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#### NOTE

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From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on combating violence against women and domestic violence - Comments submitted by Member States following the COPEN meeting on 30-31 March 2023

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Delegations will find in the annex the comments submitted by Member States following the COPEN meeting on 30-31 March 2023 on the above-mentioned subject.

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# BELGIUM

## Chapter 1 – General provisions

### Article 1 (Subject matter) and Recitals 1 and 10bis

Both Article 1, Recitals 1 and 10bis are acceptable without any comment.

### Article 2 (Victims at an increased risk of violence and specific risks) and Recitals 11 and 12

While we can be flexible, Belgium is in favour of keeping this article in its original version or Article 1bis as proposed by the Commission in the corpus of the text as we consider it is important the text explicitly recognises persons at high risk of violence.

#### Article 1 bis Objectives

**1. The purpose of this Directive is to combat violence against women and domestic violence as a form of discrimination between women and men, thereby ensuring a high level of security and the full enjoyment of fundamental rights within the Union.**

**2. When implementing the measures under this Directive, Member States shall address the increased risk of violence faced by victims experiencing discrimination based on a combination of sex and other grounds of discrimination, so as to cater to their enhanced protection and support needs.**

**3. Member States shall ensure that, in the application of this Directive, victims of violence against women and domestic violence are treated with appropriate safeguards so as to prevent the risk of intimidation, retaliation, secondary and repeat victimisation, and to protect their dignity and physical integrity.**

Belgium does not support the deletion of nationality and LGBTIQ as groups at risks in Recitals 11 and 12. We support the original text that is more inclusive.

### Article 3 (Scope) and Recital 4

While we can be flexible, Belgium is in favour of keeping this article in its original version or Article 15bis as proposed by the Commission in the corpus of the text. However, the Article 15bis as proposed by the Commission should be placed in Chapter 1 where Article 3 used to be. If the text in Article 15bis is used, Article 4 (ba) should be deleted to avoid redundancy.

#### **“ Article 3 15bis – Scope**

**1. This Directive shall apply to the following criminal offences:**

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

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

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

2. The provisions of this Chapter, as well as those of Chapters 4 to 7, shall apply to all victims of offences of violence against women and domestic violence, as defined under this Directive. This shall include victims of offences criminalised under Chapter 2, as well as victims of any other forms of violence against women or domestic violence as criminalised under other instruments of Union law or national law.

3. For the purposes of Chapters 3 to 7, “victim” means any natural person, regardless of their ~~sex or~~ gender, who has suffered harm, including physical, mental or emotional harm or economic ~~abuse loss~~, which was directly caused by acts of violence covered under this Directive, including child witnesses of such violence.”

## Article 4 (Definitions)

### (a) “violence against women” and Recital 4

Belgium can accept the text but still has additional comments : the use of including to clarify, economic abuse instead of loss.

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

### (b) “domestic violence” and Recital 8

Belgium can accept this provision with this slight change in comas in 4 (b) and the addition of the digital dimension of domestic violence.

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

(8) Domestic violence is a serious social problem which often remains hidden. It can lead to serious psychological and physical trauma with severe consequences because the offender typically is a person known to the victims, whom they would expect to be able to trust. Such violence can take on various forms, including physical, sexual, psychological, **digital** and economic. Domestic violence may occur whether or not the offender shares or has shared a household with the victim.

### (ba) “violence which constitutes a criminal offense under national or Union law”

Belgium can agree with this addition. However, following our suggestion for Article 3, it should be deleted.

### (c) “victim” and Recital 5

While Belgium stays in favour of the original text, we can be flexible as we understand the term “gender” might constitute a compromise.

However, we insist on including child witnesses. In Recital 5, we feel like the terms “men and boys” introduce a binary understanding of gender. We would suggest replacing it with “**any individual can fall victim to these forms of violence**”.

(c) “victim” means any person, regardless of **their** sex or gender, ~~unless specified otherwise,~~ who has suffered harm, ~~which was~~ directly caused by acts of violence **against women or domestic violence [as defined in points (a) (ba)] covered under this Directive, including child witnesses of such domestic violence;**

**(d) “cyber violence” and Recitals 17 and 18**

Belgium can agree with the proposed amendments even though we consider that the original text had more added value. The proposition to base the definition of cyberviolence on the concept of cyber-violence from GREVIO's General Recommendation No. 1 on the digital dimension of violence against women adopted on 20 October 2021 can be acceptable.

**(da) “multitude of end-users”**

Belgium welcomes the deletion of the requirement of a multitude of users. We stated multiple times that it is sufficient for the content to be shared with only one person (for example a relative, classmate, colleague or friend) or in a small closed group (for example a group of friends or team mates) to be harmful.

For this reason, the terms “multitude of end-users” should be removed from Article 4 (da), 7, 8 and 9 and from Recitals 18, 19, 19bis, 21 and 39. Belgium cannot accept any sentencing implying more than one share is needed.

(18) The use of information and communication technologies bears the risk of easy, fast and wide-spread amplification of certain forms of cyber violence with the effect of creating or enhancing profound and long-lasting harm for the victim. The potential for such amplification, which is a pre-requisite for the perpetration of several offences of cyber violence defined under this Directive, should be reflected by the element of making certain material accessible, through information and communication technologies, to a ‘multitude’ of end users. The term ‘multitude’ should be understood as referring to reaching a significant number of end users of the technologies in question, thus allowing for significant access to, and potential further distribution of that material. That term should be interpreted and applied having regard to the relevant circumstances, including the technologies used to make that material accessible and the means these technologies offer for amplification.

**(e) “information and communication technologies” and Recitals 17 and 18**

We fully agree with the deletion of the (e) as it corresponds to our previous comments.

**(f) “providers of intermediary services”**

Belgium can agree with the amendments proposed.

**(g) “sexual harassment at work”**

Belgium was in favour of an alignment with directive 2006/54 but the deletion is acceptable. In case a definition is kept in the text, we would like the definition to including cyber-harassment.

**(h) “child”**

Belgium can agree with this definition.

**(i) “age of sexual consent”**

Belgium can agree with this deletion.

**(j) “dependant”**

Belgium can agree with this definition.

**Chapter 2 – Offences concerning sexual exploitation of women and children and computer crime**

### Article 5 (Rape) and Recital 13 and 14

Belgium defended at length the importance of keeping Article 5 and Recitals 13 and 14 in the corpus of the text. We will keep insisting on keeping this article as we interpret that there is a legal basis for this disposition.

### Article 6 (Female genital mutilation) and Recital 16

Belgium can agree with this text. However, we suggest to add the facilitation and promotion of female genital mutilation.

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

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

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

**(c) facilitating or promoting any of the acts referred to in point (a).”**

### Article 7 (Non-consensual sharing of intimate or manipulated material) and Recitals 19 and 19bis

With regard to the words "and causing serious harm" which has the consequence of introducing special condition of prejudice as a constitutive element of non-consensual sharing of intimate material. We are not very enthusiastic about this addition. The suffering of the victim is a consequence of such a serious act and should not be a constituent element of the offence. This creates problems in terms of ex officio investigations but also in terms of secondary victimisation of the victim who has to prove his or her injury.

As regards the introduction of paragraph 2, we are not in favour of its wording as it stands. We understand the principle and the objective, but we believe that it should be more limited. Indeed, in no case should it include (c) which concerns the threat. With regard to (a), we can be a little more flexible but we do not understand in which concrete cases the sharing of intimate material where it is actually the victim would be excused as art or freedom of expression. As regards the example cited by the Presidency, we consider that this is a matter of reporting and is not covered by this article. And finally, with regard to point (b) we can be flexible as we understand that the aim is to protect caricatures of public figures published in the press.

Mainly, we would like to delete the words "causing serious harm". We would also like to see paragraph 2 deleted, as we believe that Recital 19bis is sufficient to meet the requirement of respect for the Charter and the national systems implementing it. Indeed, the last sentence of 19bis covers the reporting of abuse that could stand as an exception to Article 7(a).

**(19bis) Where required by national or Union law, the dissemination of images, videos or other material to end-users by means of information and communication technologies should not be considered as non-consensual sharing of intimate, manipulated or altered materials, when such an exception is necessary in order to safeguard the fundamental rights protected under the Charter, and in particular the freedom of expression, including the freedom to receive and impart information and ideas in an open and democratic society, as well as freedom of the arts and sciences, including academic freedom. Moreover, this offense should not cover the handling of material by public authorities, in particular to conduct criminal proceedings or to prevent, detect or investigate crime, and Member States may relieve a person of responsibility under specific circumstances, for example where telephone or internet hotlines handle material in order to report an offense to authorities.**

1. Member States shall ensure that the following intentional conduct is punishable as a criminal offence:
  - (a) making intimate images, or videos or ~~other~~ similar material depicting sexually explicit conduct activities, or the intimate parts of a person of another person without their that person's consent accessible to a multitude of end users by means of information and communication technologies ~~and causing serious harm, unless the act was justifiable in view of its purpose and other circumstances;~~
  - (b) producing ~~or manipulating~~ or altering and subsequently making accessible to a multitude of end users, by means of information and communication technologies, images, videos or similar other material, making it appear as though another person is engaged in sexually explicit conduct activities, without their that person's consent ~~and causing serious harm, unless the act was justifiable in view of its purpose and other circumstances;~~
  - (c) threatening to engage in the conduct referred to in points (a) and (b) in order to coerce another person to do, acquiesce or refrain from a certain act.

~~2. Paragraph 1 shall apply without prejudice to the application of exceptions provided for under national or Union law, which guarantee the freedom of expression and information and the freedom of the arts and sciences.~~

Alternatively, we can accept "is likely to cause harm" as in the Article and a paragraph 2 limited to (b).

1. Member States shall ensure that the following intentional conduct is punishable as a criminal offence:
  - (a) making intimate images, or videos or ~~other~~ similar material depicting sexually explicit conduct activities, or the intimate parts of a person of another person without their that person's consent accessible to a multitude of end users by means of information and communication technologies ~~and is likely to cause serious harm, unless the act was justifiable in view of its purpose and other circumstances;~~
  - (b) producing ~~or manipulating~~ or altering and subsequently making accessible to a multitude of end users, by means of information and communication technologies, images, videos or similar other material, making it appear as though another person is engaged in sexually explicit conduct activities, without their that person's consent ~~and is likely to cause serious harm, unless the act was justifiable in view of its purpose and other circumstances;~~
  - (c) threatening to engage in the conduct referred to in points (a) and (b) in order to coerce another person to do, acquiesce or refrain from a certain act.

~~2. Paragraph 1 (b) shall apply without prejudice to the application of exceptions provided for under national or Union law, which guarantee the fundamental rights protected under the Charter the freedom of expression and information and the freedom of the arts and sciences.~~

#### Article 8 (Cyber stalking) and Recital 20

Our previous comments about the terms "multitude of end-users" applies as well.  
Recital 20 is acceptable.

### Article 9 (Cyber harassment) and Recital 21

Our previous comments about the terms “multitude of end-users” applies as well. Recital 21 is acceptable.

- (a) ~~persistently repeatedly or continuously~~ engaging in threatening or ~~intimidating~~ conduct directed at another person, **at least when this conduct involves threats to commit criminal offences**, by means of information and communication technologies, which **is likely to** ~~causes that the person to seriously~~ fears for **their** own safety or ~~that the person fears for~~ safety of dependants;
- (b) **engaging in threatening or insulting conduct**, ~~initiating an attack with third parties directed at another person, by making threatening or insulting material accessible~~ **visibly** ~~to a multitude of end users, with other persons~~, by means of information and communication technologies, **which is likely to cause** ~~with the effect of causing~~ significant psychological harm to the attacked person;
- c) making material containing the personal data of another person, without that person’s consent, accessible ~~to a multitude of end users~~, by means of information and communication technologies, for the purpose of inciting those end-users to cause physical or significant psychological harm to the person.

### Article 10 (Cyber incitement to violence or hatred ) and Recital 22

Belgium can accept this Article as it is. Our previous comments about the wording “sex or gender” applies as well.

### Article 11 (Incitement, aiding and abetting, and attempt)

Belgium can agree to the amendment proposed but we would prefer to delete “(b)”.

### Article 12 (Penalties) and Recital 15

Belgium can agree with the overall Article as long as Recital 15 is deleted and paragraph 3 is transferred to Article 38 §3 as proposed.

### Article 13 (Aggravating circumstances)

Belgium is generally satisfied with the Article as it is. We preferred the previous revised text proposed by the presidency which simply added “where relevant” to ensure flexibility. We fully support to keep (n) and (o) in the text as these circumstances can be applied to Article 6.

Regarding (i), we support the inclusion of suicide. During the last COPEN meeting, another delegation suggested the current wording that we can support :

- (i) the **conduct caused** ~~offence resulted~~ in the death **or suicide** of the victim or severe physical or psychological harm for the victim;

### Article 14 (Jurisdiction)

Belgium can agree with the Article.

### **Article 15 (Limitation periods)**

Belgium can agree with the Article. However, we would prefer the previous text proposed by the Presidency.

1. Member States shall take the necessary measures to provide for a limitation period that enables the investigation, prosecution, trial and judicial decision ~~of concerning~~ criminal offences referred to in Articles 5 to 11 for a sufficient period of time after the commission of those criminal offences.
2. Member States shall take the necessary measures to provide for a limitation period for criminal offences referred to in Article 5 of at least ~~10/20~~ years from the time when the offence was committed.
3. Member States shall take the necessary measures to provide for a limitation period for criminal offences referred to in Article 6 of at least ~~5/10~~ years from the time when the offence was committed.
4. ~~Member States shall take the necessary measures to provide for a limitation period for criminal offences referred to in Articles 7 and 9 of at least 5 years after the criminal offence has ceased or the victim has become aware of it.~~
5. ~~Member States shall take the necessary measures to provide for a limitation period for the criminal offences referred to in Articles 8 and 10, of at least 7 years after the criminal offence has ceased or the victim has become aware of it.~~
6. If the victim is a child, the limitation period for offences referred to in articles 5 and 6 shall commence at the earliest once the victim has reached 18 years of age.

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

#### **Article 16 (Reporting of violence against women or domestic violence) and Recitals 24, 25 and 26**

Belgium can accept paragraphs 1 to 4. We have a scrutiny reservation on paragraph 5. We will send written comments as soon as we can lift the scrutiny reservation about the proposal from the Commission. However we would like to underline that compatibility with the Directive Return is essential to us and we support the explicit reference.

#### **Article 17 (Investigation and prosecution) and Recital 27**

Belgium can accept paragraphs 1, 2 and 5 and Recital 27.

In paragraphs 3 and 4, we would like to replace “promptly” and “as soon as possible” with “without undue delay” which is a clearer expression from Victims’ Rights Directive that allows authorities Promptly should become without undue delay in 17-3 et 4.

In 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.

For this reason, we will provide a draft for a Recital 27bis. Our experts are still working on it and the draft we will be sent as soon as possible.

**Article 18 (Individual assessment to identify victims' protection needs) and Recitals 28, 29, 30 and 31**

Belgium can accept paragraphs 1 to 7 and Recitals 28, 29, 30, 30bis and 31.  
However, in paragraph 8, the mention of under the age of 18 should be deleted.

**Article 19 (Individual assessment of victims' support needs)**

Belgium can accept Article 19 as it is.

**Article 20 (Referral to support services) and Recital 32**

Belgium can accept Article 20 and Recital 32 except for a few comments.  
In paragraph 1, we would like to insure a better alignment between §1 and §4 which is why we suggest the following wording

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, **following the transmission of the personal data in conformity with §4** ~~in cooperation with the competent authorities,~~ contact victims to offer support.

In paragraph 3, we insist on the inclusion of child witnesses.

In paragraph 5, we can accept the time limit of 5 years.

**Article 21 (Emergency barring, restraining and protection orders) and Recitals 33, 34, 35 and 36**

Belgium can support Recitals 33, 34 and 36. However, we support the suggestion of other delegations to maintain the original text in Recital 35 and Article 21 paragraph 2.

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) and Recital 37**

Article 22 and Recital 37 are acceptable to Belgium as they are.

**Article 23 (Guidelines for law enforcement and judicial authorities) and Recital 30**

Article 23 and Recital 30 are acceptable to Belgium as they are.

**Article 24 (Role of national bodies and equality bodies) and Recital 38**

Article 24 and Recital 38 are acceptable to Belgium as they are. We supported the original text of Article 24.

**Article 25 (Measures to remove certain online material) and Recital 39, 40, 41, 42 and 43**

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) and Recital 44**

Belgium supported the original text both from Article 26 and Recital 44 and we would support a compromise with higher ambition than the actual text. We are under the impression that revised Article 26 is less protective than the Victim's Rights Directive. For this reason, we suggest to add "without undue delay" to at least assure the same level of protection than Article of the Victim's Rights Directive.

1. Member States shall ensure that victims **are entitled to obtain a decision on compensation by the offender** ~~have the right to claim full compensation from offenders~~ for damages resulting from all forms of offences of violence against women or domestic violence **as provided by national law**.

2. Member States shall ensure **where appropriate** that victims are able to obtain, **within a reasonable time**, a decision on compensation in the course of criminal proceedings, **except where national law provides for such a decision to be made in other legal proceedings**.

#### **Chapter 4 – Victim support**

#### **Article 27 (Specialist support to victims) and Recital 45, 46, 47, 48 and 49**

Belgium can accept these dispositions without any comment.

#### **Article 28 (Specialist support for victims of sexual violence) and Recital 50**

Belgium can accept these dispositions without any comment.

#### **Article 29 (Specialist support for victims of female genital mutilation) and Recital 50**

Belgium can accept these dispositions without any comment.

#### **Article 30 (Specialist support for victims of sexual harassment at work) and Recital 51**

Belgium no longer as a scrutiny reservation on Article 30 and can accept it without any comment.

#### **Article 31 (Helplines for victims) and Recital 52**

Belgium can accept these dispositions. However, we would like to include victims of domestic violence in paragraph 4.

4. Member States **are encouraged to** ~~shall~~ ensure that the service under paragraph 1 for victims of violence against women **and domestic violence** 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) and Recital 53

Belgium can accept Article 32 as long as it underlines the specific needs of women and children. 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.”.

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, including the specific need of women and children. 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 provided in sufficient numbers and easily fully accessible and equipped to accommodate the specific needs of women and of children, including child victims.

### Article 33 (Support for child victims) and Recital 54

Belgium can accept Article 33 and Recital 54 as they are. We are against the suggestion to delete the mention of child witnesses. However, we would prefer the following wording:

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.~~ **Member States shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.**

(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.~~ **When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.** The best interest of the child should be always taken into account.

### Article 34 (Safety of children) and Recital 55

Belgium can accept this article without any comment.

## Article 35 (Targeted support for victims with specific needs and groups at risk) Recitals 56 and 57

In article 35, paragraph 3, we would like to replace the terms “irregular migrants with “illegally staying third-country nationals””. We still have a few comments about the terminology used in Recital 56:

(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 who are illegally staying third-country national, 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 sex workers, detainees, lesbians, bisexual, transsexual women persons, ~~or older women or women with use of alcohol and drugs or drugs use disorders~~. They should consequently receive specific protection and support.

## Chapter 5 – Prevention

### Article 36 (Preventive measures) and Recital 58 and 59

Article 36 is acceptable for Belgium. We would prefer the original text of paragraph 6. We still have a few comments about the terminology used in Recital 58:

(58) Member States should ~~take appropriate preventive measures. actions, to prevent ensure that~~ Such preventive measures ~~may include, such as awareness-raising campaigns, are taken~~ to counter violence against women and domestic violence. Prevention ~~should~~ ~~may~~ also take place in formal education, in particular, through strengthening sexuality education and socio-emotional competencies, empathy and developing healthy and respectful relationships. Taking into account language barriers and differens levels of interacy and abilities, Member States should address targeted actions to groups at heightened risk, which include children, taking into account their age and maturity, persons with disabilities, persons with alcohol and drug use disorders, and lesbian, gay, bisexual or transsexual persons.

Belgium no longer as a scrutiny reservation on Article 36§8. In paragraph 8, we suggest the following addition:

8. Member States shall take adequate and appropriate measures to address sexual harassment at work, when it constitutes a criminal offense under national law, in relevant national policies, including safety and health at the workplace to ensure that preventive measures are taken at the workplace. Those national policies may identify and establish targeted actions referred to in paragraph 2 for sectors where workers are most exposed.

### Article 37 (Training and information for professionals) and Recitals 60 and 61

Belgium is not formally opposed to the current version of Article 37, however we regret the lack of ambition of the new revised paragraph? AS suggested by several delegations, we would support the proposition of the Commission from the previous revised text. Our issue was the mandatory training for professionals that need a certain degree of independence such as judges, prosecutors and lawyers. This option keeps the degree of ambition but is flexible according to the type of professionals.

1 Member States shall ensure that professionals likely to come into contact with victims, including police officerslaw enforcement authorities[, court staff,] and healthcare professionals judges and prosecutors, lawyers, providers of victim support and restorative justice services, healthcare professionals, social services, educational and other relevant staff, receive both general and specialist training and targeted information to a level appropriate to their contacts with victims, to enable them to identify, prevent and address instances of violence against women or domestic violence and to treat victims in a trauma-, gender- and child-sensitive manner [and communicate with victims with disabilities in an accessible manner].

