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NOTE

From:	Presidency
To:	Delegations
Subject:	Proposal on a directive combating violence against women and domestic violence - Information Note from the Presidency on the outcome of the trilogue held on 6 February, on its follow-up and on next steps

Delegations will find attached the above-mentioned Information Note.

Proposal on a directive combating violence against women and domestic violence

Information Note from the Presidency on the outcome of the trilogue held on 6 February, on its follow-up and on next steps

1. Successful outcome of fifth and final trilogue on the proposal for a directive combating violence against women and domestic violence

This trilogue enabled to reach an agreement on this complex and sensitive new legislative instrument, for which negotiations started under the Spanish Presidency in July 2023. Although there was a common will to close this file before the end of the legislative term, a deal could not be given for granted, as the EP has continued to reopen before the trilogue, until the last minute, issues that were not part of the trilogue agenda. The trilogue was held in a positive and constructive spirit, with a very large audience. Already the opening statements of the Chairs of the FEMM and LIBE Committees, Mr Biedrón and Mr. Lopez Aguilar, showed the willingness of the EP to reach an agreement and set a positive climate. While strongly regretting the fact that it has proven not possible to include rape in the scope of the directive (this was restated several times, at the beginning and at the end, in particular by the co-rapporteurs Francis Fitzgerald and Ervin Incir, but also by the representatives of the Commission Vice-President Jourova and Commissioner Dalli), the importance of adopting this legislative instrument in the field of gender based violence was underlined by the European Parliament. On its side, the Presidency, represented by Ambassador Willem van de Voorde, recalled the importance of adopting a directive which will significantly reinforce the rights of all victims of gender-based violence and will introduce a set of new crimes (Feminine Genital Mutilation, Forced Marriage and the “computer crimes”) and the need of not losing the momentum.

At the end of the trilogue, both sides marked their agreement and stressed that the adoption of this directive is really a historical moment (“long awaited”, the EP said) for the EU institutions and for the European societies. While expressing satisfaction for this important outcome, the EP and the Commission underlined that the directive will be a solid basis on which it will be important to build to ensure a comprehensive coverage, in the future, of the full spectrum of gender based violence offences. Finally, both sides gave mandate to the technical teams to finalise the text of the proposal.

2. Specific Subjects addressed at the trilogue

The co-legislators validated the work done at technical level and reflected in the 4 Column Table.

There have been negotiations and some break outs on the four subjects included in the agenda:

- a) the inclusion of a provision aimed at preventing the crime of rape (Article 36a, line 309a)
- b) the reinforcement of the review clause (Article 47, line 363 and 364);
- c) the requirement (threshold) of a “serious harm” for the cybercrimes [Article 7, paragraph 1, point a), line 121; Article 8, paragraph 1, point b), line 127; Article 9, paragraph 1, point a), line 132; recital 18, line 27], as well as the related question of a clause on public order (recital 18, line 27)
- d) the timely access to healthcare services for victims (Article 28, paragraph 1a, line 270a)

On all four items it was possible to reach a suitable compromise in line with the Council position.

More in detail

- a) The following compromise was reached on Article 36a:

Article 36a

Specific prevention measures of rape and the promotion of the central role of consent in sexual relationships

- 1. Member States shall take appropriate measures to promote changes in behavioural patterns rooted in the historically unequal power relations between women and men or on stereotyped roles for women and men, in particular in the context of sexual relationships, sex and consent.***

Such measures shall be based on the principles of gender equality, non-discrimination and fundamental rights and shall address, in particular, the central role of consent in sexual relationships, which must be given voluntarily as a result of the person's free will.

The measures shall include awareness raising campaigns or programmes, the making available and distribution of consent education material and the wide dissemination of information on measures of rape prevention. They shall be promoted or conducted on a regular basis, including, where appropriate, in cooperation with civil society and non-governmental organisations, especially women's organisations.

2. *Awareness raising campaigns or programmes shall aim, in particular, to increase knowledge of the fact that non-consensual sex is considered a criminal offence.*
3. *Consent education material shall promote the understanding that consent must be given voluntarily as a result of a person's free will, mutual respect, right to sexual integrity and bodily autonomy. The material shall be adapted to the evolving capacity of to whom it is addressed.*
4. *Information shall be widely disseminated with a view to informing the general public about existing measures of rape prevention, including the availability of intervention programmes referred to in Article 38.*

b) The following compromise was reached on Article 47:

1. By *five* years after the *end of the transposition period for* this Directive at the latest, Member States shall communicate to the Commission all relevant information concerning the *functioning* of this Directive necessary for the Commission to draw up a report on the *evaluation* of this Directive.
2. On the basis of the information provided by Member States pursuant to paragraph 1, the Commission shall *carry out an evaluation of the impact of this Directive and of whether the objective of preventing and combating violence against women and domestic violence across the Union has been achieved and* submit to the European Parliament and the Council a report. *The report shall in particular assess, whether an extension of the scope of the Directive and the introduction of new offences is necessary. The report shall be accompanied by a legislative proposal, if necessary.*
3. *By 5 years after the end of the transposition period at the latest, the Commission will assess whether further measures at EU level are necessary to effectively tackle sexual harassment and violence in the workplace taking into account applicable international Conventions, the EU's legal framework in the area of equal treatment of men and women in matters of employment and occupation and the legal framework on occupational safety and health.*

c) The following compromise was reached:

- 1) the notion of "serious harm" is maintained in the relevant provisions;
- 2) in relation to "serious harm", on top of including the word "clear" (clear risk) in the first sentence, the following sentence is added in recital 18:

The Directive establishes a minimum legal framework in this regard, and Member States are free to adopt or maintain more stringent criminal rules.

