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**LIMITE**

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**NOTE**

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From: General Secretariat of the Council  
To: Delegations

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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 13-14 February 2023

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Delegations will find attached the above mentioned comments, which concern Articles 16-35 and relevant recitals.

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**Comments of the Republic of Austria on the revised Articles 16-35 of the proposal on combating violence against women and domestic violence**

1. Following the COPEN meeting on 13 and 14 February 2023 (proposal on combating violence against women and domestic violence), the Republic of Austria would like to thank the Swedish Council Presidency for providing the opportunity to submit another position statement subsequent to the meeting. With regard to the Articles already addressed in the previous COPEN meeting we would like to take the opportunity to provide the following written **comments on the revised Articles 16-35 of the proposal**:
2. Insofar as the phrase "ensure that an official complaint/record is filed in all cases" in **Article 17 para. 3** - as stated by the EC - is merely intended to ensure that an obligation to investigate applies in the case of corresponding reports and that the report is formally recorded by the competent authorities, it should be noted that this is already the case in Austrian criminal proceedings due to the **ex officio principle**. For the sake of **clarification**, we therefore ask to include this official procedure in the text and **propose the following amendment to Article 17 para. 3**:

*„The competent authorities shall promptly and effectively investigate allegations of acts of violence against women or domestic violence and ensure that an official record is filed in all cases **or investigation proceedings are conducted ex officio.**“*

3. **Art. 20 para. 4:**

In Art. 20 para. 4, it should be clarified which personal data or categories of data can be transferred to support services, the wording "relevant data concerning the victim and their situation" is not sufficient, as it allows for a potentially very comprehensive transmission of data. The same applies to the Commission's proposal in the last Council working group meeting to change the wording to "such information as is relevant for the assessment of the victim's need for assistance".

Since it seems unclear, which data are ultimately covered by these wordings, in the interest of greatest possible transparency under data protection law and due to the principle of data minimisation pursuant to Art. 5(1)(c) of Regulation 2016/679, which states that personal data must be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed", it should be specified which personal data or at least which categories of personal data can be transferred.

Further, paragraph 4 raises the question of who should transmit the personal data to the relevant support services. The wording in Recital 32 suggests that the data should be transmitted by the competent authorities. Therefore, the wording of Art. 20 para. 4 should be clarified accordingly in order to comply with the principle of transparency pursuant to Art. 5(1)(a) of Regulation 2016/679.

4. **Article 24 – Role of national bodies and equality bodies** (wk 1629/2023 INIT):

Violence against women has different requirements than harassment under civil law. Protection institutions for victims of violence are therefore better adjusted to be considered as bodies pursuant to Art. 24 of the Directive. **The sentence „Those bodies may form part of equality bodies set up pursuant to Directives 2004/113/EC, 2006/54/EC and 2010/41/EU“ in Article 24 para 1 could therefore be deleted.**

**For the sake of a compromise, the wording can be supported, as long as it remains a "MAY" provision.** MS should be allowed to decide autonomously which body it entrusts with these tasks. It should therefore also be possible to designate bodies that are not equality bodies within the meaning of the Proposal for a Directive on standards for equality bodies in the field of equal treatment and equal opportunities.

Like already mentioned orally in the last meeting, Austria also supports the complete deletion of Article 24 para. 1 lit. a and para. 2 as proposed by the Presidency.

5. The **objections to Article 25 para. 5 (and para. 7) are maintained:**

It has already been pointed out how problematic it is that Art. 25 para. 5 provides for all „end-users“ to be informed about the removal of unlawful material, now the revised version even provides for a legal remedy for „all parties affected“ in a new Art. 25 para. 7. According to Art. 25 para. 5 all „end-users“ (e.g. all user on Facebook?) have to be informed of the reasons for the removal (or blocking of access) of unlawful content (e.g. rape video) which leads to a further exposure of the victims with potentially serious consequences.

It is clear from the current wording of Art. 25 as well as recital 41 that both wordings "end-users" in para. 5 and "all parties affected of an order" (all parties affected by a removal order or access blocking) in para. 7 mean not only those users who have published the unlawful material and who will in many cases be the respondents in removal order proceedings or defendants in criminal proceedings anyway, but in fact all persons who use these internet services.

It is not compatible with the purpose of the Directive to prevent violence against women to provide any internet user (to protect voyeuristic interests?) with a legal remedy against a judicial removal order. In addition to further damage to the victims, the incalculable burden on the courts called upon by the end-users must also be pointed out.

In contrast, **Article 9 TCO** (Regulation [EU] 2021/784 on combating terrorist content online) provides that hosting service providers (para. 1) and content providers (para. 2) affected by a removal order have the right to an effective remedy, including the right to challenge the removal order before the courts. It does not provide for a legal remedy for all internet users who wish to enforce "their right" to consume terrorist content in court, nor does it inform all end-users of the removal and the reasons for it (see Art. 11 TCO on informing content providers).

It is pointed out that the CSAM Regulation is still being negotiated; the TCO Regulation, which has already entered into force, should therefore be taken as model for the present proposal.

**The following wording is proposed:**

(41) Any such measures to remove or disable access, including in particular such orders, are liable to affect the right and interests of other parties than the victims, such as the persons providing the material, the intermediary service providers whose services may be used and the end-users of those services, as well the general interest. Therefore, it should be ensured that those orders and other measures can only be taken in a transparent manner and that adequate safeguards are provided for, so as to ensure that they remain limited to what is necessary and proportionate, legal certainty is ensured, **all-affected parties hosting service providers and content providers** can exercise their right to effective judicial redress in accordance with national law, and a fair balance is struck between all rights and interests involved, including the fundamental rights of all parties concerned in compliance with the Charter. A careful weighting of all rights and interests at stake on a case-by-case basis is particularly important in proceedings for interim measures. Those orders should, as a general rule, be addressed to the specific provider of intermediary services that is best placed to act, in particular so as to limit any possible negative effects for freedom of expression and information.

**Article 25 Measures to remove certain online material**

[...]

5. Member States shall ensure that the **end-users of the relevant services- persons providing the material** are informed, where appropriate by the intermediary service providers concerned, of the reasons for the removal of or disabling access to the material pursuant to the orders or other measures referred to in paragraphs 1 and 2 and that those **end-users persons** have and of the possibility to have access to judicial redress.

[...]

7. Member States shall ensure that **all parties- hosting service providers and content providers** affected of an order referred to in paragraph 1 have a right to an effective judicial remedy. That right shall include the right to challenge such a removal order before the courts of the Member State of the competent authority that issued the removal order. [Member States shall put in place effective procedures for exercising the rights referred to in this paragraph.]

## BELGIUM

### PROPOSAL FOR A DIRECTIVE ON COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE

#### Additional comments of Belgium

#### Presidency for a redraft of Articles 1-15 (WK17827) following the COPEN meeting on 13-14 February 2023

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Belgium thanks the Presidency for the tremendous and remarkable work behind the proposed amendments which Belgium generally supports.

#### **Chapter 3 – Protection of victims and access to justice**

Belgium has no objection to the replacement of "criminal offences" by "act of violence".

#### **Article 16 – Reporting of violence against women or domestic violence**

Belgium can accept paragraphs 1 to 4. We have a scrutiny reservation on paragraph 5.

#### **Article 17 – Investigation and prosecution**

Belgium can accept paragraphs 1, 2, 4 and 5.

However, as regards paragraph 3, Belgium still needs a sentencing that would ensure the respect of the principle of opportunity encoded in our law. Opportunity to prosecute is a principle of our criminal procedure according to which the public prosecutor decides whether or not to prosecute a person suspected of having committed an offence. It can thus decide to close the case. We are currently working on a proposition and will send it as soon as possible.

Regarding paragraph 4, Belgium would like to support the oral comments made during the previous meeting : victims should be referred to support services whether or not they file a complaint.

#### **Article 18 – Individual assessment to identify victims' protection needs**

Belgium can accept all the proposed changes.

However, with regard to paragraph 8, Belgium is in favour of the extension to dependants but it introduces a certain automatism. The sentencing appears to suggest to take measures without individual assessment of the dependants' needs. It seems odd not to take into account the specific needs of children and other dependants before taking protection measures, even if the assessment is lighter and less restrictive than for direct victims.

#### **Article 19 – Individual assessment of victims' support needs**

Belgium can accept this addition from the presidency without any comment.

#### **Article 20 – Referral to support services**

Belgium can accept all the proposed changes in paragraphs 1, 2 and 5 since it corresponds to our previous comments.

Regarding §3, Belgium insists on keeping the mention of children who witness violence, who can also present serious traumas. It is not a new fact that growing up in a violent environment can produce violent individuals. Giving appropriate support to children who witness violence can prevent future violent individuals.

Regarding parental consent, we are flexible but we would like to keep the level of ambition of the original text because even though it is not written as such in our legal texts, our national practice is to refer to support services without parental consent.

With regard to paragraph 4, Belgium questions the fact that the consent of the victim is apparently not required for the confidential transfer of relevant personal data of the victim to support organisations. Shouldn't this be aligned with the previous paragraphs?

### **Article 21 – Emergency barring, restraining and protection orders**

We can accept the proposed amendments.

We wish to keep the inclusion of dependants in the urgent measures, as long as the competent authorities keep a sufficient leeway on the assessment of the appropriateness of applying such measures.

As we defend in the meeting, Belgium would also like to keep the level of ambition of paragraph 2 and to specify the measures with this last sentence.

We do not support the addition of the terms ‘where relevant’ in paragraph 3 since we feel the victims should be completely informed.

### **Article 22 – Protection of victim’s private life**

These changes in both Article 22 and Recital 37 are welcome and fully in line with our previous comments.

### **Article 23 – Guidelines for law enforcement and judicial authorities**

The proposed changes sufficiently underline the non-mandatory nature of these guidelines and we can accept the proposed changes. Belgium prefers the wording "may issue" rather than "shall consider issuing". Furthermore, if the text mentions “may issue” in the first sentence, it might be more adequate to word the last sentence as followed : “Those guidelines should include guidance on:”

Belgium suggests that the advice in Article 23 are taken into account in the training of judges which is provided for in Article 37.

Article 23 (f) only refers to the occurrence of gender stereotypes, this principle can be extended to stereotypes based on sexual orientation.

### **Article 24 – Role of national bodies and equality bodies**

Belgium has no objection to the deletion of §1, (a) and §2 but we sincerely believe that the text can retain a certain level of ambition. Perhaps a compromise can be found by keeping point (a) and paragraph 2 in the text but making them optional.

### **Article 25 – Measures to remove certain online material**

Belgium can accept the changes proposed in paragraphs 1, 2, 3, 4, 6 and 7.

However, regarding paragraph 5, it could be clarified that the notification to end-users of the reasons for removing or blocking access to online material does not always have to be immediate: in the context of a judicial investigation, it is sometimes necessary to temporarily refrain from communicating with the offender in order to avoid erasing the traces and making it more difficult to identify possible other victims

### **Article 26 – Compensation from offenders**

Belgium can accept these modifications without any comment.

## **Chapter 4 – Victim support**

### **Article 27 – Specialist support to victims**

Belgium can accept these modifications without any comment.

In paragraph 1, point b), in addition to information for the purpose of medical forensic examination, it would also be useful to form clear that support services also provide information on psychosocial counselling.

### **Article 28 – Specialist support for victims of sexual violence**

Belgium can accept these modifications without any comment.

### **Article 29 – Specialist support for victims of female genital mutilation**

Belgium can accept these modifications without any comment.

### **Article 30 – Specialist support for victims of sexual harassment at work**

Belgium can accept these adjustments.

However, this Article still holds ambiguities which is why we still have a study reservation.

Belgium asked about the need external conciliation procedures as there are internal company conciliation procedures in our national system. We understand the European Commission's reply about the need for an external service available for employees who do not have access to an internal service (e.g. company too small) but we feel that the text should reflect that answer.

We also reiterate our comment about the lack of the prevention aspect in this directive's approach of sexual harassment at work.

We still have some questions about the relationship between mediation and criminal proceedings.

Finally, Belgium had doubts about the employer's legal recourse to remove the offender from the workplace, as it could be a customer or subcontractor and not an employee. It appears that the content of the concrete obligations for Member states should be clarified: what are the means for an employer to remove an offender from the workplace when it is not an employee? If the offender is major client of a small firm, what kind of obligation should we hold against an employer?

### **Article 31 – Helplines for victims**

Belgium considers that paragraphs 1 to 3 are acceptable. We reiterate our proposal to add dependants in need of support.

Concerning paragraph 4, we are in favour of the second option making the use of the harmonised number optional. However, we are flexible and willing to explore the technical possibilities of implementing the first option.

### **Article 32 – Shelters and other interim accommodations**

We believe that shelters play an essential role in protecting victims from violence, in addition to being safe places of refuge, they should provide the necessary support to help victims deal with the interrelated issues of their health, financial situation and the well-being of their children, with the ultimate goal of preparing them for independent living.

Although we can understand the interest in drafting the text in a neutral way in order to allow for shelters for non-women victims of violence, a victim of violence may not feel safe in a mixed gender shelter and it may be worth mentioning this.

We suggest to replace the sentencing with "gender-neutral accommodations, this shall include accommodations that take into account the specific needs of women."

### **Article 33 – Support for child victims**

These changes are acceptable to us.

However, Belgium would like to reiterate our suggestion to explicitly mention in Recital 54 the terms of Article 20§3 of the Convention on the Rights of the Child, according to which the choice of placement of the child must take into account the need for continuity in the child's upbringing, as well as the child's ethnic, religious, cultural and linguistic background. This clarifies how the decision to place the child in a refuge can be made.

We would also like to add that the child who is capable of discernment should be allowed to express his or her views freely

### **Article 34 – Safety of children**

Belgium can accept this article without any comment.

**Article 35 – Targeted support for victims with specific needs and groups at risk**

Belgium can accept the transfer of the list from paragraph 1 to recital 56 and we thank the presidency for the inclusion of lesbian and transgender women which was part of our previous comments.

On the other hand, we are in favour of keeping the term "sex workers" which is the term used in Belgian national law. Prostitution is no longer illegal in Belgium.

However, we reiterate our comments concerning the words "be held separately from persons of the other sex" in §3, which do not take into account the fact that violence does not necessarily come from other detainees or from detainees of the other sex. The wording of the article should allow for the diversity of possible situations of insecurity.

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**Proposal of Bulgaria for supplementing Article 27 of the proposal for  
Directive on combating violence against women and domestic violence**

**Doc. WK 1629/2023**

Bulgaria supports the amendments suggested by the Presidency in Article 27 of the proposal for a Directive on combating violence against women and domestic violence. As we announced at the meeting on 14 February 2023 we make a proposal for supplementing par. 2 of the provision. We consider the added text corresponds to the Victims' Rights Directive and it will help to prevent revictimization of victims:

„2. Specialist support referred to in paragraph 1 shall be offered in-person, **by a person of the same sex when requested or appropriate**, and shall be easily accessible, including online or through other adequate means, such as information and communication technologies, tailored to the needs of victims of violence against women and domestic violence.“.

## CZECH REPUBLIC

*We would like to use the opportunity given by the Presidency and provide our written comments which should complement our oral explanations during the last meeting on 13<sup>th</sup> and 14<sup>th</sup> February.*

### **Chapter III**

#### **To the proposal for change of terminology in Chapter III**

We agree that it is necessary to unify and specify the terminology in this Chapter. However, we do not believe that these changes proposed in the revised text WWK 1629/2023 bring any more clarity.

Primarily, the terminology should be changes in such a way that it correspond to the existing legal texts, mainly the directive on victims' rights (example -\_article 16 of this directive in connection to article 5 of directive on victims' rights and using wording acts instead of criminal offences). In some cases, we believe that the word "acts" too much broadens the scope of the relevant provisions (instead of the original criminal offence). We would like to hear more explanation regarding the reasoning for this change.

We also believe that the terminology should be used uniformly in this whole text - article 16/1 uses complaint, article 27 uses formal complaint and some recitals uses official complaint (problems with the differentiation of recitals 24, 27, 46, 47, articles 16, article 27). Moreover, is there any difference between the term formal/official complaint and official record which is used in Article 17/3? It would be convenient, if e.g. the recitals could provide more explanation on this matter in general (such as the case of newly added recital 30bis) or if the Presidency could provide some more explanation during the meeting.

#### **Article 16 Reporting of violence against women or domestic violence**

##### **- Paragraph 2**

As already stated during the meeting, this paragraph is not sufficiently clear and predictable. The same problem regards the newly added sentence at the end. We do not see any added value of this paragraph. It would be more efficient if this paragraph would be moved to the recitals for its general wording.

##### **- Paragraph 3**

This provision is written in too much detail and does not provide for sufficient flexibility of the member states. Even though this provision has been restricted to the healthcare professionals in case of adults, the confidentiality rules regarding children have been broadened. This provision undermines national rules on professional confidentiality, as reporting all cases covered by the Directive may in some cases be counterproductive for the victim and his or her safety and could discourage the victim from seeking the necessary professional help. The rules on confidentiality under the proposal should respect the rules set out in Member States' legal systems and the reasons for which confidentiality was established for the professions concerned. **We support the idea of having the same provision regarding reporting by professionals as it is in the Istanbul convention in article 28 with the addition that the reporting can be done only after prior consent of the victim. This is also what Article 28 stipulates under "appropriate conditions" in accordance with the explanatory report.** Only these cases could be accepted.

## - Paragraph 5

We support the aims of the Presidency, which seek to clarify the original text. As we understand it, the text is linked to the provision of the necessary basic assistance for persons who could theoretically be subject to expulsion and that residence status should not hinder the reporting and effective investigation of a criminal offence. But, in the wording as it is suggested now, we do not understand how this provision should work in practice.

For victims of trafficking in human there is specific migration law (2044/81/EC) providing reflection period for victims of such crime and during this time victims cannot be expelled. The aim is to support cooperation with law enforcement authorities. There is, however, no similar migration law provision in regard to victims of domestic violence and violence against women so we cannot connect this paragraph 5 to any migration law as this was the case of THB Directive. Regarding the matter of practical application of this provision – after completion of the individual assessment - if the competent authorities stipulate all the necessary assistance for the victim, such victim can be expelled because there is no further protection provided to them – would there be even necessity for doing the individual assessment? Moreover, should the findings of the individual assessment be provided to the migration police? Would not be possible to apply general EU migration law – which provides for specific protection in a danger of a person?

We believe that the provision still provides a lot of confusion, therefore, we would prefer its deletion.

## **Article 17 Investigation and prosecution**

### - Paragraph 1

We would like to point out problems with the structure of this paragraph which does not impose any clear obligations/measures the member states should take. This provision in a way that is structured will be causing a lot of problems, doubts and ambiguities while monitoring of the implementation by EC. Therefore, this provision should be part of the recitals.

### - Paragraph 3

We suggest textual changes to this paragraph which could provide more clarity and distinction between this paragraph and paragraph 2: *“The competent authorities shall promptly and effectively investigate allegations of acts of violence against women or domestic violence and **ensure that all allegations are officially recorded.**”*

### - Paragraph 4

We agree with the other member states that the first part of the added sentence *“where the victim wishes to bring charges”* should be deleted.

### - Paragraph 5

We do not agree with the requirement that the investigations should never be dependent on reporting or accusation, especially in cases regarding acts of rape. It is necessary to retain the possibility of taking into account the will of the victim in certain cases whether or not to prosecute. It is a very efficient system in the Czech Republic which works well and ensures that the victims approach the help they need. Preserving this possibility is also important from a practical point of view, since in criminal proceedings against a perpetrator of the crime of rape who has committed a crime against a victim who has the right to refuse to testify and who exercises this right and refuses to testify, they can often end in an acquittal due to lack of evidence.

The approach proposed by the directive could have the undesirable effect of discouraging victims from approaching support organisations (if their duty of confidentiality is breached or the obligation to report such crimes is enforced on all - as proposed in Articles 16/2 and 3) or law enforcement authorities. Preserving the will of the victim is more than helpful in finding the necessary help. **The proposed paragraph, even after the new changes, therefore, cannot be supported.**

## **Article 18 Individual assessment to identify victims' protection needs**

The CZ agrees with other member states that this provision is too detailed which should not be the case of legislative texts. This whole article should be substantially reduced and made more general in order to provide member states with more flexibility. This is mainly the case of paragraphs 3, 4, 6, 7. We do not think that providing all the examples in the normative part of the text is necessary. Additionally, with this structure of the normative text can be expected that the monitoring of the implementation by EC will be more problematic and will be causing a lot of doubts and ambiguities.

In the text the attention should be paid also to distinction of substantive and procedural terms. In this sense we do not think that it is necessary to mention both the offender and the suspect in the text. It might lead to further confusion.

### **- Paragraph 5**

The changes to paragraph 5 can be accepted. However, we consider that point (c) should be deleted. If it is an individual assessment of the victim, which takes place at the beginning of criminal proceedings, often even before the criminal proceedings have been initiated, it is not possible to order a preventive intervention programme for a person suspected of committing this offence, let alone for an offender who does not yet 'exist' at the time the criminal proceedings are initiated, as no convicting judgment has been issued yet.

### **- Paragraph 7**

We support the idea of adding “if relevant” to this provision.

### **- Paragraph 8**

As already stated during the meeting, the dependants should not be covered in this article. We therefore consider that if there is a need to provide protection to someone beyond the victim themselves, it should be in cases involving a **child of the victim of domestic violence**. Only such persons should be provided with specific protection without having to undergo an individual assessment.

## **Article 21 Emergency barring, restraining and protection orders**

The Czech Republic does not agree with the concept of “dependant” as proposed by this directive in article 4 letter j). According to this definition it is not sufficiently clear which persons this definition can apply to. In our opinion it is neither proportionate nor appropriate to guarantee to all dependent persons these rights especially in cases where they have not themselves directly or indirectly witnessed the violent act. Therefore, we propose to change the word dependant in this article to a person which lives in the common household together with the victim. We think that it would be more useful and appropriate, since the reason why to impose these orders is mainly for safeguarding a person from immediate danger connected with domestic violence and violence from a partner.