**1bis.** Without prejudice to judicial independence and differences in the organisation of the judiciary across the Member States, and with due respect for the role of those responsible for the training of judges and prosecutors, Member States shall take appropriate measures to ensure that judges and prosecutors who deal with criminal proceedings involving victims of violence against women and domestic violence have effective access to specific training for the purposes set out in paragraph 1.

**1ter.** With due respect for the independence of the legal profession and for the role of those responsible for the training of lawyers, Member States shall take appropriate measures to promote the provision of specific training as referred to in paragraph 1 to lawyers who deal with criminal proceedings involving violence against women and domestic violence.

**Article 38 (Intervention programmes) and Recitals 62 and 62 bis**

Belgium can accept this article without any comment.

**Chapter 6 – Coordination and cooperation**

**Article 39 (Coordinated policies and coordinating body ) and Recital 62 ter**

Belgium can accept this article without any comment.

**Article 40 (Multi-agency coordination and cooperation)**

Belgium can accept this article.

**Article 41 (Cooperation with non-governmental organisations)**

Belgium can accept this article without any comment.

**Article 42 (Cooperation between intermediary service providers) and Recital 63**

Belgium can accept this article. However, we agree with the concerns in terms of the content of an obligation formulated as follows: “Member States shall encourage”.

**Article 43 (Union level cooperation)**

Belgium can accept this article without any comment.

**Article 44 (Data collection and research) and Recitals 64 and 65**

Belgium can accept this article. However, we regret the deletion of paragraph 3. We just finish the similar survey prescribed by the Istanbul Convention. Most Member States are concerned by this Convention meaning that there is ground to find a compromise that does not sacrifice the ambition of the text.

**Chapter 7 – Final provisions**

**Article 45 (Amendment to Directive 2011/93/EU) and Recitals 66 and 67**

Belgium is in absolute favour of keeping both Article 45 in the text.

**Article 46 (Level of protection) and Recitals 67 bis and 68**

Belgium can accept the transfer of this Article 46 in Recital 67 bis.

**Article 47 (Reporting) and Recitals 69, 70 and 71**

Belgium can be flexible about this modification. However, the replacement of “relevant information” with “available information” greatly weakens, if not voids, the obligation. Implementation and harmonisation would be complicated with a threshold of obligation so low.

**Article 48 (Relationship with other Union acts)**

Belgium can accept this article without any comment.

**[Article 48 bis – Freedom of the press and the freedom of expression in other media]**

Belgium is not convinced of the necessity of this Article. We would be in favour of transferring to the Recitals. We feel Article 7§2 new Recital 19bis are already sufficient to cover the exception desired. Should the Article stay in the corpus of the text, we advocate for its limitation to the offences of cyberviolence.

**Article 49 – Non-regression clause**

Belgium can accept this article without any comment.

**Article 50 – Transposition**

Belgium can accept this article without any comment.

**Article 51 – Entry into force**

Belgium can accept this article without any comment.

**Article 52 – Addressees**

Belgium can accept this article without any comment.

## BULGARIA

“(5) .....Therefore, the term ‘victim’ should refer to all persons and, unless specified otherwise in a given provision, all victims of those forms of violence should benefit from the rights related to the protection of victims and access to justice, victims support and prevention.”

“(11) Violence against women and domestic violence can be exacerbated where it intersects with discrimination based on the grounds listed in article 21 of the Charter.”

## GERMANY

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

Position statement by Germany following the COPEN Council Working Group Meeting on 30 and 31 March 2023:

First of all, we would like to thank the Swedish Council Presidency for their excellent work. We accept with thanks the opportunity to contribute a position statement on the provisions (Articles 1 to 38) discussed in the Council Working Group meeting of 30 and 31 March 2023. We also include a response to Articles 39 to 52 and request that this be considered in the upcoming work on those provisions by the Swedish Presidency. Due to the tight deadline, it may only be possible to address certain aspects at a later date.

- We support the Presidency's proposal to incorporate **Article 2** into Recital 11.
- **Article 4(a)**: We believe “coercion or arbitrary deprivation of liberty, or threats thereof” is confusing and does not correspond to the definition in Article 4(b), and should therefore be deleted.

It is not clear why Article 4(b) deviates from the definition in Article 3(b) of the Istanbul Convention. In cases of violence against older women with disabilities in particular, the definition in the Istanbul Convention is more appropriate, as it includes violence that occurs in a “domestic unit”.

- **Article 5** is to be deleted from the proposal. In light of the expert opinion of the Legal Service of the Council, the broad interpretation of Article 83(1), first and second subparagraph of the TFEU upon which the proposed directive is based involves substantial risks in terms of EU law. Considering the strict reasoning followed by the expert opinion, it cannot be ruled out at present that the CJEU might adopt the same reasoning and at the least declare the provision contained in Article 5 null and void due to a lack of legal basis. The gender-neutral wording for which the opinion also convincingly argues would include “men” in the crime area “exploitation of women”, thereby making the wording even further removed from the legal basis. What is more, aside from giving rise to the legal risks highlighted by the Legal Service of the Council in an unusually forceful manner, retaining Article 5 would also set a precedent for a very broad interpretation of the TFEU as a basis for criminal law, with currently unforeseeable consequences. Additionally, it could give rise to constitutional difficulties in Germany.

Regarding **Article 6**, it is questionable whether the necessary legal basis exists, as female genital mutilation (section 226a of the German Criminal Code) does not, in a strict legal interpretation of the term, necessarily include an element of exploitation; instead – like other offences involving bodily harm – its definition is centred on protecting the physical integrity and the mental integrity of female persons. The Legal Service does, however, make the comprehensible argument that those affected are particularly vulnerable, and particular vulnerability could be seen as the counterpart of exploitation. On this basis, however, only victims who are minors at the time of an offence fall within the scope of protection of Article 6. This would be in line with Directive 2011/92/EU.

- The Presidency’s changes to **Articles 7-10** go in the right direction, as the legal basis only extends to serious crime. Articles 7-10 should, however, follow the same structure. We welcome the wording “is likely to”. In our domestic legislation on stalking, the equivalent of “likely to” is used in connection with behaviour that could, not insignificantly, restrict a person’s lifestyle. Using “significantly” instead of “not insignificantly” ought to make the serious nature of the actions in question clear. We propose the following wording “...acting in an unauthorised manner that is likely to significantly restrict the lifestyle of the person in question, namely:...”. In the light of the fact that trans people are particularly affected by gender-based hate crime, we welcome the retention of the term “gender” in Article 10.
- **Article 12(2)** and (3) are in brackets in the new version. We would therefore currently reiterate our response in our previous position statement: In accordance with the Presidency’s proposal regarding Article 12(4), which we welcome, the minimum maximum penalty set out in Article 12(2) should also be adjusted so as to be in line with the Council conclusions of 24/25 April 2002 on the “approach to apply regarding approximation of penalties” (ST 9141/02). In those conclusions, the Council agreed on four levels of criminal sanctions with minimum maximum penalties of one, two, five or ten years. The minimum maximum penalty set out in Article 12(2) of the present Proposal, which provides for a threshold of eight years, does not meet these requirements. The general approach agreed for the draft Directive on Environmental Crime also provides for this system of minimum maximum penalties. If Article 5 is not deleted, it should provide for a minimum maximum penalty of five years. Member States also have to be afforded sufficient flexibility to deal with atypical individual cases. The specification of higher minimum maximum penalties for offences committed under aggravating circumstances as defined in Article 13 is also unacceptable for us. National particularities should be taken into account here and Member States should be left with some discretion in this respect. We are in favour of deleting the corresponding requirement (increase of the penalty in the case of aggravating circumstances) in paragraph 2.

With its mandatory provision, Article 12(3) interferes too much with the competence of the Member States. Instead, an optional provision should be chosen, according to which Member States must ensure that the courts or competent authorities can impose an obligation to undergo therapy. We already forwarded a written amendment proposal to this effect, which is set out again below and will also be resubmitted: “Member States shall ensure that the competent judicial authorities may impose on a perpetrator of the criminal offence referred to in Article 5, who has previously been convicted of offences of the same nature, the obligation to participate in an intervention programme referred to in Article 38.”

We have no objections to the new version of Article 12(5).

- **Specificities under juvenile criminal law:** In line with the EU Strategy on the Rights of the Child and the UN Convention on the Rights of the Child, we suggest a recital with the following wording: “The focus on “criminal penalties” does not preclude Member States from providing instead for socio-educational and other adequate sanctions and measures under national juvenile criminal law when the person accused is a child (as in line with guidelines etc. of the United Nations and recommendations of the Council of Europe dealing with juvenile justice and juveniles in conflict with the law).” A recital as above should only be omitted if, in the view of the Commission/Legal Service, it is already a generally recognised principle that sanctions under juvenile criminal law can deviate from general criminal law, and including a recital to this effect in the present directive could risk the opposite being inferred in other contexts.
- We welcome the Presidency's proposed new wording for **Article 13** – general approach for the proposed Directive on Environmental Crime and Sanctions Directive. The provision is now fundamentally acceptable.

However, the large number of aggravating circumstances – 15 – should be reduced considerably by combining some of them. Not only could this make the provisions more workable (and avoid setting such a comprehensive precedent for future draft directives), it should also facilitate trilogue negotiations.

The various aggravating circumstances could potentially be combined as follows (consultations between the ministries on this point are still ongoing):

“(a) the offence was committed against a particularly vulnerable person

[b, c + o]

(b) the offender has previously been convicted of offences of the same nature or the offence was committed repeatedly

[a +j]

(c) the offence was committed by two or more persons acting together

[e]

(d) the offence was committed with the use of an extreme level of violence or the threat of such violence

[f, g + h]

(e) the offence resulted in the death of or in severe physical or psychological harm to the victim

[= i]

(f) the offender was abusing a relationship or position of trust

[k, l + m]

We would then delete (o) and (n), which is already in square brackets.

Regarding Article 13(b): We support adding the deleted words “living in institutions” to the recital, because it seems necessary to mention the vulnerability of these women; this also applies in the event that our proposal to change (b) into a new (a) (see above) is adopted.

- We welcome the Presidency’s proposal regarding **Article 14(4)**, whereby only jurisdiction established over the offences referred to in Articles 5 and 6 would not be subject to the condition that the acts be punishable in the country where they were performed.
- Regarding the provisions on limitation periods in **Article 15**, we welcome the Presidency’s adoption of the second option proposed, which we can support. We also welcome the change to paragraph 6 [restricting the requirement that the limitation period begin when a child victim reaches their majority at the earliest to offences referred to in Articles 5 and 6].
- We propose the following wording for **Article 16(1)**: “...Member States shall ensure that victims can report acts of violence against women or domestic violence to the competent authorities through accessible, easy-to-use and readily available channels...”

We request the use of the term “care professionals” instead of “healthcare professionals” in **Article 16(3)** in order to include care for the elderly.

We would also point out that the second sentence of Article 16(3) only includes the wording “harm has been inflicted” and limits the scope to harm that has already taken place. This is not in line with the Istanbul Convention. We therefore suggest the wording “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.” (However, we very much welcome “without prejudice to national rules on legal privilege”.)

The following adjustment to the sentence structure is required in **Article 16(4)**: “designed and accessible in a child-friendly manner” -> “accessible and designed in a child-friendly manner”.

The new wording “may” (instead of “shall”) in **Article 16(5)** must not result in any reduction in protection from return. We therefore prefer the original version / the draft proposed by the Commission with “shall”. It is also not clear to us why the “individual assessment” under Article 19 has not been included as well.

- The “ex officio” addition to **Article 17(3)** is not, in our view, problematic, not least as the principle of mandatory prosecution applies in Germany in any case. However, there does need to be an addition to the effect that investigations will only be launched if there are sufficient indications of a criminal offence.

**Article 17 (4)**: We suggest changing the last sentence to “assisting in the voluntary securing of evidence” to highlight the voluntary action of the victim.

- We are grateful for the changes to **Article 18(1) to (3)** undertaken by the Presidency. However, they do not in our view go far enough.

In line with Article 51 of the Istanbul Convention, all necessary measures should be taken to ensure that a risk analysis is conducted by all competent authorities and is taken into account. We therefore propose adding the following sentence to the end of paragraph 3: “Existing findings from a risk and threat analysis related to the offender may be taken into account by the courts.”

Consultations on the second sentence of Article 18(4) are still ongoing. Our position regarding this provision will follow.

Regarding Article 18(5), we ask that the wording be changed as follows to make it clear that the independence of the courts will not be affected: “The findings of the individual assessment may be taken into consideration when decisions on adequate protection measures are made by national authorities. These may include...”, or you could use “taking into account” instead of “on the basis of”. For us, it is important to separate the individual assessment from the specific protection measures in order to comply with the constitutional requirements covering the independence of the judiciary. We propose the above wording to make it clearer that there is – as the Swedish Presidency has kindly confirmed – no obligatory link between the assessment and the protection measures.

**Article 18(6)**: In the light of their important role, we see a need to mention “relevant support services, such as victim protection centres, women’s shelters and specialised counselling centres, social services and healthcare professionals” as well.

While we welcome the deletion of the second sentence of Article 18(7), we cannot accept the changes in the first sentence as they do not sufficiently take account of the independence of the courts. “and, where relevant, take new or update ongoing protection measures” should therefore be deleted, as this does not separate the assessment from the measures and thus does not taken into account the independence of the courts. The wording “and, where relevant, take new or update ongoing protection measures” should be deleted because the provisions must not allow authorities that are only responsible for the individual assessment and updates to it to act beyond their powers and, for example, decide upon or alter court-ordered protection measures. Regarding the far-reaching protection measures under Article 21, care must be taken to ensure that independent courts can decide, and that not solely on the basis of the assessment, which is a one-sided tool centred on the interests of the victim. It must also be possible to take account of justified interests of the perpetrator.

Article 18(8): We support the option “victims’ dependants under the age of 18 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.” As already stated, “dependants” themselves do not necessarily have protection needs; there is only a disputable presumption that they are particularly vulnerable.

- An aligned wording in Article 20(3) and Article 33(2) “victims’ dependants under the age of 18” is preferable.

We very much welcome that the provision now requires the consent of the person affected to the transmission of their data. This should be retained.

Paragraph 5 now provides for a maximum storage period of five years. First of all, it is to be welcomed that a time limit for the storage of the data has been set. However, reasons should be provided as to why it appears necessary to store the data for up to five years after the last contact.

- The deletion of “dependants” and “suspects” in **Article 21(2)** is to be welcomed. With regard to the application requirement in the case of adult victims (keywords: victim protection in accordance with the principle of self-determination) we suggest a new (3) stating that MS can require a request of the victim for the measures in (1) and (2) if the victim is an adult: “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.”
- Unfortunately, our suggestion to add “without prejudice to Regulation (EU) 2022/2065” at the beginning of **Article 25** has not been taken up. Equally, our suggestion to add “Such orders shall be issued in accordance with the minimum conditions set out in Article 9(2) of Regulation (EU) 2022/2065.” has not been accepted. In our view, these additions are necessary in order to clarify the relationship with the DSA and to create harmony with the corresponding provisions contained therein.

Clarifying the relationship with domestic law might also be appropriate, for example by adding "The conditions and requirements laid down in this Article shall be without prejudice to national civil and criminal procedural law." (Wording as in Article 9(6) DSA.)

- The addition of "in accordance with national law" in **Article 26(1)** is very welcome and should absolutely be retained, as should the deletion of paragraphs 3 et seqq.
- We therefore propose the following wording for **Article 27(2)**: "*Specialist support referred to in paragraph 1 shall be offered in-person, **shall be tailored to the needs of victims of violence against women and domestic violence, and shall be accessible and readily available.***"

We prefer the original wording, without the addition of "aim to" in **Article 27(6)**.

Given that Article 28(4), Article 29(2), Article 31(3) and particularly Article 32(4) (women's shelters!) make reference to Article 27(6), this change is particularly problematic. The COVID-19 pandemic has shown very clearly that, especially in times of crisis, such institutions are systemically important and can save lives.

- We therefore propose the following wording for **Article 28(1)**: "*Member States shall provide for appropriately equipped, **widely available and fully accessible** rape crisis or sexual violence referral centres...*". In order to avoid ambiguity, we also suggest replacing the word "accessible" in **Article 28(2)** by "available": "accessible every day of the week" -> "available every day of the week".
- The proposed wording of **Article 31** exceeds the requirements of the Istanbul Convention. In Germany, a 24/7 accessible service in 19 languages is available to female victims of all forms of violence covered by the Directive, in line with Article 31 and the Istanbul Convention, in the form of the helpline for violence against women, which will soon be reachable under the EU-wide harmonised helpline number 116 016.

At present, there is not a comparable service for male victims of (domestic) violence: for such persons, there is merely a service with restricted hours that is operated jointly by several *Länder*. Accordingly, in Germany's view there should be greater leeway for the implementation of this service where non-female victims of (domestic) violence are concerned; in particular, the requirement for round-the-clock availability should be removed.

- We propose the following wording for **Article 32(2)**: "*The shelters and other appropriate interim accommodations shall be provided in sufficient numbers, **designed to be fully accessible**, and equipped to accommodate the specific needs of women and of children, including child victims*".

- In **Article 33(2)**, too, “children having witnessed” should be replaced by “victims’ dependants under the age of 18”. Under national law, children who have been victims of a criminal offence are entitled to psychosocial assistance in court proceedings. If “children having witnessed” is not deleted, Germany requests the deletion of the word “psychosocial” by way of an alternative.
- Regarding **Article 36(7)**, we welcome the Presidency’s decision in favour of this amendment version (retention of specific measures that can contribute to the self-empowerment of citizens).
- The addition of “relevant” in **Article 37(1)** is very much to be welcomed. In our view, there is no need for further changes in this respect. We also suggest amending the wording as follows: „...*child-sensitive manner, and take accessibility into account when communicating with victims with disabilities.*”
- Regarding **Article 38(2)**, Germany advocates also making intervention programmes available to persons who are at risk of committing violent offences and therefore suggests replacing the second “may” by “shall”.
- We welcome the deletion of “witnesses” in **Article 40(1)**. In Article 40(2), “where appropriate” should be inserted after “pertain to”.
- Overall, it would be desirable to clarify the relationship (as merely supplementary measures) to the DSA in **Article 42** itself, and not just in recital 63.

Unfortunately, our suggestion to require platforms to provide the content moderators themselves with psychological training and psychological assistance in carrying out this mentally extremely demanding task has not yet been inserted into the text. The requirement could be included in a separate article, or the words “and psychosocial assistance” could be added to the heading of Article 42.

- **Re Article 44:** Germany is grateful for the clarification in the box “on point 1”.

Furthermore, Germany thanks the Swedish Presidency for taking out persons prosecuted for in Article 44(2).

We support the Commission's proposal set out in footnote 23 regarding the wording of paragraph 3.

We welcome the replacement of “methodology” with “standards” in paragraph 4 and the corresponding amendment of Article 5. However, Germany still has concerns about the standards to be developed, in case they turn out to be too detailed. In this respect, we propose inserting “endeavour to” before [“collect administrative data”...].

- **Article 45** relates closely to Article 5 and should therefore also be deleted.

- The **recitals** need to be amended accordingly; this should include the following changes:
- **(5)** The change to Recital 5 cannot be supported: trans persons (besides cis women) are those who most often experience gender-based violence because of their gender identity. Referring to men and boys only disregards this issue. We would advocate retaining the first deleted sentence in Recital 5: *This Directive, however, acknowledges that other persons may also fall victim to these forms of violence.*
- **(6)** Recital 6 is inaccurate in that victim status is attributed in too general a manner. Instead, we suggest describing the status of victim as follows: "Due to their vulnerability, children who witness violence against women or domestic violence may suffer direct emotional harm that impacts their development. There needs to be an assessment on a case by case basis whether a child has suffered or is suffering direct emotional harm. If this is the case, the child himself or herself should be considered a victim."  
We may submit further comments on this point.
- **(7)** It is important to emphasise the Directive's focus on gender-based violence in line with the questioning of the Istanbul Convention. We therefore oppose the deletion of the definition of the term "gender" in Recital 7, which corresponds to the definition in the Istanbul Convention.
- **(8)** Consultations on Recital 8 are still ongoing.
- **(25)** would have to be adapted in line with our proposal regarding Article 16(3) sentence 2. We fail to understand why, in the case of domestic violence and violence against women, the risk of physical violence is rightly and in a future-oriented way taken into account, whereas, where children are concerned, only physical harm that has already been inflicted is taken into account, even though both forms of domestic violence should be treated equally.
- **(31)** should be deleted, because the statements contained therein are too generalised. Whether the measures taken should be the same as those taken to protect the actual victim should be assessed in each individual case. In addition, purely emotional harm does not necessarily constitute violence.
- **(33)** "and their dependants" is to be deleted as well.
- **(35)** "suspect" is to be deleted.

## CZECH REPUBLIC

### Article 3

In view of the latest discussion regarding the scope of the directive, we can agree that a new provision on a scope might be useful. Mainly in order to specifically state to which victims the directive relates to and how to understand without any confusion the scope in general but also to each chapter (the difference between the name of the directive – violence against women, FGM relating only to women, cybercrimes to all victims and chapters 3-7 relating to both women and men but only in respect to certain crimes).

In such case, the definition provided in article 4 letter ba) is superfluous and, therefore, should be deleted.

