and 19 and individual assessment of victims' support needs, including how frequently such assessments are to be updated~~under Articles 18 and 19;~~

(ba) how to handle cases which may require the issuance and/or the implementation of emergency barring, restraining or protection orders, including those with immediate effect;

(c) how to treat victims in a trauma-, gender-, disability and child-sensitive manner and how to ensure the child's right to be heard and the best interests of the child;

- (d) how to ensure that victims are treated in a respectful way and that the proceedings are conducted in such a manner as to prevent secondary or repeat victimisation;
- (e) how to cater to the enhanced protection, medical and support needs of victims experiencing discrimination based on a combination of sex, gender and other grounds as referred to in Article 35 (1);
- (f) how to identify and avoid gender stereotypes; and raise awareness on all victim groups in the context of domestic violence;
- (g) how to refer victims to specialist support services, including medical services, to ensure the appropriate treatment of victims and handling of cases of violence against women or domestic violence without undue delay;
- (h) how to ensure the protection of the victim's privacy and confidential information.

4) Article 23, paragraph 1, subparagraph 1 a (new) (line 229b)

The EP proposes to add a new subparagraph on the need to review the guidelines referred to in this Article. The Presidency indicated the need for flexibility. As a compromise, the last part of the Article is moved to a Recital, and the new paragraph is submitted to the consideration of Member States.

Article 23, subparagraph 1 a new: The guidelines referred to in the first paragraph shall be reviewed and updated at regular intervals, having regard to the way that they apply in practice

New Recital 30bis:

The guidelines for prosecutorial authorities can be understood as both a procedural handbook and a reference for best practice. Particularly in relation to how to approach victims and how to treat them according to their unique circumstance and experience, women's specialist services can offer expert advice and guidance based on their daily interactions with victims. As such, any such guidelines should be created and revised in consultation and cooperation with women's specialist services.

Q8: Member States are invited to indicate whether these changes in Article 23 and the relevant recitals are acceptable.

Article 24

The EP has a strong position regarding the mention of civil society organisations in paragraph 1 of this Article. The Presidency is not convinced of its suitability, but brings it to the consideration of the delegations. As a compensation, the EP accepts to eliminate the reference to “other specialised relevant actors”, included in their proposal. The EP also agrees to delete subparagraph (a) (line 232) and paragraph 2 of this Article (line 236).

Concerning subparagraph (b), the EP wishes to keep the original word, “independent”. As a compromise, they suggest a new wording that avoids this word, that was deleted from the GA, changing it for “impartial and evidence-based”. The EP also suggests an addition to subparagraph (c).

The Presidency brings all this proposed amendments to the consideration of Member States.

1. Member States shall designate and make the necessary arrangement for a body or bodies to carry out the following tasks, in consultation with civil society organisations:

a)

b) publish impartial and evidence-based reports and make recommendations on any issue relating to violence against women and domestic violence, including gathering existing best practice;

c) support the collection of data and research carried out pursuant to Article 44, exchange available information with corresponding European bodies such as the European Institute for Gender Equality.

Those bodies may form part of equality bodies set up pursuant to Directives 2004/113/EC, 2006/54/EC and 2010/41/EU.

Q9: Member States are invited to indicate whether these changes in Article 24 are acceptable.

Article 25

1) Article 25(1) (line 238)

The EP can accept the wording of the GA for all paragraphs of Article 25 (subject to further internal consideration), which is a significant departure from their mandate, but requests that an express reference is made to the possibility to adopt interim measures. The Presidency suggests adding a reference to this kind of measures in paragraph 1. Reference to cybercrimes is kept between brackets, as these Articles have not yet been discussed.

1. Without prejudice to Regulations (EU) 2022/2065, Member States shall take the necessary measures to ensure the prompt removal of– or disabling access to online publicly accessible material referred to in [Article 7, point 1 (a) and (b), and Articles 9 and 10]. Those measures shall include the possibility for their competent authorities to issue binding legal orders including interim measures to remove or disable access to such material. Member States shall ensure that the orders meet, at least, the conditions set out in Article 9 (2) of Regulation (EU) 2022/2065.

Q10: Member States are invited to indicate whether these changes in Article 25 are acceptable.

Article 26

The original positions of the EP and the Council were very different regarding this Article. The Presidency explained the Member States' concerns. The EP offers a new wording that tries to accommodate both their concerns and the Council's. The Presidency brings this new drafting, which represents a significant softening of the EP's initial position, to the consideration of the delegations. Recital 44 is also amended.

Article 26 Compensation from offenders

1. Member States shall ensure that victims have the right to claim full compensation from offenders for damages resulting from offences of violence against women or domestic violence, in accordance with national law.

Ibis. Member States shall ensure that where offenders do not abide by the decision to pay compensation to the victim within the agreed timeframe, the victims have access to existing schemes of compensation

2. Member States shall ensure, where appropriate, that victims are able to obtain a decision on compensation in the course of criminal proceedings.

3. Compensation shall at least take due account of any healthcare needs that have arisen as a result of the offence or to manage its consequences, to the extent that the damage is not covered by other sources such as insurance or State-funded health and social provisions. Member States shall be encouraged to ensure that the full redress is available to the victim, placing them in the situation they were had the offence not taken place, including loss of income, physical or psychological harm, including secondary victimisation, and moral prejudice.

4. The limitation period for claiming compensation shall not expire while investigations or criminal proceedings are ongoing.

5. If the victim is a child, the limitation period shall not commence before the victim has reached 18 years of age.

New wording for Recital 44:

(44) Victims should have the right to claim full compensation for damages in accordance with national law. While this Directive does not require Member States to change their national law on compensation, the right to compensation is, nevertheless, inviolable. In order to avoid secondary victimisation, it is important that victims ~~should~~ be able, as a general rule, to seek and obtain compensation in the course of criminal proceedings. However, where that would have a significant detrimental effect on the criminal proceedings, for example by significantly delaying them or by negatively affecting the victim, it should be possible to deal with the issue of compensation outside of the criminal proceedings. Compensation from the offender should be full and should not be restricted by a fixed upper limit. It should cover all harm and trauma experienced by victims and costs incurred to manage the damages, including, among other things, costs for healthcare services, including [sexual and reproductive and] psychological health services, rehabilitation, therapy costs, impact on the victim's employment situation, loss of earnings, psychological damages, and moral prejudice due to the violation of dignity. The amount of compensation should reflect that victims of violence against women and domestic violence may have to uproot their lives in order to seek safety, entailing a possible change of residence or employment or finding new schools for children or even creating a new identity. Compensation should be made available to victims as soon as possible.

Q11: Member States are invited to indicate whether these changes in Article 26 and Recital 44 are acceptable.