### **- Paragraph 3 and 4**

It would be appropriate for the sake of consistency to include a specification of the nature of the restraining orders to the recitals. Currently there are explanations only regarding to barring orders in recital 34 and protections orders in article 21.

We also propose to include in the recital 36 other possibilities of penalties, such as detention or administrative fines to provide broader scope.

### **- Paragraph 5**

The CZ suggests including into this paragraph also restraining orders. There is no reason and also no explanation was provided by the COM why these types of orders should not be part of the discretion of member states. We believe that this wording was taken from the article 53 of the IC which however does not operate with emergency barring orders in this article. Article 21, nevertheless, covers all three of them.

## **Article 24 Role of national bodies and equality bodies**

We can agree with the changes made by the Presidency. However, in relation to Article 24 (1) (b) and (c), the Czech Republic requests to minimise the reporting and administrative burden arising from these provisions. What is the essence of the independent reports in point b)? Does the designated body need to be independent in order to provide independent report? This word “independent” does not seem necessary in the provision in order to gain complex reports on this type of violence. Regarding c) - who will decide on that is available information which should be exchanged? What form should this information have?

Generally, we still believe that national bodies and equality bodies are sufficiently regulated on the EU level in the anti-discrimination area. Moreover, in the view of prepared legislative changes (15899/22, 15902/22), the regulation in this directive is superfluous. We would prefer deletion of this whole article.

## **Article 25 Measures to remove certain online material**

We do not consider that there is a need for specific regulation beyond the general regulation under the Digital Services Regulation. There is also a draft CSA regulation currently under discussion on the issue of child sexual abuse, which is similar in subject matter to sexual violence. Creating further different rules would only lead to fragmentation of the legislation.

If this provision is retained, we support the proposal for a significant generalisation of the text and also the attempt to align the text with other EU instruments (CSA, TCO, DSA). The proposed changes to this article are consistent with the process for the removal of Child Sexual Abuse Material (CSA) contained in the current compromise text of the draft CSA Regulation as discussed in the LEWP Enforcement Working Party. The competent authorities of the Member States should order the removal of CSAM. However, it is necessary to retain the possibility of judicial review of infringements as also proposed. All the time limits in the CSA Regulation are still under discussion in the LEWP. Until agreement is reached on these issues within the CSA Regulation discussions, we should not make final decisions even within the framework of this draft directive.

We also feel that terminology should be harmonised - the term 'end-user' is not used in any other EU instrument. The DSA (Digital Services Regulation) works with the term 'recipient'. In our view, it should be the same person, so it would be appropriate to change end-user to recipient. Furthermore, paragraph 5 talks about information on access to judicial protection, but this is already covered by the DSA Regulation in general, so there is a duplication of obligations.

## **Chapter IV**

### **Article 27 Specialist support to victims**

With regard to paragraph 5, we consider that the issue of issuing guidance protocols and, where appropriate, instructions should be part of the recitals and not the normative text itself, as this is a practical requirement, not a legislative one.

In paragraph 6, we suggest an amendment to allow States more flexibility. "A 'crisis period' such as a covid pandemic is just one example, but such crises can also include situations where critical infrastructure is disrupted, for example in conjunction with war or mass cyber-attacks or natural disasters. In such cases, the critical infrastructure (running hospitals, electricity, food, etc.) needs to be put in place first before other issues can be addressed. We therefore propose a change to the text as follows:

*“Member States **are encouraged** to ensure that specialist support services remain fully operation for victims...”*

### **Article 28 Specialist support for victims of sexual violence**

The directive should ensure that the services are available in order to ensure minimal harmonisation, the distribution and the capacity and the accessibility should be left upon the technical and financial possibilities of the member states. Therefore, a more flexible approach would be preferable in regard to this provision and also article 29. This could be done in such a way that paragraphs 2, 3, 4 will be deleted and more generally stated only in the recitals. Alternatively, they could be redrafted as optional “encouraging” states to have such possibilities.

### **Article 29 Specialist support for victims of female genital mutilation**

This provision should provide more flexibility for the member states. Some issues relevant and acute in one member state do not have to be necessarily problematic in another one, due to differences in population compositions. We consider that it would be sufficient if, in general terms, the whole Article was subsumed under the new paragraph 5 of Article 28 in the following text:

*„Member States shall ensure effective, age-appropriate support to victims of female genital mutilation providing at least information on possibilities to perform clitoral reconstructive surgery and counselling. These services may be part of the services referred to in Article 27”*

### **Article 35 Targeted support for victims with specific needs and groups at risk**

#### **- Paragraph 1**

We support the changes to first paragraph aiming at the generalization of the text. It seems inappropriate to have a demonstrative list of forms of discrimination. Keeping the list would cause problems in regard to the monitoring of the implementation by EC.

## FINLAND

### Proposal for a Directive on combating violence against women and domestic violence (COM(2022) 105 final)

- Comments by Finland

The Finnish delegation thanks the Presidency for the opportunity to provide written comments on the draft Directive (chapters 3 and 4). At this point, we would like to present the following views.

#### **Article 16 – Reporting of violence against women or domestic violence**

- In article 16(2), the reference to adequate measures for the victim's safety is somewhat unclear – it is not entirely clear what is expected from the authorities based on this requirement. This should be made clearer. One option could be to add a reference to situations where the victim's safety is endangered.
- In article 16(3), Finland can support the first part of the section that applies to cases concerning all victims but only to healthcare professionals.
- Finland has concerns on the second part of article 16(3) which applies only to cases concerning child victims. First, the scope of professionals mentioned in the provision is too vague. Based on the provision, it should be clear what kind of professionals are covered. Second, Finland has reservations concerning the scope of professionals, which might be too extensive, at least when it comes to some specific professionals, such as lawyers and priests.

#### **Article 18 – Individual assessment to identify victims' protection needs**

- Finland still has concerns on the scope of the assessment. Now, the assessment should be conducted in even all minor cases within the scope of the Directive. The cases where the assessment comes into question should be more limited. Long duration of criminal proceedings is even now a problem in many cases, so adding new time-consuming elements to the process should be carefully considered. The individual assessment should not cause unnecessary administrative burden for the Member States. Also, the assessment would result in need of additional resources and therefore costs that should be taken into account.
- One option could be to limit the scope of the article to more serious/frequent cases.
- Finland is in favor of removing the provision concerning victims' dependants in article 18(8) and. The victims' dependants are not parties to the proceedings automatically in Finland.

### **Article 19 – Individual assessment of victims’ support needs**

- Finland has similar kind of concerns concerning article 19 as article 18. Especially, reference to article 18(4) and (7) in article 19(2) would make the assessment unnecessary burdensome. It could be sufficient if the authorities would refer the victim to support services if he/she would be in need of protection based on the assessment in article 18 or if the nature of the crime of the victim’s individual circumstances would so require. The assessment should not cause unnecessary administrative burden for the Member States.
- Finland is in favor of removing the reference to victims’ dependants from the article. As said, victim’s dependant are not parties to the proceedings in Finland.

### **Article 20 – Referral to support services**

- In article 20(5) the time limit for storing personal data has been changed to maximum of 24 months. Finland considers even the proposed time limit too short. Criminal investigation and the criminal procedure may in some cases last for many years. Finland considers that an appropriate time limit would be three years (36 months).

### **Article 25 – Measures to remove certain online material**

- Finland has a scrutiny reservation concerning article 25.
- Finland underlines the need to examine carefully the relationship between article 25 and the CSAM-regulation, especially article 14.

### **Article 27 – Specialist support to victims**

- Article 27(1) not only concerns the right to support services but also the content of the services. Therefore, it could be better to refer to both article 8(3) and 9(3) of the Victims’ Rights Directive in the article.
- Article 27(1)(a) would require that the support services give advice and information on a broad scale of matters (“relevant practical matters arising as a result of the crime, including on access to housing, education, training, financial support and assistance to remain in or find employment”). For a support service, it might be difficult to provide information and advice on all of these matters. Therefore, we suggest adding “or direct referral to any relevant services in place” to article 27(1)(a). This formulation has been used also in the Victims’ Rights Directive (art. 9(1)(b)).
- Article 27(4) would require member states to provide protection and specialist support services at the same premises, or by coordinating services through a central contact point, or by facilitating access to such services through one-stop online access.
- First, it is not entirely clear what is meant by “one-stop online access”. This should be made clearer. Second, based on the article and recital 38, Finland would consider a website including links and information on different services enough to fulfil the requirements of “one-stop online access”, but if something more than that is required, Finland can’t support this provision.

### **Article 30 – Specialist support for victims of sexual harassment at work**

- In the article, the reference to counselling services should cover external or internal counselling services. Both options may not be available in all cases.
- Finland is in favour of removing the reference to conciliation as it is unclear what is meant by conciliation in this regard.

### **Article 31 – Helplines for victims**

- Referring to article 31(4), Finland can support the introduction of the harmonised EU level number if the national number can still be used alongside the EU level number.
- However, if the introduction of the EU level number would require marketing in the Member States, funding for marketing expenses should be provided.

### **Article 32 – Shelters and other interim accommodations**

- Finland has no objections in removing the word “women” from the article and developing the article to a gender-neutral direction.

However, Finland cannot support this change if it would lead to a conclusion that there should be shelters specifically for men and for women and also shelters for any sex or gender. In the national system, there are shelters available for both men and women and shelters available for women only.

## NOTE DES AUTORITÉS FRANÇAISES

**Objet :** Commentaires des autorités françaises sur les articles 16 à 35 et les considérants y afférents 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 1629/23

Lors de la réunion du groupe COPEN des 13 et 14 février 2023, la Présidence a sollicité les Etats membres en vue de transmettre des commentaires sur les articles 16 à 35 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 16 sur le signalement de la violence à l'égard des femmes et de la violence domestique :**

Au paragraphe 1, les autorités françaises indiquent ne pas avoir d'opposition à la souplesse introduite par la Présidence concernant le signalement en ligne.

Concernant le paragraphe 2, les autorités françaises sont favorables à la suppression du terme « *further* » qui laissait penser qu'un premier acte de violence devait être intervenu. Elles indiquent être favorables à l'ajout d'une disposition prévoyant des mesures pour la protection de la victime n'étant pas à l'origine du signalement, mais soulignent, en revanche, que la dernière partie de la phrase proposée par la Présidence manque de clarté sur la nature des « mesures adéquates » devant être prises. Elles proposent la formulation suivante :

*« Même si la victime n'est pas à l'origine de la plainte, les Etats membres devraient engager une enquête sur les faits dénoncés et si nécessaire proposer à la victime des mesures permettant de l'éloigner de l'auteur ».*

Par ailleurs, les autorités françaises considèrent qu'il convient de laisser à la discrétion des autorités compétentes de chaque Etat membre l'opportunité de prévenir la victime du signalement opéré par un tiers. Cette information peut en effet s'avérer contreproductive, selon la nature du dossier, lorsqu'une enquête est en cours.

Sur le paragraphe 3, première phrase, les autorités françaises sont favorables à la proposition de la Présidence de ne viser que les professionnels de santé parmi les professionnels pour lesquelles les règles de confidentialité ne doivent pas constituer un obstacle pour signaler des faits de violence à l'égard des femmes.

Par ailleurs, les autorités françaises considèrent que la levée éventuelle du secret médical s'imposant aux professionnels de santé, ne peut pas, en tout état de cause, être décollée d'un premier constat médicalement objectif, laissant présumer la commission effective de violences physiques ou psychiques, lors de l'examen médical. Elles relèvent toutefois que la notion de « *reasonable grounds* » inclue bien la nécessité de ce constat.

S'agissant du paragraphe 5, les autorités françaises appellent à davantage de souplesse et proposent de remplacer mention « *shall ensure* » par « *may ensure* » dans la proposition de rédaction de la Présidence. Les autorités françaises indiquent que la directive retour 2008/115/CE prévoit déjà que les besoins particuliers des personnes vulnérables doivent être pris en compte lorsqu'elles font l'objet d'une mesure d'éloignement.

### Courtesy translation

*In paragraph 1, the French authorities indicate that they have no objection to the flexibility introduced by the Presidency concerning online reporting.*

*With regard to paragraph 2, the French authorities are in favour of deleting the word "further", which implied that a first act of violence must have occurred. They indicate that they are in favour of the introduction of a provision providing for measures to protect the victim who is not the source of the report but they stress that the last part of the sentence proposed by the Presidency lacks clarity on the nature of the "appropriate measures" to be taken. They propose the following wording:*

*"Even if the victim is not making the report, Member States may initiate an investigation into the facts reported and, if necessary, offer the victim measures to remove the perpetrator".*

*Furthermore, the French authorities consider that it should be left to the discretion of the competent authorities in each Member State to inform the victim of the report issued by a third party. This information may be counterproductive, depending on the nature of the case, when an investigation is underway.*

*With regard to paragraph 3, first sentence, the French authorities are in favour of the Presidency's proposal to include only health professionals among the professionals for whom the rules of confidentiality should not constitute an obstacle to reporting acts of violence against women.*

*Furthermore, the French authorities consider that the possible lifting of confidentiality rules by healthcare professionals, cannot in any case be disconnected from an initial medically objectified finding that suggests the actual commission of physical or psychological violence during the medical examination. They note, however, that the notion of "reasonable grounds" does include the need for this finding.*

*With regard to paragraph 5, the French authorities call for more flexibility and propose to replace "shall ensure" by "may ensure" in the Presidency's drafting proposal. The French authorities indicate that the Return Directive 2008/115/EC already provides that the special needs of vulnerable persons must be taken into account when they are subject to a removal order.*

#### **Sur l'article 17 sur les enquêtes et poursuites :**

Les autorités françaises sont favorables à la modification, au paragraphe 3, du terme « *complaint* » par le terme « *record* », la formulation initiale qui induisait la nécessité d'une plainte systématique n'étant pas satisfaisante.

Sur le paragraphe 4, les autorités françaises sollicitent la suppression des termes « *where the victim wishes to bring charges* » puisqu'il lui apparaît impératif de recueillir les éléments de preuve, notamment médicaux, dans un temps le plus concomitant possible à la commission de l'infraction, indépendamment d'une plainte de la victime. La décision de la victime de ne pas déposer plainte dans un premier temps est susceptible d'évoluer notamment lors d'un contact avec les acteurs habilités tels que les associations d'aide aux victimes ou les avocats.

#### *Courtesy translation*

*The French authorities are in favour of replacing the term "complaint" in paragraph 3 with the term "record", as the initial wording, which implied the need for a systematic complaint, was not satisfactory.*

*With regard to paragraph 4, the French authorities request the deletion of the words "where the victim wishes to bring charges", as they consider imperative to collect evidence, particularly medical evidence, as soon as possible after the offence is committed, independently of a complaint from the victim. The victim's decision not to lodge a complaint at first is likely to change, particularly when he or she is in contact with the relevant service or persons, such as victim support associations or lawyers.*

#### **Sur l'article 18 sur l'évaluation personnalisée destinée à identifier les besoins des victimes en matière de protection :**

Les autorités françaises privilégient la rédaction initiale de la Commission concernant le paragraphe 2, visant à ce que soit opérée systématiquement une première évaluation, dès le stade de la plainte, par l'enquêteur. Le contrôle de l'autorité judiciaire sur l'état du dossier semble nécessaire aux autorités françaises et devrait être maintenu. La formulation de « *competent authorities* » proposée par la Commission apparaît cependant acceptable aux autorités françaises.

Sur le paragraphe 6, les autorités françaises sont favorables à la proposition de la Présidence qui offre plus de souplesse par l'ajout des termes « *when appropriate* ».

Sur le paragraphe 7, les autorités françaises demandent l'ajout des termes « *if relevant* » car la répétition des évaluations doit se faire au cas par cas et sur la base de l'appréciation de l'autorité compétente.

Sur le paragraphe 8, les autorités françaises souhaitent la prise en compte des personnes à charge, en particulier des enfants témoins de violence résidant au sein du foyer, indépendamment de liens de parenté.

Sur le considérant 30, les autorités françaises privilégient le retour à la notion de lignes directrices qui figure dans la rédaction initiale.

Courtesy translation

*The French authorities prefer the Commission's initial wording for paragraph 2, which aims to ensure that an initial assessment is systematically initiated by the investigator at the complaint stage. The verification of the judicial authority over the state of the case seems necessary to the French authorities and should be maintained. The wording of "competent authorities" proposed by the Commission seems acceptable to the French authorities though.*

*With regard to paragraph 6, the French delegation is in favour of the Presidency's proposal, which offers more flexibility by adding the words "when appropriate".*

*With regard to paragraph 7, the French authorities request the addition of the words "if relevant" because the repetition of assessments must be done on a case-by-case basis and on the basis of the assessment of the competent authority.*

*With regard to paragraph 8, the French authorities would like to see dependants taken into account, in particular children who witness violence and live in the home, regardless of family ties.*

*With regard to recital 30, the French authorities favour a return to the concept of guidelines as initially drafted.*

**Sur l'article 19 sur l'évaluation personnalisée des besoins des victimes en matière de soutien :**

Les autorités françaises n'ont pas d'opposition concernant l'ajout des termes « *when necessary* » à cet article. Elles sollicitent par ailleurs la prise en compte des personnes à charge et en particulier les enfants témoins de violence résidant au sein du foyer, indépendamment de liens de parenté.

Courtesy translation

*The French authorities have no opposition to the addition of the words "when necessary" to this article. They are in favour of taking into account dependants and in particular children who witness violence living in the same household as the victim, regardless of family ties.*

**Sur l'article 20 sur l'orientation vers les services d'aide :**

Les autorités françaises sont favorables à la mention du consentement de la victime. Elles font part de leur soutien à l'inclusion, au paragraphe 3, des enfants témoins de violences au sein d'un foyer, indépendamment de liens de parenté.

Sur le paragraphe 5, les autorités françaises restent dans l'attente de la nouvelle proposition de la Commission concernant une durée de conservation des données plus longue que les 12 mois initialement visés, ainsi qu'indiqué lors du groupe COPEN. Une période minimale de 24 mois lui semble en tout état de cause nécessaire.

Courtesy translation

*The French authorities are in favour of mentioning the victim's consent in paragraph 1. They support the inclusion in paragraph 3 of children who have witnessed violence, living in the same household as the victim, regardless of family ties.*

*With regard to paragraph 5, the French delegation is still waiting for the Commission's new proposal concerning a longer data retention period than the 12 months initially envisaged, as indicated during the COPEN group. In any case, a minimum period of 24 months seems necessary.*

### **Sur l'article 21 sur les ordonnances d'urgence d'interdiction et ordonnances d'injonction et de protection :**

Les autorités françaises sont favorables à l'inclusion des personnes à charge de la victime dans ce dispositif de protection, tel que proposé dans la rédaction du paragraphe 1 et réitèrent leur position quant à l'inclusion des enfants témoins de violences et résidant au foyer.

Sur le paragraphe 2, les autorités françaises indiquent qu'elles n'ont pas d'opposition à l'ajout proposé des termes « *for as long as necessary* ». En revanche, les autorités françaises sont défavorables à la suppression de la fin de la phrase (« *including by prohibiting or restraining certain dangerous behaviour of the offender or suspect* ») dès lors que ces mesures viennent renforcer la protection des victimes. Les autorités françaises sont favorables à la rédaction initiale proposée par la Commission.

Sur le paragraphe 3, les autorités françaises n'ont pas d'opposition à l'ajout de la mention « *where relevant* ».

Sur le considérant 35, les autorités françaises sollicitent la réintroduction de la référence aux armes à feu, qui semble nécessaire dans un objectif de plus grande protection des victimes, dont les enfants témoins de violence au sein d'un foyer.

#### Courtesy translation

*The French authorities are in favor of including the victim's dependents in this protection scheme, as proposed in the wording of paragraph 1, and reiterate their position on the inclusion of children who witness violence and live at home, regardless of family ties.*

*With regard to paragraph 2, the French authorities indicate that they have no objection to the proposed addition of the words "for as long as necessary". However, the French authorities are not in favour of deleting the end of the sentence ("including by prohibiting or restraining certain dangerous behaviour of the offender or suspect") since these measures strengthen the protection of victims. The French authorities are in favour of the initial wording proposed by the Commission.*

*With regard to paragraph 3, the French authorities have no objection to the addition of the words "where relevant".*

*With regard to recital 35, the French authorities request the reintroduction of the reference to firearms, which seems necessary in order to provide greater protection for victims.*

### **Sur l'article 22 sur la protection de la vie privée de la victime :**

Les autorités françaises sont favorables à la nouvelle rédaction proposée par la Présidence concernant cet article et le considérant 37, en ce qu'elle correspond à une réalité opérationnelle permettant de faciliter le travail de manifestation de la vérité opéré par l'enquêteur. Cette formulation est en effet plus équilibrée et permet à l'enquêteur de garder la flexibilité nécessaire au bon déroulement de l'audition de la victime tout en permettant une meilleure articulation avec les droits de la défense.

#### Courtesy translation

*The French authorities are in favour of the new wording proposed by the Presidency concerning this article and recital 37, in that it corresponds to an operational reality that facilitates the investigator's work of establishing the truth. This wording is more balanced and allows the investigator to maintain the flexibility necessary for the proper conduct of the victim's hearing while allowing for better coordination with the rights of the defense.*

**Sur l'article 23 sur les lignes directrices à l'intention des services répressifs et des autorités judiciaires :**

Les autorités françaises sont favorables à la proposition d'ajout des termes « *may issue* » au paragraphe 1, qui donne davantage de flexibilité et permettra une transposition plus fluide de la disposition.

Elles sollicitent en revanche la suppression de l'ajout du *litera* (h) dont elles n'identifient pas la pertinence.

Courtesy translation

*The French authorities are in favour of the proposed addition of the words "may issue" in paragraph 1, which gives more flexibility and will allow a more fluid transposition of the provision.*

*However, they request the deletion of the addition of *litera* (h), which they do not consider relevant.*

**Sur l'article 24 sur le rôle des organismes nationaux et des organismes de promotion de l'égalité :**

Les autorités françaises sont en faveur de la souplesse introduite par la Présidence et les suppressions envisagées.