#### – EC proposal

Such provision should be at the beginning of the directive, having it as article 15bis would cause further confusion. From the legal drafting point of view, it would be odd to define the scope of other chapters in one special chapter. Generally, this is done via the introductory general provisions.

Moreover, the text of the provision is inconsistent, in par 1 there is “provisions of this chapter” which means chapter 3 but in par 2 it says “for the purposes of chapters 3 to 7”.

We believe that the provided scope by the EC does not provide for the possibility to overcome the problem with discrimination as it was stated by the CLS opinion. If we refer to “violence against women” the victims will be only women. Instead it would be clearer if we stated that Chapters 3 to 7 will apply to all victims of conduct (instead of forms of violence against women) referred to in chapter 2, even if the victim is not a woman or a girl.

For the sake of legal clarity, it is necessary to specify that the instruments of Union law or national law relate only to sexual violence. The definition of violence against women which we currently have in article 4 is too broad and could include criminal acts which do not have to be necessarily connected to violence against women (such as theft).

The second paragraph should not be part of the scope provision. Throughout the whole directive, it is vital to have only one common definition of the word victim. The definition is already part of the article 4 letter c) and as such was agreed on by the member states. Moreover, if we wanted to cover also men as victims, even the current agreed on definition of “victim” is not sufficient. It would be better to align the definition of the victim with the Victims’ Rights Directive which would ensure that both men and women are seen as victims e.g. *“victim means a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence within the meaning of Article 2 par. 1 a) i) of the directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime”*.

#### **Article 4, letter j)**

The current definition is too broad and could cover potentially quite long list of people who do not actually need to have special protection, such as parents of the perpetrator for whom, however, also the victim provides care/support. It could be also siblings of the victim or also the perpetrator, who share the same household for some time due to their unsuitable financial situation, etc.

Such broad definition cannot be supported by us.

The CZ can agree with the definition of the dependant as long as it is used only in case of article 9. However, if the word “dependant” should be used further in the text we propose following definition, which would be more suitable and would cover clear amount of people.

*“Dependant means a child of the victim of domestic violence living in the same household as the victim, [for whom the victim is providing care and support].”*

#### **Articles 7-9**

We agree with other member states that the wording connected to causing harm should be unified for all three cybercrime provisions. Currently article 7 uses “causing serious harm”, article 8 “significant psychological harm”, article 9 “physical or significant psychological harm”.

Firstly, the CZ would like to reiterate that it strongly supports having stipulated at the EU level only such criminal offences in regard to the cybercrimes which fulfil only the most severe cases.

In Article 8 we propose to change the wording from “..., where this is likely to cause significant psychological harm” to “and causing serious psychological harm”. Our criminal law works with the construct of causing harm. The courts have no difficulties with proving that harm was caused – the intent of the perpetrator to cause harm should be always clear. On the other hand, “is likely to” is more problematic since it is dependent on other circumstances and harm must not actually be caused, according to the recital 20 it only requires that the act would typically cause significant psychological harm for a victim. It is not clear to us, how this condition will be proved and what is the added value of it. If such conduct did not cause harm to a particular person, how can we assess that it might have caused harm to that person? Do we assess this according to some average vulnerable victim? We should always consider one particular victim, and if we find out that according to the expert opinion such conduct has caused harm, it is not necessary to address that it might have caused harm (“is likely to”). Additionally, if we would like to punish cases where the harm was not actually caused but the perpetrator intended to cause it, this can be dealt with by way of criminalising also an attempt, not by changing the criminal offence as such.

### **Article 11**

We would like to raise up only linguistic inconsistency. The Czech version of the text works with the terms “*podněcování, napomáhání, účastenství a pokus*” (incitement, aiding and abetting, and attempt). However, other already existing criminal law instruments work with the terms “*návod, pomoc, pokus*”. The wording should be unified in this directive.

The different wording is essential in connection to article 10 which also relates to incitement. In the sense of article 10 this should, however, be translated as “*podněcování*”.

When preparing the next language versions of the directive, this should be taken into account.

### **Article 16 par. 3**

The CZ believes that this paragraph is confusing and causes problems with understanding. It should be written in a clearer way so that the reader knows to whom the exceptions apply.

The whole paragraph could be divided into two. Moreover, the second sentence could be drafted “*If the victim is a child, professionals subject to confidentiality rules imposed by national law, **with the exception of attorneys**, shall be able to report to the competent authorities if they have reasonable grounds to believe that serious physical harm has been inflicted on the child.*”

Moreover, we support the comment of Finland who would like to add to the list of exceptions the priests.

Additionally, we support those member states who stated that we must take into account also future acts of violence, therefore “or is expected to be” should be reintroduced to the text.

## **Articles 18 and 19**

We can support the Commission idea of having only one article regarding the individual assessment instead of two in order to simplify the text. We can also partially support their proposed wording of this article, however necessary changes in relation to the already agreed wording must be taken into account. These changes to the Commission's proposal should be made:

- Change of 2bis letter c) (par. 5 letter c): instead of "further measures to manage the offender or suspect's behaviour" to have "intervention programmes under Article 38 of this Directive"
- Par. 1 – additional elements as set out in ~~paragraphs 2 to 7~~ of this Article are assessed.
- 2 bis: Member States shall ensure that, upon the first contact of the victim with the competent authorities and on the bases of the individual assessment, ~~if there are~~ indications of an imminent risk for the safety of the victim, adequate protection measures are taken ~~immediately~~.
- Para 8 – ~~The individual assessment shall include the protection and support needs of the victims' dependants.~~ We oppose having this last paragraph due to the broad definition of the word dependant.

## **Article 25**

During the meeting the CZ has expressed only general concerns in regard to this article which needs more complex changes, and which should be drafted only upon the finalisation of the cybercrime offences.

As stated during the meeting itself, the best solution would be to have only general provision and all the details would be left upon the member states which are already bound by the DSA regulation.

The wording of this provision could be: "*Member states shall establish adequate procedures to have the power to remove publicly available material or to disable access to such material.*"

However, if the current article 25 stays in the text, we have following comments.

In par. 1, 3, 6 it is necessary to delete from the text article 8, since there have been changes in the order of cybercrimes. Cybercrime in article 8/c has been moved to article 9/c.

Par 1:

– no definition of "online material" exists. To better understand the relevant material, online should be changed to "publicly accessible material".

– TCO does not provide for further conditions as it is the case here with the last sentence. In order to have consistent text we cannot develop further conditions. The paragraph should only state that the member states should provide for measures in the form of orders to remove material or orders to disable access.

Par. 3 and 4: The effective judicial remedy goes beyond the provisions of the DSA regulation. It is necessary to be consistent with the main instrument, this provision relates to and this is the DSA, neither TCO nor CSAM. We believe that only the original par 3 should be kept in the text. The added part from par. 7 should be deleted. There is no harm caused to the provider

However, if we should consider possible remedy, it should be only in connection to the removal order, not the order of disabling access.

### **Article 35**

We support the idea of FR and the Commission to remove the word intersectional altogether with the reference to Gender pay gap directive. We believe that this wording could be sufficiently clear:

*“Member states shall ensure the provision of specific support to victims at an increased risk of violence against women or domestic violence **due to the possible combination with other forms of discrimination.**”*

Also, for par. 3, we consider that “irregular migrants” should be deleted. In the Czech Republic, for example, such persons are excluded from participation in public health insurance and social services if they are illegal migrants. It should also be pointed out that persons in detention cannot, by their nature, be provided with the full range of services (such as services under Articles 27, 28, 29, i.e. the availability of individual support services). This should be taken into account in the text.

**SPANISH WRITTEN PROPOSAL FOR PARA. 1 AND 4 ART. 20 OF THE PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON COMBATTING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE**

We consider that victims in this context are particularly vulnerable. When it comes to whether or not to ask for support, experience tells us that they often feel very disoriented at first. For this reason, we are of the opinion that support services should receive in any case the minimum identifying and contact data in order to be able to contact the victims and offering them support, regardless of whether or not the victim consented or asked for it. In this regard, when transmitting data at the initial moment of offering support, we would like underline that the European legal framework of data protection does not always require consent of the subject, which is not necessary here as we are dealing with the exercise of a public power in the public interest, that of supporting and protecting victims.

Once this first contact has taken place, the victims will be in a good position, as they will already have all the information they need, to decide whether or not giving consent to receive effective support and thus to the transmission to support services of other relevant personal data.

Accordingly, we suggest unifying para. 1 and 4 of Art. 20, and to distinguish between the offer of support and the effective provision of support.

Therefore, we suggest the following wording for para. 1 of Art. 20, and to delete para. 4.

*“1. If the assessments referred to in Articles 18 and 19 have identified specific support or protection needs, or if the victim has requested support, Member States shall ensure that competent authorities transmit identifying and contact data of the victim to the support services, and that support services, in cooperation with the competent authorities, contact the victim to offer support.*

*The effective provision of support to the victims, and the transmission by the competent authorities of other relevant personal data concerning the victims and their situation to support services, shall require the explicit consent of the victims*

*Member States shall ensure an adequate level of confidentiality for the transmission of data”.*

## FRANCE

Lors de la réunion du groupe COPEN des 30 et 31 mars 2023, la Présidence a sollicité les Etats membres en vue de transmettre des commentaires sur les chapitres 1 à 5 de la version révisée 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 2 sur les victimes exposées à un risque accru de violences et risques spécifiques :**

Les autorités françaises sont favorables à la proposition de la Commission, en ce qu'elle souligne le fait que les violences à l'égard des femmes et les violences domestiques représentent une forme de discrimination. Dans l'hypothèse où cette proposition rédactionnelle ne serait pas retenue, les autorités françaises ne sont pas opposées à un renvoi des dispositions de l'article au considérant 11.

#### Courtesy translation

The French authorities are in favour of the Commission's proposal, in that it stresses the fact that violence against women and domestic violence constitute a form of discrimination. If this drafting proposal is not adopted, the French authorities are not opposed to referring to the provisions of the article in recital 11.

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

Les autorités françaises privilégient la proposition alternative de la Commission permettant que la directive conserve un champ d'application. Elles sollicitent dans cette hypothèse le maintien du champ d'application à l'article 3 du chapitre 1 et proposent que la première phrase débute ainsi : « *The directive, shall apply to all victims of offences ... as defined below* ».

Les autorités françaises sollicitent par ailleurs qu'il soit fait référence aux violences sexuelles au paragraphe 2 de la proposition rédactionnelle de la Commission.

#### Courtesy translation

*The French authorities prefer the Commission's alternative proposal allowing the Directive to retain a scope. In this case, they request that the scope be maintained in Article 3, Chapter 1, and propose that the first sentence begin as follows*

*"The Directive shall apply to all victims of offences ... as defined below".*

*The French authorities also request that reference be made to sexual violence in paragraph 2 of the Commission's drafting proposal.*

#### **Sur l'article 4 sur les définitions :**

Concernant le *litera a)*, les autorités françaises sont défavorables à l'ajout de la mention « *regardless of the gender of the victim* », dans une définition relative à la violence à l'égard des femmes, pour des raisons de cohérence entre la notion définie et sa définition. En outre, elles proposent de remplacer l'expression « *economic loss* » par « *economic abuse* ».

Sur le *litera c)*, les autorités françaises indiquent qu'à défaut de retenir la proposition rédactionnelle alternative de la Commission pour l'article 3, le paragraphe 2 de cette proposition ("*victim*" means any natural person, regardless of their sex or gender, who has suffered harm, including physical, mental or emotional harm or economic loss, which was directly caused by acts of violence covered under this Directive, including child witnesses of such violence) leur semble particulièrement adapté pour définir la notion de victime, à condition qu'y soit ajoutée une référence aux violences sexuelles. Cette rédaction permettrait de donner une définition plus précise à la notion de victime, que la proposition formée par le Président, s'agissant d'un concept central dans la présente directive, et de faire référence à l'enfant témoin de violences qui doit également être considéré comme victime.

Sur le *litera d)*, les autorités françaises privilégient la rédaction initiale de la Commission, la proposition de la présidence lui apparaissant trop restrictive.

Sur le *litera j)*, les autorités françaises sont favorables au maintien d'une définition concernant les personnes à charge.

#### *Courtesy translation*

*With regard to *litera a)*, the French authorities are against adding the words "regardless of the gender of the victim" to a definition of violence against women, for reasons of consistency between the concept defined and its definition. Moreover, they suggest to replace the terms "economic loss" by "economic abuse".*

*With regard to *litera c)*, the French authorities indicate that, if the Commission's alternative drafting proposal for Article 3 is not retained, paragraph 2 of this proposal ("*victim*" means any natural person, regardless of their sex or gender, who has suffered harm, including physical, mental or emotional harm or economic loss, which was directly caused by acts of violence covered under this Directive, including child witnesses of such violence) seems to them to be particularly well suited to defining the concept of victim, provided that a reference to sexual violence is added. This wording would give a more precise definition of the concept of victim than the Presidency's proposal, since it is a central concept in this Directive, and would refer to the child witness of violence, who should also be considered as a victim.*

*With regard to litera d), the French authorities prefer the Commission's initial wording, as the Presidency's proposal seems too restrictive.*

*As regards litera j), the French authorities are in favour of maintaining a provision concerning dependants.*

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

Les autorités françaises soulignent que la notion de « partie intime d'une personne » n'est pas suffisamment précise et proposent que la notion de « matériels montrant une conduite sexuelle explicite ou les parties intimes de la personne » soit remplacée par la notion plus générale « d'images ou vidéos présentant un caractère sexuel ». En outre, elles précisent ne pas être favorables à l'ajout de la condition que les faits causent un préjudice grave, qui viendrait trop limiter le champ de la disposition.

Les autorités françaises saluent la création du considérant 19 bis et précisent que la référence à la notion large de « public », au sens du règlement 2022/2065 relatif à un marché unique des services numériques, en remplacement de celle de « multitude d'utilisateurs finaux », lui convient.

*Courtesy translation*

*The French authorities stress that the notion of "intimate part of a person" is not sufficiently precise and propose that the notion of "material showing explicit sexual conduct or the intimate parts of the person" be replaced by the more general notion of "images or videos of a sexual nature". In addition, they state that they are not in favour of adding the condition that the acts cause serious harm, as it would extensively limit the scope of the article.*

*The French authorities welcome the creation of Recital 19a and state that the reference to the broad notion of "the public", within the meaning of Regulation 2022/2065 on a single market for digital services, replacing that of "a multitude of end users", seem appropriate.*

**Sur l'article 9 sur le cyberharcèlement :**

Les autorités françaises sont favorables au fait de remplacer les termes « *to a multitude of end users* » par le terme de « public » pour tenir compte de la possible commission de ces faits dans un cadre scolaire par exemple.

*Courtesy translation*

*The French authorities are in favour of replacing the words "to a multitude of end users" by the term "public" to take account of the possible commission of these acts in a school setting for example.*

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

Les autorités françaises sont défavorables à la suppression de la mention « *sex or* » au paragraphe 1. En effet, les deux termes « sexe » et « genre » devraient être conservés afin de respecter la diversité des traditions juridiques des Etats membres.

Courtesy translation

*The French authorities are against the deletion of the words "sex or" in paragraph 1. In fact, the two terms "sex" and "gender" should be retained in order to respect the diversity of the legal traditions of the Member States.*

**Sur l'article 12 sur les sanctions :**

Concernant le paragraphe 4, les autorités françaises sont favorables à la suppression de la référence aux « cas les plus graves en droit national » et considère qu'une peine minimale encourue de 5 ans doit être prévue pour tous les faits de mutilations génitales féminines, même commis sans circonstance aggravante.

Courtesy translation

*With regard to paragraph 4, the French authorities are in favour of deleting the reference to "the most serious cases under national law" and consider that a minimum penalty of 5 years should be provided for all acts of female genital mutilation committed, even without aggravating circumstances.*

**Sur l'article 13 sur les circonstances aggravantes :**

Les autorités françaises sont favorables à la souplesse accordée par la Présidence. Elles considèrent que cette nouvelle rédaction laisse désormais aux Etats membres le soin de déterminer les circonstances aggravantes pertinentes pour chaque infraction visée par la directive.

Courtesy translation

*The French authorities are in favour of the flexibility granted by the Presidency. They consider that this new wording now leaves it to the Member States to determine the relevant aggravating circumstances for each offence covered by the Directive.*

### **Sur l'article 14 sur la compétence :**

Les autorités françaises rappellent leur souhait que le paragraphe 5 soit limité aux infractions visées aux articles 5 et 6, afin de s'assurer que l'exception relative à l'absence de nécessité d'un signalement de la victime ou d'une dénonciation officielle pour engager les poursuites ne s'applique qu'aux infractions les plus graves, comme ce qui est prévu au paragraphe 4.

#### Courtesy translation

*The French authorities reiterate their wish that paragraph 5 be limited to the offences referred to in Articles 5 (if the Article is retained) and 6, i.e. to the most serious cases, as provided for in paragraph 4.*

### **Sur l'article 15 sur la prescription :**

Les autorités françaises sont favorables à l'option une qui était proposée par la présidence dans son projet de rédaction initiale (sous réserve que soit prévu un délai minimal de prescription de 5 ans concernant les mutilations génitales féminines). L'option 2 retenue dans le présent projet par la Présidence semble aux autorités française moins ambitieuse au regard des objectifs fixés par la directive.

#### Courtesy translation

*The French authorities are in favour of option 1, which was proposed by the Presidency in its initial draft (subject to the provision of a minimum limitation period of 5 years for female genital mutilation). The French authorities consider that option 2, which was retained by the Presidency in the present draft, is less ambitious with regard to the objectives set by the Directive.*

### **Sur l'article 16 sur le signalement de la violence à l'égard des femmes et de la violence domestique :**

La rédaction du paragraphe 3 proposée par la Présidence convient aux autorités françaises.

Sur la nouvelle proposition de rédaction du paragraphe 5, les autorités françaises confirment que la protection de toutes les femmes victimes de violences conjugales, y compris celles se trouvant dans un contexte de migration, est une priorité française, bien que les procédures d'évaluation et les mesures d'obligation de quitter le territoire peuvent différer en fonction du droit au séjour national dont relève la victime. Ce paragraphe ne semble pas nécessaire pour les autorités françaises en ce que la directive Retour de 2008/115/CE prévoit déjà que les personnes vulnérables doivent faire l'objet d'une prise en compte et d'une évaluation particulière relative à l'éloignement (articles 6§4, 9§2, 14§1 b et d, 16§3).

De plus, les autorités françaises s'interrogent s'agissant de la base juridique. En effet, afin que la directive sur la lutte contre les violences faites aux femmes et la violence domestique soit une *lex specialis*, elle devrait être fondée sur la même base juridique que celle de la directive de 2008/115/CE, cette dernière reposant sur l'article 79 du TFUE. Le nouveau paragraphe 5, qui renvoie aux politiques migratoires, devrait donc être fondé sur ce même article. A titre subsidiaire, les autorités françaises considèrent que la rédaction proposée par la présidence suédoise semble plus souple [que les options de la Commission] dans la mesure où elle garantit que la personne ne sera pas éloignée avant qu'il n'ait été procédé à l'évaluation de sa situation conformément à l'article 18 de la directive.

Enfin et en tout état de cause, la directive 2008/115/CE doit constituer l'unique texte de référence pour la mise en œuvre de décision d'éloignement à l'encontre d'étrangers en situation irrégulière. A ce titre, et afin d'assurer la cohérence des négociations au sein du Conseil, les autorités françaises considèrent inopportun de mentionner les sujets migratoires, déjà traités en filière JAI, dans un acte de droit dérivé revêtant une dimension pénale.

Courtesy translation

*The wording of paragraph 3 proposed by the Presidency is acceptable to the French authorities. With regard to the new proposed wording of paragraph 5, the French authorities confirm that the protection of all women victims of domestic violence, including those in a migration context, is a French priority, although the assessment procedures and the obligation to leave the territory may differ depending on the victim's national right of residence. This paragraph does not seem necessary to the French authorities, as the 2008/115/EC Return Directive already provides that vulnerable persons must be taken into account and a special assessment made regarding their removal (Articles 6§4, 9§2, 14§1 b and d, 16§3).*

*In addition, the French authorities indicate have questions about the legal basis. Indeed, in order for the directive on combating violence against women and domestic violence to be a *lex specialis*, it should have the same legal basis as that of Directive 2008/115/EC, which is based on Article 79 TFEU. The new paragraph 5, which refers to migration policies, should therefore be based on this same article. In the alternative, the French authorities consider that the wording proposed by the Swedish Presidency seems more flexible [than the Commission's options] insofar as it guarantees that the person will not be removed before his or her situation has been assessed in accordance with article 18 of the directive.*

*Finally and in any case, Directive 2008/115/EC must be the sole reference text for the implementation of expulsion decisions against illegal immigrants. In this respect, and in order to ensure the coherence of the negotiations within the Council, the French authorities consider it inappropriate to mention migration issues, which are already dealt with in the JHA channel, in a secondary legislation with a criminal dimension.*

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

Les autorités françaises sont favorables au contrôle de l'autorité judiciaire visée au paragraphe 2, comme l'avait proposé la Commission dans la version initiale du texte. Sur le paragraphe 7, elles sollicitent que les termes « *where relevant* » soient déplacés en début de paragraphe, pour également viser la mise à jour de l'évaluation personnalisée car la répétition des évaluations doit se faire au cas par cas et sur la base de l'appréciation de l'autorité compétente. Au paragraphe 8, les autorités françaises soutiennent la deuxième option proposée mais souhaitent la suppression de la fin de la phrase ajoutée par la

présidence, considérant que tous les enfants à charge doivent être présumés avoir des besoins spécifiques de protection.

