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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence - Proposal from the Presidency for a redraft of Articles 1-15

We continue the work on Chapters 1 and 2 and examine Articles 7-15 based on the redraft put forward before the COPEN meeting on January 13 th (see WK 17827/22). We will then come back to Articles 1-6 and examine a redraft made based on oral and written comments from Member States. We suggest recitals where Member States asked for further clarification.

At a later stage we will come back to all recitals.

To facilitate Member States' preparation, the relevant provisions are accompanied by brief description of the proposed improvements/changes. At the COPEN meeting we will of course explain these proposals in more detail.

Suggested changes are highlighted with strikethrough and underline, the explanations are included in boxes in relation to the relevant provisions. Additional changes made after the COPEN meeting on January 13 th in Articles 1-6 are made bold.

CHAPTER 1

GENERAL PROVISIONS

Article 1

Subject matter (Recitals 1–3, 9–10)

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

- (a) the definition of criminal offences and penalties in the areas of sexual exploitation ~~of women and children~~ and computer crime;
- (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.

Recital 10 bis) Some MS indicated a need to clarify “and for an appropriate time”. If such clarification is needed, we suggest adding a recital 10 bis, inspired by Recital 37 in the Victims Right’s Directive.

Recital 10 bis

The rights of victims should be available 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.

Article 2

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

Article 2: Text moved to Recitals 11 and 12. In the Recitals some amendments are proposed. Regarding nationality: prohibition of discrimination only applies to Union nationals. Regarding particular groups to be protected: suggestion to use wording to be more aligned with Article 4.3 Istanbul Convention. Instead of including the most relevant Articles (18, 27 and 37) in the recital we refer to them in text, since there should be no referens to other articles in a recital.

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

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

Recitals

*(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, pParticular attention ~~should thus be~~ is paid to these risks and to the need to protect the dignity and physical integrity of such victims.

~~Article 3~~

Scope (Recital 4)

Article 3: There are several directives without an article on scope (for example Victims Rights, European protection order, Trafficking, Child sexual abuse, Terrorism and Protection of the euro and other currencies). We maintain our suggestion to delete Article 3.

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

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

Article 4

Definitions (Recitals 4–8, 17–18)

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

Paragraph a) We suggest explaining both violence against women and the application in relation to the offences in this Directive, in Union law and in national law in this paragraph. This would be elaborated in a recital as well. It's important to make clear that Chapters 3-7 apply irrespective of the gender of the victim. We added sexual. Some MS thinks this Section is unclear. One possibility could be to move "irrespective of the gender of the victim" to a separate sentence which could, for example, read: "this notion shall be applied in Chapters 3 to 7 irrespective of the gender of the victim".

(a) "violence against women" means all forms of gender-based-violence, coercion or arbitrary deprivation of liberty, or threats thereof, that is directed against a woman or a girl because she is a woman or a girl or that affects women or girls disproportionately, including all acts of such violence that result in, or are likely to result in, harm, including physical, 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 ~~physical, sexual, psychological or economic harm or suffering, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;~~

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

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

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

Paragraph c) We suggest removing the text concerning child witnesses of domestic violence. The definition would mean applying all provisions in the Directive to child witnesses. That could be a bit far-reaching. Reference to child witnesses could, instead, be added directly to relevant articles. That approach is used in the Istanbul Convention (Articles 26 and 56).

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

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

Paragraph da) Some Member States asked for more clarity on “multitude of end-users”. We tried but MS then questioned the added value. We suggest deleting which leaves wide discretion to MS as to the definition of this notion.

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

(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;~~

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

Paragraph g) Some reference to national law seems necessary. Some MS asked to move this definition to relevant provisions. One possibility is to delete this definition and add “sexual harassment at work, when it constitutes a criminal offense under national law” to Articles 30, 36 (8) and 37 (3).

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

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

(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;~~

Paragraph j) It will be discussed in relation to each Article where dependants occur if MS wants dependants to be included and we will then see if this definition is needed. But in brackets for now.

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

CHAPTER 2

OFFENCES CONCERNING SEXUAL EXPLOITATION OF WOMEN AND CHILDREN AND COMPUTER CRIME

Article 5

[Rape (Recitals 13–15)]

Article 5 The article on rape and relating articles are put in brackets for now. We will come back to these Articles later.

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 (Recital 16)

Article 6) We suggest changing the recital to introduce some flexibility for MS and allow for a more general classification in national law.

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).

(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 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 practices undertaken for non-medical reasons. 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.

Article 7

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

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

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

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

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

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

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

Article 8

Cyber stalking (Recitals 17–18, 20)

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

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

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

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

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

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

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

Article 9

Cyber harassment (Recitals 17–18, 21)

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

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

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

Paragraph b) Change in line with Article 9 a.

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

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

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

Article 10

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

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

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

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

Article 11

Incitement, aiding and abetting, and attempt

Article 11: A minor change.

1. Member States shall ensure that inciting and aiding and abetting the commission of any of the criminal offences referred to in Articles [5] 6 to 910 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 (Recital 15)

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

1. Member States shall ensure that the criminal offences referred to in Articles [5] 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 ~~and at least 7 years of imprisonment in the most serious cases of Article 6 as defined in their national law if the offence was committed under aggravating circumstances referred to in Article 13.~~

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

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

Article 13

Aggravating circumstances

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

In so far as the following circumstances do not already form part of the constituent elements of the criminal offences referred to in Articles ~~5~~ 6 to 10, Member States shall ensure that they may be regarded as aggravating circumstances in relation to those offences, where relevant:

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

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

Article 14

Jurisdiction

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

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 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

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

1. Member States shall take the necessary measures to provide for a limitation period that enables the investigation, prosecution, trial and judicial decision ~~of concerning~~ criminal offences referred to in Articles ~~[5]~~ 6 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 Article[s 5 and] 6 shall commence at the earliest once the victim has reached 18 years of age.

or

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