Courtesy translation

*The French authorities are in favour of the flexibility introduced by the Presidency and the envisaged deletions.*

**Sur l'article 25 sur les mesures visant à retirer certains matériels en ligne :**

Les autorités françaises sont favorables aux propositions de rédaction de la Présidence en ce compris l'ajout du paragraphe 7. Elles sollicitent toutefois une souplesse supplémentaire sur la durée appropriée des injonctions visées au paragraphe 3. Les autorités françaises proposent que les Etats membres soient uniquement enjoins à s'assurer que les ordonnances sont prises par l'autorité judiciaire « pour une période appropriée » (sans nécessité de renouvellement).

Courtesy translation

*The French authorities are in favour of the Presidency's drafting proposals, including the addition of paragraph 7. However, they request additional flexibility on the appropriate duration of the orders referred to in paragraph 3. The French authorities propose that Member States should only be required to ensure that orders are issued by the judicial authority "for an appropriate period" (without the need for renewal).*

**Sur l'article 26 sur l'indemnisation par l'auteur de l'infraction :**

Les autorités françaises sont favorables à la rédaction de cette disposition, qui va au-delà de l'article 30 de la Convention d'Istanbul, en prévoyant une réparation intégrale du préjudice causé par la violence à l'égard des femmes ou la violence domestique.

Sur le paragraphe 2, les autorités françaises ne sont pas opposées à l'ajout de la mention « *where appropriate* », de même qu'à la suppression des délais de prescription visés au paragraphe 5.

Courtesy translation

*The French authorities are in favour of the wording of this provision, which goes beyond Article 30 of the Istanbul Convention by providing for full reparation for the harm caused by violence against women or domestic violence.*

*With regard to paragraph 2, the French authorities are not opposed to the addition of the words "where appropriate", nor to the deletion of the limitation periods referred to in paragraph 5.*

#### **Sur l'article 27 sur le soutien spécialisé aux victimes :**

Les autorités françaises sont favorables à l'ajout du *litera ba*) qui clarifie le fait que les organismes de soutien ne peuvent pas fournir de conseils juridiques.

Sur le paragraphe 4, les autorités françaises indiquent être favorables à la proposition rédactionnelle de la Présidence, au vu de la complexité de la fourniture de services de soutien au sein de mêmes locaux.

#### Courtesy translation

*The French authorities are in favour of adding *litera ba*) which clarifies that support organisations cannot provide legal advice.*

*On paragraph 4, the French authorities indicate that they are in favour of the Presidency's drafting proposal, given the complexity of providing support services within the same premises.*

#### **Sur l'article 28 sur le soutien spécialisé aux victimes de violences sexuelles :**

Les autorités françaises sont favorables au maintien du terme « *psychological* » au paragraphe 1 du fait du caractère pluridisciplinaire inhérent à une prise en charge efficace de la victime de violences sexuelles.

#### Courtesy translation

*The French authorities are in favor of retaining the term "psychological" in paragraph 1 because of the multidisciplinary nature inherent in the effective treatment of victims of sexual violence.*

#### **Sur l'article 30 sur le soutien spécialisé aux victimes de harcèlement sexuel au travail :**

Les autorités françaises sont favorables à cette nouvelle rédaction, qui a pour effet de distinguer le conseil juridique des informations concernant les droits et voies de recours disponibles.

Toutefois, concernant le paragraphe 4, ainsi qu'au considérant 51, les autorités françaises suggèrent de supprimer le terme « *external* » car si des services bénéficiant d'une certaine indépendance peuvent déjà accompagner la victime et l'entreprise, il est indispensable de ne pas circonscrire cet accompagnement aux seuls services extérieurs.

#### Courtesy translation

*The French authorities are in favour of this new wording, which has the effect of distinguishing between legal advice and information on the rights and remedies available.*

*However, in paragraph 4, as well as in recital 51, the French authorities suggest deleting the word "external" because, although services with a certain degree of independence can already accompany the victim and the company, it is essential that this support is not limited to external services.*

#### **Sur l'article 31 sur les permanences destinées aux victimes :**

Les autorités françaises sont très réservées quant à la mise en place d'un numéro européen harmonisé, en raison du risque de créer de la confusion auprès des utilisateurs de certains Etats-membres disposant d'ores et déjà de numéros nationaux clairement identifiés et ayant fait l'objet de campagnes de communication importantes.

Ainsi, elles sollicitent la suppression du paragraphe 4, et subsidiairement, elles seraient plutôt en faveur de l'option 1, visant uniquement à encourager les Etats-membres à mettre en place le numéro européen 116 016 tout en conservant leur numéro national existant.

#### Courtesy translation

*The French authorities are very reticent about the introduction of a harmonized European number, because they fear it would creating confusion among users in certain Member States which already have national numbers clearly identified and which had been the subject of major communication campaigns.*

*Thus, they request the deletion of paragraph 4, and alternatively they would be in favour of option 1, aimed at encouraging Member States to set up the 116 016 number while keeping their existing national numbers.*

### Sur l'article 32 sur les refuges et autres hébergements provisoires :

Les autorités françaises, dans le prolongement de l'avis du service juridique du Conseil du 31 octobre 2022, prennent acte du fait qu'aucune base juridique européenne n'apparaît justifier une différence de traitement entre les femmes adultes victimes et les hommes. Elles proposent donc la suppression de la référence aux femmes dans le corps de l'article et l'insertion de la phrase suivante, au sein du considérant 53 :

*« Les refuges jouent un rôle essentiel dans la protection des victimes contre les actes de violence. En plus d'être des lieux d'accueil sûrs, ils devraient apporter le soutien nécessaire pour aider les victimes à faire face aux problèmes interdépendants liés à leur santé, à leur situation financière et au bien-être de leurs enfants, le but ultime étant de les préparer à une vie autonome. **Bien qu'ils soient accessibles à toutes les victimes, les refuges prennent en compte les besoins spécifiques des femmes victimes de violences domestiques ou sexuelles** ».*

Les autorités françaises proposent de supprimer le terme « fully » de la proposition de la Présidence. Elles soutiennent la volonté légitime de rendre accessibles les refuges aux personnes en situation de handicap. Toutefois, elles considèrent qu'il n'est pas nécessairement pertinent que les Etats membres rendent l'ensemble des hébergements proposés accessible à ces publics, si une offre large est déjà proposée, notamment au sein d'un même groupement de logements.

#### Courtesy translation

*The French authorities, in line with the opinion of the Council's Legal Service of 31 October 2022, note that no European legal basis appears to justify a difference in treatment between adult women victims and men. They therefore propose the deletion of the reference to women in the body of the article and the insertion of the following sentence in recital 53:*

*"Shelters play a vital role in protecting victims from acts of violence. Beyond providing a safe place to stay, shelters should provide the necessary support concerning interlocking problems related to victims' health, financial situation and the well-being of their children, ultimately preparing victims for an autonomous life. **Although accessible to all victims, shelters take into account the specific needs of women victims of domestic or sexual violence**".*

*The French authorities propose to delete the word "fully" from the Presidency's proposal. They support the legitimate will to make shelters accessible to people with disabilities. However, they consider that it is not necessarily relevant for Member States to make all accommodation available to these groups, if a wide range of accommodation is already available, particularly within the same group of accommodation.*

### Sur l'article 35 sur le soutien ciblé aux victimes ayant des besoins spécifiques et aux groupes à risque :

Les autorités françaises ne sont pas favorables à une référence à la discrimination intersectionnelle, qui n'existe pas en droit pénal national. Elle propose le remplacement de « *intersecting forms of discrimination* » par « *multiple forms of discriminations* ».

Par ailleurs, les autorités françaises sont favorables à la suppression de l'énumération non exhaustive.

#### Courtesy translation

*The French authorities are not in favour of mentioning intersecting discrimination, which does not exist in national criminal law. They propose replacing "intersecting forms of discrimination" with "multiple forms of discrimination".*

*Moreover, the French authorities are in favour of deleting the non-exhaustive list.*

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

Berlin, 24 February 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 13/14 February 2023:

Germany is grateful for the opportunity to contribute a position statement on the provisions discussed in the COPEN Council Working Group Meeting on 13 and 14 February 2023.

- In several Articles, “criminal offences” has been changed to “acts”. What is the reason for this change? Are the provisions still relating to criminal offences only (this is our understanding), or do they also cover acts that fall below the threshold of criminality?
- We already proposed replacing “accessible” in **Article 16(1)** by “barrier-free” during the CZE Council Presidency. The Commission expressly welcomed this proposal. We think that this change, which should also be implemented in Article 27(2), Article 28(1) and (2), and Article 32(2), needs to be upheld. In Germany’s Federal Act on Equal Opportunity for People with Disabilities (*Behindertengleichstellungsgesetz, BGG*), *barrierefrei* (barrier-free) is defined as follows: Buildings and other facilities, means of transport, technical items of daily use, information processing systems, acoustic and visual sources of information and communication facilities as well as other designed areas of life are considered *barrierefrei* if they can be located, accessed and used by persons with disabilities in the usual way, without any particular difficulty and, in principle, without the assistance of others (section 4 BGG). On the other hand the well-defined term *barrierefrei* is mainly related to the term “barrier” within the meaning of the UN Convention on the Rights of Persons with Disabilities, while “accessible” also refers to “reachability” (including in the geographical sense) and accessibility in a broader sense. Therefore, combining the two terms, i.e. using “accessible and barrier-free” could be a good solution. The term “accessible” could constitute an additional and meaningful element.
- What kind of measures for the safety of a victim not making the report does **Article 16(2)** sentence 2 (new) refer to? At the least, the sentence needs to be worded in more precise terms.
- With regard to **Article 16(3)**, it should be taken into account that Article 28 of the Istanbul Convention, too, only applies to future acts, since that Article uses the word “and”, not the word “or”. Under national law, too, persons bound by professional secrecy may only supply data if this is justified by the “necessity” standard of section 34 of the German Criminal Code (*Strafgesetzbuch, StGB*) on account of an immediate risk of serious physical harm. Under these preconditions (risk of serious physical harm and current danger), the limitation to health care professionals does not need to be maintained. We therefore propose the following wording:

“Member States shall ensure that the confidentiality rules imposed by national law on relevant professionals, such as healthcare professionals, do not constitute an obstacle to their reporting to the competent authorities if they have reasonable grounds to believe that there is an imminent risk that serious physical harm will be inflicted on a

person due to their being subject to violence against women or domestic violence. If the victim or potential victim is a child, the relevant professionals subject to the protection of legal privilege or confidentiality rules imposed by national law shall be able to report to the competent authorities if they have reasonable grounds to believe that there is an imminent risk that serious physical harm will be inflicted.”

- We welcome the addition of “to the competent authorities” in **Article 16(4)**. We assume that the addition is to be interpreted as referring only to the authorities responsible for the reporting procedure and that Article 16(4) sentence 1 does not also cover statements made by the child in family court proceedings, for example. If this assumption is incorrect, we would ask to be notified of this. The reason for this request is the following: Statements about violent incidents made by the child during a personal hearing in family court proceedings have to be passed on to the other parties to the proceedings so as not to violate their right to be heard. This means that the confidentiality of such statements could not be guaranteed.
- In **Article 17(4)**, the term “refer” should be retained. The “competent authority” should help those affected in contacting the “relevant health care professionals” and not just inform them of who they can turn to. Insofar as **Article 17(5)** refers to “acts of rape” – and not instead to Article 5, deleted in this provision in the text proposal put forward by the Swedish Presidency – it is logical for us to agree to this change, since we are in favour of deleting Article 5 on account of the substantial risks under EU law that have been pointed out in the legal opinion prepared by the Council Legal Service.
- The examination of **Article 18 to 21** has not been concluded yet. We continue to have a critical view of the very detailed specifications made in this provision with regard to the assessment of protection needs. The specifications still go considerably beyond the provisions made in the Victims' Rights Directive (transposed into section 48(3) – now section 48a – of the German Code of Criminal Procedure [*Strafprozessordnung*]), which are worded more broadly and apply equally to all groups of victims. It also remains questionable whether such detailed provisions for one specific group of victims would, in practice, have any added value compared with the existing regulations. At the same time, there is also a risk that the national provisions of criminal procedure law would be permanently overloaded and become confusing if detailed provisions of this type have to be adopted. The considerations of the Swedish Council Presidency to replace “including” in Article 18(3) and (4) with “which may include” and the new recital 30 bis are a step in the right direction. However, our concerns have not been fully eliminated yet.

In particular, our fundamental concerns regarding the concept of individual assessment that the proposed Directive is based on are not alleviated by this amendment. Apparently, this underlying concept of the proposal is based on the assumption that the “competent authorities” (i.e. law enforcement authorities, but also others) are to comprehensively assess the various levels of a victim's individual support and protection needs upon the victim's first contact with such authorities and to take measures to remedy the situation. This is already implied by the title of Article 18: “Individual assessment to identify victims' protection needs”. However, in contrast to the Victims' Rights Directive, the support and protection measures do not solely relate to criminal proceedings, but comprise almost all of the victim's areas of life. This would, in any case, overwhelm the law enforcement authorities (courts and public prosecution offices) if they were a victim's first point of contact. In our view, the recommendations made with regard to the (initial) individual assessment should not be binding for law enforcement authorities and courts. Moreover, according to the provisions of the Directive, this assessment would be unilaterally geared towards the needs of the victim.

Any justified interests of the (alleged) offender are not taken into account. However, in proceedings conducted in compliance with the rule of law, this would be a condition for protection measures pursuant to Article 21 that can considerably interfere with the (alleged) offender's rights (for example a permanent prohibition to enter the residence – which may be owned by the offender alone –, or the joint workplace, or a prohibition to contact their children). Against this background and in view of the independence of the judiciary, the wording of paragraph 5 must also ensure that courts are not automatically bound to take specific protection measures. Ultimately, Article 18 et seqq. should best be restricted in such a way that they do not go beyond the provisions made in the Victims' Rights Directive. We therefore support the Netherlands' proposal to replace "shall" with "may" in Article 18(1). Alternatively, the assessment and the provisions made with regard to the protection measures under Article 21 should be decoupled (see below).

In any case, the Member States should be allowed sufficient flexibility for the implementation of the concept of individual assessment. A clarification to this effect could also be added to recital 30. In connection with this, we welcome the inclusion of the new recital 30 bis according to which it is up to the Member States to determine which authorities should be considered "competent authorities" for the purpose of the Directive's provisions. We understand this to mean that, even within one specific Article, different agencies may be responsible for the individual assessment, depending on the stage reached in the procedure. Here, too, Member States should be allowed as much flexibility as possible regarding the implementation of this concept.

**Paragraph 3** deals with the assessment of the danger emanating from the offender, for example whether he/she owns any weapons. This is primarily a police task. Our previous statements remain valid.

The amendment to **Article 18(5)** is to be welcomed, but is still not sufficient. We understand this amendment to mean that there is no obligatory link/no automatic linkage between the assessment and the protection measures according to Article 21, and that the Member States have a certain discretion in this regard. We welcome that the Swedish Council Presidency has confirmed this. In order to make this clear in the text, the phrase "are taken" should be replaced with "are available". This is necessary in view of the independence of the judiciary which, in addition to the justified interests of victims, must also take account of any justified interests of the alleged offender. Moreover, this is important, firstly, in order to ensure that (civil-law) protection orders do not have to be imposed on adult victims ex officio, but can be made dependent on an application by the victim (as is the case in Germany under civil-law protection against violence). Germany advocates victim protection in accordance with the principle of self-determination. Protection measures should respect the autonomy of adult victims and be made dependent on their respective decisions. Furthermore, it should be possible to issue protection orders immediately and independently of an assessment, in order to ensure fast and effective victim protection. This is also necessary because, in Germany, civil courts independently decide on any necessary protective measures. If our understanding of Article 18(5) is not shared, Article 18(5)(b) should, as an alternative, be deleted without any replacement.

The inclusion of "where appropriate" in **paragraph 6** is a step in the right direction.

The second sentence of **Article 18(7)** should be deleted entirely, or at least the reference to Article 21 ("in particular under Article 21"). The reason for this is, again, that the measures should not be imposed on adult victims, but should depend on the decisions made by the victims themselves. Furthermore, it should be possible to issue or amend protection orders immediately and independently of an assessment, in order

to ensure fast and effective victim protection. Ultimately, civil courts such as those in Germany must retain the power to decide independently on necessary protective measures.

**Article 18(8)** should be deleted entirely, as dependants are not always / not necessarily vulnerable. Either they are themselves victims, in which case they will 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.

- The issue of the problematic structure of the concept of individual assessment also applies to **Article 19**. The obligation to assess a victim’s individual need for support would lead to confusion on the different roles in criminal proceedings. For example, judges have a duty of impartiality. Were they to grant victims certain support measures before rendering judgment, they could risk appearing biased. At the same time, public prosecution offices already have a wide range of duties to fulfil, and adding that of examining support needs would put them under impossible strain in practice.
- Overall, the changes to **Article 20** go in the right direction. In Article 20(1) and (2), it is now clear that support and protective measures are not to be imposed on a victim but require the victim’s consent. We welcome this principle. However, the steps set out in Article 20(4) should also be conditional on consent or a request from the victim. This principle should, moreover, also be applied to the second sentence of Article 18(7) and to Article 21(1) and (2). As set out in our comments on Article 19, making the judiciary or public prosecution offices responsible for liaising between victims and support services would lead to confusion as to their roles and place them under impossible strain.

On paragraph 5, we would suggest that a retention period of 12 months is quite possibly sufficient.

“Where needed” at the start of the sentence should also be deleted now that “when necessary” has been added.

- **Article 21** contains overly far-reaching provisions on protection against violence (which in Germany, in compliance with Article 21 (5), falls largely under civil law). Specifically: in Article 21(1) and (2), it should be ensured that (civil-law) protection orders are not imposed on adult victims ex officio, but can be made dependent on an application by the victim (as is the case in Germany under civil-law protection against violence). Germany advocates victim protection in accordance with the principle of self-determination. Protection measures should respect the autonomy of adult victims and be made dependent on their decisions. Germany proposes the following wording for a **new paragraph 3**:  
“Member States can provide that the measures under paragraphs 1 and 2 each require an application by the victim if the victim is an adult.”

The extension to “dependants” in **Article 21(1) and (2)** should be deleted. “Dependants” do not require protection in all cases. Automatically extending the scope of application of (civil-law) protection against violence to include such “dependants” would be a mistake. Either they are themselves victims, in which case they will 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.

The extension to “suspects” in Article 21(1) and (2) should be deleted entirely. In particular in cases involving a shared residence or workplace, the envisaged protective measures represent a considerable interference in the rights and lives of the persons concerned. Therefore, the obligation to order (without exception) such far-reaching measures should only apply where the perpetrator of the offence has been established. Otherwise, this provision would be problematic in terms of the rule of law and the principle of proportionality. Moreover, there would be a risk of abuse that must be averted.

The phrase “or safety” in Article 21(1) should be deleted as protection against violence in Germany largely falls under civil law, which is in line with Article 21(5), and cannot be applied on the basis of a danger for safety. Reference to “danger for health” appears sufficient to us, not least in the light of the far-reaching legal consequences provided for in Article 21(1) and (2).

- We welcome the changes to **Article 22**.
- We welcome the changes to **Article 23**. Greater flexibility in the provisions and, in particular, the non-binding nature of the guidelines are to be welcomed given the implications for judicial independence. Article 23 appears to relate solely to criminal proceedings. We do not see it as affecting civil-law proceedings relating to protection against violence. If appropriate, we would ask for clarification on this point. We welcome the addition of “disability-sensitive” in Article 23(c) if and to the extent that the term covers barrier-free (barrierefreie) services.

We also propose the following addition to (f): “and raise awareness of all victim groups in the context of domestic violence” in order to make it clear that violence also affects men (they account for 20% of victims of domestic violence).

- We welcome the changes to **Article 24**.
- The changes to **Article 25** are relatively minor. It is, in our view, still not entirely clear how this article will operate alongside the provisions of the Digital Services Act and of the CSA Regulation, and we see a need for improvements in the wording. An in-depth assessment as regards the CSA Regulation was unfortunately not possible within the time allowed. We would appreciate an explanation of how the different pieces of legislation are to operate together, and reserve the right to submit a statement on this issue at a later point.  
As regards the relationship with the DSA, we propose the following changes to Article 25(1): “*Without prejudice to Regulation (EU) 2022/2065, Member States shall take the necessary measures to ensure the prompt removal of online material referred to in Article 7, points (a) and (b), Article 8, point (c), and Articles 9 and 10 by the relevant provider of intermediary services. Those measures shall include the possibility for their competent judicial authorities to issue, upon application by the victim, binding legal orders to remove or disable access to such material addressed to relevant providers of intermediary services. Such orders shall be issued in accordance with the minimum conditions set out in Article 9(2) of Regulation (EU) 2022/2065. Where removal at the source is not feasible, Member States shall ensure the order may include the disabling of access to the material in question.*”
- The change to **Article 26(1)** (deletion of “all forms” and addition of “offences”) is to be welcomed. The words “as provided by national law” should also be added at the end of the sentence to ensure that the other elements necessary for the existence of liability

under national law must also be present, for example fault (*Verschulden*) in German law.

As regards the adhesion procedure under **Article 6(2)**, we welcome the addition of the words “where appropriate”. This allows for the specificities of German law relating to criminal proceedings against juveniles.

We also welcome the deletion of **Article 26(3) to (5)**. The law of damages (in Germany, sections 249 et seqq. of the Civil Code) is not harmonised at EU level. Regulation governing the scope of compensation should therefore remain the purview of the Member States. The same applies to the statute of limitations under civil law.