Les autorités françaises sont par ailleurs favorables à la proposition rédactionnelle alternative de la Commission concernant les articles 18 et 19, qui lui semble équilibrée, sous réserve des observations formulées sur la mention « *where relevant* » au paragraphe 7.

*Courtesy translation*

*The French authorities are in favour of control by the judicial authority referred to in paragraph 2, as proposed by the Commission in the initial version of the text. With regard to paragraph 7, they request that the words "where relevant" be moved to the beginning of the paragraph, to also refer to the updating of the personalised assessment, as the repetition of assessments must be done on a case-by-case basis and based on the assessment of the competent authority. In paragraph 8, the French authorities support the second option proposed but would like to see the end of the sentence added by the Presidency deleted, considering that all dependent children should be presumed to have specific protection needs.*

*The French authorities are also in favour of the Commission's alternative drafting proposal concerning Articles 18 and 19, which they consider to be balanced, subject to the comments made on the reference to "where relevant" in paragraph 7.*

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

Les autorités françaises souhaitent la prise en compte des enfants mineurs vivant au foyer, indépendamment du lien de parenté.

#### Courtesy translation

*The French authorities would like to see minor children living in the home taken into account, regardless of the family relationship.*

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

Les autorités françaises n'identifient pas la plus-value de solliciter le consentement au transfert des données à caractère personnel au paragraphe 4, alors que le consentement pour faire appel à ces services est déjà requis au paragraphe 1. Au paragraphe 5, elles ne s'opposent pas à la durée à cinq ans, mais considèrent que cette période ne devrait pas être davantage étendue.

Par ailleurs, sur le paragraphe 5, les autorités françaises souhaitent préciser qu'en fonction de la nature de la donnée conservée, il peut être sollicité une durée plus longue. Elles proposent donc d'ajouter une mention du droit national des Etats membres à la fin du paragraphe (« *in accordance with national law* »).

#### Courtesy translation

*The French authorities do not see the added value of seeking consent to the transfer of personal data in paragraph 4, when consent to use these services is already required in paragraph 1. In paragraph 5, they do not object to the five-year period, but considers that this period should not be further extended.*

*In addition, in paragraph 5, the French authorities wish to specify that, depending on the nature of the data stored, a longer period may be requested. They therefore propose adding a reference to Member States' national law at the end of the paragraph ("in accordance with national law").*

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

Les autorités françaises insistent sur la nécessité de conserver la fin du paragraphe 2, dès lors que ces mesures viennent renforcer la protection des victimes. En outre, s'agissant du considérant 35, elles s'opposent à la suppression de la référence aux armes à feu, qui semble nécessaire dans un objectif de plus grande protection des victimes. Ce type de mesures peut s'avérer d'une particulière efficacité pour prévenir la réitération d'infractions et notamment des faits de violences voire d'homicide au sein du couple.

Courtesy translation

*The French authorities insist on the need to keep the end of paragraph 2, since these measures strengthen the protection of victims. Furthermore, with regard to recital 35, they are opposed to the deletion of the reference to firearms, which seems necessary in order to provide greater protection for victims. This type of measure can be particularly effective in preventing the repetition of offences, particularly acts of violence or even homicide within a couple.*

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

Les autorités françaises souhaitent le maintien de la référence aux examens médicaux et médico-légaux qui lui semblent être une composante essentielle du soutien aux victimes de violences sexuelles.

Courtesy translation

*The French authorities wish to maintain the reference to medical and forensic examinations, which they consider to be an essential component of support for victims of sexual violence.*

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

Les autorités françaises soutiennent la rédaction du paragraphe 4 suggérée par la présidence et proposent qu'il puisse constituer un considérant.

Courtesy translation

*The French authorities support the wording of paragraph 4 suggested by the Presidency and propose that it could constitute a recital.*

**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. Elles proposent le remplacement des termes « *intersectional forms of discrimination* » par les termes « *multiple forms of discriminations* ».

Courtesy translation

*The French authorities are not in favour of a reference to intersectional discrimination, which does not exist in national criminal law. They propose replacing the term "intersecting forms of discrimination" with the wording "multiple forms of discrimination".*

**Sur l'article 36 sur les mesures préventives :**

Les autorités françaises indiquent, s'agissant du paragraphe 6, être défavorables à la mention « *in a manner proportionate to its prevalence in the Member State concerned* ». Les mesures de sensibilisation au préjudice causé par les mutilations génitales féminines semblent en effet aux autorités françaises devoir constituer un sujet prioritaire dans l'ensemble des Etats membres. Le fait que le phénomène soit constaté dans une faible mesure ne signifie pas qu'il ne se développera pas à l'avenir.

Courtesy translation

*The French authorities indicate that, with regard to paragraph 6, they are not in favour of the phrase "in a manner proportionate to its prevalence in the Member State concerned". The French authorities believe that measures to raise awareness of the harm caused by female genital mutilation should be a priority in all Member States, and that the fact that the phenomenon is not currently prevalent in some of them does not mean that it will not develop in the future.*

**Sur l'article 37 sur la formation et l'information des professionnels :**

Les autorités françaises sont favorables à une prise en compte plus large des professionnels visés par la formation. Elles soutiennent ainsi l'option 1 proposée par la présidence dans sa dernière version de compromis. Par ailleurs, les autorités françaises privilégient les termes « *law enforcement authorities* », plutôt que « *police officers* », s'agissant d'un langage courant dans les textes européens. Les autorités françaises souhaitent en outre que les partenaires sociaux figurent parmi les publics susceptibles de bénéficier d'une formation, au titre du paragraphe 1.

Courtesy translation

*The French authorities are in favour of taking greater account of the professionals targeted by the training. They therefore support option 1 proposed by the Presidency in its latest draft. Furthermore, the French authorities prefer the term "law enforcement authorities" rather than "police officers", as this is common language in European texts. The French authorities would also like the social partners to be included among the groups likely to benefit from training under paragraph 1.*

**Sur l'article 38 sur les programmes d'intervention :**

Les autorités françaises sont favorables à la rédaction du paragraphe 2. Au paragraphe 3, elles souhaitent modifier le terme « *shall* » par le terme « *may* » afin de laisser l'opportunité à l'autorité judiciaire d'apprécier la nécessité d'imposer la participation à un programme d'intervention.

*Courtesy translation*

*The French authorities are in favour of the wording of paragraph 2. In paragraph 3, they wish to change the word "shall" to "may" in order to allow the judicial authority to assess the necessity of requiring participation in an intervention programme.*

## LITHUANIA

### Article 27

#### Specialist support to victims

1. (a) [advice, information and support on 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;]
2. [...]
3. [...]
4. [...]

*Justification: Lithuania suggests keeping the wording 'advice' as one of the important issues regarding support services. The suggested provision is in line with the Article 9(1) (a) and (d) of the EU Victims directive, as an 'advice' is related to practical issues arising because of the crime. To be emphasised, advice is unrelated to legal advice in this regard. Alternatively, as a compromise proposal Lithuania could also accept replacing the [advice] to [consultations].*

## HUNGARY

### Recital 5

(5) The measures under this Directive have been designed to address the specific needs of women and girls, given that they are disproportionately affected by the forms of violence covered under this Directive, namely violence against women and domestic violence. ~~This Directive, however, acknowledges that other persons~~ **However, men and boys may also fall victim to these forms of violence. The fact that they are less likely to fall victims to those forms of violence does not justify that they should not benefit from the same measures provided for in the Directive for victims and should benefit from the measures provided for therein.** Therefore, the term ‘victim’ should refer to all persons, regardless of their sex or gender **and, unless specified otherwise in a given provision, victims of all genders, regardless of their gender,** should benefit from the rights related to the protection of victims and access to justice, victims support and prevention.

or

(5) The measures under this Directive have been designed to address the specific needs of women and girls, given that they are disproportionately affected by the forms of violence covered under this Directive, namely violence against women and domestic violence. ~~This Directive, however, acknowledges that other persons~~ **However, men and boys may also fall victim to these forms of violence. The fact that they are less likely to fall victims to those forms of violence does not justify that they should not benefit from the same measures provided for in the Directive for victims and should benefit from the measures provided for therein.** Therefore, the term ‘victim’ should refer to all persons, regardless of their sex or gender **and, unless specified otherwise in a given provision, all victims of all genders,** should benefit from the rights related to the protection of victims and access to justice, victims support and prevention.

### Recital 58

Member States should **take appropriate preventive measures.** actions. to prevent ensure that **Such preventive measures may include,** such as awareness-raising campaigns, are taken to counter violence against women and domestic violence. Prevention should **may** also take place in formal education, in particular, through strengthening **age-appropriate** sexuality education and socio-emotional competencies, empathy and developing healthy and respectful relationships. **Taking into account language barriers and differens levels of interacy and abilities, Member States should address targeted actions to groups at heightened risk, which include children, taking into account their age and maturity, persons with disabilities, persons with alcohol and drug use disorders, and lesbian, gay, bisexual or transexual persons.**

## Recital (67bis)

This Directive establishes minimum rules. Member States are therefore free to adopt or maintain more stringent criminal law rules concerning the definition of criminal offences and sanctions in the area of violence against women. **However, this Directive does not require Member States to define the offences as a self standing criminal offence for the purposes of implementing this Directive, if national legislation already criminalises these conducts as part of other criminal offences.** As regards victims' rights, Member States may introduce or maintain provisions with higher standards, including such which provide a higher level of protection and support for victims.

## Explanation:

In the case where a sufficiently general definition is used in the Criminal Code to define criminal offences listed in the directive, this should be considered as an acceptable form implementing the directive. **Repeated amendments to the definition of criminal offences may have a contradictory effect and lead to a *contrario* interpretation.** Any new conduct that needs to be explicitly mentioned in the national criminal legislation could be seen as a criminal offence that has not been formerly included in the definition. Therefore, as explicitly mentioned in the preamble, national legislative solutions already providing a sufficiently broad and general solution need not be amended, if they already cover the criminal conduct.

## Article 2

Hungary supports the compromise text and the corresponding recitals.

## Article 4

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

or

“violence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;

(j) “dependant” means a child of the victim or any person, other than the offender or suspect, living in the same household as the victim, for whom the victim is providing care and support. – Hungary supports the proposed definition, nevertheless, we suggest clarifying that the definition is relevant only in relation to Article 9 (Article 21 also includes dependants, which broadens the scope extensively)

## Article 5

Hungary maintains its previous position that Article 5 should be deleted.

**General comment in relation to Articles 6-10:** see text proposal and the corresponding explanation under recital (67bis)

## Article 16 (5)

Hungary supports the PRES compromise text.

## Article 17

We suggest deleting parts of Article 17 highlighted in yellow (see below).

Paragraph 5 refers to rape in Article 5, which the majority of Member States would like to delete due to lack of legal basis. Therefore, this provision is not relevant anymore.

Furthermore, with regards paragraph 3, and **ex officio procedures in general**, we maintain our position that at least in certain cases, the victim's complaint should be required for the investigation. Crimes against sexual dignity in general represent a very severe intrusion to the private life of the victim, which may be aggravated by a subsequent criminal procedure. If the victim does not wish to bring charges, Member States should retain their discretion in deciding which procedural conditions need to be met to open an investigation. This discretion would be entirely removed if in all cases, regardless of the origin of the complaint, in all cases an investigation has to be open.

3. The competent authorities shall **as soon as possible** ~~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]~~ **they are officially recorded** in all cases ~~or investigation proceedings are conducted ex officio.~~

~~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.]~~

## Article 18 (8)

Hungary is in favour of the first option (deletion of dependants).

## NETHERLANDS

### Article 18

We support the alternative suggestion of the European Commission with 1 mandatory change in paragraph 8: **When relevant** the individual assessment shall include the protection and support needs of the victims' dependants. Or, the individual assessment shall include the protection and support needs of the victims' dependants **unless there are clear indications that this is not necessary.** Reasoning: for cases like sexual violence or online violence (by stranger) this is not deemed necessary. It should not be mandatory for this to always be included in the assessment.

Paragraph 2ter: inclusion of "when appropriate" is supported.

### Article 20

Paragraph 5 is a worry for us for we have an advice and support organization for domestic violence and child abuse that people, police and professionals report their concerns to. They offer initial advice and support for both the victim and professional and refer to the police or specialized support (healthcare and welfare). Because they are the "memory" of all the reports, complaints, advice requests and information on a case or person we have allowed them to keep information for 20 years. **We would like to make an exception for support services that also are an reporting centre.**

### Article 25

Paragraph 1: We support the suggestion of Germany to state "**Without prejudice to Regulation (EU) 2022/2065**"

paragraph 4: and to add "**such orders shall be issued in accordance with the minimum conditions set out in Article 9 (2) of Regulation (EU) 2022/2065**".

Lastly, it is also useful to state – in alignment to Article 9 (6) DSA "**The conditions and requirements laid down in this Article shall be without prejudice to national civil and criminal procedural law.**"

### Article 44

Paragraph 2: change "persons convicted" to "**convictions**". One person can separately be convicted for several crimes. Our data systems do not link convictions to social security numbers.

Paragraph 3: we support the commission's proposal.

**Comments of the Republic of Austria on the revised proposal on combating violence against women and domestic violence**

1. Following the COPEN meeting on 30 and 31 March 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 of the proposal**:
2. As we have already expressed orally in previous meetings, we are strongly in favour of establishing a certain uniformity between comparable elements of the **cybercrime offences (Articles 7, 8 and 9 of the proposal)**. In our view, **these offences should contain (i) a uniform time element and (ii) also an element, which focuses on the subjective impairment of the victim**. We have already provided suggestions for concrete wordings in this regard in the past, which we may repeat at this point:

- We suggest **adding the following time element to all cybercrimes**:

*„continuously over a longer period of time“*

- We also suggest **adding the following element regarding the subjective impairment of the victim to all cybercrimes**:

*„in a way that unacceptably impacts a person’s way of life“*

We cannot support the newly introduced term „serious harm“ in Article 7 and the term „significant psychological (or physical) harm“ in Articles 8 and 9. We do not see any reason, why two different types of “harm” should be used within the cybercrime offences of Articles 7, 8 and 9. In our view, the use of our proposed wording „in a way that unacceptably impacts a person’s way of life“ would lead to more consistency and would also capture the phenomenon more adequately.

3. We also oppose the **suggested deletion of the term "multitude of end users" in Articles 7 and 9 of the proposal**. We clearly **reject a complete deletion of the public element in these provisions** as the public dissemination of content constitutes a particular burden to the victim and is typical for cybercrime offences. This is not the case to the same extent with private messages/uploading of images between two users and it would also lead to a disproportionate expansion of criminal liability. Our national legislation, for example, provides for the criterion of perceptibility to a larger number of people. Therefore, we would suggest using one of the two alternative proposals by the Presidency and in this regard, **we would prefer the term "a significant number of end-users"**.
4. As regard **Article 9 lit. b** of the proposal, we would like to emphasize that we **do not see any added value in this provision** that goes beyond the general criminal offences dealing with insults and (dangerous) threats, which certainly already exist in all Member States. In Austria, both the individual perpetrator and, in the case of a group, all co-perpetrators of such an act

would in any case be punished equally for their own actions. Therefore, it would not be necessary to expressly include joint action with other persons in the elements of the offence. As already expressed orally in previous meetings, **we therefore suggest deleting Article 9 lit. b of the proposal**. If a deletion is not possible, then we would prefer using the above mentioned wording „in a way that unacceptably impacts a person’s way of life“ instead of the wording "with the effect of causing significant psychological harm to the attacked person".

5. The suggested amendment in **Article 35** of the proposal, which is intended to adapt to the „Gender Pay Gap Directive ST 15997/22 Add1 Rev2“ by means of a corresponding reference (reference to Article 3(2)(e) of the Gender Pay Gap Directive, but the reference itself refers to Directive 2000/43/EC and Directive 2000/78/EC), could be too complex in legal terms. In our opinion, such a double reference may cause confusion and lead to legal uncertainty. Therefore, we suggest to adopt the definition of „*intersectional discrimination*“ from Article 3(2)(e) of the Gender Pay Gap Directive verbatim into Article 35 of this proposal. Another solution could be to include the definition in Article 4 (Definitions). We **propose the following wording for Article 35 para. 1:**

*"Member States shall ensure the provision of specific support to victims at an increased risk of violence against women or domestic violence because they are subject to intersectional ~~[within the meaning of Article 3.2(e) of the Gender pay gap Directive]~~ forms of discrimination which is discrimination based on a combination of sex and any other ground or grounds of discrimination protected under Directive 2000/43/EC or Directive 2000/78/EC."*

6. In the last sentence of the revised version of **Article 37 para. 1** of the proposal, reference is now made to judicial independence and the differences in the organization of the judiciary. However, the independence of the legal profession, which is to be observed in the same way, remains unmentioned - despite the fact that "lawyers" are also expressly mentioned in this context; this should in any case be supplemented. In general, a distinction should be made between judges and public prosecutors on the one hand and lawyers on the other, because the responsibilities for training are different for these groups and are distributed differently (the word "*encourage*" does not fit with regard to the legal profession, as it is too broad). We **propose the following wording for Art. 37 para. 1, last sentence:**

*"Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union and with due respect for the independence of the legal profession, Member States shall encourage such training for judges and prosecutors and shall recommend that those responsible for the training of lawyers make available such training."*

## POLAND

### Recital 5:

- Poland proposes to replace the expression „victims of all genders” with the expression „all victims”.
- Poland proposes the term "gender" with "sex" and "gender equality" with "equality between women and men" in all speeches.
- Consistent: the use of the word "gender" will be acceptable to PL, which in this case reserves the right to submit an interpretative statement.
- Due to the implications for domestic law, the use of "sex" and "gender" should not occur simultaneously in the same editorial unit.

### Recital 16:

It would be clearer in the preamble to indicate that female genital mutilation usually takes the form of a) excision, understood as ..., b) infibulation, i.e. ..., c) other mutilation, i.e. ....

### Recitals 18,19,21:

Poland proposes to delete references to the multitude of end-users due to the deletion of the wording from the main text of the Directive (in art. 4 da, art. 7,8,9)

### Recital 19bis:

□ Poland proposes to shorten the provision, which is incomprehensible, and additionally suggests that the person disseminating the image on the basis of an exception provided, for example, for the press, does so on the basis of the consent given by the presented person ("should not be considered as non-consensual"). In our opinion, such action is non-consensual, but justified precisely because of the exception.

### Recital 20:

A linguistic remark: the amendments to recitals 20 and 51 use the adverb 'therefor' without 'e', while recitals 20 (third sentence), 50 (last sentence) and many others consistently use 'therefore'.

### Recital 22:

Poland proposes to return to the original distinction of "sex or gender". It categorically opposes such a proposal, supporting the change made by the Swedish Presidency to "gender" in the context of changes in Recital 7

### Theme 30bis:

Poland proposes to transfer the definition of competent authorities to Art. 4. This is a normative provision, and placing it in the preamble weakens its importance.

Recital 32:

Poland opposes the deletion of the fourth sentence - on the possibility of operation of assistance services without the consent of the victim. Doubts or intimidation of the victim should not prevent them from obtaining help from specialist services.

Recital 38:

Poland indicates that the regulations concerning equality bodies, according to the information provided by the European Commission at the SQWP meeting 20-21.03, will not be extended to criminal proceedings. Removal of "equality bodies" under Art. 24 does not force further changes. Of course, the negotiations of COM(2022)688 and COM(2022)689 may force the removal of references to Directives 2004/113, 2006/54 and 2010/41.

Recital 40:

Poland welcomes the addition of Recital 19a, which emphasizes much better the need to protect freedom of expression and access to information. Nevertheless, in the opinion of PL, it seems that the removal of the section on the protection of freedom of expression in recital 40 is unjustified.

Recital 46:

Poland proposes to replace the words benefit from with the words be offered. The last sentence of Recital 46 should be maintained without deleting the fourth sentence of Recital 32 which refers to the reporting of support services against the will of the victim.

Recital 56:

Poland is in favor of maintaining the original version of the introduction of the catalog of people protected against discrimination on "Victims with specific needs and groups at risk of violence against women or domestic violence", unless there are credible scientific studies showing statistically significantly higher vulnerability to violence of all the groups mentioned, eg women from rural areas. According to Poland, the order of the listed groups seems to be accidental, e.g. placing older women between transsexuals and those abusing alcohol and drugs. Lacking numerical data that would allow groups to be ranked according to size or level of vulnerability to violence - and taking into account the possibility of belonging to several groups at the same time,

*Victims with specific needs and groups at risk of violence against women or domestic violence, such as women:*

*affected by homelessness,  
applicants for international protection,  
detainees,  
fleeing armed conflict,*

*identified on basis of sexual orientation,*

*in prostitution,  
living in rural areas,*

*with dependent residence status or permit,  
with disabilities,  
with a minority racial or ethnic background,  
with use of alcohol and drugs or drugs use disorders,.*

*as well as*

*older women  
undocumented migrant women,*

- *should receive specific protection and support.*

Recital 58:

Poland makes a linguistic remark: the word "interacy" is probably a mistake, it was supposed to be "literacy".