The full recital 18 therefore reads as follows:

The use of information and communication technologies bears the risk of easy, fast and wide-spread amplification of certain forms of cyber violence with the **clear risk** of creating or enhancing profound and long-lasting harm for the victim. The potential for such amplification, which is a pre-requisite for the perpetration of several offences of cyber violence defined under this Directive, should be reflected by the element of making certain material accessible, through information and communication technologies, to 'the public'. *The terms 'accessible to the public' and 'publicly accessible' should be understood as referring to potentially reaching a number of persons. These terms should be interpreted and applied having regard to the relevant circumstances, including the technologies used to make that material accessible. Moreover, in order to only set minimum rules for the most serious forms of cyber violence, the relevant incriminations limited to conduct which is likely to cause serious harm or serious psychological harm to the victim, or to conduct which is likely to cause the victim to seriously fear for their own safety or that of their dependants. In each case, when assessing whether the conduct is likely to cause serious harm, and without prejudice to judicial independence, the specific circumstances of the case should be taken into account. The likelihood to cause serious harm can be inferred from objective, factual circumstances. This Directive establishes a minimum legal framework in this regard, and Member States are free to adopt or maintain more stringent criminal rules.*

- 3) in order to address the question of public order, a new recital (23a) will be introduced:

(23a) In order to ensure a fair balance between freedom of expression and the prosecution of the offence of incitement to violence or hatred, Member States should be able to choose to punish only conducts, which are carried out in a manner likely to disturb public order or which are threatening, abusive or insulting. The application of these conditions, where required by national law, should not lead to undermining the effectiveness of the provision.

Moreover, the EP asked for the inclusion of the following sentence, but the Presidency did not accept this addition: “*It is important that the notion of public order is interpreted taking into account the specific features of the digital world*”. Therefore, no further additions were made to recital 23a were made.

- d) The following compromise was reached on Article 28, paragraph 1 a:

Member States shall provide for victims of sexual violence to have timely access to healthcare services, including sexual and reproductive healthcare services, in accordance with national law.

3. Technical finalisation of the proposal, following the trilogue - Consultation of Member States on one specific issue

As it frequently happens in the context of this exercise, despite its technical nature, there have been attempts to reopen or enlarge provisions and recitals which were already agreed. The Presidency, while open to consider technical adjustments - such as relevant additions in recitals (due to the lack of time in considering them), in particular with the objective of ensuring appropriate alignment with the operative part - has always restated that it was not possible to re-open issues already agreed or not expressly addressed at the final trilogue.

There have been repeated requests to address the following issue, in relation to which the Presidency has expressed its readiness to consider it, while clarifying that the agreement of Member States would be required to make the relevant additions.

A reference to the crime of forced marriage, as set out in in Article 6c, had not been added to Article 15(6) (line 178), which foresees in a limitation period commencing at the earliest once the victim has reached 18 years of age. The obligations under Article 58 of the Istanbul Convention on statute of limitation is actually more nuanced. In response to the request of the European Commission to ensure coherence with the Istanbul Convention, a new element in recital 15a in line 15 could be introduced in this regard:

Member States should take the necessary measures to provide for a limitation period that enables the investigation, prosecution, trial and judicial decision of forced marriage. Given that the victims of forced marriage are often minors, the limitation periods should continue for a period of time that is sufficient and commensurate with the gravity of the offence in question, to allow for the efficient initiation of proceedings after the victim has reached the age of majority.

Delegations are invited to express their views by Friday 9 February 2024 COB at the latest. Should delegations not support the inclusion of these clause, the Presidency will oppose any change to the agreed text.

4. Next steps

The Presidency considers that we should not lose the momentum and we should rapidly proceed towards the adoption of the directive. For this reason, the text of the proposal will be submitted to Coreper at its meeting on 14 February 2024 as 'I' item, to confirm the provisional agreement reached with the EP. Provisional agreement is also expected to be confirmed on the following day by the FEMM and LIBE committees.

The Presidency is aware of the tight calendar and would have preferred, if feasible, to grant more time to delegations for consideration. However, in order to engage the legal-linguistic revision of the proposal and to have it adopted before the end of the legislative term, the Coreper meeting on 14 February is the latest possible cut-off date. Delaying the confirmation of the provisional agreement would concretely risk to jeopardise the process leading to the adoption of the directive.

Technical work is ongoing on the text of the proposal, which will be released, along with the I Note, on Monday 12 February 2024.

The Presidency thanks delegations for their understanding and for their active support and contribution in this file, which is finally coming to an end.