- Consultations on Chapter 4 are still ongoing. Restricting **Article 30** to cases of sexual harassment that constitute criminal offences appears problematic to us. Directive 2006/54 addresses all forms of sexual harassment in the workplace. National equality bodies advise on the issue of sexual harassment in the workplace as part of implementation of Directive 2006/54. The previous version of Article 30 is in line with EU anti-discrimination law and should therefore be retained.
- The **recitals** need to be amended accordingly; this should include the following changes:
  - **(25)** “to believe that serious physical harm has been or is expected to be inflicted on the child” is to be changed to “to believe that there is an imminent risk that serious physical harm will be inflicted on the child.”
  - **(31)** should be deleted. On the first sentence: the children of victims are not necessarily / not always as vulnerable as the victims themselves. On the second sentence: purely emotional harm does not necessarily constitute violence, and “dependants” may require protection as victims themselves and in line with their own vulnerability.
  - **(33)** “and their dependants” is to be deleted
  - **(35)** “suspect” is to be deleted.

## HUNGARY

### Written comments of Hungary

**(Proposal on Combatting violence against women and domestic violence, doc. WK 1629/2023)**

**Article 17:**

We still maintain that the provisions under Article 17 are a matter of criminal procedure, and there is no legal base for these provisions.

paragraph 5: In order to avoid multiple victimisation and in light of the victim's best interests, we find it necessary to ensure that investigations or prosecution of minor offences are still dependent on the reporting by the victim.

**Article 19:**

The victim's dependants should be deleted from the article.

**Article 20:**

Paragraph 5: We consider the 24 month time limit too short.

**Article 22:**

Hungary still maintains that the provision under Article 22 is a matter of criminal procedure, and there is no legal base for it.

**Article 23:**

Article 23 is acceptable for Hungary, however, it should be made clear that the guidelines are not intended to settle legal matters, are not legally binding and may take the form of training material.

**Article 31:**

Paragraph 4: we can only accept the paragraph if it is non-binding.

## LITHUANIA

### Lithuania's Comments on article 17 and 27 of Directive of the European Parliament and of the Council on combating violence against women and domestic violence

#### *Article 17(3)*

##### Investigation and prosecution

**Question:** *To clarify, Lithuania has a question regarding this provision. According to Lithuania's national laws, in the event of domestic violence it is not mandatory for victim to file an official complaint (record) in order to start an investigation. Is the provision of the proposal 17(3) in line with our current regulation? Does this 17(3) provision indicates that in all cases a victim has to file an official complaint in order for competent institutions to start investigation?*

#### *Article 27*

##### Specialist support to victims

1. [...]
2. [...]
3. [...]
4. [Member States shall provide the protection and specialist support services necessary to comprehensively address the multiple needs of victims either by providing these services at the same premises, or by coordinating services through a central contact point, or by facilitating access to such services through one-stop online access, **or by coordinating services through multiple local contact points**. The services included shall at least cover first hand medical care and social services, psychosocial support, legal and police services, or information on and direction to such services.]

**Justification:** *Lithuania suggests adding another alternative to the provision, providing flexibility organizing specialist support services to victims in Member States. Lithuania does not have the opportunity to provide protection and specialist support services at the same premises/location. According to Lithuania's national laws, specialized complex assistance centres act as the main managerial point of service located throughout all territory. These centres regarding the needs of the victim, directs victim to the relevant institutions or bodies.*

**To be noted:** in accordance with the requirements of the principle of non-discrimination, regarding the United Nations Convention on the Rights of Persons with Disabilities there should be provided specialist support to men (for instance, referring to the Article 29<sup>th</sup> of proposal, aimed at ensuring specialist support in the event of genital mutilation), moreover, there should be provided specialist support to the women and girls with disabilities in the event of forced sterilization.

## NETHERLANDS

### NOTE

From:	Presidency
To:	Delegations
N° Cion doc.:	ST 7042 2022 ADD 1 + ST 7042 2022 ADD 2 + ST 7042 2022 ADD 3 + ST 7042 2022 ADD 4 + ST 7042 2022 ADD 5 + ST 7042 2022 INIT + COM(2022)105 final; SEC(2022)150 final; SWD(2022)60 final; SWD(2022)61 final; SWD(2022)62 final; SWD(2022)63 final
Subject:	Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence - Presentation and exchange of views on a revised draft, submitted by the Presidency, of Chapters 3 and 4

The Working Party is invited to continue the work on Chapters 3 and 4 and to examine Articles 16-35, on the basis of the revised draft submitted by the Presidency before the COPEN meeting on 31 January 2023 (see WK 17827/22). The recitals concerning Articles 16-35 are also included in the revised draft.

Suggested changes are highlighted with strikethrough and underline, the explanations are included in boxes in relation to the relevant provisions.

- (24) Victims should be able to report ~~crimes~~ acts of violence against women or domestic violence easily without being subject to secondary or repeat victimisation. To this end, Member States should provide the possibility to submit complaints online or through other information and communication technologies for the reporting of such acts ~~crimes~~. Victims of cyber violence should be able to upload materials relating to their report, such as screenshots of the alleged violent behaviour.

- (25) In the case of domestic violence and violence against women, especially when committed by close family members or intimate partners, victims may be under such duress by the offender that they fear to reach out to the competent authorities, even if their lives are in danger. Therefore, Member States should ensure that their confidentiality rules do not constitute an obstacle for ~~relevant professionals, such as~~ healthcare professionals, to report to the competent authorities, where they have reasonable grounds to believe that ~~there the life of the victim is at~~ an imminent risk of serious physical harm. Similarly, instances of domestic violence or violence against women affecting children are often only intercepted by third parties noticing irregular behaviour or physical harm to the child. Children need to be effectively protected from such forms of violence and adequate measures promptly taken. Therefore, ~~relevant~~ professionals coming in contact with child victims or potential child victims, including healthcare or education professionals, should equally not be constrained by confidentiality where they have reasonable grounds to believe that serious physical harm acts of violence under this Directive have has been or is expected to be inflicted on the child committed against the child or further serious acts are to be expected. Where professionals report such instances of violence, Member States should ensure that they are not held liable for breach of confidentiality.
- (26) In order to tackle underreporting in the cases when the victim is a child, safe and child-friendly reporting procedures should be established. This can include questioning by competent authorities in simple and accessible language.
- (27) Delays in processing complaints of violence against women and domestic violence can bear particular risks to victims thereof, given that they might still be in immediate danger given and that offenders might often be close family members or spouses. Therefore, the competent authorities should have the sufficient adequate expertise and effective investigative tools to investigate and prosecute such crimes.
- (28) Victims of domestic violence and violence against women are typically in need of immediate protection or specific support, for example in the case of intimate partner violence, where the rate of recidivism tends to be high. Therefore, an individual assessment to identify the victim's protection needs should be ~~conducted~~ initiated at the earliest possible stage after the first contact of ~~upon the very first contact of competent authorities with~~ the victim 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.
- (29) When assessing the victim's protection and support needs, the primary concern should lie in safeguarding the victim's safety and providing tailored support, taking into account, among other matters, the individual circumstances of the victim. Such circumstances requiring special attention could include the victim's pregnancy or the victim's dependence on or relationship to the offender.

(30) In order to ensure comprehensive support and protection to victims, all competent authorities and relevant bodies, not limited to law enforcement and judicial authorities, should be involved in assessing the risks for victims and appropriate support measures ~~on the basis of clear guidelines issued by the Member States~~. Such assessment, when assessing the risk emanating from the offender or suspect, guidelines should include ~~factors to be taken into consideration when assessing the risk emanating from the offender or suspect, including~~ the consideration that suspects charged with minor offences are as likely to be dangerous as those charged with more severe offences, especially in cases of domestic violence and stalking.

(30 bis) For the purposes of this Directive, competent authorities should be understood as the authority or authorities which have the relevant competence to carry out the task in question, under national law. Each Member State should determine which authorities should be considered competent authorities for the purpose of each provision that refers to this concept.

#### The Netherlands supports this addition

(31) Due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation, and the fact that they suffer emotional harm that prejudices their development, the victim's children should receive the same protection measures as those accorded to the victim. Other persons dependant on the victim, such as adults with disabilities or older dependant adults for whom the victim provides care, may experience similar emotional harm and should thus be accorded the same protection measures.

(32) Victims of violence against women and domestic violence are often in need of specific support. To ensure they effectively receive offers of support, the competent authorities should refer victims to appropriate support services. This should in particular be the case where an individual assessment has found particular support needs of the victim. ~~In that case, support services should be able to reach out to the victim even without the victim's consent.~~ For the processing of related personal data by competent authorities, Member States should ensure that it is based on law, in accordance with Article 6(1)(c) read in conjunction with Article (6)(2) and (3) of Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>1</sup>. Such laws should include appropriate personal data safeguards that respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the individuals. Where competent authorities transfer victims' personal data to support services for victims' referral, they should ensure that the data transferred is limited to what is necessary to inform the services of the circumstances of the case, so that victims receive appropriate support and protection.

(33) Member States should take the necessary measures to ensure the availability of emergency barring, restraining and protection orders to ensure effective protection of victims and their dependants.

<sup>1</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), ([OJ L 119, 4.5.2016, p. 1–88](#)).

- (34) Member States should ensure that emergency barring 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.
- (35) Protection orders may include prohibiting the offender or suspect to access certain localities; to approach the victim or dependant closer than a prescribed distance or to contact them, including through the use of online interfaces ~~and to possess firearms or deadly weapons, where necessary.~~
- (36) In order to safeguard the effectiveness of emergency barring, restraining and protection orders, breaches of such orders should be subject to penalties. Those penalties can be of a criminal law or other legal nature and may include prison sentences, fines or any other legal penalty that is effective, proportionate and dissuasive.
- (37) Presenting evidence of past sexual behaviour 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, ~~without prejudice to the rights of defence,~~ Member States shall ensure that questions, enquiries and evidence concerning past sexual conduct of the victim ~~should not be permitted only when it is relevant and necessary in criminal investigations and court proceedings.~~
- (38) Given the complexities and gravity of offences of violence against women and domestic violence and specific support needs of victims, Member States should ensure additional support and prevention of such offences is provided by designated bodies. Given their expertise in matters of discrimination on grounds of sex, national equality bodies, set up in accordance with Directives 2004/113/EC<sup>2</sup>, 2006/54/EC<sup>3</sup> and 2010/41/EU<sup>4</sup> of the European Parliament and of the Council, are well placed to fulfil these tasks. ~~Such bodies should in addition have legal standing to act on behalf or in support of victims of all forms of violence against women or domestic violence in judicial proceedings, including for the application for compensation and removal of online illegal content, with the victims' approval. This should include the possibility of acting on behalf or in support of several victims together.~~ To enable these bodies to effectively carry out their tasks, Member States should ensure that they are provided with sufficient human and financial resources.
- (39) Certain offences covered by this Directive involve the increased risk of repeated, prolonged or even continuous victimisation. That risk occurs especially in relation to offences involving the making accessible to a multitude of end-users, through information and communication technologies, of material, resulting from certain offences of cyber violence, considering the ease and speed with which such material

<sup>2</sup> Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, ([OJ L 373, 21.12.2004, p. 37](#)).

<sup>3</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), ([OJ L204, 26.7.2006, p. 23](#)).

<sup>4</sup> Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, ([OJ L 180, 15.7.2010, p. 1](#)).

can be distributed on a large scale and the difficulties that often exist when it comes to removing such material. That risk typically remains even after a conviction. Therefore, in order to effectively safeguard the rights of the victims of those offences, Member States should be required to take suitable measures aimed at the removal of the material in question. Considering that removal at the source may not always be feasible, for instance because of legal or practical difficulties relating to the execution or enforcement of an order to remove, Member States should also be allowed to provide for measures to disable access to such material.

- (40) Those measures should include, in particular, empowering national judicial authorities to issue orders to providers of intermediary services to remove, or also to disable access to, one or more specific items of the material in question. ~~Those orders should be issued upon a sufficiently reasoned and substantiated request of the victim. Considering the speed with which such material can spread online and the time it can take to complete criminal proceedings against the persons suspected of having committed the relevant offences, it is necessary for the effective protection of the victims' rights to provide for the possibility of issuing, subject to certain conditions, such orders by means of interim measures, even prior to the termination of such criminal proceedings.~~
- (41) Any such measures to remove or disable access, including in particular such orders, are liable to affect the right and interests of other parties than the victims, such as the persons providing the material, the intermediary service providers whose services may be used and the end-users of those services, as well the general interest. Therefore, it should be ensured that those orders and other measures can only be taken in a transparent manner and that adequate safeguards are provided for, so as to ensure that they remain limited to what is necessary and proportionate, legal certainty is ensured, all affected parties can exercise their right to effective judicial redress in accordance with national law, and a fair balance is struck between all rights and interests involved, including the fundamental rights of all parties concerned in compliance with the Charter. A careful weighting of all rights and interests at stake on a case-by-case basis is particularly important in proceedings for interim measures. Those orders should, as a general rule, be addressed to the specific provider of intermediary services that is best placed to act, in particular so as to limit any possible negative effects for freedom of expression and information.
- (42) The provisions of this Directive on orders and other measures for the removal and disabling access to relevant material should leave the relevant rules contained in Regulation XX/YYYY [proposed DSA Regulation] 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) unaffected. In particular, those orders should comply with the prohibition of imposing general obligations of monitoring or active fact-finding and with the specific requirements of that Regulation regarding orders to remove illegal content online.

- (43) Considering the potential importance of material that may be the object of the orders or other measures taken under this Directive to remove or disable access thereto for investigating or prosecuting the relevant offences under criminal law, the necessary measures should be taken to allow the competent authorities to obtain or secure such material, where necessary. Those measures could consist, for example, of requiring relevant intermediary service providers to transmit the material to those authorities or to preserve the material for a limited period that does not go beyond what is necessary. Any such measures should ensure the security of the material, remain limited to what is reasonable and comply with the applicable rules on the protection of personal data.
- (44) In order to avoid secondary victimisation, victims should be able to obtain compensation in the course of 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 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 domestic violence may have to uproot their lives in order to seek safety, entailing a possible change of employment or finding new schools for children or even creating a new identity.~~
- (45) Assistance and support to victims of violence against women and domestic violence should be provided before, during and for an appropriate period after the criminal proceedings have ended, for example where medical treatment is still needed to address the severe physical or psychological consequences of the violence, or if the victim's safety is at risk in particular due to the statements made by the victim in those proceedings.
- (46) Specialised support services should provide support to victims of all forms of violence against women and domestic violence, including sexual violence, female genital mutilation, forced marriage, forced abortion and sterilisation, sexual harassment and of various forms of cyber violence. Victims should benefit from specialist support services irrespective of whether they have filed a formal complaint.
- (47) Specialist support services should offer victims support tailored to their specific needs. Building on the requirements set out in Directive 2012/29/EU, the legal framework needs to be supplemented in order to ensure that specialist support services are provided with all the necessary tools to provide a targeted and integrated support for victims of violence against woman and and domestic violence, in view of their specific needs. — and irrespective of any official complaint. Such services could be provided in addition to, or as an integrated part of, general victim support services, which may call on existing entities providing specialist support. Specialist support may be provided by public national authorities, victims' support organisations, or other non-governmental organisations. They should be granted sufficient human and financial resources and, where the services are provided by non-governmental organisations, Member States should ensure that they receive appropriate funds.

- (48) Victims of domestic violence and violence against women typically have multiple protection and support needs. In order to address these effectively, Member States should provide such services at the same premises, or have such services coordinated through a central contact point or through online access to such services. The latter would ensure also victims in remote areas or unable to physically reach such centres are reached, ~~Member States should could provide for online access to such services.~~ This should at least entail setting up a single and updated website where all relevant information on and direction to access to available support and protection services is provided (one-stop online access). The Such a website should follow accessibility requirements for persons with disabilities.
- (49) Specialist support services, including shelters and rape crisis centres, should be considered essential during crises and states of emergency, including during health crises. These services should continue to be offered in these situations, where instances of domestic violence and violence against women tend to surge.
- (50) The traumatic nature of sexual violence, including rape, requires a particularly sensitive response by trained and specialised staff. Victims of this type of violence need immediate medical care and trauma support combined with immediate forensic examinations for the safe-keeping of to collect the evidence needed for future prosecution. Rape crisis centres or sexual violence referral centres should be available in sufficient numbers and adequately spread over the territory of each Member State, with the respect of the Member States geographical and demographic composition. Such centers can form part of the existing healthcare system in the Member State. Similarly, victims of female genital mutilation, who are often girls, typically are in need of targeted support. Therefore, Member States should ensure they provide dedicated support tailored to these victims.

(51)

Sexual Harassment at work is considered as a form of discrimination on grounds of sex by Directives 2004/113/EC, 2006/54/EC and 2010/41/EU. Given that Ssexual harassment at work has significant negative consequences both for the victims and the employers,. Therefore external counselling services independent advice and information should be provided to both victims and employers, where such conduct is criminalised under national law. These should include information advice on ways for employers to adequately addressing such instances and where victims find appropriate help and support. at the workplace, including on available legal remedies available to the employer to remove the offender from the workplace and providing the on possibilities of early conciliation, if the victim so wishes.

- (52) Member States should ensure that national helplines are operated under the EU-harmonised number [116016] and this number is widely advertised as a public number, free of charge and available round-the-clock. The support provided should include crisis counselling and should be able to refer to face-to-face services, such as shelters, counselling centres or the police.

- (53) Shelters play a vital role in protecting victims from acts of violence. Beyond providing a safe place to stay, shelters should provide the necessary support concerning interlocking problems related to victims' health, financial situation and the well-being of their children, ultimately preparing victims for an autonomous life.
- (54) To effectively address negative consequences for children victims, support measures to children should include specialised and age-appropriate to age psychological counselling developmental needs and the individual situation of the child, together with paediatric care where necessary, and be provided as soon as competent authorities have reasonable grounds to believe that children might have been victims, or having including child witnesseds of violence against women or domestic violence. In the provision of support to children-victims, the rights of the child, as laid down in Article 24 of the Charter, should be a primary consideration.
- (55) In order to ensure the safety of children during possible visits with an offender or suspect who is a holder of parental responsibility with rights of access as determined under the applicable national civil law rules, Member States should ensure that supervised neutral places, including child protection or welfare offices, are made available so that such visits can take place there in the best interests of the child. If needed, the visits should take place in the presence of child protection or welfare officials. Where it is necessary to provide for interim accommodation, children should as a priority be accommodated together with the holder of parental responsibility who is not the offender or suspect, such as the child's mother. The best interest of the child should be always taken into account.
- (56) Victims experiencing discrimination based on a combination of sex and other grounds are at a heightened risk of violence, with specific needs and groups at risk of violence against women or domestic violence, such as women with disabilities, women with dependant residence status or permit, undocumented migrant women, women applicants for international protection, women fleeing armed conflict, women affected by homelessness, with a minority racial or ethnic background, living in rural areas, women in prostitution sex workers, detainees, lesbians, trans women, or older women or women with use of alcohol and drugs or drugs use disorders. They should consequently receive specific protection and support.
- (57) Women with disability disproportionately experience violence against women and domestic violence and due to their disability often have difficulties in accessing protection and support measures. Therefore, Member States should ensure they can benefit fully from the rights set out in this Directive, on an equal basis with others, while paying due attention to the particular vulnerability of such victims and their likely difficulties to reach out for help.

## CHAPTER 3

### PROTECTION OF VICTIMS AND ACCESS TO JUSTICE

General remark: “criminal offences” is changed to “acts”. The reporting is of the act, not the offence.

#### Article 16

#### Reporting of violence against women or domestic violence

*1. Some MS indicated that they can't support the idea of a possibility to report online in all cases. One possibility could be to change “shall” to “may”.*

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 ~~criminal offences~~ acts of violence against women or domestic violence to the competent authorities in an easy and accessible manner. This ~~shall~~ may include the possibility of reporting ~~criminal offences~~ such acts online or through other information and communication technologies, including the possibility to submit evidence, in particular concerning reporting of ~~criminal offences~~ acts of cyber violence.

The Netherlands supports the suggested changes.

*2. We have noticed concerns from MS on how the victim would know if a report were made by a third party. One suggestion could be to add a sentence on this. This could be elaborated in a recital where references could be made to relevant Articles on safety.*

2. Member States shall take the necessary measures to encourage any person who knows about or suspects, in good faith, that ~~offences~~ acts of violence against women or domestic violence have occurred, or that ~~further~~ acts of violence are to be expected, to report this to the competent authorities. Where it is not the victim who is making the report, Member States shall take adequate measures for the victim's safety when necessary / if there are indications that the safety of the victim is at risk.

We would like to see this added to the paragraph. The victim is not always at risk.

*3. MS have concerns on lawyers being covered by the term “relevant professionals”. Since the aim with this Paragraph is to facilitate reporting by healthcare professionals (see Recital 25) we suggest to delete relevant professionals and refer only to healthcare professionals. Alternative suggestions by COM in footnote<sup>5</sup>. Changes in the end to align text on adults with text on children.*

3. Member States shall ensure that the confidentiality rules imposed by national law on ~~relevant professionals, such as~~ healthcare professionals, do not constitute an obstacle to their reporting to the competent authorities if they have reasonable grounds to believe that there is an imminent risk that serious physical harm will be inflicted on a person due to their being subject to violence against women or domestic violence ~~any of the offences covered under this Directive~~. If the victim or potential victim is a child, ~~the relevant professionals subject to the protection of legal privilege or confidentiality rules imposed by national law~~ shall be able to report to the competent authorities if they have reasonable grounds to believe that a serious physical harm ~~act of violence covered under this Directive~~ has been or is expected to be inflicted on the child ~~committed or further serious acts of violence are to be expected~~.

The Netherlands supports the suggested changes.

4. *Minor changes to clarify.*

4. Where children report ~~criminal offences~~ 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 act~~ act involves the holder of parental responsibility, Member States ~~should~~ shall ensure reporting is not conditional upon this person's consent.

The Netherlands supports the suggested changes.