Poland is against adding sexual minorities to the list of groups covered by special state measures.

Poland requests the deletion of the words "and lesbian, gay, bisexual or transexual persons". Since the directive deals with violence against women, this extension of the list suggests that gay men are disproportionately the perpetrators of violence and therefore should be subject to special preventive measures.

As a consequence of the changes in Recital 11, Poland proposes to use the collective term "based on sexual orientation", or following the changes in Art. 36 sec. 4- reference to "groups at hightened risk" to be determined by each Member State according to local needs. — With regard to sexual education, Poland proposes to precede the words "sexuality education" with the qualifier "age-appropriate".

Recital 59:

Poland proposes to delete a recital which deviates from the subject matter of the Directive and imposes very broad, though vague, obligations on Member States.

## Chapter 1:

### Article 1

Poland indicates that Art. 83 sec. The TFEU does not currently cover Eurocrimes as defined in Art. 5-10.



## Article 2

Poland will support the transfer to Recital 11 of Art. 2, concerning the protection of the dignity and bodily integrity of victims, including those exposed to discrimination on many grounds. The provisions are of an assessment nature and should not be included in the normative content of the directive.

## Article 3

Poland does not support art. 15 bis.

## Article 4

### article 4 lit. a

why, according to the first part of the sentence, after the proposed change, the victim should be a woman or a girl, and in the second part, "regardless of the sex of the victim" is added. This provision is supposed to define "violence against women". If it applies regardless of the sex of the victim, it is redundant. Is this provision intended to guarantee the protection of registered men and boys who feel they belong to the female sex?

### article 4 lit. b)

the words "which constitutes a criminal offense in national or Union law", if they are to be added, should be placed at the beginning of the definition, after the words: "acts of violence".

## Chapter 2

## Article 5

Poland indicates that Art. 83 sec. 1 TFEU currently does not provide a basis for adopting a common definition of the crime of rape.

## Article 6

Poland suggests that the part moved to recital 16, concerning surgical intervention, should be included in the normative text.

## Article 7

Poland submits a general remark: regarding Art. 7-10, it should be emphasized that the above-mentioned crimes may be committed to the detriment of all persons, regardless of their sex, so already in this element there are doubts as to the legitimacy of the subjective limitation of the directive in this respect.

#### Article 7 lit. a

Poland indicates that the change of "content other than photographs or video recordings" to "similar content", especially in combination with the illustrative participle ("depicting"), suggests impunity for perpetrators who, against the will of the victim, make her naked image or during sexual activity available in the form of drawings, images, computer graphics, holograms, sculptures, 3D prints or verbal descriptions.

Moreover, in the proposed definition, the word "their" grammatically refers to the private parts of the body. According to Poland, the previous version was better - „that person’s consent”.

#### Article 8

Poland believes that the use in Article 8 lit. b) signs "for the purpose of tracking or monitoring" (track or monitor) and answering the question of what is the real difference between them. Article 9(a): — Poland raises the question: is it advisable to limit the scope of persons whose safety a victim of cyberbullying is concerned about to herself and her "dependants". In PL's opinion, the definition also covers situations where, for example, a rejected ex-partner threatens to commit suicide.

#### Article 9 lit. c

Poland believes that the provision continues to pose a threat to freedom of expression if exclusions resulting from, for example, press law or public figures are not introduced

#### Article 10

Poland recalls the critical remarks contained in the opinion of the Legal Service of the Council with regard to the competence of the EP and the Council to define the offense set out in Article 10 - due to the differentiation of the situation of women and men or any other groups considered in national law as "defined by reference to gender”.

With the respect to paragraph 2, Poland will ask for examples of conduct that could be exempted from liability by Member States because public incitement to hatred did not violate public order, was not offensive, abusive or did not create a sense of threat. Is it about, for example, unrealistic threats, which are rhetorical figures? Moreover, it is important to determine whether impunity requires none of the features of “disturb public order or which is threatening, abusive or insulting”, or can Member States exclude all these cases?

#### Article 12 par. 3

Poland proposes to move this paragraph to Art. 38.

#### Article 13

Poland indicates that a number of numerically listed aggravating circumstances are still a contentious issue, as they do not belong to the features of crimes contained in Art. 5-10 of the draft directive, and are of significant importance for the principles of the judicial administration of punishment.

#### Article 14 par. 1 lit. (b)

According to Poland, it seems necessary to define the rules of priority of criminal prosecution in the case of the perpetrator's dual citizenship.

#### Article 14 par. 4

According to Poland, this provision may require not only an amendment to the criminal procedure codes, but also a potential renegotiation of bilateral agreements on judicial cooperation in criminal matters.

#### Article 15

Poland reports a typographical error in para. 1 last sentence: it should be "commensurate" in the sense of proportional. — As a consequence of the amendments to art. 13 lit. (i) by adding a reference to the fatal outcome (and not just the suicide of the victim), consideration should be given to suspending the limitation periods not only until the victim's 18th birthday, but also until the date the victim who died would have reached the age of 18.

#### To Chapter 3

#### Article 16

Poland supports the flexible approach to reporting violence on-line proposed by the SE PRES.

#### Article 20 par. 5

Extending the retention period of data on victims of violence to 5 years after the last contact carries a risk for the protection of family life, stigmatization of the rehabilitated perpetrator and data leakage. PL proposes a return to 24 months.

#### Article 23

Poland supports changing the obligation to issue guidelines ("shall") to the possibility of issuing them ("may issue")

#### Article 23 lit. c

Poland supports the initiative of PREZ SE to add people with disabilities to the catalogue. — With regard to the use of the term 'gender', Poland reiterates its previous comments regarding the lack of a definition of this term and its absence in the Treaties.

#### Article 24

Pursuant to the note to Recital 38, PL recognizes the separation of tasks between equality bodies and institutions coordinating combating violence against women and domestic violence.

## Article 25

With regard to the change contained in the proposal of Art. 25 sec. 1, in the opinion of Poland, it seems appropriate to limit the subjective scope of the injunction's impact only on hosting service providers.

## Chapter 4

### Article 29

Poland believes that it still seems redundant to provide detailed information to be provided to the victim of this type of procedure ("providing information on units in public hospitals that perform surgical reconstruction of the clitoris"). It would be sufficient to impose a requirement to inform about the availability of gynecological, sexological, psychological and post-traumatic (surgical) counseling services.

### Article 30

Poland indicates that this provision is limited only to situations where sexual harassment is a crime and not a tort of labor law. It should be noted that this provision in its current wording still does not contribute much to the system of protection of victims of sexual violence in the workplace.

## Chapter 5

Article 36 sec. 4 — Poland supports deleting the casuistic catalog and replacing it with "groups at heightened risk"

### Article 36 sec. 7

Poland is in favor of restoring a direct reference to the role of the education system in combating cyberbullying. Campaigns aimed at adult citizens and seniors are needed, but the most important seems to be the impact of school and university.

### Article 37 sec. 5

Poland proposes to add to the catalog expressing opposition to the presentation of stereotypical and sexualizing images of women, next to sexist images of women, the aspect of pornographic content, which could take the following wording: pornographic contents including sexist images of women.

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**on combating violence against women and domestic violence**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,  
Having regard to the Treaty on the Functioning of the European Union, and in particular  
Article 82(2) and Article 83(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The purpose of this Directive is to provide a comprehensive framework to effectively combat violence against women and domestic violence throughout the Union. It does so by strengthening and introducing measures in the following areas: the definition of relevant criminal offences and penalties, the protection of victims and access to justice, victim support, prevention, coordination and cooperation.
- (2) Equality between women and men and non-discrimination are core values of the Union and fundamental rights enshrined, respectively, in Article 2 of the Treaty on European Union and in Articles 21 and 23 of the Charter of Fundamental Rights of the European Union (the 'Charter'). Violence against women and domestic violence endanger these very principles, undermining women and girls' rights to equality in all areas of life.
- (3) Violence against women and domestic violence violate fundamental rights such as the right to human dignity, the right to life and integrity of the person, the prohibition of inhuman or degrading treatment or punishment, the right to respect for private and family life, personal data protection, and the rights of the child, as enshrined in the Charter of Fundamental Rights of the European Union.

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<sup>1</sup> OJ C , , p. .

- (4) This Directive should apply to criminal conduct which amounts to violence against women or domestic violence, as criminalised under Union or national law. This includes the criminal offences defined in this Directive, namely rape, female genital mutilation, the non-consensual sharing of intimate or manipulated material, cyber stalking, cyber harassment, cyber incitement to violence or hatred and criminal conduct covered by other Union instruments, in particular Directives 2011/36/EU<sup>2</sup> and 2011/93/EU<sup>3</sup> of the European Parliament and of the Council, which define criminal offences concerning the sexual exploitation of children and trafficking of human beings for the purpose of sexual exploitation. Lastly, certain criminal offences under national law fall under the definition of violence against women. This includes crimes such as femicide, sexual harassment, sexual abuse, stalking, early and forced marriage, forced abortion, forced sterilisation and different forms of cyber violence, such as online sexual harassment, cyber bullying or the unsolicited receipt of sexually explicit material. Domestic violence is a form of violence which may be specifically criminalised under national law or covered by criminal offences which are committed within the family or domestic unit or between former or current spouses.
- (5) The measures under this Directive have been designed to address the specific needs of women and girls, given that they are disproportionately affected by the forms of violence covered under this Directive, namely violence against women and domestic violence. ~~This Directive, however, acknowledges that other persons~~ **However, men and boys may** also fall victim to these forms of violence. **The fact that they are less likely to fall victims to those forms of violence does not justify that they should not benefit from the same measures provided for in the Directive for victims and should benefit from the measures provided for therein.** Therefore, the term ‘victim’ should refer to all persons, regardless of their ~~sex or gender~~ **and, unless specified otherwise in a given provision, victims of all genders should benefit from the rights related to the protection of victims and access to justice, victims support and prevention.**
- (6) Due to their vulnerability, children who witness violence against women or domestic violence suffer a direct emotional harm, which impacts their development. Therefore, such children should be considered victims and benefit from targeted protection measures.
- (7) Violence against women is a persisting manifestation of structural discrimination against women, resulting from historically unequal power relations between women and men. It is a form of gender-based violence, which is inflicted primarily on women and girls, by men. ~~It is rooted in the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men, generally referred to under the term ‘gender’.~~
- (8) Domestic violence is a serious social problem which often remains hidden. It can lead to serious psychological and physical trauma with severe consequences because the offender typically is a person known to the victims, whom they would expect to be able to trust. Such violence can take on various forms, including physical, sexual, psychological and economic. Domestic violence may occur whether or not the offender shares or has shared a household with the victim.

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<sup>2</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, OJ L 101, 15.4.2011, p. 1–11.

<sup>3</sup> Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ L 335, 17.12.2011, p. 1–14.

- (9) In light of the specificities related to these types of crime it is necessary to lay down a comprehensive set of rules, which addresses the persisting problem of violence against women and domestic violence in a targeted manner and caters to the specific needs of victims of such violence. The existing provisions at Union and national levels have proven to be insufficient to effectively combat and prevent violence against women and domestic violence. In particular, Directives 2011/36/EU and 2011/93/EU concentrate on specific forms of such violence, while Directive 2012/29/EU of the European Parliament and of the Council<sup>4</sup> lays down the general framework for victims of crime. While providing some safeguards for victims of violence against women and domestic violence, it is not set out to address their specific needs.
- (10) This Directive supports the international commitments the Member States have undertaken to combat and prevent violence against women and domestic violence, in particular the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)<sup>5</sup> and, where relevant, the Council of Europe Convention on preventing and combating violence against women and domestic violence ('Istanbul Convention')<sup>6</sup> and the International Labour Organization's Convention concerning the elimination of violence and harassment in the world of work, signed on 21 June 2019 in Geneva.
- (10 bis) The rights of victims should be available before, throughout criminal proceedings and for an appropriate time after such proceedings in accordance with the needs of the victim and under the conditions set out in the Directive.**

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<sup>4</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).

<sup>5</sup> [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW), UNGA, 1979.

<sup>6</sup> [Convention on preventing and combating violence against women and domestic violence](#) (Istanbul Convention), Council of Europe, 2011.

- (11) Violence against women and domestic violence can be exacerbated where it intersects with discrimination based on sex and other grounds of discrimination prohibited by Union law, namely ~~nationality~~, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. Member States should therefore pay due regard to victims affected by such intersectional discrimination, **by taking specific measures through providing specific measures where intersecting forms of discrimination are present.** In particular, **members of one or several groups of persons protected against discrimination on the basis of sexual orientation, disability, racial or ethnic origin, lesbian, bisexual, trans, non-binary, intersex and queer (LBTIQ) women, women with disabilities and women with a minority racial or ethnic background** are at a heightened risk of experiencing gender-based violence. **Member States should take that heightened level of risk into consideration when implementing the measures provided for by this Directive, especially regarding the individual assessment to identify victims' protection needs, specialist support to victims and training and information for professionals likely to come into contact with victims.**
- (12) Victims of violence against women and domestic violence are at an increased risk of intimidation, retaliation, secondary and repeat victimisation. **Member States should ensure that P**particular attention ~~should thus be~~ **is** paid to these risks and to the need to protect the dignity and physical integrity of such victims.
- [(13) Rape is one of the most serious offences breaching a person's sexual integrity and is a crime that disproportionately affects women. It entails a power imbalance between the offender and the victim, which allows the offender to sexually exploit the victim for purposes such as personal gratification, asserting domination, gaining social recognition, advancement or possibly financial gain. Many Member States still require the use of force, threats or coercion for the crime of rape. Other Member States solely rely on the condition that the victim has not consented to the sexual act. Only the latter approach achieves the full protection of the sexual integrity of victims. Therefore, it is necessary to ensure equal protection throughout the Union by providing the constitutive elements of the crime of rape of women.]
- [(14) Rape should explicitly include all types of sexual penetration, with any bodily part or object. The lack of consent should be a central and constitutive element of the definition of rape, given that frequently no physical violence or use of force is involved in its perpetration. Initial consent should be withdrawable at any given time during the act, in line with the sexual autonomy of the victim, and should not automatically imply consent for future acts. Non-consensual sexual penetration should constitute rape even where committed against a spouse or intimate partner.]
- ~~(15) With regard to offences amounting to rape, offenders who have been previously convicted of offences of the same nature should be obliged to participate in intervention programmes to mitigate the risk of recidivism.~~

- (16) **Genital mutilation results in** In order to address the **irreparable and lifelong damage** female genital mutilation has ~~on victims~~, this offence should be specifically and adequately addressed in the criminal laws. Female genital mutilation is an **abusive and** exploitative practice that pertains to the sexual organs of a girl or a woman and that is performed for the purpose of preserving and asserting domination over women and girls and exerting social control over girls and women's sexuality. It is sometimes performed in the context of child forced marriage or domestic violence. Female genital mutilation may occur as a traditional practice which some communities perform on their female members. It should cover **mutilative** practices undertaken for non-medical reasons, **which cause irreparable and lifelong damage on victims, including psychological and social damages, which severely affect the victim's quality of life**. The term "excising" should refer to the partial or total removal of the clitoris and the *labia majora*. "Infibulating" should cover the closure of the *labia majora* by partially sewing together the outer lips of the vulva in order to narrow the vaginal opening. The term "performing any other mutilation" should refer to all other physical alterations of the female genitals.
- (17) It is necessary to provide for harmonised definitions of offences and penalties regarding certain forms of cyber violence **where violence is intrinsically linked to the use of information and communication technologies, and those technologies are used as a means of attack which significantly amplify the severity of harmful impact of the offences, thereby changing the characteristics of the offence**. Cyber violence particularly targets and impacts women politicians, journalists and human rights defenders. It can have the effect of silencing women and hindering their societal participation on an equal footing with men. Cyber violence also disproportionately affects women and girls in educational settings, such as schools and universities, with detrimental consequences to their further education and to their mental health, which may, in extreme cases, lead to suicide.
- (18) The use of information and communication technologies bears the risk of easy, fast and wide-spread amplification of certain forms of cyber violence with the effect of creating or enhancing profound and long-lasting harm for the victim. The potential for such amplification, which is a pre-requisite for the perpetration of several offences of cyber violence defined under this Directive, should be reflected by the element of making certain material accessible, through information and communication technologies, to a 'multitude' of end-users. The term 'multitude' should be understood as referring to reaching a significant number of end-users of the technologies in question, thus allowing for significant access to, and potential further distribution of that material. That term should be interpreted and applied having regard to the relevant circumstances, including the technologies used to make that material accessible and the means these technologies offer for amplification.

- (19) Especially due to its tendency for easy, swift and broad distribution and perpetration, as well as its intimate nature, the non-consensual making accessible of intimate images or videos and material that depict sexual activities, to a multitude of end-users, by means of information and communication technologies, can be very harmful for the victims. The offence provided for in this Directive should cover all types of such material, such as images, photographs and videos, including sexualized images, audio clips and video clips. It should relate to situations where the making accessible of the material to a multitude of end-users, through information and communication technologies, occurs without the victim's consent, irrespective of whether the victim consented to the generation of such material or may have transmitted it to a particular person. The offence should also include the non-consensual production or manipulation, for instance by image editing, of material that makes it appear as though another person is engaged in sexual activities, insofar as the material is subsequently made accessible to a multitude of end-users, through information and communication technologies, without the consent of that person. Such production or manipulation should include the fabrication of 'deepfakes', where the material appreciably resembles an existing person, objects, places or other entities or events, depicting sexual activities of another person, and would falsely appear to others to be authentic or truthful. In the interest of effectively protecting victims of such conduct, threatening to engage in such conduct should be covered as well.

**(19bis) Where required by national or Union law, the dissemination of images, videos or other material to end-users by means of information and communication technologies should not be considered as non-consensual sharing of intimate, manipulated or altered materials, when such an exception is necessary in order to safeguard the fundamental rights protected under the Charter, and in particular the freedom of expression, including the freedom to receive and impart information and ideas in an open and democratic society, as well as freedom of the arts and sciences, including academic freedom. Moreover, this offense should not cover the handling of material by public authorities, in particular to conduct criminal proceedings or to prevent, detect or investigate crime, and Member States may relieve a person of responsibility under specific circumstances, for example where telephone or internet hotlines handle material in order to report an offense to authorities.**

- (20) Cyber stalking is a modern form of violence which is often perpetrated against family members or persons living in the same household, but also perpetrated by ex-partners or acquaintances. Typically, technology is misused by the offender to proceed to intensify coercive and controlling behaviour, manipulation and surveillance, thereby increasing the victim's fear, anxiety and gradual isolation from friends and family. Therefore, minimum rules on cyber stalking should be established. The offence of cyber stalking should cover **repeated or the** continuous surveillance of the victim without their consent or **a** legal authorisation by means of information and communication technologies. This might be enabled by processing the victim's personal data, such as through identity theft ~~or the spying out of such data on their various social media or messaging platforms, their emails and phone~~, stealing passwords or hacking their devices to access their private spaces, via the installation of geo-localisation apps, including stalkerware, or via stealing their devices. Furthermore, stalking should cover the monitoring of victims, without that person's consent or authorisation, via technology devices connected through the Internet of Things, such as smart home appliances. **However, surveillance can have legitimate reasons such as showing parents their childrens' whereabouts, tracking their activity on the internet or monitoring the vital functions of ill or, elderly persons or persons with disabilities. Criminal liability could therefor be limited to where such monitoring is likely to cause significant psychological harm. When assessing whether the act is likely to cause such harm the focus should be if the act typically would cause significant psychological harm for a victim.**
- (21) Minimum rules concerning the offence of cyber harassment should be laid down to counter initiating an attack with third parties or participating in such an attack directed at another person, by making threatening or insulting material accessible to a multitude of end-users. Such broad attacks, including coordinated online mob attacks, may morph into offline assault or cause significant psychological injury and in extreme cases lead to suicide of the victim. They often target prominent (female) politicians, journalists or otherwise well-known persons, but they can also occur in different contexts, for instance on campuses or in schools. Such online violence should be addressed especially where the attacks occur on a wide-scale, for example in the form of pile-on harassment by a significant amount of people.
- (22) The increase in internet and social media usage has led to a sharp rise in public incitement to violence and hatred, including based on ~~sex or~~ gender, over the past years. The easy, fast and broad sharing of hate speech through the digital word is reinforced by the online disinhibition effect, as the presumed anonymity on the internet and sense of impunity reduce people's inhibition to engage in such speech. Women are often the target of sexist and misogynous hate online, which can escalate into hate crime offline. This needs to be intercepted at an early stage. The language used in this type of incitement does not always directly refer to the ~~sex or~~ gender of the targeted person(s), but the biased motivation can be inferred from the overall content or context of the incitement.

- (23) The offence of cyber incitement to violence or hatred presupposes that the incitement is not expressed in a purely private context, but publicly through the use of information and communication technologies. Therefore, it should require dissemination to the public, which should be understood as entailing the making accessible, through information and communications technologies, of a given item of material inciting to violence or hatred to a potentially unlimited number of persons, namely making the material easily accessible to users in general, without requiring further action by the person who provided the material, irrespective of whether those persons actually access the information in question. Accordingly, where access to the material requires registration or admittance to a group of users, that information should be considered to be disseminated to the public only where users seeking to access the material are automatically registered or admitted without a human decision or selection of whom to grant access. In assessing whether material qualifies as amounting to incitement to hatred or violence, the competent authorities should take into account the fundamental rights to freedom of expression as enshrined in Article 11 of the Charter.
- (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. **When the victim is not the one making the report, Member States should ensure that the competent authorities, when necessary, take adequate measures for the victims' safety, such as information about the possibility to apply for emergency barring, restraining or protection orders.**
- (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 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.**
- (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>7</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.
- (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.~~ **Emergency barring, restraining or protection orders should be issued either for a specified period, or until modified or discharged.**
- (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

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<sup>7</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](#)).

accordance with Directives 2004/113/EC<sup>8</sup>, 2006/54/EC<sup>9</sup> and 2010/41/EU<sup>10</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 **material** 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.
- (40) Those measures should include, in particular, empowering national ~~judicial~~ authorities to issue orders to **hosting service** 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 **hosting service 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

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<sup>8</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>9</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>10</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](#)).

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 **hosting service** ~~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, by a person of the same sex when requested or appropriate and such a person is available. **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, taking into account the Member States geography and demographic composition. They should be granted sufficient human and financial resources and, where the services are exclusively 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 that** 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~~ **The aim should be to** continue to ~~be offered in~~ these **services in** 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, **taking into account 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. **Therefor internal or 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, and 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, should be provided by external counselling services to both victims and employers.**
- (52) Member States **are encouraged to should** ensure that national helplines are **reachable operated** under the EU-harmonised number [116016] **in addition to any existing national number(s) and this number is widely advertised as a public number,** free of charge and available round-the-clock. **The public should be adequately informed of the existence of and use of such number.** 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 psychological counselling adapted to the age, and age appropriate to age psychological counselling, the 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, bisexual, transsexual 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.
- (58) Member States should **take appropriate preventive measures**. ~~actions to prevent ensure that~~ **Such preventive measures may include**, ~~such as~~ awareness-raising campaigns, ~~are taken~~ to counter violence against women and domestic violence. Prevention ~~should~~ **may** also take place in formal education, in particular, through strengthening sexuality education and socio-emotional competencies, empathy and developing healthy and respectful relationships. **Taking into account language barriers and differens levels of interacy and abilities, Member States should address targeted actions to groups at heightened risk, which include children, taking into account their age and maturity, persons with disabilities, persons with alcohol and drug use disorders, and lesbian, gay, bisexual or transsexual persons.**
- (59) Member States should take measures to prevent the cultivation of harmful gender stereotypes to eradicate the idea of the inferiority of women or stereotyped roles of women and men. This could also include measures aimed at ensuring that culture, custom, religion, tradition or honour is not perceived as a justification for, or a more lenient treatment of, offences of violence against women or domestic violence. **Preventive measures should encourage men and boys to act as positive role models to support equality between men and women, but should also aim to overcome stereotypes whereby men are inhibited to reach out for help in situations of violence directed against them.** Considering that from a very young age onwards, children are exposed to gender roles that shape their self-perception and influence their academic and professional choices as well as expectations of their roles as women and men throughout their life, it is crucial to address gender stereotypes as of early-childhood education and care.
- (60) In order to ensure victims of violence against women and domestic violence are identified and receive appropriate support **and protection**, Member States should ensure that **officials** ~~professionals~~ likely to come into contact with victims receive training and targeted

information. **Regarding court staff, such training should be required only for those likely to come into contact with victims, and to a level appropriate to their contact with victims.** Trainings should cover the risk and prevention of intimidation, repeat and secondary victimisation and the availability of protection and support measures for victims. To prevent and appropriately address instances of sexual harassment at work, persons with supervisory functions should also receive training. ~~These trainings should also cover assessments regarding sexual harassment at work and associated psychosocial safety and health risks as referred to under Directive 89/391/EEC of the European Parliament and of the Council<sup>11</sup>.~~ Training activities should also cover the risk of third party violence. Third party violence refers to violence which staff may suffer at the workplace, not at the hands of a co-worker, and includes cases, such as nurses sexually harassed by a patient.

- (61) In order to counteract underreporting, Member States should also liaise with law enforcement authorities in the development of trainings in particular regarding harmful gender stereotypes, but also in the prevention of offences, given their typical close contact with groups at risk of violence and victims.
- (62) Intervention programmes should be set up to prevent and minimise the risk of (repeated) offences of violence against women or domestic violence. The programmes should specifically aim at teaching offenders or those at risk of offending how to adopt non-violent behaviour in interpersonal relationships and how to counter violent behavioural patterns. Programmes should encourage offenders to take responsibility for their actions and examine their attitudes and beliefs towards women.
- (62 bis) ~~(15) With regard to offences amounting to rape, offenders who have been previously convicted of offences of the same nature should be encouraged obliged able to participate in intervention programmes to mitigate the risk of recidivism.~~**
- (62 ter) Member States should have discretion to decide which authorities are designated or established as official bodies responsible for coordinating, implementing, monitoring and evaluating policies and measures to prevent and combat all forms of violence covered under this Directive, in compliance with the principle of procedural autonomy of the Member States, provided that such authorities have the competences to intervene in accordance with the provisions of this Directive.**

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<sup>11</sup> Council Directive 89/391/EEC of the European Parliament and of the Council of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ L 183, 29.6.1989, p. 1).

- (63) In order to ensure that victims of the offences of cyber violence contained in this Directive can effectively realise their rights to have illegal material relating to such offences removed, Member States should encourage the **self-regulatory** cooperation between **hosting service providers** ~~of intermediary services~~. To ensure that such material is detected early on and tackled effectively and that victims of those offences are adequately assisted and supported, Member States should also facilitate the establishment ~~of~~ or **raise awareness** ~~use~~ of existing self-regulatory measures of a voluntary nature, such as codes of conduct. **This facilitation should include self-regulatory measures— including for on** the detection of systematic risks, in **particular relation** to **reinforce mechanisms designed to tackle such** cyber violence and **to improve** the training of the providers' employees **concerned engaged in by preventing such the prevention of** violence and **assisting the assistance and support to** victims. **Such self-regulatory measures could complement EU-level action at Union level, in particular under the Digital Services Act.**
- (64) Policies to adequately tackle violence against women and domestic violence can only be formulated on the basis of comprehensive and comparable disaggregated data. ~~In order to effectively monitor developments in the Member States and fill the gaps of comparable data, Member States should regularly conduct surveys using the harmonised methodology of the Commission (Eurostat) to gather data and transmit these data to the Commission (Eurostat).~~
- (65) Member States should ensure that the data collected are limited to what is strictly necessary in relation to supporting the monitoring of the prevalence and trends of violence against women and domestic violence and design new policy strategies in this field. When sharing the data collected, no personal data should be included.

(66) Any processing of personal data carried out pursuant to this Directive, including the exchange or transmission of personal data by the competent authorities, ~~is to should~~ be carried out in accordance with Regulation (EU) 2016/679, Directives 2016/680/EU<sup>12</sup> and 2002/58/EC<sup>13</sup> of the European Parliament and of the Council. Any processing of personal data by Union institutions, bodies, offices or agencies ~~is to should~~ be carried out in accordance with Regulations (EU) 2018/1725<sup>14</sup>, 2018/1727<sup>15</sup> and 2016/794<sup>16</sup> of the European Parliament and of the Council, or any other applicable Union rules on data protection.

[(67) Directive 2011/93/EU provides for criminal offences concerning the sexual abuse of children. In order to ensure coherence with this Directive as regards the criminal offence of rape, the same degree of protection for children who have reached the age of sexual consent should be ensured and a specific offence should be defined as regards children below the age of sexual consent. Therefore, Directive 2011/93/EU should be amended accordingly.]

**(67 bis) This Directive establishes minimum rules. Member States are therefore free to adopt or maintain more stringent criminal law rules concerning the definition of criminal offences and sanctions in the area of violence against women. As regards victims' rights, Member States may introduce or maintain provisions with higher standards, including such which provide a higher level of protection and support for victims.**

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<sup>12</sup> Directive (EU) 2016/680 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 by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, ([OJ L 119, 4.5.2016, p. 89](#)).

<sup>13</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) OJ L 201, 31.7.2002, p. 37.

<sup>14</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, ([OJ L 295, 21.11.2018, p. 39](#)).

<sup>15</sup> Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA, ([OJ L 295, 21.11.2018, p. 138](#)).

<sup>16</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, ([OJ L 135, 24.5.2016, p. 53](#)).

- (68) Since the objective of this Directive, namely to prevent and combat violence against women and domestic violence across the Union on the basis of common minimum rules, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of the envisaged measures, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (69) ~~{In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application.}~~ OR  
{In accordance with Article 3 of Protocol No 21 on the position of United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Ireland has notified<sup>1</sup>, by letter of 22 June 2022 its wish to take part in the adoption and application of this Directive.}
- (70) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (71) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on 5 April 2022 ~~[XX XX 2022]~~.

HAVE ADOPTED THIS DIRECTIVE:

# CHAPTER 1

## GENERAL PROVISIONS

### Article 1

#### Subject matter

*Some Member States had concerns with the deletion of “of women and children” in (a). We propose to reintroduce this wording. Making that change, the Presidency believes that Article 1 is acceptable to a majority of Member States.*

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

- (a) the definition of criminal offences and penalties in the areas of sexual exploitation of women and children and computer crime;
- (b) the rights of victims of all forms of violence against women or domestic violence before, during ~~or~~ **and for an appropriate time** after criminal proceedings;
- (c) victims’ protection and victims’ support.

### Article 2

#### **Victims at an increased risk of violence and specific risks**

*No further changes have been made. The Presidency believes that there is support to consider this Article as better suited for a recital (see the sentence added at the end of recital 11). COM suggestion in footnote.<sup>17</sup>*

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

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<sup>17</sup> Article 1 bis Objectives

1. The purpose of this Directive is to combat violence against women and domestic violence as a form of discrimination between women and men, thereby ensuring a high level of security and the full enjoyment of fundamental rights within the Union.
2. When implementing the measures under this Directive, Member States shall address the increased risk of violence faced by victims experiencing discrimination based on a combination of sex and other grounds of discrimination, so as to cater to their enhanced protection and support needs.
3. Member States shall ensure that, in the application of this Directive, victims of violence against women and domestic violence are treated with appropriate safeguards so as to prevent the risk of intimidation, retaliation, secondary and repeat victimisation, and to protect their dignity and physical integrity.

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

~~Article 3~~  
**Scope**

*No further changes have been made. The Presidency believes that there is support for including the content of this Article ino Article 4. Suggestion from COM in footnote<sup>18</sup>.*

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

- ~~(a) criminal offences referred to in Chapter 2;~~
- ~~(b) acts of violence against women or domestic violence as criminalised under other instruments of Union law;~~
- ~~(c) any other acts of violence against women or domestic violence as criminalised under national law.~~

~~Article 4~~  
**Definitions**

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

*Some Member States had concerns with he notion “irrespective of the gender of the victim”. We suggest to move that part to the end to avoid ambiguity as to the intention to also include victims when those are men and boys. See also Recital 5.*

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<sup>18</sup> Article 15bis Scope

1. The provisions of this Chapter, as well as those of Chapters 4 to 7, shall apply to all victims of offences of violence against women and domestic violence, as defined under this Directive. This shall include victims of offences criminalised under Chapter 2, as well as victims of any other forms of violence against women or domestic violence as criminalised under other instruments of Union law or national law.
2. For the purposes of Chapters 3 to 7, “victim” means any natural person, regardless of their sex or gender, who has suffered harm, including physical, mental or emotional harm or economic loss, which was directly caused by acts of violence covered under this Directive, including child witnesses of such violence.

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

*No further changes have been made. Making those changes, the Presidency believes that there is support for the current wording.*

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

*Suggestion to simplify the text. No change in substance. Making those changes, the Presidency believes that there is support for the current wording.*

(ba) “;

*Minor changes. The words “unless...” are removed from the Article to simplify the definition (it is still included in Recital 5). The Presidency believes that there is support for the current wording.*

- (c) “victim” means any person, regardless of **their** sex or gender, ~~unless specified otherwise,~~ who has suffered harm, ~~which was~~ directly caused by acts of violence **against women or domestic violence [as defined in points (a)-(ba)]** ~~covered under this Directive, including child witnesses of such domestic violence;~~

*No further changes have been made. The Presidency believes that there is support for the current wording. COM suggestion in footnote.<sup>19</sup>*

<sup>19</sup> “cyber violence” means any act of violence **criminalised under Union law**.

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

*Suggestion to delete this definition since it is suggested to remove this requirement from Articles 7 and 9.*

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

*No further changes have been made. The Presidency believes that there is support for deleting this definition.*

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

*No further changes have been made. The Presidency believes that there is support for the current wording.*

- (f) “**hosting service providers of intermediary services**” means providers of the services as defined in Article 32 point (gf) **(iii)** of Regulation (EU) **2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act)** ~~YYYY/XXX of the European Parliament and of the Council~~<sup>20</sup> [~~Regulation on a Single Market for Digital Services~~];

*No further changes have been made. The Presidency believes that there is support for deleting this definition.*

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

*No changes have been made. The Presidency believes that there is support for the current wording.*

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

*No further changes have been made. The Presidency believes that there is support for deleting this definition*

<sup>20</sup> Regulation (EU) YYYY/XXX of the European Parliament and of the Council on a Single Market for Digital Services (OJ L ...).

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

*This definition is relevant in relation to Article 9 a and we suggest keeping it.*

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

## CHAPTER 2

### OFFENCES CONCERNING SEXUAL EXPLOITATION OF WOMEN AND CHILDREN AND COMPUTER CRIME

#### [Article 5 Rape

*For the time being put in brackets.*

1. Member States shall ensure that the following intentional conduct is punishable as a criminal offence:
  - (a) engaging with a woman in any non-consensual act of vaginal, anal or oral penetration of a sexual nature, with any bodily part or object;
  - (b) causing a woman to engage with another person in any non-consensual act of vaginal, anal or oral penetration of a sexual nature, with any bodily part or object.
2. Member States shall ensure that a non-consensual act is understood as an act which is performed without the woman’s consent given voluntarily or where the woman is unable to form a free will due to her physical or mental condition, thereby exploiting her incapacity to form a free will, such as in a state of unconsciousness, intoxication, sleep, illness, bodily injury or disability.
3. Consent can be withdrawn at any moment during the act. The absence of consent cannot be refuted exclusively by the woman’s silence, verbal or physical non-resistance or past sexual conduct.]

*Article 6*  
**Female genital mutilation**

*No changes have been made in the Article. We suggest a minor change in Recital 16 to make clear that, for example, necessary medical interventions are not covered. The Presidency believes that there is support for the current wording.*

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

- (a) excising, infibulating or performing any other mutilation to the whole or any part of the *labia majora, labia minora* or clitoris;
- (b) coercing or procuring a woman or a girl to undergo any of the acts referred to in point (a).

*Article 7*  
**Non-consensual sharing of intimate or manipulated material**

*Suggestion to introduce a possibility for exceptions in national law for cases where it is justifiable to share images or materials, for example satirical material. We also suggest deleting the requirement on multitude of end-user. The Article would then for example include sharing images in a school. One alternative could be to limit the scope to “the public” (see Article 3 k of Reg 2022/2065 and Recital 14) or “to a significant number of end-users”. The same wording should be used in Article 9. We also suggest introducing harm in this Article. Some updates are made in the Recitals, 19 bis is introduced. Recitals 18-21 need further changes at a later stage. Suggestions to align (b) with (a). We also suggest including both manipulation and altering and adding harm.*

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

- (a) making ~~intimate~~ images, or videos or ~~other~~ **similar** material depicting sexually **explicit conduct activities, or the intimate parts of a person of another person** without ~~their that~~ **their** consent accessible ~~to a multitude of end-users~~ by means of information and communication technologies **and causing serious harm, unless the act was justifiable in view of its purpose and other circumstances;**
- (b) producing ~~,or manipulating~~ **or altering** and subsequently making accessible ~~to a multitude of end-users,~~ by means of information and communication technologies, images, videos or **similar** ~~other~~ material, making it appear as though another person is engaged in sexually **explicit conduct** activities, without ~~their that person’s~~ **their** consent **and causing serious harm, unless the act was justifiable in view of its purpose and other circumstances;**
- (c) threatening to engage in the conduct referred to in points (a) and (b) in order to coerce another person to do, acquiesce or refrain from a certain act.

**2. Paragraph 1 shall apply without prejudice to the application of exceptions provided for under national or Union law, which guarantee the freedom of expression and information and the freedom of the arts and sciences.**

*Article 8*  
**Cyber stalking**

*Suggestion to add continuous as an alternative. We also suggest limiting the scope by introducing harm. That could solve concerns on children or the elderly being monitored for security purposes as well as air traffic monitoring. This is elaborated in Recital 20, regarding Recitals 18-21, these Recitals are to be updated at a later stage. Even the wording “likely to cause” is explained more in detail in recital 20, to clarify that the focus is on whether the act typically would cause significant psychological harm for a victim (and not if the act actually caused such fear).*

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

- (a) ~~persistently engaging in threatening or intimidating conduct directed at another person, by means of information and communication technologies, which causes that the person fears for own safety or that the person fears for safety of dependants;~~
- (b) **repeatedly or continuously** placing another person under ~~continuous~~ surveillance, without that person’s consent or a legal authorisation to do so, by means of information and communication technologies, to track or monitor that person’s movements and activities, **where when this is likely to cause significant psychological harm violate that person’s peace; is punishable as a criminal offence.**
- (c) ~~making material containing the personal data of another person, without that person’s consent, accessible to a multitude of end-users, by means of information and communication technologies, for the purpose of inciting those end-users to cause physical or significant psychological harm to the person.~~

*Article 9*  
**Cyber harassment**

*Some Member States have questions on the difference between the points. Cyber harassment (a) is done by one person but requires proof that the victim will likely fear for their safety, and cyberbullying (b) is done by a group and just requires proof of psychological harm, and doxing (c) will, by its nature, either cause psychological harm, or create a significant risk that a person is going to actually hurt the victim physically. As regards defining personal data in c), this notion is well-established as it is used in Article 8 of the Charter. Recitals 18-21 are to be updated at a later stage.*

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

- ~~(a) initiating an attack with third parties directed at another person, by making threatening or insulting material accessible to a multitude of end-users, by means of information and communication technologies, with the effect of causing significant psychological harm to the attacked person;~~
- (a) persistently repeatedly **or continuously** engaging in threatening or intimidating conduct directed at another person, **at least when this conduct involves threats to commit criminal offences**, by means of information and communication technologies, which **is likely to** causes that the person **to seriously** fears for **their** own safety or that the person fears for safety of dependants;
- (b) **engaging in threatening or insulting conduct**, ~~initiating an attack with third parties directed at another person, by making threatening or insulting material accessible~~ **visibly** ~~to a multitude of end-users~~, **with other persons**, by means of information and communication technologies, with the effect of causing significant psychological harm to the attacked person;
- c) making material containing the personal data of another person, without that person's consent, accessible ~~to a multitude of end-users~~, by means of information and communication technologies, for the purpose of inciting those end-users to cause physical or significant psychological harm to the person.
- ~~(b) participating with third parties in attacks referred to in point (a).~~

*Article 10*

**Cyber incitement to violence or hatred**

*No further changes have been made. The Presidency believes that there is support for the current wording.*

1. Member States shall ensure that the intentional conduct of inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to ~~sex or~~ gender, by **public dissemination** ~~to the public~~ of material containing such incitement by means of information and communication technologies is punishable as a criminal offence.
- 2.

## Article 11

### Incitement, aiding and abetting, and attempt

*On article 6 b, coercing or procuring a woman/girl to undergo an female genital mutilation seems to be a form of aiding and abetting female genital mutilation, and we ask Member States to indicate if they agree. We suggest separating incitement from aiding and abetting, to be able to make different references. Regarding Article 9 c it seems overlapping to include it (inciting to incite). No support for adding Article 10, which is now deleted.*

1. Member States shall ensure that inciting ~~and aiding and abetting~~ the commission of any of the criminal offences referred to in Articles [5] 6 to 9 b 10 are punishable as criminal offences.
- 1bis. Member States shall ensure that aiding and abetting the commission of any of the criminal offences referred to in Articles [5] 6 a and 7 to 9 are punishable as criminal offences.**
2. Member States shall ensure that an attempt to commit any of the criminal offences referred to in Article[s 5 and] 6 is punishable as a criminal offence.