5. *It's our understanding that we are trying to create a protection in line with Article 6 of Directive 2004/81.*

5. Member States shall ensure that, at least until completion of the first individual assessment referred to in Article 18, it shall not be possible to enforce an expulsion order against the competent authorities coming in contact with a victim reporting ~~offences~~ acts of violence against women or domestic violence ~~are prohibited from transferring personal data pertaining to the residence status of the victim to~~

The Netherlands supports the suggested changes.

<sup>5</sup> To keep "relevant professionals", which would also cover lawyers and to replace "that serious physical harm will be inflicted or has been inflicted on a person" with "for the life of the victim".

~~competent migration authorities, at least until completion of the first individual assessment referred to in Article 18.~~

## Article 17

### Investigation and prosecution

*1-3: Minor changes to clarify*

1. Member States shall ensure that persons, units or services investigating and prosecuting violence against women or domestic violence have ~~sufficient~~ adequate expertise and effective investigative tools to effectively investigate and prosecute such acts ~~crimes~~, especially to gather, analyse and secure electronic evidence in cases of cyber violence.
2. Member States shall ensure that reported ~~offences~~ acts of violence against women or domestic violence are processed and transferred without delay to the competent authorities for prosecution and investigation.
3. The competent authorities shall promptly and effectively ~~record and~~ investigate allegations of acts of violence against women or domestic violence and ensure that an official ~~complaint~~ record is filed in all cases.

*4. We understand that the primary intention of this paragraph is to require competent authorities to send victims to doctors or to support services, in order to gather evidence. Therefore, we suggest to turn the provision around. Article 27–29 includes different support services, and this addition could clarify that only support services specialised in securing evidence are relevant.*

4. Where the victim wishes or is considering to bring charges, and in order to assist in securing evidence, in particular in cases of sexual violence, ~~The~~ competent authorities shall promptly ~~refer~~ direct victims to relevant health care professionals or to the support services referred to in Articles 27, 28 and 29, specialised in ~~to assisting~~ in securing evidence, ~~in particular in cases of sexual violence,~~ where the victim wishes to ~~bring charges and~~ make use of such services.

The Netherlands supports the suggested changes. We suggest an addition to include victims that are not yet sure of reporting the violence.

*5. Change from “shall” to “may” to align with Art. 55 Istanbul Convention and allow for necessary prosecutorial discretion. Suggestion to replace “Article 5” with “acts of rape”.*

5. Member States shall ensure that ~~Investigations into or prosecution of offences acts referred to in Article 5~~ acts of rape shall not be dependent on reporting or accusation by a victim or by their representative, and that criminal proceedings shall may continue even if the report or accusation has been withdrawn.

The Netherlands supports the suggested changes.

## Article 18

### Individual assessment to identify victims' protection needs

1. In the framework of the individual assessment which is to be carried out under Article 22 of Directive 2012/29/EU, Member States shall ensure that, as regards victims covered by this Directive, the additional elements as set out in paragraphs 2 to 7 of this Article are assessed.

*2. In practice, it is not possible to initiate an individual assessment upon the first contact of the victim. "At the earliest stage after" indicates some flexibility. We suggest deleting the requirement to verify. Since all competent authorities should update the assessment, any mistake should be detected (Paragraph 18.7). Suggestion by COM in footnote<sup>6</sup>.*

2. This individual assessment shall be initiated ~~upon~~ at the earliest possible stage after the first contact of the victim with the competent authorities. ~~The competent judicial authorities shall verify at the latest at the initiation of criminal proceedings whether an assessment has been conducted. If this has not been the case, they shall remedy the situation by undertaking an assessment as soon as possible.~~

The Netherlands supports the suggested changes.

3. The individual assessment shall focus on the risk emanating from the offender or suspect, **including which may include** the risk of repeated violence, the risk of bodily harm, the use of 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.

**In order to have more flexibility when conducting the individual assessment the NL suggests the above mentioned change of paragraph 3.**

4. The assessment shall take into account the victim's individual circumstances, including whether they experience discrimination based on a combination of sex and other grounds 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.

*5. Change to clarify that a-c are examples.*

5. Member States shall ensure that adequate protection measures are taken on the basis of the individual assessment, ~~such as:~~ These may include:
  - (a) measures referred to in 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. *Change to*

6. When appropriate, ~~the~~ individual assessment shall be undertaken in collaboration with ~~all~~ relevant competent authorities depending on the stage of the proceedings,

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<sup>6</sup> This individual assessment shall be initiated upon the first contact of the victim with the competent authorities and be completed at the earliest possible stage. The competent ~~judicial~~ authorities shall verify at the latest at the initiation of criminal proceedings whether an assessment has been conducted. If this has not been the case, they shall ensure ~~remedy the situation by that undertaking~~ an assessment is carried out as soon as possible.

and relevant support services, such as victim protection centres and women's shelters, social services and healthcare professionals.

7. Competent authorities shall update the individual assessment **where relevant / necessary** at regular intervals to ensure the protection measures relate to the victim's current situation. This shall include an assessment of whether protection measures, in particular under Article 21, need to be adapted or taken.

The Netherlands agrees with the suggested changes proposed by France. We would like to see more flexibility as it is not always necessary.

*8. Some MS indicated that they can't support that dependants are included, please indicate if that applies for this Paragraph.*

8. Victims' dependants shall be presumed to have specific protection needs without undergoing the assessment referred to in paragraphs 1 to 6 **unless there are indications that these dependants do not have specific protection needs.**

The Netherlands suggests the above mentioned changes. There needs to be an indication that the dependants will be unsafe.

## Article 19

### Individual assessment of victims' support needs

*1. Change to align with Article 51.1 in the Istanbul Convention (“if necessary to provide for coordinated safety and support”). We ask MS to indicate their opinion on including dependant’s in Article 19.*

1. Member States shall ensure that, taking into account the individual assessment referred to in Article 18, the competent authorities, when necessary, assess the victim’s and their dependant’s individual needs for support as provided for under Chapter 4.  
Instructie, eerste lid: NL steunt “when necessary”. Op deze manier kunnen de autoriteiten rekening houden met de concrete situatie.
2. Article 18(4) and (7) shall apply to the individual assessment of support needs under paragraph 1 of this Article.

The Netherlands agrees with the suggested changes made.

## Article 20

### Referral to support services

*1. MS asked for inclusion of consent from the victim.*

1. If the assessments referred to in Articles 18 and 19 have identified specific support or protection needs ~~or if~~ and the victim consents, or if the victim requests support, Member States shall ensure that support services, in cooperation with the competent authorities, contact victims to offer support.

*2. Minor change to make it clear that it is the victim’s request.*

2. The competent authorities shall respond to the victim’s requests for protection and support in a timely and coordinated manner.

*3. A recital could clarify that refer only means that the child victim is offered support. Adding “when necessary” is intended to make it clear that parents should be included as a startingpoint and that it should be decided case by case when it’s necessary to do. MS indicated they don’t want to include child witnesses..*

3. Where needed, ~~they~~ competent authorities shall be able to refer child victims, ~~including witnesses~~, to support services, when necessary without the prior consent of the holder of parental responsibility.

The Netherlands supports the suggested changes.

4. Member States shall ensure the transmission 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.

*5. There needs to be a time-limit, could 24 months be acceptable?*

5. Support services shall store personal data for as long as necessary for the provision of support services, and in any event for no longer than ~~12-24 months~~ **necessary for the purpose it was collected** after the last contact between the support service and the victim.

The Netherlands suggests the above mentioned change to the text. Violence can occur for a long period of time. We need to save these reports in cases violence reoccurs and we need to evaluate the safety of those concerned.

#### *Article 21*

### **Emergency barring, restraining and protection orders**

*1. We ask MS to indicate their opinion on including dependant's in Article 21.*

1. Member States shall ensure that, in situations of immediate danger for the victim's ~~[or their dependant's]~~ health or safety, the competent authorities issue orders 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 the residence or to enter the victim's workplace or contacting the victim ~~[or their dependants]~~ in any way. Such orders shall have immediate effect and not be dependent on a victim reporting the criminal offence.

*2. Long-term is not proportionate, restraining or protection orders should be used for the time needed. Changes to align with Istanbul Convention.*

2. Member States shall ensure that the competent authorities can issue restraining or protection orders to provide ~~long-term~~ protection for as long as necessary for victims ~~[or their dependants]~~ against any acts of violence covered by this Directive, ~~including by prohibiting or restraining certain dangerous behaviour of the offender or suspect.~~

*3. Doesn't seem reasonable to require this in every case covered by the scope of this Directive. Suggestion to allow some flexibility.*

3. Member States shall ensure that the competent authorities, where relevant, inform victims of the possibility to apply for emergency barring and restraining or protection orders, as well as the possibility to seek cross-border recognition of protection orders pursuant to Directive 2011/99/EU or Regulation (EU) No 606/2013.

4. Any breaches of emergency barring or restraining and protection orders shall be subject to effective, proportionate and dissuasive criminal or other legal penalties.
5. This Article does not oblige the Member States to modify their national systems as regards the qualification of emergency barring orders and protection orders as falling under criminal, civil or administrative law.

The Netherlands agrees with the suggested changes made, except for the addition of “or their dependant”. We prefer the separate evaluation of the necessity for an protection order for the dependant.

#### Article 22

### Protection of victim’s private life

*MS have raised concerns and we are trying to be more aligned with Istanbul Article 54. “Criminal proceedings” includes both questions and enquiries.*

~~Without prejudice to the rights of defence, Member States shall ensure that, in criminal investigations and court proceedings, questions, enquiries and evidence concerning past sexual conduct of the victim or other aspects of the victim’s private life related thereto are not permitted~~ shall be permitted only when it is relevant and necessary.

The Netherlands agrees with the suggested changes made.

#### Article 23

### Guidelines for law enforcement and judicial authorities

*Member States have raised concern regarding the fact that it is binding to issue guidelines. Moreover, change from “shall” to “may” is also necessary as all the listed guidelines are not relevant for all competent authorities. For example a and b are not relevant for courts.*

Member States **may issue** ~~shall consider issuing~~ issue non-binding guidelines for the competent authorities acting in criminal proceedings, including prosecutorial ~~and judicial~~ guidelines, concerning cases of violence against women or domestic violence. Those guidelines ~~shall~~ may include guidance on:

- (a) how to ensure the proper identification of all forms of such violence;
- (b) how to conduct the individual assessment under Articles 18 and 19;
- (c) how to treat victims in a trauma-, gender- disability and child-sensitive manner;
- (d) how to ensure the proceedings are conducted in a manner as to prevent secondary or repeat victimisation;
- (e) how to cater to the enhanced protection and support needs of victims experiencing discrimination based on a combination of sex and other grounds;

- (f) how to avoid gender stereotypes;
- (g) how to refer victims to support services, to ensure the appropriate treatment of victims and handling of cases of violence against women or domestic violence;
- (h) how to ensure the protection of the victim's privacy and confidential information.

The Netherlands agrees with the suggested changes. We have marked our choice between the suggested options.

#### Article 24

#### **Role of national bodies and equality bodies**

*Many Member States raised concerns regarding this Article and especially Paragraph 2 that gives the bodies the task to work on behalf of the victim. Our understanding is that MS already have lawyers or others who have been entrusted with this task and that it is not desirable to change there systems. Having both lawyers and the bodies could can lead to difficulties and you could question the added value and cost. We therefor suggest deleting a) and 2. COM suggestion in footnote<sup>7</sup>.*

1. Member States shall designate and make the necessary arrangement for a body or bodies to carry out the following tasks:
  - ~~(a) provide independent assistance and advice to victims of violence against women and domestic violence;~~
  - ~~(b) publish independent reports and make recommendations on any issue relating to such forms of violence;~~
  - ~~(c) 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.

2. ~~Member States shall ensure that the bodies referred to in paragraph 1 can act on behalf or in support of one or several victims of violence against women or domestic violence in judicial proceedings, including for the application for compensation~~

<sup>7</sup> Member States shall ensure that the bodies referred to in paragraph 1 can act on behalf or in support of one or several victims of violence against women or domestic violence in judicial proceedings, including for the application for compensation referred to in Article 26 and removal of online content referred to in Article 25, with the victims' approval and in accordance with national rules on legal representation.

2. Member States shall ensure that the bodies referred to in paragraph 1 can act on behalf or in support of one or several victims of violence against women or domestic violence in judicial proceedings, including for the application for compensation referred to in Article 26 and removal of online content referred to in Article 25, with the victims' approval and in accordance with national rules on legal representation.

3. Member States shall ensure that the bodies referred to in paragraph 1 are provided with the human, technical and financial resources necessary to perform their task and exercise their competences effectively.

**Recital 38** could be amended as follows:

“Given the complexities and gravity of offences of violence against women and domestic violence and specific support needs of victims, Member States should ensure additional support and prevention of such offences is provided by designated bodies. Given their expertise in matters of discrimination on grounds of sex, national equality bodies, set up in accordance with Directives 2004/113/EC, 2006/54/EC and 2010/41/EU of the European Parliament and of the Council, are well placed to fulfil these tasks. Such bodies should in addition have legal standing to act on behalf or in support of victims of all forms of violence against women or domestic violence in judicial proceedings, including for the application for compensation and removal of online illegal content, with the victims' approval. This should include the possibility of acting on behalf or in support of several victims together. It should be left to the relevant bodies' discretion to decide in which cases to make use of this right. To enable these bodies to effectively carry out their tasks, Member States should ensure that they are provided with sufficient human, technical and financial resources.”

~~referred to in Article 26 and removal of online content referred to in Article 25, with the victims' approval.~~

#### *Article 25*

### **Measures to remove certain online material**

*Article 25: The proposal differs from both CSAM and TCO. Is it reasonable to introduce a new set of rules here? One solution is to have a more general framework in this Directive. 1. We suggest allowing for other than judicial authorities, deleting application by the victim, which doesn't exist in other regulations and to clarify that removal is the first step. 2. We suggest deleting interim proceedings, MS could have it but it would not be a requirement for all MS. 3-6 minor changes. 7. We should also consider introducing a system on judicial review (Article 9 TCO and Article 14 CSAM).*

1. Member States shall take the necessary measures to ensure the prompt removal of material referred to in Article 7, points (a) and (b), Article 8, point (c), and Articles 9 and 10 in line with the Digital Services Act and other relevant legal frameworks concerning online illegal content. ~~Those measures shall include the possibility for their competent judicial authorities to issue, upon application by the victim, binding legal orders to remove or disable access to such material addressed to relevant providers of intermediary services. Where removal at the source is not feasible, Member States shall ensure the order may include the disabling of access to the material in question.~~

The digital services act, especially Article 8 and 9, includes both the removal of illegal content and (without delay) the effect given to the order by the providers of intermediary services. We do not think it necessary for a new digital law enforcement to be created through this Directive when the system already exists. Any changes made to these directives to better match the online dimension would also benefit this directive. The NL supports the suggestion to refer to more general framework.

2. ~~Member States shall ensure that orders referred to in paragraph 1 can be issued in interim proceedings, even prior to the termination of any criminal proceedings regarding the offences referred to in Article 7, points (a) and (b), Article 8, point (c), Article 9 or Article 10 where the judicial authority seized considers that:~~
  - ~~(a) — it has been presented with sufficient evidence to justify the conclusion that the conduct referred to in Article 7, points (a) and (b), Article 8, point (c), Article 9 or Article 10 likely took place in respect of the applicant and that the material that is the object of the application constitutes material as referred to in those articles;~~
  - ~~(b) — the removal of that material is necessary to prevent or limit significant harm to the victim;~~
  - ~~(c) — the rights and interests of other parties involved associated with the potential removal are not such as to outweigh those of the victim associated with removal.~~

The Netherlands agrees with the suggested changes.

3. Member States shall ensure that orders referred to in paragraph 1 ~~and 2~~ are valid for an appropriate time period ~~not exceeding one year~~, subject to renewal for an additional appropriate time period, **for example** upon application by the victim, where the judicial authority seized considers that the conditions of paragraph 2 continue to be met. However, Member States shall ensure that, where criminal proceedings regarding the offences referred to in Article 7, point (a) and (b), Article 8, point (c), Article 9 or Article 10 are terminated without leading to the finding of such an offence having been committed, the orders are invalidated and the provider of intermediary services concerned is informed thereof.

The Netherlands prefers to include “for example” for this is not always necessary. Paragraph 2 is still mentioned in this sentence. Please rewrite or remove.

4. Member States shall ensure that the orders and other measures referred to in paragraphs 1 ~~and 2~~ are taken following transparent procedures and are subject to adequate safeguards, in particular to ensure that those orders and other measures are limited to what is necessary and proportionate and that due account is taken of the rights and interests of all parties involved.
5. Member States shall ensure that the end-users of the relevant services are informed, where appropriate by the intermediary service providers concerned, of the reasons for the removal of or disabling access to the material pursuant to the orders or other measures referred to in paragraphs 1 ~~and 2~~ and that those end users have and of the possibility to have access to judicial redress.
6. Member States shall ensure that the removal of or disabling access to the material pursuant to the orders or other measures referred to in paragraphs 1 ~~and 2~~ does not prevent the competent authorities from obtaining or securing the evidence necessary for the investigation and prosecution of the offences referred to in Article 7, points (a) and (b), Article 8, point (c), Article 9 or Article 10.
7. Member States shall ensure that all parties affected of an order referred to in paragraph 1 have a right to an effective judicial remedy. That right shall include the right to challenge such a removal order before the courts of the Member State of the competent authority that issued the removal order. [Member States shall put in place effective procedures for exercising the rights referred to in this paragraph.]

The Netherlands does not see the need for the addition of the last sentence of paragraph 7

#### *Article 26*

#### **Compensation from offenders**

*Article 26. The Article is far more detailed than Art. 30 Istanbul Convention, Art. 16 Victim's Rights Directive and Art. 17 Trafficking Directive. 1. Suggestion to clarify that this only apply to offences (Article 82(2)(c) TFEU). 2. There are cases where it is reasonable to handle compensation in civil proceedings, adding "where appropriate" indicates that. 3-5. Should be left to MS to decide, matter on civil proceedings and matters. Goes much further than other Directives. COM suggestion in footnot.*

1. Member States shall ensure that victims have the right to claim full compensation from offenders for damages resulting from ~~all forms~~ offences of violence against women or domestic violence.
2. Member States shall ensure where appropriate that victims are able to obtain a decision on compensation in the course of criminal proceedings.

The Netherlands supports the suggested addition

3. ~~The compensation shall place victims in the position they would have been in had the offence not taken place, taking into account the seriousness of the consequences for the victim. Compensation shall not be restricted by the fixing of an upper limit.~~

The Netherlands supports the removal of paragraph 3

4. ~~The damage shall include costs for healthcare services, support services, rehabilitation, loss of income and other reasonable costs that have arisen as a result of the offence or to manage its consequences. The amount of the damages awarded shall also compensate for physical and psychological harm and moral prejudice.~~

The Netherlands supports the removal of paragraph 4

5. ~~The limitation period for bringing a claim for compensation shall be no less than 5 years from the time the offence has taken place.~~

~~In cases of sexual violence, the limitation period shall be no less than 10 years.~~

~~The limitation period for bringing a claim for compensation of criminal offences referred to in Article 7 shall commence with the victim's knowledge of the offence.~~

~~The limitation period shall not commence as long as the offender and the victim share the same domestic unit. In addition, if the victim is a child, the limitation period shall not commence before the victim has reached 18 years of age.~~

~~The limitation period shall be interrupted or suspended for the duration of pending legal proceedings concerning the offence.~~

## CHAPTER 4

### VICTIM SUPPORT

#### *Article 27*

#### **Specialist support to victims**

*1. Suggestion to clarify that support should be available regardless of reporting, see Recital 47. We also suggest changing the referens to Article 8 (3) Victims Right's Directive. On a) we move legal issues to a separate Paragraph ba) and change to information, in order not to interfere with advice, that can only be given by lawyers in some MS. On b) clarification. On c) same as a) with regard to lawyers.*

1. Member States shall ensure that specialist support services referred to in Article 98(3) of Directive 2012/29/EU are available for victims of acts of violence covered by this Directive, irrespective of whether they have filed a formal complaint.

Those specialist support services shall provide:

- (a) ~~advice and information on any relevant legal or practical matters arising as a result of the crime, including on access to housing, education, training,~~ financial support and assistance to remain in or find employment;

(ba) information about access to legal counselling, including possibilities of legal aid, where available;

(b) ~~referrals~~ information on services providing to medical forensic examinations;

(c) support to victims of cyber violence, including ~~advice~~ information on judicial remedies and remedies to remove online content related to the crime.

2. Specialist support referred to in paragraph 1 shall be offered in-person and shall be easily accessible, including online or through other adequate means, such as information and communication technologies, tailored to the needs of victims of violence against women and domestic violence.

*3. Point c) on cyber does not seem more important than a) and b) with regard to resources, we therefore suggest deleting the reference to c). MS can't control the priorities within a NGO, as deciding on human resources. We suggest a change to clarify this.*

3. Member States shall ensure sufficient human and financial resources to provide the services referred to in paragraph 1, ~~especially those referred to in point (c) of that paragraph, including~~ Where such services are exclusively provided by non-governmental organisations, Member States shall provide the latter with adequate funding.

The Netherlands prefers to add “exclusively”. This is only necessary where only NGO’s offer these services. When governmental organisations offer these services it is not necessary to also fund these NGO’s.

*4. MS indicated a need for more flexibility. We suggest making it clear that MS is obliged to have at least one, but not all, of the alternatives listed.*

4. Member States shall provide the protection and specialist support services necessary to comprehensively address the multiple needs of victims either by providing these services at the same premises, or by coordinating services ~~have such services coordinated~~ through a central contact point, or by facilitating access to such services through one-stop online access ~~to such services~~. ~~The Such combined offering of services~~ included shall ~~include~~ at least cover first hand medical care and social services, psychosocial support, legal, and police services, or information on and direction to such services.