## Article 12

### Penalties

*Regarding point 5 the Presidency believes that one year of imprisonment got support from a majority of Member States. No other changes have been made. The Presidency believes that there is support for the current wording.*

1. Member States shall ensure that the criminal offences referred to in Articles [5] 6 to 11 are punishable by effective, proportionate and dissuasive criminal penalties.
- [2. Member States shall ensure that the criminal offence referred to in Article 5 is punishable by a maximum penalty of at least 8 years of imprisonment and at least 10 years of imprisonment if the offence was committed under aggravating circumstances referred to in Article 13.]
- [3. Member States shall ensure that an offender of the criminal offence referred to in Article 5, who has previously been convicted of offences of the same nature, mandatorily participates in an intervention programme referred to in Article 38.]
4. Member States shall ensure that the criminal offence referred to in Article 6 is punishable by a maximum penalty of at least 5 years of imprisonment **in the most serious cases of Article 6 as defined in their national law** ~~and at least 7 years of imprisonment if the offence was committed under aggravating circumstances referred to in Article 13.~~

5. Member States shall ensure that the criminal offences referred to in Articles 7 8 and to 10 are punishable by a maximum penalty of at least 12 years of imprisonment.
- ~~6. Member States shall ensure that the criminal offences referred to in Articles 7 and 9 are punishable by a maximum penalty of at least 1 year of imprisonment.~~

*Article 13*  
**Aggravating circumstances**

*Suggestion to align with the general approach regarding the Directive on the protection of the environment through criminal law and the Proposal for a Directive on the definition of criminal offences and penalties for the violation of Union restrictive measures. Suggestion to include death in (i) and to put (n) and (o) in brackets since those point seems relevant only to Article 5.*

In so far as the following circumstances do not already form part of the constituent elements of the criminal offences referred to in Articles [5] 6 to 10, Member States shall **take the necessary measures to** ensure that, **in relation to the relevant offences referred to in Articles [5] 6 to 10, one or several of the following circumstances** ~~they~~ may, **in accordance with the relevant provisions of national law,** be regarded as aggravating circumstances ~~in relation to those offences, where relevant:~~

- (a) the offence, or another criminal offence of violence against women or domestic violence, was committed repeatedly;
- (b) the offence was committed against a person made vulnerable by particular circumstances, such as a situation of dependence or a state of physical, mental, intellectual or sensory disability, ~~or living in institutions;~~
- (c) the offence was committed against a child;
- (d) the offence was committed in the presence of a child;
- (e) the offence was committed by two or more persons acting together;
- (f) the offence was preceded or accompanied by extreme levels of violence;
- (g) the offence was committed with the use or threat of using a weapon;
- (h) the offence was committed with the use of force or threats to use force, or coercion;
- (i) the offence resulted in ~~the death or suicide of the victim or~~ severe physical or psychological harm for the victim;
- (j) the offender has previously been convicted of offences of the same nature;
- (k) the offence was committed against a former or current spouse or partner;
- (l) the offence was committed by a member of the family or person cohabiting with the victim;
- (m) the offence was committed by abusing a recognised position of trust, authority or influence;

- [(n) the offence was filmed, photographed or recorded in another form and made accessible by the offender;]
- ](o) the offence was committed by causing the victim to take, use or be affected by drugs, alcohol or other intoxicating substances.]

*Article 14*  
**Jurisdiction**

*No further changes has been made. The Presidency believes that there is support for the current wording.*

1. Member States shall take the necessary measures to establish their jurisdiction over the criminal offences referred to in Articles [5] **6** to 11 where:
  - (a) the offence is committed in whole or in part within their territory;
  - (b) the offence is committed by one of their nationals.
2. A Member State shall inform the Commission where it decides to extend its jurisdiction to criminal offences referred to in Articles [5] **6** to 11 which have been committed outside its territory in any of the following situations:
  - (a) the offence is committed against one of its nationals or habitual residents in its territory;
  - (b) the offender is a habitual resident in its territory.
3. Member States shall ensure that their jurisdiction established over the criminal offences referred to in Articles 7 to ~~10~~ **11** includes situations where the offence is committed by means of information and communication technology accessed from their territory, whether or not the **hosting service** provider ~~of intermediary services~~ is based on their territory.
4. In cases referred to in paragraph 1, point (b), each Member State shall ensure that its jurisdiction **established over the criminal offences referred to in Article[s 5] and 6** is not subject to the condition that the acts are punishable as criminal offences in the country where they were performed.
5. In cases referred to in paragraph 1, point (b), Member States shall ensure that the exercise of their jurisdiction is not subject to the condition that a prosecution can be initiated only following a report made by the victim in the place where the criminal offence was committed, or a denunciation from the State of the place where the criminal offence was committed.

*Article 15*  
**Limitation periods**

*In the last redraft, the Presidency put forward two options with the aim of limiting the scope of application to the most serious cases. The Presidency believes that the second option got support from a majority of Member States.*

1. Member States shall take the necessary measures to provide for a limitation period that enables the investigation, prosecution, trial and judicial decision of ~~concerning~~ criminal offences referred to in Articles [5] 6 to 11 for a sufficient period of time after the commission of those criminal offences, **in order for those criminal offences to be tackled effectively. The limitation period should be commensurate with the gravity of the offence concerned.**
- ~~2. Member States shall take the necessary measures to provide for a limitation period for criminal offences referred to in Article 5 of at least 20 years from the time when the offence was committed.~~
- ~~3. Member States shall take the necessary measures to provide for a limitation period for criminal offences referred to in Article 6 of at least 10 years from the time when the offence was committed.~~
- ~~4. Member States shall take the necessary measures to provide for a limitation period for criminal offences referred to in Articles 7 and 9 of at least 5 years after the criminal offence has ceased or the victim has become aware of it.~~
- ~~5. Member States shall take the necessary measures to provide for a limitation period for the criminal offences referred to in Articles 8 and 10, of at least 7 years after the criminal offence has ceased or the victim has become aware of it.~~
6. If the victim is a child, the limitation period **for offences referred to in Article[s 5 and] 6** shall commence at the earliest once the victim has reached 18 years of age.

## CHAPTER 3

### PROTECTION OF VICTIMS AND ACCESS TO JUSTICE

#### Article 16

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

*Point 2: Suggestion from Member States to add “When necessary”. Also a clarification in the Article and in Recital 24 regarding the measures that can be taken. With the changes made, the Presidency believes that there is support for the current wording. Point 3: there seems to be support by a majority of Member States to limit this Article to healthcare professionals as regards adults. Regarding children we suggest to introduce a references to Member States rules of client confidentiality. No support for keeping potential victims in the Article. Point 5: Needs further work in order to ensure compliance with migration law. At this stage we suggest to change to may and to use common language. COM suggestion in footnote.<sup>21</sup>*

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 ~~eriminal 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 ~~eriminal offences~~ **such acts** online or through other information and communication technologies, including the possibility to submit evidence, in particular concerning reporting of ~~eriminal offences~~ **acts** of cyber violence.
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 a person other than the ~~it is not the~~ victim ~~who~~ is making the report, Member States shall ensure that the competent authorities take adequate measures for the victim’s safety when necessary.**

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<sup>21</sup> 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 **launch issue enforce an return procedure** ~~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.~~

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, **without prejudice to national rules on legal privilege.**
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. Member States ~~may~~ **shall** ensure that, **at least until completion of the first individual assessment referred to in Article 18, it shall not be possible to [conclude the procedure leading to the return of a third-country national, against] 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**

*Point 3: suggestion to use a more clear wording and to add ex officio which could include situations where prosecutors or judges makes these decisions. Point 4: there seems to be support for deleting the requirement on the victims wish to act.*

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 **investigation and** prosecution ~~and investigation~~.
3. The competent authorities shall **as soon as possible** ~~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. ~~Where the victim wishes 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.~~

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.

#### Article 18

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

*Point 1: change to make clear that the requirements set out under this Article applies alongside with the Victims Rights Directive. Point 3, 4 and 7: suggestions to introduce flexibility. Point 8: Some MS indicated that they can't support that dependants are included, at this stage we ask if it is acceptable to keep dependants if limited to children with needs or if this point can't be supported at all.*

1. In **addition to** ~~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, **in respect of as regards** victims ~~covered by this Directive~~, the **additional** elements as set out in ~~paragraphs 2 to 7 of~~ this Article are assessed.
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 shall focus on the risk emanating from the offender or suspect, **which may include** ~~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 **individual** assessment shall take into account the victim's individual circumstances, **which may include** ~~including~~ whether they experience discrimination based on a combination of sex 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. Member States shall ensure that adequate protection measures are taken on the basis of the individual assessment, ~~such as:~~ **Those measures may include:**
  - (a) measures **under** 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. **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~~ **review** the individual assessment at regular intervals **and, where relevant, take new or update ongoing protection measures** to ensure **that they address** 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. ~~Victims' dependants shall be presumed to have specific protection needs without undergoing the assessment referred to in paragraphs 1 to 6.~~

or

Victims' dependants **under the age of 18** 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.**

#### *Article 19*

#### **Individual assessment of victims' support needs**

*Regarding dependants, see question in box on Article 18.*

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~~ **appliesy** to the individual assessment of support needs under paragraph 1 of this Article.

#### *Article 20*

#### **Referral to support services**

*Point 4: suggestion to add consent regarding transmission of personal data and to clarify that it is the competent authorities that transmit the personal data. Regarding a definition on personal data, see box on Article 9. Point 5: Several Member States asks for a longer period. It is our understanding that there needs to be a number and we suggest 5 years.*

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**, to offer support.
2. The competent authorities shall respond to **the victim's** requests for protection and support in a timely and coordinated manner.
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 **that the competent authorities transmit of** relevant personal data concerning the victim and ~~their~~ situation **of the victim** to the relevant support services, where this is necessary to ensure that the victim receives appropriate support and protection **and the victim consents to such transmission**. Such transmission shall be confidential.
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 5 years** after the last contact between the support service and the victim.

#### *Article 21*

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

*Point 1: suggestion to add "can" to indicate that it is up to the judge to decide, the requirement is that the judge should have the possibility to issue such orders. For the time being we believe that a majority of Member States support keeping dependants in the text.*

*Point 2: addition in Recital 35 to clarify that these orders should be issued for a specific period.*

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 **can** issue orders addressed **at to** 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. 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. 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**

*No further changes has been made. The Presidency believes that there is support for the current wording.*

~~Without prejudice to the rights of defence, Member States shall ensure that, in criminal investigations and court proceedings, questions, enquiries and evidence concerning the 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**

*Support from Member States to change from "shall" to "may" and a suggestion from a Member State to add text in point (f).*

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 **and raise awareness on all victim groups in the context of domestic violence and violence against women;**
- (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~~

*We follow the ongoing work in FREMP. Minor change in the title to clarify. Making that change, the Presidency believes that there is support for the current wording.*

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.~~

#### Article 25

### Measures to remove certain online material

*Trying to take into account the views from Member States and hearing their call for a more general framework that is better in line with the DSA-regulation as well as other relevant frameworks concerning the removal of online illegal content, namely the TCO-regulation and CSAM-proposal, we present additional amendments to this Article. Point 1: we suggest a minor clarification by adding "online" in the first part of the sentence, and altering the scope by using the same terminology as the TCO-regulation (article 3) and CSAM-proposal (article 14), i.e., "hosting service providers" instead of "providers of intermediary services".*

1. 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. 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~~ **hosting service providers**. **Where removal at the source is not feasible, Member States shall ensure that 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;~~
- (e) ~~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.~~

*Point 3: we wonder whether a time limit for the validity of a removal order is necessary, as a removal order per definition entails the permanent removal of the relevant material referred to in the order. Furthermore, the TCO-regulation and the CSAM-proposal does not include a system like this. We therefore suggest the deletion of the first part of the paragraph, which also at the same time gives more flexibility to Member States in this regard. As regards the second part of this paragraph, we suggest using the terminology "hosting service providers" instead of "providers of intermediary services" in order to better align the scope with the TCO-regulation and the amendment made to point 1.*

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 **hosting service providers** ~~provider of intermediary services~~ concerned is informed thereof.

*Point 4: we suggest merging paragraph 7 regarding judicial remedies with this paragraph as it seems better suited as regards the context, and making some amendments aimed to better align the scope the TCO-regulation (see article 9), i.e. changing "all parties" to "hosting service providers and content providers".*

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 **relevant** ~~all~~ parties involved. **Member States shall ensure that 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.**

*Point 5: we suggest amendments aimed to better align the paragraph to the TCO-regulation, in other words, replacing "intermediary service providers" with "hosting service providers". See the similar system in TCO, article 11.*

5. Member States shall ensure that the **relevant** ~~end-users~~ **content providers** ~~of the relevant services~~ are informed, where appropriate by the **intermediary service hosting 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.

*Point 6: only one minor change.*

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.

*Point 7: we suggest merging this paragraph with paragraph 4 and deleting the last bit of the sentence as some Member States have indicated as superfluous.*

- ~~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

*Point 1: Suggestion to add a reference to national law to ensure that other elements necessary for liability under national law applies. Making that change, the Presidency believes that there is support for the current wording.*

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 **as provided by national law**.
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

*Point 1: we suggest to make the reference to both Article 8 (3) and 9 (3). Point 1 (a): suggestion to add “support”, since specialist services do not only provide information but also support. Point 1 (b): suggestion to add “and” to align with Article 25 IC and to add psychosocial counselling. Point 2: suggestion to add barrier-free. Point 3: an addition suggested by a Member State since funding should not be necessary when governmental organisations also provide these services. Point 4: concerns from Member States on the mix-up between immediate medical assistance to the victim and victims’ forensic examination. We suggest to split in two points. We also suggest deleting central, since this could give the impression that it should be only one contact point in each Member State. Point 6: a suggestion to add some flexibility since we don’t know what crises may come in the future.*

1. Member States shall ensure that specialist support services referred to in Article ~~98(3)~~ **and 9(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~~ **and support** 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 **and** forensic examinations **and on psychosocial counselling;**
  - (c) inform the victims of cyber violence, including ~~advice~~ **information** on judicial remedies and remedies to remove online content related to the crime, where available.
2. Specialist support referred to in paragraph 1 shall be offered in-person and shall be easily accessible **and barrier-free**, 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. 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 **exclusively** provided by non-governmental organisations, **Member States shall provide the latter with adequate funding.**
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.**

- 4.bis Member States shall ensure that guidelines and protocols for health-care services performing first hand medical care are established for cases of violence against women and domestic violence. Such guidelines and protocols shall cover preservation and documentation of evidence, and its further transmission to competent forensic centres in compliance with national procedural law.**
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.
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**

*Point 1: suggestions from Member States to clarify on trauma, delete medical, delete requirement as regards time and add coordination. We suggest to make these changes but wonder if we don't need something on medical in this Article? Medical examinations could for example include having rape-kits. Point 2: Victims' Rights Directive requires support free of charge. This Article includes also medical examinations and the change suggested allows for some flexibility regarding for example a patient fee on such examinations.*

1. Member States shall provide for appropriately equipped, easily accessible rape crisis or sexual violence referral centres, **which may form part of the healthcare system**, to ensure effective support to victims of sexual violence, including assisting in the ~~preservation~~ **safekeeping** and documentation of evidence. ~~Those~~ **These** centres shall provide for [medical and forensic examinations,] **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. **Member States may ensure the provision of forensic examination through referral to specialised services; in such case they shall ensure coordination between the referral centres and competent forensic centres.**
2. The services referred to in paragraph 1 shall be available free of charge, **without prejudice to those services that are provided for under the national health care system**, 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*

*No changes have been made. The Presidency believes that there is support for the current wording.*

**Specialist support for victims of female genital mutilation**

1. Member States shall ensure effective, **and** 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**

*Suggestion to delete “external” to allow for companies that have this competence within their organisation to use that competence. We also suggest deleting conciliation after discussions at the last meeting.*

**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 and providing the on possibilities of early conciliation, if the victim so wishes.**

*Article 31*

**Helplines for victims**

*Point 4: we believe that there is support for keeping the first option. Recital 52 is updated. Making that change, the Presidency believes that there is support for the current wording.*

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 **the** 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>22</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. ~~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. ~~]~~

#### *Article 32*

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

*Currently, the requirement for shelters in Article 9(3)(a) of the Victims Rights Directive is gender neutral. Removing the reference to the sex of the victims would not exclude special shelters only for women, but ensures that shelters cater to the specific needs of victims of domestic violence and sexual violence regardless of gender.*

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<sup>22</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](#).

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 ~~women~~ victims of domestic violence and sexual violence, as domestic violence affects women disproportionately, and recognising that men may also be victims of domestic 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 **provided in sufficient numbers and easily**~~fully~~ **accessible and** equipped to accommodate the specific needs of **women and 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**

*Point 2: suggestion to add child witnesses.*

1. Member States shall ensure that children are provided specific adequate support as soon as the competent authorities have reasonable grounds to believe that ~~a 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, **or children having witnessed**, 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. 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**

*No changes have been made. The Presidency believes that there is support for the current wording.*

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**

*Point 1: suggestion to align with Gender pay gap Directive ST 15997/22Add1 Rev2. Point 4: suggestion to change to procedures to clarify the requirement. The Presidency believes that, after making that change, this Article is acceptable to most Member States.*

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 because they are subject to intersectional intersecting [within the meaning of Article 3.2(e) of the Gender pay gap Directive] 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. 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 **procedures** ~~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.

## CHAPTER 5

### PREVENTION

#### Article 36

#### Preventive measures

*Point 2: minor change. Point 4: minor changes made and the list of examples of groups at heightened risk are moved to Recital 58, where additional groups are added. Point 5: deletion since the group is included in “all”. Point 7: there seems to be support from a majority of Member States to keep the second suggestion in the last redraft. The Presidency believes that after making these changes, this Article is acceptable to most Member States. Point 8: suggestion to add reference to Dir. 2006/54 to make clear that the requirement in this Article doesn't affect the requirements under that Directive.*

1. Member States shall take appropriate actions to prevent violence against women and domestic violence.
2. Preventive measures shall include **conducting or supporting** awareness-raising campaigns **or programmes, which may include** research and education programmes, where appropriate developed in cooperation with relevant civil society organisations, social partners, impacted communities and other stakeholders, **to increase awareness and understanding among the general public of the different manifestations and root causes of all forms of violence against women and domestic violence, their consequences in particular on children and the need for their prevention.**
3. Member States shall make information on preventive measures, the rights of victims, access to justice and to a lawyer, and the available protection and support measures available to the general public.
4. Targeted action shall be **focused on** ~~addressed to~~ groups at **heightened risk, such as including children, according to their age and maturity, and persons with disabilities, taking into consideration language barriers and different levels of literacy and abilities, lesbians and trans women, as well as persons with alcohol and drug use disorders.** Information for children shall be formulated **or adapted** in a child-friendly way. **Information shall be presented in formats accessible to people with disabilities.**
5. Preventive measures shall in particular aim at challenging harmful gender stereotypes, promoting equality between women and men, encouraging all, ~~including men and boys,~~ to act as positive role models to support corresponding behaviour changes across society **and to seek help where needed** ~~as a whole in line with the objectives of this directive.~~
6. Preventive measures shall develop and/or increase sensitivity about the harmful practice of female genital mutilation, **in an manner proportionate according to its prevalence in the Member State concerned.**
7. Preventive measures shall also specifically address cyber violence. In particular, Member States shall ensure that ~~education~~ **such** measures include the development of digital literacy skills, including critical engagement with the digital world, to enable users to

identify and address cases of cyber violence, seek support and prevent its perpetration. Member States shall foster multidisciplinary and stakeholder cooperation, including intermediary hosting service providers and competent authorities, to develop and implement measures to tackle cyber violence.

8. **Without prejudice to Article 26 of Directive 2006/54/EC**, Member States shall **take adequate and appropriate measures to address** ~~ensure that~~ sexual harassment at work, **when it constitutes a criminal offense under national law**, is addressed in relevant national policies. Those national policies ~~may shall~~ identify and establish **the** targeted actions referred to in paragraph 2 for sectors where workers are most exposed.

#### Article 37

#### Training and information for professionals

*Point 1: it is a bit unclear to us but we believe that a majority of Member States could accept the second suggestion in the last redraft. We also suggest to add “relevant”, elaborating on this in Recital 60, and to add a reference to judicial independence (see VRD). Point 3: Suggestion from Member State to remove the detailed list. The requirement, especially in relation to the private sector, seems far-reaching. Point 5: Suggestion from Member State to exemplify who could provide training. The Presidency asks, after making these changes, if this Article is acceptable to most Member States.*

1. Member States shall ensure that ~~professionals~~ **officials** likely to come into contact with victims, ~~of victim support and restorative justice services, healthcare professionals, social services, educational and other relevant staff,~~ receive both general and specialist training and targeted information to a level appropriate to their contacts with victims, to enable them to identify, prevent and address instances of violence against women or domestic violence and to treat victims in a trauma-, gender- and child-sensitive manner **and communicate with victims with disabilities in an accessible manner. Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union Member States shall encourage such training for judges, prosecutors and lawyers.**
2. Relevant health professionals, including paediatricians, **gynecologists** and midwives shall receive targeted training to identify and address, in a cultural-sensitive manner, the physical, psychological and sexual consequences of female genital mutilation.
3. Persons with supervisory functions in the workplace, in both the public and private sectors, shall receive training on how to recognise, prevent and address sexual harassment at work, **when it constitutes a criminal offense under national law**, ~~including on risk assessments concerning occupational safety and health risks, to provide support to victims affected thereby and respond in an adequate manner.~~ Those persons and employers shall receive information about the effects of violence against women and domestic violence on work and the risk of third party violence.
4. The training activities referred to in paragraphs 1 and 2 shall include training on coordinated multi-agency co-operation to allow for a comprehensive and appropriate handling of referrals in cases of violence against women or domestic violence.