*5. Suggestion to make it possible for the Government or other national authorities to issue these guidelines.*

5. Member States shall ensure that issue guidelines and protocols for healthcare and social service professionals on identifying and providing appropriate support to victims of all forms of violence against women and domestic violence are issued, including on referring victims to the relevant support services. Such guidelines and protocols shall also indicate how to address the specific needs of victims who are at an increased risk of such violence as a result of their experiencing discrimination based on a combination of sex and other grounds of discrimination.

6. Member States shall **aim to** ensure that specialist support services remain fully operational for victims of violence against women and domestic violence in times of crisis, such as health crises or other states of emergency.

For practicality reasons we would like to see the addition of “aim to” for we cannot predict what crises will occur in the future.

7. Member States shall ensure that specialist support services are available to victims before, during and for an appropriate time after criminal proceedings.

1.

## Article 28

### Specialist support for victims of sexual violence

*1: Clarification to underline that this is about gathering and keeping evidence. “Psychological” deleted inline with Article 25 Istanbul Convention. We also suggest to clarify in Recital 50 that centers can form part of the existing healthsystem and that preserving evidence refers to the safekeeping of evidence.*

1. Member States shall provide for appropriately equipped, easily accessible rape crisis or sexual violence referral centres to ensure effective support to victims of sexual violence, including assisting in the ~~preservation~~ safekeeping and documentation of evidence. These centres shall provide for medical and forensic examinations, initial **trauma-sensitive support and when necessary referral to specialised** trauma support and ~~psychological~~ counselling, after the offence has been perpetrated **and for as long as necessary thereafter**. Where the victim is a child, such services shall be provided in a child-friendly manner.

- a) Our proposal is to delete 'as long as thereafter' and reflect this need for initial support. De Commission seemed to be susceptible to this change.
- b) Victims of sexual violence require specialised support. This is and should be part of the general healthcare system. These centres should focus on the initial support, acute medical care and watchful waiting, closely watching a patient's condition but not giving treatment unless symptoms of trauma appear or change.

2. The services referred to in paragraph 1 shall be available free of charge and accessible every day of the week. They may be part of the services referred to in Article 27.

Proposal by NL to **replace** this first sentence by: “The services referred to in paragraph 1 shall be available and accessible every day of the week and shall be supported financially in line with the national health care system.”

#### Explanation.

- a. This paragraph is in conflict with the division of competences in Europe: Member States are expressly left with the power to determine the scope and limitations of insured (health) care without interference from the EU. The directive is not an appropriate instrument to change national health systems and their funding; there is no legal basis for such a change.
  - b. A minimum norm could require these facilities to be available and accessible to the victim, but the wording “free of charge” should be deleted. Medical care (incl. examinations), trauma support and counselling are part of the general healthcare system and the charges are therefore dependent on your insurance. Our laws make sure that insurances reimburse the necessary care. Depending on your insurance a relatively limited personal payment in the form of the compulsory deductible applies. Depending on your income you get help with paying this (max. 800 euro) deductible; there are specific arrangements for these situations. The proposed paragraph is therefore not in line with the Dutch healthcare system. Making an exception for this specific victim group does not fit into our system. There is no supporting argument within our laws, nor research, to exempt healthcare costs from the deductible if a (violent crime) is the cause of the healthcare demand. We have carefully considered this issue. Recent Dutch research has shown that the deductible is not perceived as a serious barrier to taking the step towards this assistance. Moreover, this sets a precedent.
3. Member States shall ensure a sufficient geographical distribution and capacity of these services across the Member State.
  4. Article 27(3) and (6) shall apply to the provision of support for victims of sexual violence.

## Article 29

### Specialist support for victims of female genital mutilation

1. Member States shall ensure effective, age-appropriate support to victims of female genital mutilation, including by providing, gynaecological, sexological, psychological and trauma care and counselling tailored to the specific needs of such victims, after the offence has been perpetrated and for as long as necessary thereafter. This shall also include the provision of information on units in public hospitals that perform clitoral reconstructive surgery. Such support may be provided by the referral centres referred to in Article 28 or any dedicated health centre.
2. Article 27(3) and (6) and Article 28(2) shall be applicable to the provision of support for victims of female genital mutilation.

## Article 30

### Specialist support for victims of sexual harassment at work

*Article 30: MS asked to clarify that this Article only apply to criminal offense under national law. The suggestion to change from advice to information is in line with changes suggested in Article 27.*

In cases of sexual harassment at work that constitute a criminal offense under national law, Member States shall ensure that external counselling services are independent advice and information is available for victims and employers in cases of sexual harassment at work. These services shall include advice information on ways for employers to adequately addressing such instances and where victims find appropriate help and support. at the workplace, including on available legal remedies available to the employer to remove the offender from the workplace and providing the on possibilities of early conciliation, if the victim so wishes.

We prefer the above suggested changes (in orange). Also for recital 51

#### Arguments:

- A) Legal basis of this article is unclear. We're talking about labour and criminal law in 1 article. Because the legal basis of the article is unclear, it is not clear on what basis which powers and resources can be deployed that are necessary to make the article effective in practice. A clear and proper legal basis provides the legal authority to make such a decision and deploy the associated resources to bring it about in practice, which is lacking here.
- B) There is no clear demarcation of tasks and positions in this article: the tasks referred to in the article are partly tasks that belong to the occupational health and safety service/expert, partly confidential adviser and partly counsel. "Advisory service" as a collective term is too vague and therefore not definable in a legal sense, also with regard to the powers associated with the tasks and therefore unusable.

- C) We would like to keep the possibility for employers to use the (mandatory) internal and independent advisers/consultants in regard to risks in the workplace, which includes sexual harassment. Victims can also independently contact external advisory services, such as the Centre for Sexual Violence or Victim Support for advice and support. The article should reflect a minimum norm thus the need for advice and information to be available, not a separate service.

### Article 31

#### Helplines for victims

*1: MS expressed a need for some flexibility with regard to the technologie used. "Set-up" changed to clarify that existing helplines are sufficient.*

1. Member States shall ensure that set-up state-wide round-the-clock (24/7) telephone helplines are available, free of charge, to provide advice for victims of violence against women and domestic violence. Advice shall be provided confidentially or with due regard for their anonymity. Member States are encouraged to provide ~~shall ensure the provision of~~ such service also through other information and communication technologies, including online applications.

#### The Netherlands supports the suggested changes

2. Member States shall take appropriate measures to ensure the accessibility of services referred to in paragraph 1 for end-users with disabilities, including providing support in easy to understand language. Those services shall be accessible in line with the accessibility requirements for electronic communications services set in Annex I to Directive 2019/882/EU of the European Parliament and of the Council<sup>8</sup>.
3. Article 27(3) and (6) shall apply to the provision of helplines and support through information and communication technologies under this Article.

*4: MS asked for more flexibility since several MS already have national helplines and not all MS indicated that they will join that initiative. One solution could be to clarify that the Paragraph only requires that an existing national number is reachable under the harmonised number. Another solution could be to make this Paragraph non-binding.*

4. [Member States are encouraged to ~~shall~~ ensure that the service under paragraph 1 for victims of violence against women is reachable ~~operated~~ under the harmonised number at EU level "116 016" in addition to any existing national number(s) ~~and that the e~~End-users shall be ~~are~~ adequately informed of the existence and use of such number.]

FRA,

*or*

Member States shall ensure that the service under paragraph 1 for victims of violence against women is reachable ~~operated~~ under the harmonised number at EU level “116 016” in addition to any existing national number(s), and that the End-users shall be ~~are~~ adequately informed of the existence and use of such number.

We have marked our preferred option

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<sup>8</sup> Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services, [OJ L 151, 7.6.2019, p. 70–115](#).

## Article 32

### Shelters and other interim accommodations

*1: One possibility is to change (delete “women”) in line with the opinion from the Council Legal Service to make the Paragraph non-discriminatory. Such a change would not exclude special shelters only for women, but ensures that shelters are available regardless of gender.*

1. The shelters and other appropriate interim accommodations as provided for in Article 9(3), point (a), of Directive 2012/29/EU shall address the specific needs of women victims of domestic violence and sexual violence. They shall assist them in their recovery, providing adequate and appropriate living conditions with a view on a return to independent living.
2. The shelters and other appropriate interim accommodations shall be fully accessible and equipped to accommodate the specific needs of children, including child victims.
3. The shelters and other appropriate interim accommodations shall be available to victims regardless of their nationality, citizenship, place of residence or residence status.
4. Article 27(3) and (6) shall apply to shelters and other appropriate interim accommodations.

## Article 33

### Support for child victims

*1. Deleting “including” is a consequential change with regard to changes made in Article 4 c. Suggestion include children having witnessed in this Article.*

1. Member States shall ensure that children are provided specific adequate support as soon as the competent authorities have reasonable grounds to believe that the children might have been subject to, ~~or, including~~ having witnessed, violence against women or domestic violence. Support to children shall be **specialised** and appropriate to age-appropriate, developmental needs and the individual situation of the child, respecting the best interests of the child.

**We would like to see specialised removed for practicality. Specialised child support is not always available in the broad sense. According to the first paragraph specific and adequate support is already required.**

2. Child victims shall be provided with age-appropriate medical care, emotional, psychosocial, psychological and educational support, tailored to developmental needs and individual situation of the child, as well as any other appropriate support tailored in particular to situations of domestic violence.

*3. We suggest not having a specific order for a certain type of protection. The principle of the best interests of the child and each child's individual needs must be the overarching guidelines when assessing an interim accommodation for a child victim.*

3. Where it is necessary to provide for interim accommodation, children shall as a priority be placed together with other family members, in particular with a non-violent parent in permanent or temporary housing, equipped with support services.

The principle of the best interests of the child shall be decisive when assessing matters regarding interim accommodation. Placement in shelters shall be a last resort.

#### *Article 34*

### **Safety of children**

*Article 34: An addition in Recital 55 regarding concerns in relation to civil law.*

Member States shall establish and maintain safe places which allow a safe contact between a child and a holder of parental responsibilities who is an offender or suspect of violence against women or domestic violence, to the extent that the latter has rights of access. Member States shall ensure supervision by trained professionals, as appropriate, and in the best interests of the child.

#### *Article 35*

### **Targeted support for victims with specific needs and groups at risk**

*1. MS expressed that the non-exhaustive list of examples should only remain in Recital 56. We suggest changing women sex workers to women in prostitution, since this is aged international language, see for example Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women. We also suggest including lesbians, trans women and women with use of alcohol and drugs or drugs use disorders in the list of examples. We also add a some more grounds in the Recital.*

1. Member States shall ensure the provision of specific support to victims at an increased risk of violence against women or domestic violence due to intersecting forms of discrimination, ~~such as women with disabilities, women living in rural areas, women with dependant residence status or permit, undocumented migrant women, women applying for international protection, women fleeing from armed conflict, women affected by homelessness, women with a minority racial or ethnic background, women sex workers, women detainees, or older women.~~

## The Netherlands supports the suggested changes

2. The support services under Articles 27 to 32 shall have sufficient capacities to accommodate victims with disabilities, taking into consideration their specific needs, including personal assistance.
3. The support services shall be available for third-country nationals who are victims of violence against women and domestic violence, including for applicants for international protection, for irregular migrants ~~undocumented persons~~ and for persons subject of return procedures in detention. Member States shall ensure that victims who request so may be kept separately from persons of the other sex in detention facilities for third-country nationals subject of return procedures, or accommodated separately in reception centres for applicants for international protection.

*4. Concern from MS that detention center should do the assessments etc. in accordance with Art. 18-20. Suggestion to clarify that it is the competens authorities that are responsible, see the recital that clarifies the concept of competens authorities.*

4. Member States shall ensure that persons can report occurrences of violence against women or domestic violence in reception and detention centres to the relevant staff and that protocols are in place to ensure they or the competent authorities adequately and swiftly address such reports in accordance with the requirements set out under ~~in~~ Articles 18, 19 and 20.

## 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 - COM (2022) 105 (revised draft, submitted by the Presidency, of Chapters 3 and 4 - WK 1629/2023 INIT)**

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.

With regard to the revised draft of Chapters 3 and 4 of the Directive, in the course of the ongoing negotiations, Poland submits the following comments:

#### **I. with regard to Article 16:**

— Poland supports the flexible approach proposed by the Swedish Presidency with regard to online reporting of violence (it should not be imposed on Member States).

— Aware of the fact, that Art. 16 paragraph 1 does not apply to criminal proceedings, but to the procedure described in Art. 5 of Directive 2012/29/EU, we would like to stress, that Polish law does not provide for the possibility of reporting a crime online nor to produce evidence by that means, with an exclusion evidence from the hearing of a witness or an expert pursuant to Article 177 § 1a of the Code of Criminal Procedure.

— Although the amendment proposed by the Swedish Presidency in Art. 16 paragraph limits the protection from deportation granted to foreigners reporting domestic violence, Poland will be flexible with regard to supporting the 18-month period of protection from enforcement of the expulsion order.

#### **II. with regard to Article 17:**

— Poland is critical towards the proposed drafting of paragraph 4. Making obtaining medical evidence dependent from the decision of the victim, often ashamed or intimidated, can thwart the main goal of criminal proceedings – establishing the truth, penalizing the perpetrator and ensuring, that no innocent person will not be found liable. In Poland, criminal proceedings concerning offences against sexual freedom are initiated *ex officio*, without the need for the victim to file an indictment, the same rule applied to collection of evidence.

#### **III. with regard to Article 22:**

The proposed amendment is rational and takes into account both the rights of the defense and protection of private life of the victim.

#### **IV. with regard to Article 23:**

— Poland endorses the Swedish Presidency’s proposal to add “disability” to the list in letter (c)

— Poland seeks the deletion of the term “gender” (translated in the Polish text of the directive as “socio-cultural gender”, opposed to “sex”) in letter (c), as this term is ambiguous and unknown the Treaties and the Charter of Fundamental Rights. It has not been defined in the provisions of the directive, only referred to in recital (7). Throughout the draft (recitals: 5, 7 and 22 and articles: 4c, 10, 23c and 37), “gender” and “sex” are being used either as opposite concepts or in a synonymous meaning, which entails interpretative complications, including the lack of guidance on how to deal with such victims’ cases according to Art. 23 (c). We opt for the use of the term “sex” and not the ambivalent “gender” as well as of the expression “equality between women and men” instead of “gender equality” throughout the directive.

#### **V. with regard to Article 25:**

— amendments proposed in Article 25 of the draft Directive still do not allow to consider the introduction of that provision to be justified. In the first place, it should be noted that, in principle, the basis for blocking access to illegal content in all countries is introduced by Article 9 of Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on the Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act). This provision provides a sufficient basis to issue orders to take action against certain illegal content or certain illegal content. In addition, it defines the elements of this order and the scope of their use. It is therefore incomprehensible to introduce in the commented draft Directive another basis for issuing identical orders to counteract specific content,

— it should also be clarified whether the deletion in paragraph. 1 Article 25 of the wording ‘at the request of the victim’ would introduce a direct obligation on the Member States to monitor content online and whether any request for an injunction made by a person not having an interest in bringing proceedings would also have to be considered by the relevant authority.

— in addition, Article 25, which allows the removal of content, refers not only to objective grounds such as the existence of an offence of cyberstalking or the making available without consent of intimate content, but also to a very vague indication of incitement to violence or hate. This premise seems extremely broad and appraisal and can therefore be implemented differently in different countries. Its correct and unambiguous interpretation can be very difficult before case law of the Court of Justice appears and is popularized.

—The provision of the proposed Article 25 does not contain any indication as to the territorial scope of the order, so that an order issued by the relevant authority of the Member State in which the content is illegal may also affect the territory of the Member State where the content is completely legal.

— it is also necessary to clarify what is meant by ‘removal of materials’. An order for the complete removal of content from the service may be treated by providers of intermediary services as an obligation to permanently and completely remove the content from the service, which would result in its irretrievable loss. In practice, this may significantly impede possible redress in the future as well as prosecution of offenders,

— in addition, removal from the paragraph. 3 words ‘not exceeding one year’ may mean that a mechanism which is to be understood only as a provisional solution until the conclusion of the dispute in the main proceedings could be properly applied indefinitely. The previous solution limiting the period of validity of the Order was a much better solution, which allowed to minimise the negative effects of the Order, especially in the absence of a final judicial decision.

#### **VI. with regard to Article 26:**

— Poland supports the proposal of the Swedish Presidency to delete paragraphs 4 and 5, which go beyond the provisions of the Istanbul Convention.,

#### **VII. with regard to Article 29 para. 1:**

— The Polish language version uses the term “female genital mutilation” in plural (“mutilation of female genitals”), which is not correct. The basic grammatical interpretation, using the literal meaning of the statutory text, could lead to the conclusion, that the mutilation of one single female genital should remain unpunished. To avoid future doubts of justices and ensure precise definitions, we would appreciate an according modification of the plural phrase “okaleczania żeńskich narządów płciowych” into singular “okaleczania żeńskiego narządu płciowego”, pursuant to the phrasing used in the Polish Criminal Code when implementing Art. 38 of the Istanbul Convention.

## ROMANIA

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

#### RO comments on Articles 17 - 21

##### **Art. 17 para. 5**

RO is aware that, of the two possible solutions (ex officio prosecution versus pre-complaint), neither is ideal in all respects. However, we still lean towards our previous position, appreciated as the only one that also takes into account the victim's will. We tend to believe that it is the most equitable option for the typical forms of the crime. For cases with minor victims or committed under aggravating circumstances, we appreciate that the option of initiating criminal action *ex officio* can also be supported.

##### **Art. 18 para. 3**

We believe that the provision calls for more flexibility (*shall focus (...) including* seems to call for the analysis of all the elements listed in the paragraph in each case, or it is possible that such a detailed analysis is not necessary in all cases). We propose the following reformulation: "*which may include the risk of repeated violence, the risk of bodily harm...* "

##### **Art. 21 para. 2**

We consider that the imposition of protection orders for an indefinite period cannot be sustained. The formulation regarding the duration of the measure (as long as necessary) is, in our opinion, unpredictable, as well as disproportionate because, in concrete terms, the measure can reach excessive durations of a nature not only to restrict the exercise of some rights, but even to affect their substance.

## SLOVENIA

- (24) Victims should be able to report ~~crimes~~ acts of violence against women or domestic violence easily without being subject to secondary or repeat victimisation. To this end, Member States should provide the possibility to submit complaints online or through other information and communication technologies for the reporting of such acts ~~crimes~~. Victims of cyber violence should be able to upload materials relating to their report, such as screenshots of the alleged violent behaviour.
- (25) In the case of domestic violence and violence against women, especially when committed by close family members or intimate partners, victims may be under such duress by the offender that they fear to reach out to the competent authorities, even if their lives are in danger. Therefore, Member States should ensure that their confidentiality rules do not constitute an obstacle for ~~relevant professionals, such as~~ healthcare professionals, to report to the competent authorities, where they have reasonable grounds to believe that there ~~the~~ life of the victim is at an imminent risk of serious physical harm. Similarly, instances of domestic violence or violence against women affecting children are often only intercepted by third parties noticing irregular behaviour or physical harm to the child. Children need to be effectively protected from such forms of violence and adequate measures promptly taken. Therefore, ~~relevant~~ professionals coming in contact with child victims or potential child victims, including healthcare or education professionals, should equally not be constrained by confidentiality where they have reasonable grounds to believe that serious physical harm ~~acts of violence under this Directive have~~ has been or is expected to be inflicted on the child ~~committed against the child or further serious acts are to be expected~~. Where professionals report such instances of violence, Member States should ensure that they are not held liable for breach of confidentiality.
- (26) In order to tackle underreporting in the cases when the victim is a child, safe and child-friendly reporting procedures should be established. This can include questioning by competent authorities in simple and accessible language.
- (27) Delays in processing complaints of violence against women and domestic violence can bear particular risks to victims thereof, given that they might still be in immediate danger given and that offenders might often be close family members or spouses. Therefore, the competent authorities should have the ~~sufficient~~ adequate expertise and effective investigative tools to investigate and prosecute such crimes.
- (28) Victims of domestic violence and violence against women are typically in need of immediate protection or specific support, for example in the case of intimate partner violence, where the rate of recidivism tends to be high. Therefore, an individual assessment to identify the victim's protection needs should be ~~conducted~~ initiated at the earliest possible stage after the first contact of ~~upon the very first contact of competent authorities with~~ the victim 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.
- (29) When assessing the victim's protection and support needs, the primary concern should lie in safeguarding the victim's safety and providing tailored support, taking into account, among other matters, the individual circumstances of the victim relevant for delivering the assessment. Such circumstances requiring special attention could include the victim's pregnancy or the victim's dependence on or relationship to the offender.

- (30) In order to ensure comprehensive support and protection to victims, all competent authorities and relevant bodies, not limited to law enforcement and judicial authorities, should be involved in assessing the risks for victims and appropriate support measures ~~on the basis of clear guidelines issued by the Member States~~. Such assessment, when assessing the risk emanating from the offender or suspect, ~~guidelines should include factors to be taken into consideration when assessing the risk emanating from the offender or suspect, including~~ the consideration that suspects charged with minor offences are as likely to be dangerous as those charged with more severe offences, especially in cases of domestic violence and stalking.
- (30 bis) For the purposes of this Directive, competent authorities should be understood as the authority or authorities which have the relevant competence to carry out the task in question, under national law. Each Member State should determine which authorities should be considered competent authorities for the purpose of each provision that refers to this concept.
- (31) Due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation, and the fact that they suffer emotional harm that prejudices their development, the victim's children should receive the same protection measures as those accorded to the victim. Other persons dependant on the victim, such as adults with disabilities or older dependant adults for whom the victim provides care, may experience similar emotional harm and should thus be accorded the same protection measures.
- (32) Victims of violence against women and domestic violence are often in need of specific support. To ensure they effectively receive offers of support, the competent authorities should refer victims to appropriate support services. This should in particular be the case where an individual assessment has found particular support needs of the victim. ~~In that case, support services should be able to reach out to the victim even without the victim's consent.~~ For the processing of related personal data by competent authorities, Member States should ensure that it is based on law, in accordance with Article 6(1)(c) read in conjunction with Article (6)(2) and (3) of Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>1</sup>. Such laws should include appropriate personal data safeguards that respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the individuals. Where competent authorities transfer victims' personal data to support services for victims' referral, they should ensure that the data transferred is limited to what is necessary to inform the services of the circumstances of the case, so that victims receive appropriate support and protection.
- (33) Member States should take the necessary measures to ensure the availability of emergency barring, restraining and protection orders to ensure effective protection of victims and their dependants.
- (34) Member States should ensure that emergency barring 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.

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<sup>1</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), ([OJ L 119, 4.5.2016, p. 1–88](#)).

- (35) Protection orders may include prohibiting the offender or suspect to access certain localities; to approach the victim or dependant closer than a prescribed distance or to contact them, including through the use of online interfaces ~~and to possess firearms or deadly weapons, where necessary.~~
- (36) In order to safeguard the effectiveness of emergency barring, restraining and protection orders, breaches of such orders should be subject to penalties. Those penalties can be of a criminal law or other legal nature and may include prison sentences, fines or any other legal penalty that is effective, proportionate and dissuasive.
- (37) Presenting evidence of past sexual behaviour 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, ~~without prejudice to the rights of defence,~~ Member States shall ensure that questions, enquiries and evidence concerning past sexual conduct of the victim should not be permitted only when it is relevant and necessary in criminal investigations and court proceedings.
- (38) Given the complexities and gravity of offences of violence against women and domestic violence and specific support needs of victims, Member States should ensure additional support and prevention of such offences is provided by designated bodies. Given their expertise in matters of discrimination on grounds of sex, national equality bodies, set up in accordance with Directives 2004/113/EC<sup>2</sup>, 2006/54/EC<sup>3</sup> and 2010/41/EU<sup>4</sup> of the European Parliament and of the Council, are well placed to fulfil these tasks. ~~Such bodies should in addition have legal standing to act on behalf or in support of victims of all forms of violence against women or domestic violence in judicial proceedings, including for the application for compensation and removal of online illegal content, with the victims' approval. This should include the possibility of acting on behalf or in support of several victims together.~~ To enable these bodies to effectively carry out their tasks, Member States should ensure that they are provided with sufficient human and financial resources.
- (39) Certain offences covered by this Directive involve the increased risk of repeated, prolonged or even continuous victimisation. That risk occurs especially in relation to offences involving the making accessible to a multitude of end-users, through information and communication technologies, of material, resulting from certain offences of cyber violence, considering the ease and speed with which such material can be distributed on a large scale and the difficulties that often exist when it comes to removing such material. That risk typically remains even after a conviction. Therefore, in order to effectively safeguard the rights of the victims of those offences, Member States should be required to take suitable measures aimed at the removal of the material in question. Considering that removal at the source may not always be feasible, for instance because of legal or practical difficulties relating to the execution or enforcement of an order to remove, Member States should also be allowed to provide for measures to disable access to such material.

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<sup>2</sup> Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, ([OJ L 373, 21.12.2004, p. 37](#)).

<sup>3</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), ([OJ L204, 26.7.2006, p. 23](#)).

<sup>4</sup> Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, ([OJ L 180, 15.7.2010, p. 1](#)).

- (40) Those measures should include, in particular, empowering national judicial authorities to issue orders to providers of intermediary services to remove, or also to disable access to, one or more specific items of the material in question. ~~Those orders should be issued upon a sufficiently reasoned and substantiated request of the victim. Considering the speed with which such material can spread online and the time it can take to complete criminal proceedings against the persons suspected of having committed the relevant offences, it is necessary for the effective protection of the victims' rights to provide for the possibility of issuing, subject to certain conditions, such orders by means of interim measures, even prior to the termination of such criminal proceedings.~~
- (41) Any such measures to remove or disable access, including in particular such orders, are liable to affect the right and interests of other parties than the victims, such as the persons providing the material, the intermediary service providers whose services may be used and the end-users of those services, as well the general interest. Therefore, it should be ensured that those orders and other measures can only be taken in a transparent manner and that adequate safeguards are provided for, so as to ensure that they remain limited to what is necessary and proportionate, legal certainty is ensured, all affected parties can exercise their right to effective judicial redress in accordance with national law, and a fair balance is struck between all rights and interests involved, including the fundamental rights of all parties concerned in compliance with the Charter. A careful weighting of all rights and interests at stake on a case-by-case basis is particularly important in proceedings for interim measures. Those orders should, as a general rule, be addressed to the specific provider of intermediary services that is best placed to act, in particular so as to limit any possible negative effects for freedom of expression and information.
- (42) The provisions of this Directive on orders and other measures for the removal and disabling access to relevant material should leave the relevant rules contained in ~~Regulation XX/YYYY [proposed DSA Regulation]~~ 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) unaffected. In particular, those orders should comply with the prohibition of imposing general obligations of monitoring or active fact-finding and with the specific requirements of that Regulation regarding orders to remove illegal content online.
- (43) Considering the potential importance of material that may be the object of the orders or other measures taken under this Directive to remove or disable access thereto for investigating or prosecuting the relevant offences under criminal law, the necessary measures should be taken to allow the competent authorities to obtain or secure such material, where necessary. Those measures could consist, for example, of requiring relevant intermediary service providers to transmit the material to those authorities or to preserve the material for a limited period that does not go beyond what is necessary. Any such measures should ensure the security of the material, remain limited to what is reasonable and comply with the applicable rules on the protection of personal data.
- (44) In order to avoid secondary victimisation, victims should be able to obtain compensation in the course of 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 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 domestic violence may have to uproot their lives in order to seek safety, entailing a possible change of employment or finding new schools for children or even creating a new identity.~~

- (45) Assistance and support to victims of violence against women and domestic violence should be provided before, during and for an appropriate period after the criminal proceedings have ended, for example where medical treatment is still needed to address the severe physical or psychological consequences of the violence, or if the victim's safety is at risk in particular due to the statements made by the victim in those proceedings.
- (46) Specialised support services should provide support to victims of all forms of violence against women and domestic violence, including sexual violence, female genital mutilation, forced marriage, forced abortion and sterilisation, sexual harassment and of various forms of cyber violence. Victims should benefit from specialist support services irrespective of whether they have filed a formal complaint.
- (47) Specialist support services should offer victims support tailored to their specific needs. Building on the requirements set out in Directive 2012/29/EU, the legal framework needs to be supplemented in order to ensure that specialist support services are provided with all the necessary tools to provide a targeted and integrated support for victims of violence against woman and and domestic violence, in view of their specific needs. ~~and irrespective of any official complaint.~~ Such services could be provided in addition to, or as an integrated part of, general victim support services, which may call on existing entities providing specialist support. Specialist support may be provided by public national authorities, victims' support organisations, or other non-governmental organisations. They should be granted sufficient human and financial resources and, where the services are provided by non-governmental organisations, Member States should ensure that they receive appropriate funds.
- (48) Victims of domestic violence and violence against women typically have multiple protection and support needs. In order to address these effectively, Member States should provide such services at the same premises, or have such services coordinated through a central contact point or through online access to such services. The latter would ensure also victims in remote areas or unable to physically reach such centres are reached, ~~Member States should could provide for online access to such services.~~ This should at least entail setting up a single and updated website where all relevant information on and direction to access to available support and protection services is provided (one-stop online access). The ~~Such~~ a website should follow accessibility requirements for persons with disabilities.
- (49) Specialist support services, including shelters and rape crisis centres, should be considered essential during crises and states of emergency, including during health crises. These services should continue to be offered in these situations, where instances of domestic violence and violence against women tend to surge.
- (50) The traumatic nature of sexual violence, including rape, requires a particularly sensitive response by trained and specialised staff. Victims of this type of violence need immediate medical care and trauma support combined with immediate forensic examinations for the safe-keeping of ~~to collect the~~ evidence needed for future prosecution. Rape crisis centres or sexual violence referral centres should be available in sufficient numbers and adequately spread over the territory of each Member State, with the respect of the Member States geographical and demographic composition. Such centers can form part of the existing healthcare system in the Member State. Similarly, victims of female genital mutilation, who are often girls, typically are in need of targeted support. Therefore, Member States should ensure they provide dedicated support tailored to these victims.

- (51) Sexual Harassment at work is considered as a form of discrimination on grounds of sex by Directives 2004/113/EC, 2006/54/EC and 2010/41/EU. Given that sexual harassment at work has significant negative consequences both for the victims and the employers, Therefore external counselling services should be provided to both victims and employers, where such conduct is criminalised under national law. These should include information advice on ways to adequately addressing such instances at the workplace, on legal remedies available to the employer to remove the offender from the workplace and providing the on possibilities of early conciliation, if the victim so wishes, could should be provided by external counselling services to both victims and employers.
- (52) Member States should ensure that national helplines are operated under the EU-harmonised number [116016] and this number is widely advertised as a public number, free of charge and available round-the-clock. The support provided should include crisis counselling and should be able to refer to face-to-face services, such as shelters, counselling centres or the police.
- (53) Shelters play a vital role in protecting victims from acts of violence. Beyond providing a safe place to stay, shelters should provide the necessary support concerning interlocking problems related to victims' health, financial situation and the well-being of their children, ultimately preparing victims for an autonomous life.
- (54) To effectively address negative consequences for children victims, support measures to children should include specialised and age-appropriate to age psychological counselling developmental needs and the individual situation of the child, together with paediatric care where necessary, and be provided as soon as competent authorities have reasonable grounds to believe that children might have been victims, or having including child witnesses of violence against women or domestic violence. In the provision of support to children victims, the rights of the child, as laid down in Article 24 of the Charter, should be a primary consideration.
- (55) In order to ensure the safety of children during possible visits with an offender or suspect who is a holder of parental responsibility with rights of access as determined under the applicable national civil law rules, Member States should ensure that supervised neutral places, including child protection or welfare offices, are made available so that such visits can take place there in the best interests of the child. If needed, the visits should take place in the presence of child protection or welfare officials. Where it is necessary to provide for interim accommodation, children should as a priority be accommodated together with the holder of parental responsibility who is not the offender or suspect, such as the child's mother. The best interest of the child should be always taken into account.
- (56) Victims experiencing discrimination based on a combination of sex and other grounds are at a heightened risk of violence, with specific needs and groups at risk of violence against women or domestic violence, such as women with disabilities, women with dependant residence status or permit, undocumented migrant women, women applicants for international protection, women fleeing armed conflict, women affected by homelessness, with a minority racial or ethnic background, living in rural areas, women in prostitution sex workers, detainees, lesbians, trans women, or older women or women with use of alcohol and drugs or drugs use disorders. They should consequently receive specific protection and support.
- (57) Women with disability disproportionately experience violence against women and domestic violence and due to their disability often have difficulties in accessing protection and support measures. Therefore, Member States should ensure they can benefit fully from the rights set out in this Directive, on an equal basis with others, while paying due attention to the particular vulnerability of such victims and their likely difficulties to reach out for help.

## CHAPTER 3

### PROTECTION OF VICTIMS AND ACCESS TO JUSTICE

General remark: “criminal offences” is changed to “acts”. The reporting is of the act, not the offence.

#### *Article 16*

#### **Reporting of violence against women or domestic violence**

*1. Some MS indicated that they can't support the idea of a possibility to report online in all cases. One possibility could be to change “shall” to “may”.*

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 ~~criminal offences~~ acts of violence against women or domestic violence to the competent authorities in an easy and accessible manner. This ~~shall~~ may include the possibility of reporting ~~criminal offences~~ such acts online or through other information and communication technologies, including the possibility to submit evidence, in particular concerning reporting of ~~criminal offences~~ acts of cyber violence.

*2. We have noticed concerns from MS on how the victim would know if a report were made by a third party. One suggestion could be to add a sentence on this. This could be elaborated in a recital where references could be made to relevant Articles on safety.*

2. Member States shall take the necessary measures to encourage any person who knows about or suspects, in good faith, that ~~offences~~ acts of violence against women or domestic violence have occurred, or that ~~further~~ acts of violence are to be expected, to report this to the competent authorities. Where it is not the victim who is making the report, Member States shall take adequate measures for the victim's safety.

*3. MS have concerns on lawyers being covered by the term “relevant professionals”. Since the aim with this Paragraph is to facilitate reporting by healthcare professionals (see Recital 25) we suggest to delete relevant professionals and refer only to healthcare professionals. Alternative suggestions by COM in footnote<sup>5</sup>. Changes in the end to align text on adults with text on children.*

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<sup>5</sup> To keep “relevant professionals”, which would also cover lawyers and to replace “that serious physical harm will be inflicted or has been inflicted on a person” with “for the life of the victim”.

3. Member States shall ensure that the confidentiality rules imposed by national law on ~~relevant professionals, such as~~ healthcare professionals, do not constitute an obstacle to their reporting to the competent authorities if they have reasonable grounds to believe that there is an imminent risk that serious physical harm will be inflicted on a person due to their being subject to violence against women or domestic violence ~~any of the offences covered under this Directive~~. If the victim or potential victim is a child, ~~the relevant professionals subject to the protection of legal privilege or confidentiality rules imposed by national law~~ shall be able to report to the competent authorities if they have reasonable grounds to believe that a serious physical harm ~~act of violence covered under this Directive~~ has been or is expected to be inflicted on the child ~~committed or further serious acts of violence are to be expected~~.

*4. Minor changes to clarify.*

4. Where children report ~~criminal offences~~ 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~~ act involves the holder of parental responsibility, Member States ~~should~~ shall ensure reporting is not conditional upon this person's consent.

*5. It's our understanding that we are trying to create a protection in line with Article 6 of Directive 2004/81.*

5. Member States shall ensure that, at least until completion of the first individual assessment referred to in Article 18, it shall not be possible to enforce an expulsion order against the competent authorities coming in contact with a victim reporting ~~offences~~ acts of violence against women or domestic violence ~~are prohibited from transferring personal data pertaining to the residence status of the victim to competent migration authorities, at least until completion of the first individual assessment referred to in Article 18.~~

#### *Article 17*

### **Investigation and prosecution**

*1-3: Minor changes to clarify*

1. Member States shall ensure that persons, units or services investigating and prosecuting violence against women or domestic violence have ~~sufficient~~ adequate expertise and effective investigative tools to effectively investigate and prosecute such acts ~~crimes~~, especially to gather, analyse and secure electronic evidence in cases of cyber violence.
2. Member States shall ensure that reported ~~offences~~ acts of violence against women or domestic violence are processed and transferred without delay to the competent authorities for prosecution and investigation.
3. The competent authorities shall promptly and effectively ~~record and~~ investigate allegations of acts of violence against women or domestic violence and ensure that an official complaint record is filed in all cases.

*4. We understand that the primary intention of this paragraph is to require competent authorities to send victims to doctors or to support services, in order to gather evidence. Therefore, we suggest to turn the provision around. Article 27–29 includes different support services, and this addition could clarify that only support services specialised in securing evidence are relevant.*

4. Where the victim wishes to bring charges, and in order to assist in securing evidence, in particular in case of sexual violence, ~~The~~ competent authorities shall promptly refer direct victims to medical – forensic examination, specialised in ~~to~~ assisting in securing evidence, in particular in cases of sexual violence, where the victim wishes to bring charges and make use of such services.

5. Change from “shall” to “may” to align with Art. 55 Istanbul Convention and allow for necessary prosecutorial discretion. Suggestion to replace “Article 5” with “acts of rape”.

5. Member States shall ensure that investigations into or prosecution of offences ~~acts referred to in Article 5~~ of rape and offence shall not be dependent on reporting or accusation by a victim or by their representative, and that criminal proceedings shall may continue even if the report or accusation has been withdrawn.

#### Article 18

##### Individual assessment to identify victims’ protection needs

1. In the framework of the individual assessment which is to be carried out under Article 22 of Directive 2012/29/EU, Member States shall ensure that, as regards victims covered by this Directive, the additional elements as set out in paragraphs 2 to 7 of this Article are assessed.

2. In practice, it is not possible to initiate an individual assessment upon the first contact of the victim. “At the earliest stage after” indicates some flexibility. We suggest deleting the requirement to verify. Since all competent authorities should update the assessment, any mistake should be detected (Paragraph 18.7). Suggestion by COM in footnote<sup>6</sup>.

2. This individual assessment shall be initiated ~~upon~~ at the earliest possible stage after the first contact of the victim with the competent authorities. ~~The competent judicial authorities shall verify at the latest at the initiation of criminal proceedings whether an assessment has been conducted. If this has not been the case, they shall remedy the situation by undertaking an assessment as soon as possible.~~
3. The individual assessment may focus on the risk emanating from the offender or suspect, including the risk of repeated violence, the risk of bodily harm, the use of 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. The assessment may take into account the victim’s individual circumstances, including whether they experience discrimination based on a combination of sex and other grounds 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.

5. Change to clarify that a-c are examples.

<sup>6</sup> This individual assessment shall be initiated upon the first contact of the victim with the competent authorities and be completed at the earliest possible stage. The competent ~~judicial~~ authorities shall verify at the latest at the initiation of criminal proceedings whether an assessment has been conducted. If this has not been the case, they shall ensure ~~remedy the situation by that undertaking~~ an assessment is carried out as soon as possible.

5. Member States shall ensure that adequate protection measures are taken on the basis of the individual assessment, ~~such as:~~ These may include:
- (a) measures referred to in 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. Change to*

6. When appropriate, ~~the~~ individual assessment shall be undertaken in collaboration with ~~all~~ relevant competent authorities depending on the stage of the proceedings, and relevant support services, such as victim protection centres and women's shelters, social services and healthcare professionals.
7. Competent authorities shall update the individual assessment at regular intervals to ensure the protection measures relate to the victim's current situation. This shall include an assessment of whether protection measures, in particular under Article 21, need to be adapted or taken.

*8. Some MS indicated that they can't support that dependants are included, please indicate if that applies for this Paragraph.*

8. Victims' dependants shall be presumed to have specific protection needs without undergoing the assessment referred to in paragraphs 1 to 6.

*Article 19*

**Individual assessment of victims' support needs**

*1. Change to align with Article 51.1 in the Istanbul Convention ("if necessary to provide for coordinated safety and support"). We ask MS to indicate their opinion on including dependant's in Article 19.*

1. Member States shall ensure that, taking into account the individual assessment referred to in Article 18, the competent authorities, when necessary, assess the victim's and their dependant's individual needs for support as provided for under Chapter 4.
2. Article 18(4) and (7) shall apply to the individual assessment of support needs under paragraph 1 of this Article.

*Article 20*

**Referral to support services**

*1. MS asked for inclusion of consent from the victim.*

1. If the assessments referred to in Articles 18 and 19 have identified specific support or protection needs ~~or if~~ and the victim consents, or if the victim requests support, Member States shall ensure that support services, in cooperation with the competent authorities, contact victims to offer support.

*2. Minor change to make it clear that it is the victim's request.*

2. The competent authorities shall respond to the victim's requests for protection and support in a timely and coordinated manner.

*3. A recital could clarify that refer only means that the child victim is offered support. Adding "when necessary" is intended to make it clear that parents should be included as a startingpoint and that it should be decided case by case when it's necessary to do. MS indicated they don't want to include child witnesses..*

3. Where needed, they competent authorities shall be able to refer child victims, ~~including witnesses,~~ to support services, when necessary without the prior consent of the holder of parental responsibility.

4. Member States shall ensure the transmission 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.

*5. There needs to be a time-limit, could 24 months be acceptable?*

5. Support services shall store personal data for as long as necessary for the provision of support services, and in any event for no longer than ~~12~~ 24 months after the last contact between the support service and the victim.

#### *Article 21*

#### **Emergency barring, restraining and protection orders**

*1. We ask MS to indicate their opinion on including dependant's in Article 21.*

1. Member States shall ensure that, in situations of immediate danger for the victim's [or their dependant's] health or safety, the competent authorities issue orders 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 the residence or to enter the victim's workplace or contacting the victim [or their dependants] in any way. Such orders shall have immediate effect and not be dependent on a victim reporting the criminal offence.

*2. Long-term is not proportionate, restraining or protection orders should be used for the time needed. Changes to align with Istanbul Convention.*

2. Member States shall ensure that the competent authorities can issue restraining or protection orders to provide ~~long-term~~ protection for as long as necessary for victims [or their dependants] against any acts of violence covered by this Directive, ~~including by prohibiting or restraining certain dangerous behaviour of the offender or suspect.~~

*3. Doesn't seem reasonable to require this in every case covered by the scope of this Directive. Suggestion to allow some flexibility.*

3. Member States shall ensure that the competent authorities, where relevant, inform victims of the possibility to apply for emergency barring and restraining or protection orders, as well as the possibility to seek cross-border recognition of protection orders pursuant to Directive 2011/99/EU or Regulation (EU) No 606/2013.
4. Any breaches of emergency barring or restraining and protection orders shall be subject to effective, proportionate and dissuasive criminal or other legal penalties.

5. This Article does not oblige the Member States to modify their national systems as regards the qualification of emergency barring orders and protection orders as falling under criminal, civil or administrative law.

*Article 22*

**Protection of victim's private life**

*MS have raised concerns and we are trying to be more aligned with Istanbul Article 54. "Criminal proceedings" includes both questions and enquiries.*

~~Without prejudice to the rights of defence, Member States shall ensure that, in criminal investigations and court proceedings, questions, enquiries and evidence concerning past sexual conduct of the victim or other aspects of the victim's private life related thereto are not permitted~~  
shall be permitted only when it is relevant and necessary.