5. Without affecting media freedom and pluralism, Member States shall encourage and support the setting up of media training activities by media professionals' organisations, media self-regulatory bodies and industry representatives or other relevant independent organisations, to combat stereotypical portrayals of women and men, sexist images of women, and victim-blaming in the media, aimed at reducing the risk of violence against women or domestic violence. **These training activities may be provided by relevant civil society organisations, non-governmental organisations working with victims of violence against women or domestic violence, social partners and other stakeholders.**
6. Member States shall ensure that the authorities competent for receiving reports of offences from victims are appropriately trained to facilitate and assist in the reporting of such crimes.
7. Training activities referred to in paragraphs 1 and 2 ~~shall be regular and mandatory,~~ including on cyber violence, ~~and~~ **shall be** built on the specificities of violence against women and domestic violence. Such training activities ~~shall~~ **may** include training on how to identify and address the specific protection and support needs of victims who face a heightened risk of violence due to their experiencing discrimination based on a combination of sex and other grounds.
8. The measures under paragraphs 1 to 6 shall be implemented without affecting judicial independence, the self-organisation of regulated professions and differences in the organisation of the judiciary across the Union.

#### *Article 38*

#### **Intervention programmes**

*Point 1: we suggest deleting effective, after discussions at the last meeting. Point 2: suggestion to make clear that persons who committed crimes are included. Regarding persons who fear, an alternative solution can be found in Article 22 Child abuse Directive, where this requirement is: "to ensure that persons who fear that they might commit any of the offences referred to in Articles 3 to 7 may have access, where appropriate, to..." Point 3: no support for adding personally. The Presidency believes that after making these changes, this Article is acceptable to most Member States.*

1. Member States shall take the necessary measures to ensure that targeted ~~and effective~~ intervention programmes are established to prevent and minimise the risk of committing ~~offences of~~ violence against women or domestic violence, or reoffending.
2. The intervention programmes shall ~~may~~ **may** be made available for participation **to persons who committed an offence of violence against women or domestic violence and, including may be made available to other persons who are assessed as being at risk for committing such offences. This may include persons who feel the need to participate, for example because they fear they might commit any offence of violence against women or domestic violence.**
3. **Member States shall ensure that an offender of the offence of rape is ~~personally~~ encouraged to participate in an intervention programme.**

## CHAPTER 6

### COORDINATION AND COOPERATION

#### Article 39

##### Coordinated policies and coordinating body

*Point 4: there seems to be support for keeping the second suggestion in the last redraft, adding “or” to solve difficulties for federal states. The Presidency believes that after making this change, this Article is acceptable to most Member States.*

1. Member States shall adopt and implement state-wide effective, comprehensive and coordinated policies encompassing all relevant measures to prevent and combat all forms of violence against women and domestic violence.
2. Member States shall designate or establish **one or more** ~~an~~ official body(ies) responsible for coordinating, implementing, monitoring and evaluating policies and measures to prevent and combat all forms of violence covered under this Directive.
3. That body, **or one of the bodies designated pursuant to paragraph 2**, shall coordinate the collection of data referred to in Article 44, and analyse and disseminate its results.
4. ~~It~~ **Member States** shall ~~be responsible for coordinating~~ **ensure** that policies are **coordinated** at the central, regional and/or local levels.

#### Article 40

##### Multi-agency coordination and cooperation

*Suggestions from Member States to add “ombudsmen” and to delete “witnesses”. Making those changes, the Presidency believes that this Article is acceptable to most Member States.*

1. Member States shall put in place appropriate mechanisms, **in accordance with national law or practice**, to ensure effective coordination and cooperation, ~~at the national level~~, of relevant authorities, agencies and bodies, including, ombudsmen, local and regional authorities, law enforcement ~~agencies~~, the judiciary, **with due respect for judicial independence** ~~public prosecutors~~, support services ~~providers~~ as well as non-governmental organisations, social services, including child protection or welfare authorities, education and healthcare providers, social partners, without prejudice to their autonomy, and other relevant organisations and entities, **in protecting and supporting victims and witnesses from violence against women and domestic violence**.
2. Such mechanisms shall in particular pertain to the individual assessments under Articles 18 and 19, and the provision of protection and support measures under Article 21 and Chapter 4, the **non-binding** ~~guidelines for law enforcement and judicial authorities~~ under Article 23, and in the trainings for professionals as referred to in Article 37.

#### Article 41

##### Cooperation with non-governmental organisations

*The Presidency believes that this Article is acceptable to most Member States.*

Member States shall cooperate with and consult civil society organisations, including non-governmental organisations working with victims of violence against women or domestic violence, in particular in providing support to victims, concerning policymaking initiatives, information and awareness-raising campaigns, research and education programmes and in training, as well as in monitoring and evaluating the impact of measures to support and protect victims.

#### Article 42

#### Cooperation between hosting intermediary service providers

*Suggestion from Member State to make a few additional changes in Recital 63. Making these changes, the Presidency believes that this Article is acceptable to most Member States.*

Member States shall **encourage self-regulatory cooperation between hosting service providers ~~of intermediary services~~, such as codes of conduct, and raise awareness** facilitate the taking of **on** self-regulatory measures **which may be adopted** by hosting service providers ~~of intermediary services~~ in connection **with** ~~to~~ this Directive, in particular to reinforce ~~internal~~ mechanisms **that they implement** to tackle the online material referred to in Article 25(1) and to improve the training of their employees concerned on preventing, assisting and supporting the victims of the offences referred to therein.

#### Article 43

#### Union level cooperation

*Suggestion to align with the wording in Article 26 of the Victims' Rights Directive and to add "within their corresponding mandates" to limit the scope, since exchanging information goes beyond the requirements in VRD. Making these changes, the Presidency believes that this Article is acceptable to most Member States.*

Member States shall take appropriate action to facilitate cooperation between each other to improve the implementation of this Directive. Such cooperation shall aim at least at:

- (a) exchanging **information, such as** best practices, **with relevant Union agencies, within their corresponding mandates**, and consulting each other in individual cases, ~~including through Eurojust and the European Judicial Network in criminal matters;~~
- (b) ~~exchanging information and best practices with relevant Union agencies;~~
- (e) **and** providing assistance to Union networks working on matters directly relevant to violence against women and domestic violence.

*Article 44*  
**Data collection and research**

*Member States expressed a number of concerns on this Article. On point 1: the crimes relevant is determined by the definitions in Article 4 (a), (b) and (ba) and it will be up to Member States to decide which offences are covered by the categories. This applies to Chapters 3-6 in general since the definitions refer to acts criminalised in Chapter 2, under other instruments of Union law or under national law. Point 2: amended to solve difficulties for federal states and a suggestion to delete prosecuted cases, since not all Member States collect such data. Point 3: suggestion from COM in footnote.<sup>23</sup> Point 4 and 5: suggestions to align with other changes suggested in this Article and to use reference to point 2 instead of to the Eurostat in point 5.*

1. Member States shall have a system in place for the collection, development, production and dissemination of statistics on violence against women or domestic violence, ~~including the forms of violence referred to in Articles 5 to 10.~~
2. The statistics shall, **as a minimum**, include the ~~following existing data, available at a central level,~~ disaggregated by ~~sex, age of the victim and of the offender, relationship between the victim and the offender and type of offence:~~
  - ~~(a) the number of victims who experienced violence against women or domestic violence during the last 12 months, last five years and lifetime;~~
  - ~~(b) the annual number of such victims of such offences,~~ of reported offences, of persons ~~prosecuted for and~~ convicted of such forms of violence, obtained from national administrative sources.
3. ~~Member States shall conduct a population based survey every 5 years using the harmonised methodology of the Commission (Eurostat) to gather the data referred to in paragraph 2, point (a), and on this basis assess the prevalence of and trends in all forms of violence covered by this Directive.~~

~~Member States shall transmit those data to the Commission (Eurostat) [3 years after the entry into force of the directive] at the latest.~~
4. In order to ensure administrative data comparability across the Union, Member States shall collect administrative data on the basis of common disaggregations developed in cooperation with and according to the **standards methodology** developed by the European Institute for Gender Equality in accordance with paragraph 5. They shall transmit this data to the European Institute for Gender Equality on a yearly basis. The transmitted data shall not contain personal data.
5. The European Institute for Gender Equality shall support Member States in the data gathering referred to in paragraph 2, ~~point (b),~~ including by establishing common standards **taking into account the requirements set out in paragraph 2, point (b)** ~~on counting units, counting rules, common disaggregations, reporting formats, and on the classification of criminal offences. The standard format shall as far as possible be based on the definitions and standards that have been developed and applied to European statistics in the field of Crime and Criminal Justice that is collected by Eurostat.~~

<sup>23</sup> Member States shall endeavour to conduct population-based surveys at regular intervals to assess the prevalence of and trends in all forms of violence covered by this Directive

6. The Member States shall make the collected statistics available to the public. The statistics shall not contain personal data.
- ~~7. The Member States shall support research on root causes, effects, incidences and conviction rates of the forms of violence covered by this Directive.~~

## CHAPTER 7

### FINAL PROVISIONS

[Article 45

*For the time being put in brackets.*

#### **Amendment to Directive 2011/93/EU**

In Article 3 of Directive 2011/93/EU, the following paragraphs are added:

- “7. Member States shall ensure that the following intentional conduct shall be punishable by a maximum term of imprisonment of at least 12 years:
  - (a) engaging with a child below the age of sexual consent in any act of vaginal, anal or oral penetration of a sexual nature, with any bodily part or object;
  - (b) causing a child below the age of sexual consent to engage with another person in any act of vaginal, anal or oral penetration of a sexual nature, with any bodily part or object.
8. Where the child is above the age of sexual consent and does not consent to the act, Member States shall ensure that the conduct set out in paragraph 7 is punishable by a maximum term of imprisonment of at least 10 years.
9. For the purpose of paragraph 8, Member States shall ensure that a non-consensual act is understood as an act which is performed without the child’s consent given voluntarily, or where the child is unable to form a free will due to the presence of circumstances referred to in paragraph 5, including the child’s physical or mental condition such as a state of unconsciousness, intoxication, sleep, illness or bodily injury.

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

*Article 46*  
**Level of protection**

*The Presidency believes that the deletion of this Article is acceptable to most Member States. At the request of a Member State, it is suggested to include the substance of this Article in a new Recital 67 bis.*

~~This Directive establishes minimum rules. Member States may introduce or maintain provisions with higher standards, including such which provide a higher level of protection and support for victims.~~

*Article 47*  
**Reporting and review**

*The Presidency believes that this Article is acceptable to most Member States.*

1. By [seven years after the entry into force of this Directive] at the latest, Member States shall communicate to the Commission ~~all relevant~~ **available** information concerning the application of this Directive necessary for the Commission to draw up a report on the application of this Directive.
2. On the basis of the information provided by Member States pursuant to paragraph 1, the Commission shall submit to the European Parliament and the Council a report in which it reviews the application of this Directive.

*Article 48*

**Relationship**

**with other Union acts**

*The Presidency believes that this Article is acceptable to most Member States.*

1. This Directive shall not affect the application of the following legal acts:
  - (a) Directive 2011/36/EU,
  - (b) Directive 2011/93/EU,
  - (c) Directive 2011/99/EU,
  - (d) Directive 2012/29/EU,
  - (e) Regulation (EU) No 606/2013,
  - (f) [~~Regulation (EU) 2022/2065.../... on a Single Market for Digital Services~~].
2. The specific measures of prevention, protection of and support to victims under this Directive shall apply in addition to measures laid down in Directives 2011/36/EU, 2011/93/EU and 2012/29/EU.

**Article 48 bis**

## Freedom of the press and the freedom of expression in other media

*Article 48 bis: There is a need for a provision in order to safeguard the rules on freedom of the press. This already exists in other documents, see for example Article 7 Framework Decision on Racism and Xenophobia (2008/913/JHA)*

**This Directive shall not affect special liability regimes relating to fundamental principles on to the freedom of the press and the freedom of expression in protected media which exist in Member States at the time of adoption of this Directive, provided this provisions can be applied in full compliance with the Charter.**

### Article 49

#### Non-regression clause

*The Presidency believes that this Article is acceptable to most Member States.*

Nothing in this Directive shall be construed as lowering, limiting or derogating from any of the rights and procedural safeguards that are guaranteed under the law of any Member State which provides a higher level of protection. Member States shall not lower that higher level of protection guaranteed at the time of entry into force of this Directive. **The implementation of this Directive shall not constitute grounds for justifying a reduction in the level of protection of victims in the areas covered by this Directive.** The prohibition of such a reduction in the level of protection shall be without prejudice to the right of Member States to lay down, in light of changing circumstances, legislative or regulatory arrangements other than those in force on the date of entry into force of this Directive, provided that the minimum requirements laid down in this Directive are complied with.

### Article 50

### Transposition

*The Presidency believes that this Article is acceptable to most Member States.*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [~~two~~ **three** years after entry into force] at the latest. They shall forthwith communicate to the Commission the text of those provisions.  
When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 51*  
**Entry into force**

*The Presidency believes that this Article is acceptable to most Member States.*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

*Article 52*  
**Addressees**

*The Presidency believes that this Article is acceptable to most Member States.*

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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## FINLAND

### Comments by Finland

- The Finnish delegation would like to thank for the possibility to comment on the text in writing. We refer to our previous written comments sent to the Presidency (13 March, 7 February and 19 January 2023). Overall the text has developed in the right direction. In addition, we present the following views at this point.

### Recital 16

- We find adding “including psychological and social damages” problematic. They are too vague and difficult to prove. They are also in contradiction with Article 6 as they seem to set new constituent elements to the crime which are not mentioned in the Article. We suggest deleting those words, or, alternatively, drafting a separate sentence where the characteristics of the FGM is explained and which would include reference to psychological and social damages. For example: “Female genital mutilation may lead to various harmful consequences, such as physiological, psychological and social damages”. Important is that psychological and social damages are separated from the constituent elements of the crime.

### Recital 30bis

- We don't think the Recital is necessary. It is usually self-evident, what “competent authorities” mean. If such a definition is retained, it should be moved to an Article.

### Article 4 – Definitions

- As noticed in the meeting, the Article on definitions has a close link to the scope presented in the deleted Article 3. Therefore, they should be considered together. Attention should be paid to that the scope is not defined in the Article on definitions. Therefore, the need for a separate Article on scope could perhaps be reconsidered, although it is not strictly necessary.
- The definition of “Violence against Women” in point a) is currently confusing and too far reaching (especially coercion and arbitrary deprivation of liberty), and it seems to be mixing up violence against women and gender-based violence. Perhaps the last sentence (“such acts of violence...”) could be moved to the recital, in order to make the definition clearer. That sentence defines gender-based violence, not VaW.
- In the Recital 5, the fact that victim support services are meant for all persons regardless of their gender, should perhaps be taken to an Article, as it is setting up an obligation rather than providing for an explanation.

## Articles 7 to 10

- With reference to our previous more written comments, we would like to thank the Presidency for taking into account our suggestion to clarify in the Recitals (especially 17) the reasoning regarding the adequacy of the computer crime -legal basis for these offences.
- However, we are still of the opinion that Article 9 is lacking the legal basis. The use of ICT for committing the crime is not essential to the character of the crime. The crime can be equally committed both online and offline, and the same constituent elements of the crime apply to both.
- In order to make the legal basis clearer, it is strictly necessary in Articles 9 and 10 to have a reference to the fact that it is essential for those crimes that the harmful material is accessible to a potentially large number of people. We can accept “multitude of end-users” or “publicly accessible” or something similar.
- In Articles 7-9 we would strictly avoid using expression “is likely to”. It is too vague and unclear for criminalizing purposes and is difficult to transpose into a clear domestic criminal provision.

## Article 13 – Aggravating circumstances

- We repeat that in general, it should be noted that in the law, it does not seem possible to enumerate in detail all of the circumstances that should be considered aggravating for a given offence. Also, some circumstances are such that they should be not be considered aggravating categorically but largely depending on the other circumstances of the case.
- Therefore, it is commendable that the link to the rules on maximum penalties (in Article 12) has been deleted.
- We consider that at least the circumstances mentioned in the following points are not relevant enough for the offences in Articles 7 to 10, and thus should not apply to them:
  - c (no special reason to aggravate; also, such offences are often committed by a child)
  - d (no special reason to aggravate; usually not applicable; also, such offences are often committed by a child or group of children)
  - e (does not seem to entail more harm as such)
  - i (causing another person’s death is a crime as such)
  - n (cyber offences get typically recorded digitally); we support deletion
  - o ; we support deletion
- Similarly, we consider that at least the circumstances mentioned in the following points should not apply to Article 5:
  - b (a constituent element of rape)
  - c (concerns directive 2011/93)

- h (a constituent element of rape)
- m (a constituent element of rape)
- n (usually a separate offence)
- o (a constituent element of rape)
- And for Article 6, the following should not apply:
  - e (presumably a typical situation and does not seem to entail more harm as such)
  - i (a constituent element or at least typical consequence of the offence)
  - n (usually a separate offence)
- As regards the chapeau of Article 13, we find that the proposed amendments are bringing it to the right direction in light of our previous comments, where we suggest that in the Recital the necessary discretion for the Member States in the implementation is expressed (with the same text as also in Directive 2011/93 Recital 21: *“Member States should provide for aggravating circumstances in their national law in accordance with the applicable rules established by their legal systems on aggravating circumstances. They should ensure that those aggravating circumstances are available for judges to consider when sentencing offenders, although there is no obligation on judges to apply those aggravating circumstances. The aggravating circumstances should not be provided for in Member States’ law when irrelevant taking into account the nature of the specific offence. The relevance of the various aggravating circumstances provided for in this Directive should be evaluated at national level for each of the offences referred to in this Directive.”*)

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

- In article 16(3), we can support the first part of the section that concerns healthcare professionals and applies to all victims.
- We still have concerns on the second part of article 16(3) which applies to only child victims. We consider it necessary that information falling into the scope of legal privilege is excluded from the article. However, also information falling into the scope of secrecy of the confession should be excluded in the corresponding way. In practice, this refers to priests and professionals comparable to them.
- Secrecy of the confession and spiritual counseling are part of exercising the right to religion, which is a human right protected, for example, in the European Convention of Human Rights. Therefore, this exclusion is essential.

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

- In the proposed form, the risk assessment should be carried out in all cases of violence against women and domestic violence. This means a wide range of different kinds of offences, ranging from petty offences to the most serious ones. However, all cases covered by the directive are not similar in nature, and the assessment should be done only in cases where it is expected to be most useful. Nationally we have big problems with lengthy proceedings, thus we don't want to add any new elements to the process unless it is strictly necessary.
- In the proposed form, even with the added flexibility in some provisions, we are worried that the article would cause unnecessary administrative burden to the authorities and lengthen criminal proceedings even more.
- Based on the above, we consider it essential to limit the scope of the article. In our national system, similar type of risk assessment as mentioned in the article is done in serious cases of domestic violence. From our perspective, also in practice, most of the risks on the safety of the victim are related specifically to domestic violence cases. Therefore, we think that limiting the scope of the article to only domestic violence could be a solution here.
- In order to limit the scope of the article as described above, we propose that the bolded words would be added to Art 18(1). The proposed change would not prevent the Member States to extend the assessment to all cases of violence against women and domestic violence, but would ensure the necessary flexibility.
  - *In addition to the individual assessment under Article 22 of Directive 2012/29/EU, Member States shall ensure that, **at least in respect of victims of domestic violence**, the additional elements as set out in this Article are assessed.*
- Another to limit the scope of the article and prevent the abovementioned problems would be to add more flexibility to article 18(1), for example by adding, "where appropriate" or "where necessary".
- When it comes to article 18(8), we support removing the article entirely. In the national legislation, victim's dependents are not parties to the proceedings automatically. Some protection measures would therefore not be possible to carry out, because they are related directly to the criminal proceedings. It could give a contradictory signal for the child if the directive would impose the presumption for protection set out in article 18(8) but no specific protection measures would in practice be available. After all, the article does not affect the conditions under which, for example, restraining orders should be available.
- Even though victim's dependents are not parties automatically, children are protected in many ways if needed. Finland's Child Welfare Act obliges the authorities to take protective actions in cases when the child's welfare is at risk.

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

- We have 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 would 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, provided that the victim consents. The assessment should not cause unnecessary administrative burden for the Member States.
- We are in favor of removing the reference to victims' dependents from the article based on the reasons mentioned above.
- Based on the above, we consider that articles 18 and 19 could be combined.

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

- Article 20(5) has been formulated in a way that it would impose obligations mostly to the authorities that apply the legislation. We would welcome a redraft, where the provision would be written as specifically binding the legislator.
- We therefore propose the following reformulation of article 20(5): *The Member States shall provide for the (maximum) storage period of personal data necessary for the provision of support services, which in any event is no longer than 5 years from the last contact between the support service and the victim.*

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

- Under article 25(5), Member States shall ensure that the relevant content providers are informed, where appropriate by the hosting 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 of the possibility to have access to judicial redress.
- Under the article, it should also be possible for the competent authorities to inform the content providers on these matters. In practice, situations may vary as to which party is the most practical in communicating the decision. It could therefore be left to the Member States to decide which party to notify the order.

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

- We have had some difficulties in understanding the relationship between Article 27 and the subsequent articles related to other support services. In this context, we would like to propose, for example, the following clarification to the article:
  - *“Articles 28 to 33 contain provisions on other special support services”.*

**Article 37**

- From our point of view, article 37(3) is quite far reaching in providing an unconditional obligation to arrange training to all work places. Therefore, we would hope for more flexibility. Member States should only be encouraged to provide the training.

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