*Article 23*

**Guidelines for law enforcement and judicial authorities**

*Member States have raised concern regarding the fact that it is binding to issue guidelines. Moreover, change from "shall" to "may" is also necessary as all the listed guidelines are not relevant for all competent authorities. For example a and b are not relevant for courts.*

Member States [may issue]/[shall consider issuing] ~~issue non-binding~~ guidelines for the competent authorities acting in criminal proceedings, including prosecutorial ~~and judicial~~ guidelines, concerning cases of violence against women or domestic violence. Those guidelines ~~shall~~ may include guidance on:

- (a) how to ensure the proper identification of all forms of such violence;
- (b) how to conduct the individual assessment under Articles 18 and 19;
- (c) how to treat victims in a trauma-, gender- disability and child-sensitive manner;
- (d) how to ensure the proceedings are conducted in a manner as to prevent secondary or repeat victimisation;
- (e) how to cater to the enhanced protection and support needs of victims experiencing discrimination based on a combination of sex and other grounds;
- (f) how to avoid gender stereotypes;
- (g) how to refer victims to support services, to ensure the appropriate treatment of victims and handling of cases of violence against women or domestic violence;-
- (h) how to ensure the protection of the victim's privacy and confidential information.

## Article 24

### Role of national bodies and equality bodies

*Many Member States raised concerns regarding this Article and especially Paragraph 2 that gives the bodies the task to work on behalf of the victim. Our understanding is that MS already have lawyers or others who have been entrusted with this task and that it is not desirable to change there systems. Having both lawyers and the bodies could lead to difficulties and you could question the added value and cost. We therefor suggest deleting a) and 2. COM suggestion in footnote<sup>7</sup>.*

1. Member States shall designate and make the necessary arrangement for a body or bodies to carry out the following tasks:
  - ~~(a) provide independent assistance and advice to victims of violence against women and domestic violence;~~
  - (b) publish independent reports and make recommendations on any issue relating to such forms of violence;
  - (c) 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.

- ~~2. Member States shall ensure that the bodies referred to in paragraph 1 can act on behalf or in support of one or several victims of violence against women or domestic violence in judicial proceedings, including for the application for compensation referred to in Article 26 and removal of online content referred to in Article 25, with the victims' approval.~~

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<sup>7</sup> Member States shall ensure that the bodies referred to in paragraph 1 can act on behalf or in support of one or several victims of violence against women or domestic violence in judicial proceedings, including for the application for compensation referred to in Article 26 and removal of online content referred to in Article 25, with the victims' approval and in accordance with national rules on legal representation.

2. Member States shall ensure that the bodies referred to in paragraph 1 can act on behalf or in support of one or several victims of violence against women or domestic violence in judicial proceedings, including for the application for compensation referred to in Article 26 and removal of online content referred to in Article 25, with the victims' approval and in accordance with national rules on legal representation.

3. Member States shall ensure that the bodies referred to in paragraph 1 are provided with the human, technical and financial resources necessary to perform their task and exercise their competences effectively.

**Recital 38** could be amended as follows:

“Given the complexities and gravity of offences of violence against women and domestic violence and specific support needs of victims, Member States should ensure additional support and prevention of such offences is provided by designated bodies. Given their expertise in matters of discrimination on grounds of sex, national equality bodies, set up in accordance with Directives 2004/113/EC, 2006/54/EC and 2010/41/EU of the European Parliament and of the Council, are well placed to fulfil these tasks. Such bodies should in addition have legal standing to act on behalf or in support of victims of all forms of violence against women or domestic violence in judicial proceedings, including for the application for compensation and removal of online illegal content, with the victims' approval. This should include the possibility of acting on behalf or in support of several victims together. It should be left to the relevant bodies' discretion to decide in which cases to make use of this right. To enable these bodies to effectively carry out their tasks, Member States should ensure that they are provided with sufficient human, technical and financial resources.”

Article 25

**Measures to remove certain online material**

*Article 25: The proposal differs from both CSAM and TCO. Is it reasonable to introduce a new set of rules here? One solution is to have a more general framework in this Directive. 1. We suggest allowing for other than judicial authorities, deleting application by the victim, which doesn't exist in other regulations and to clarify that removal is the first step. 2. We suggest deleting interim proceedings, MS could have it but it would not be a requirement for all MS. 3-6 minor changes. 7. We should also consider introducing a system on judicial review (Article 9 TCO and Article 14 CSAM).*

1. Member States shall take the necessary measures to ensure the prompt removal of material referred to in Article 7, points (a) and (b), Article 8, point (c), and Articles 9 and 10. Those measures shall include the possibility for their competent ~~judicial~~ authorities to issue, ~~upon application by the victim,~~ binding legal orders to remove ~~or disable access to~~ such material addressed to relevant providers of intermediary services. Where removal at the source is not feasible, Member States shall ensure the order may include the disabling of access to the material in question.
2. ~~Member States shall ensure that orders referred to in paragraph 1 can be issued in interim proceedings, even prior to the termination of any criminal proceedings regarding the offences referred to in Article 7, points (a) and (b), Article 8, point (c), Article 9 or Article 10 where the judicial authority seized considers that:~~
  - ~~(a) it has been presented with sufficient evidence to justify the conclusion that the conduct referred to in Article 7, points (a) and (b), Article 8, point (c), Article 9 or Article 10 likely took place in respect of the applicant and that the material that is the object of the application constitutes material as referred to in those articles;~~
  - ~~(b) the removal of that material is necessary to prevent or limit significant harm to the victim;~~
  - ~~(c) the rights and interests of other parties involved associated with the potential removal are not such as to outweigh those of the victim associated with removal.~~
3. Member States shall ensure that orders referred to in paragraph 1 ~~and 2~~ are valid for an appropriate time period ~~not exceeding one year~~, subject to renewal for an additional appropriate time period, upon application by the victim, where the judicial authority seized considers that the conditions of paragraph 2 continue to be met. However, Member States shall ensure that, where criminal proceedings regarding the offences referred to in Article 7, point (a) and (b), Article 8, point (c), Article 9 or Article 10 are terminated without leading to the finding of such an offence having been committed, the orders are invalidated and the provider of intermediary services concerned is informed thereof.
4. Member States shall ensure that the orders and other measures referred to in paragraphs 1 ~~and 2~~ are taken following transparent procedures and are subject to adequate safeguards, in particular to ensure that those orders and other measures are limited to what is necessary and proportionate and that due account is taken of the rights and interests of all parties involved.
5. Member States shall ensure that the end-users of the relevant services are informed, where appropriate by the intermediary service providers concerned, of the reasons for the removal of or disabling access to the material pursuant to the orders or other measures referred to in paragraphs 1 ~~and 2~~ and that those end-users have and of the possibility to have access to judicial redress.

6. Member States shall ensure that the removal of or disabling access to the material pursuant to the orders or other measures referred to in paragraphs 1 ~~and 2~~ does not prevent the competent authorities from obtaining or securing the evidence necessary for the investigation and prosecution of the offences referred to in Article 7, points (a) and (b), Article 8, point (c), Article 9 or Article 10.
7. Member States shall ensure that all parties affected of an order referred to in paragraph 1 have a right to an effective judicial remedy. That right shall include the right to challenge such a removal order before the courts of the Member State of the competent authority that issued the removal order. [Member States shall put in place effective procedures for exercising the rights referred to in this paragraph.]

*Article 26*  
**Compensation from offenders**

*Article 26. The Article is far more detailed than Art. 30 Istanbul Convention, Art. 16 Victim's Rights Directive and Art. 17 Trafficking Directive. 1. Suggestion to clarify that this only apply to offences (Article 82(2)(c) TFEU). 2. There are cases where it is reasonable to handle compensation in civil proceedings, adding "where appropriate" indicates that. 3-5. Should be left to MS to decide, matter on civil proceedings and matters. Goes much firther than other Directives. COM suggestion in footnot.*

1. Member States shall ensure that victims have the right to claim full compensation from offenders for damages resulting from ~~all forms~~ offences of violence against women or domestic violence.
2. Member States shall ensure where appropriate that victims are able to obtain a decision on compensation in the course of criminal proceedings.,
3. ~~The compensation shall place victims in the position they would have been in had the offence not taken place, taking into account the seriousness of the consequences for the victim. Compensation shall not be restricted by the fixing of an upper limit.~~
4. ~~The damage shall include costs for healthcare services, support services, rehabilitation, loss of income and other reasonable costs that have arisen as a result of the offence or to manage its consequences. The amount of the damages awarded shall also compensate for physical and psychological harm and moral prejudice.~~
5. ~~The limitation period for bringing a claim for compensation shall be no less than 5 years from the time the offence has taken place.~~

~~In cases of sexual violence, the limitation period shall be no less than 10 years.~~

~~The limitation period for bringing a claim for compensation of criminal offences referred to in Article 7 shall commence with the victim's knowledge of the offence.~~

~~The limitation period shall not commence as long as the offender and the victim share the same domestic unit. In addition, if the victim is a child, the limitation period shall not commence before the victim has reached 18 years of age.~~

~~The limitation period shall be interrupted or suspended for the duration of pending legal proceedings concerning the offence.~~

# CHAPTER 4

## VICTIM SUPPORT

Article 27

Specialist

### support to victims

*1. Suggestion to clarify that support should be available regardless of reporting, see Recital 47. We also suggest changing the referens to Article 8 (3) Victims Right's Directive. On a) we move legal issues to a separate Paragraph ba) and change to information, in order not to interfer with advice, that can only be given by lawyers in some MS. On b) clarification. On c) same as a) with regard to lawyers.*

1. Member States shall ensure that specialist support services referred to in Article 98(3) of Directive 2012/29/EU are available for victims of acts of violence covered by this Directive, irrespective of whether they have filed a formal complaint.

Those specialist support services shall provide:

- (a) ~~advice and~~ information on ~~any~~ relevant ~~legal or~~ practical matters arising as a result of the crime, including on access to housing, education, training, financial support and assistance to remain in or find employment;
  - (ba) information about access to legal counselling, including possibilities of legal aid, where available;
  - (b) ~~referrals~~ information on health care erVICES ;
  - (c) support to victims of cyber violence, including advice information on judicial remedies and remedies to remove online content related to the crime.
2. Specialist support referred to in paragraph 1 shall be offered in-person and shall be easily accessible, including online or through other adequate means, such as information and communication technologies, tailored to the needs of victims of violence against women and domestic violence.

*3. Point c) on cyber does not seem more important than a) and b) with regard to resources, we therefore suggest deleting the reference to c). MS can't contol the priorities within a NGO, as deciding on human resources. We suggest a change to clarify this.*

3. Member States shall ensure sufficient human and financial resources to provide the services referred to in paragraph 1, ~~especially those referred to in point (c) of that paragraph, including w~~Where such services are provided by non-governmental organisations, Member States shall provide the latter with adequate funding.

*4. MS indicated a need for more flexibility. We suggest making it clear that MS is obliged to have at least one, but not all, of the alternatives listed.*

4. Member States shall provide the protection and specialist support services necessary to comprehensively address the multiple needs of victims either by providing these services at the same premises, or by coordinating services ~~have such services coordinated~~ through a central contact point, or by facilitating access to such services through one-stop online ~~access to such services~~. The ~~Such combined offering of services~~ included shall ~~include~~ at least cover first hand medical care and social services, psychosocial support, legal, and police services, or information on and direction to such services.

*5. Suggestion to make it possible for the Government or other national authorities to issue these guidelines.*

5. Member States shall ensure that ~~issue~~ guidelines and protocols for healthcare and social service professionals on identifying and providing appropriate support to victims of all forms of violence against women and domestic violence are issued, including on referring victims to the relevant support services. Such guidelines and protocols shall also indicate how to address the specific needs of victims who are at an increased risk of such violence as a result of their experiencing discrimination based on a combination of sex and other grounds of discrimination.
6. Member States shall ensure that specialist support services remain fully operational for victims of violence against women and domestic violence in times of crisis, such as health crises or other states of emergency.
7. Member States shall ensure that specialist support services are available to victims before, during and for an appropriate time after criminal proceedings.

#### *Article 28*

#### **Specialist support for victims of sexual violence**

*1: Clarification to underline that this is about gathering and keeping evidence. "Psychological" deleted inline with Article 25 Istanbul Convention. We also suggest to clarify in Recital 50 that centers can form part of the existing healthsystem and that preserving evidence refers to the safekeeping of evidence.*

1. Member States shall provide for appropriately equipped, easily accessible rape crisis or sexual violence referral centres to ensure effective support to victims of sexual violence, including assisting in the ~~preservation~~ safekeeping and documentation of evidence. These centres shall provide for medical and forensic examinations, trauma support and ~~psychological~~ counselling, after the offence has been perpetrated and for as long as necessary thereafter. Where the victim is a child, such services shall be provided in a child-friendly manner.
2. The services referred to in paragraph 1 shall be available free of charge and accessible every day of the week. They may be part of the services referred to in Article 27.
3. Member States shall ensure a sufficient geographical distribution and capacity of these services across the Member State.
4. Article 27(3) and (6) shall apply to the provision of support for victims of sexual violence.

## Article 29

### Specialist support for victims of female genital mutilation

1. Member States shall ensure effective, age-appropriate support to victims of female genital mutilation, including by providing, gynaecological, sexological, psychological and trauma care and counselling tailored to the specific needs of such victims, after the offence has been perpetrated and for as long as necessary thereafter. This shall also include the provision of information on units in public hospitals that perform clitoral reconstructive surgery. Such support may be provided by the referral centres referred to in Article 28 or any dedicated health centre.
2. Article 27(3) and (6) and Article 28(2) shall be applicable to the provision of support for victims of female genital mutilation.

## Article 30

### Specialist support for victims of sexual harassment at work

*Article 30: MS asked to clarify that this Article only apply to criminal offense under national law. The suggestion to change from advice to information is in line with changes suggested in Article 27.*

In cases of sexual harassment at work that constitute a criminal offense under national law, Member States shall ensure that external counselling services are available for victims and employers ~~in cases of sexual harassment at work~~. These services shall include ~~advice~~ information on ways to adequately addressing such instances ~~at the workplace,~~ including on available legal remedies ~~available to the employer~~ to remove the offender from the workplace.

## Article 31

### Helplines for victims

*1: MS expressed a need for some flexibility with regard to the technologie used. "Set-up" changed to clarify that existing helplines are sufficient.*

1. Member States shall ensure that ~~set-up~~ state-wide round-the-clock (24/7) telephone helplines are available, free of charge, to provide advice for victims of violence against women and domestic violence. Advice shall be provided confidentially or with due regard for their anonymity. Member States are encouraged to provide ~~shall ensure the provision of~~ such service also through other information and communication technologies, including online applications.
2. Member States shall take appropriate measures to ensure the accessibility of services referred to in paragraph 1 for end-users with disabilities, including providing support in easy to understand language. Those services shall be accessible in line with the accessibility requirements for electronic communications services set in Annex I to Directive 2019/882/EU of the European Parliament and of the Council<sup>8</sup>.

<sup>8</sup> Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services, [OJ L 151, 7.6.2019, p. 70–115](#).

3. Article 27(3) and (6) shall apply to the provision of helplines and support through information and communication technologies under this Article.

*4: MS asked for more flexibility since several MS already have national helplines and not all MS indicated that they will join that initiative. One solution could be to clarify that the Paragraph only requires that an existing national number is reachable under the harmonised number. Another solution could be to make this Paragraph non-binding.*

4. ~~Member States are encouraged to shall~~ ensure that the service under paragraph 1 for victims of violence against women is reachable ~~operated~~ under the harmonised number at EU level “116 016” in addition to any existing national number(s). ~~and that the e~~End-users shall be ~~are~~ adequately informed of the existence and use of such number.

*or*

Member States shall ensure that the service under paragraph 1 for victims of violence against women is reachable ~~operated~~ under the harmonised number at EU level “116 016” in addition to any existing national number(s). ~~and that the~~ End-users shall be ~~are~~ adequately informed of the existence and use of such number.

#### Article 32

##### **Shelters and other interim accommodations**

*1: One possibility is to change (delete “women”) in line with the opinion from the Council Legal Service to make the Paragraph non-discriminatory. Such a change would not exclude special shelters only for women, but ensures that shelters are available regardless of gender.*

1. The shelters and other appropriate interim accommodations as provided for in Article 9(3), point (a), of Directive 2012/29/EU shall address the specific needs of women victims of domestic violence and sexual violence. They shall assist them in their recovery, providing adequate and appropriate living conditions with a view on a return to independent living.
2. The shelters and other appropriate interim accommodations shall be fully accessible and equipped to accommodate the specific needs of children, including child victims.
3. The shelters and other appropriate interim accommodations shall be available to victims regardless of their nationality, citizenship, place of residence or residence status.
4. Article 27(3) and (6) shall apply to shelters and other appropriate interim accommodations.

#### Article 33

##### **Support for child victims**

*1. Deleting “including” is a consequential change with regard to changes made in Article 4 c. Suggestion include children having witnessed in this Article.*

1. Member States shall ensure that children are provided specific adequate support as soon as the competent authorities have reasonable grounds to believe that the children might have been subject to, or ~~including~~ having witnessed, violence against women or domestic violence. Support to children shall be specialised and appropriate to age-appropriate, developmental needs and the individual situation of the child, respecting the best interests of the child.

2. Child victims shall be provided with age-appropriate medical care, emotional, psychosocial, psychological and educational support, tailored to developmental needs and individual situation of the child, as well as any other appropriate support tailored in particular to situations of domestic violence.

*3. We suggest not having a specific order for a certain type of protection. The principle of the best interests of the child and each child's individual needs must be the overarching guidelines when assessing an interim accommodation for a child victim.*

3. Where it is necessary to provide for interim accommodation, children shall as a priority be placed together with other family members, in particular with a non-violent parent in permanent or temporary housing, equipped with support services. The principle of the best interests of the child shall be decisive when assessing matters regarding interim accommodation ~~Placement in shelters shall be a last resort.~~

#### Article 34

### Safety of children

*Article 34: An addition in Recital 55 regarding concerns in relation to civil law.*

Member States shall establish and maintain safe places which allow a safe contact between a child and a holder of parental responsibilities who is an offender or suspect of violence against women or domestic violence, to the extent that the latter has rights of access. Member States shall ensure supervision by trained professionals, as appropriate, and in the best interests of the child.

#### Article 35

#### Targeted

### support for victims with specific needs and groups at risk

*1. MS expressed that the non-exhaustive list of examples should only remain in Recital 56. We suggest changing women sex workers to women in prostitution, since this is aged international language, see for example Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women. We also suggest including lesbians, trans women and women with use of alcohol and drugs or drugs use disorders in the list of examples. We also add a some more grounds in the Recital.*

1. Member States shall ensure the provision of specific support to victims at an increased risk of violence against women or domestic violence due to intersecting forms of discrimination ~~, such as women with disabilities, women living in rural areas, women with dependant residence status or permit, undocumented migrant women, women applying for international protection, women fleeing from armed conflict, women affected by homelessness, women with a minority racial or ethnic background, women sex workers, women detainees, or older women.~~
2. The support services under Articles 27 to 32 shall have sufficient capacities to accommodate victims with disabilities, taking into consideration their specific needs, including personal assistance.

3. The support services shall be available for third-country nationals who are victims of violence against women and domestic violence, including for applicants for international protection, for irregular migrants ~~undocumented persons~~ and for persons subject of return procedures in detention. Member States shall ensure that victims who request so may be kept separately from persons of the other sex in detention facilities for third-country nationals subject of return procedures, or accommodated separately in reception centres for applicants for international protection.

*4. Concern from MS that detention center should do the assessments etc. in accordance with Art. 18-20. Suggestion to clarify that it is the competens authorities that are responsible, see the recital that clarifies the concept of competens authorities.*

4. Member States shall ensure that persons can report occurrences of violence against women or domestic violence in reception and detention centres to the relevant staff and that protocols are in place to ensure they or the competent authorities adequately and swiftly address such reports in accordance with the requirements set out under ~~in~~ Articles 18, 19 and 20.

## SPAIN

### **Spanish comments to the Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence after 13-14 of February COPEN WP-**

*Disclaimer: All the technical points or considerations expressed in this document, aimed at contributing to negotiations, in no way prejudge Spain's final position on the legislative proposal.*

#### **Art. 24.2**

##### Rationale

Para. 2 of art. 24 is deleted in the Presidency proposal, due to the legal concerns expressed by many delegations. We share those concerns, but we must admit that the main problem in this respect was the use of the terms “on behalf”. Granting the national body the possibility to act on behalf of the victim in judicial proceedings constitutes a new form or procedural legitimacy that presents many difficulties when it comes to integrating it into national procedural systems. From this perspective, we can accept deletion of para 2 of art. 24.

##### Proposal

We understand the principles subjacent to the Commission proposal. In order to be constructive we are also prepared to accept reintroducing para. 2 if the words “on behalf or” are deleted.

→ Mentioning only the possibility to act “in support” of victims gives flexibility to MS without altering radically the national criminal procedural framework.

#### **Arts. 27 and 28**

##### Rationale

There are two different issues that should not be confused: immediate medical assistance to the victim and victim’s forensic examination. Usually, hospitals or medical centres nearest to the scene of the crime are called to provide the former; the latter is provided in specialised forensic centres. In this context, the core issue is to ensure that protocols for safeguarding evidence and the subsequent transmission to forensic centres, in compliance with domestic procedural law, are in place in hospitals and other medical centres performing first hand medical care.

## Drafting proposals

→ Art. 27.4

- Delete “first hand medical care”.
- Add a new **27.4.a**

**Member States shall ensure that guidelines and protocols for medical centres performing first hand medical care are established for cases of acts of violence covered by this Directive. Such guidelines and protocols shall cover preservation and documentation of evidence, and its further transmission to competent forensic centres in compliance with domestic procedural law.**

→ Art. 28

In our understanding, new art. 27.4.a will apply to these cases as well, as a general provision.

For specific cases of sexual violence, para. 1 of Art. 28 would read as follows:

*Member States shall provide for appropriately equipped, easily accessible rape crisis or sexual violence referral centres **or specialised units in the healthcare system,** to ensure effective support to victims of sexual violence **and immediate preservation and documentation of evidence including assisting in the preservation safekeeping and documentation of evidence.** These centres shall provide for ~~medical and forensic examinations~~, trauma support and psychological counselling, after the offence has been perpetrated and for as long as necessary thereafter. Where the victim is a child, such services shall be provided in a child-friendly manner. **Member States shall ensure early coordination of crisis centres or units with the competent forensic centres.***