



European Network of Migrant Women

AMENDMENTS PROPOSALS

on the proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence

Date: 5 June 2022

CONTENTS

PROPOSED AMENDMENTS TO THE ARTICLES OF THE DIRECTIVE	2
PROPOSED AMENDMENTS TO THE RECITALS OF THE DIRECTIVE.....	42
EXPLANATORY STATEMENT	45

PROPOSED AMENDMENTS TO THE ARTICLES OF THE DIRECTIVE

CHAPTER 1 - GENERAL PROVISIONS

p.34 - Article 1 (Subject matter)

Text proposed by the Commission:

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 after criminal proceedings;
- (c) victims' protection and victims' support

Proposed amendments:

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 after criminal **and civil** proceedings;
- (c) victims' protection and victims' support

(d) prevention of violence against women and domestic violence

Justifications:

- Prevention is important part of effectively tackling violence against women and girls which is a pervasive and widespread phenomena deeply rooted in mentalities and cultures, as was stated in a statement issued on Friday 25/11/2022 by 11 United Nation Agencies.
 - Some areas related to violence against women and domestic violence (violence in the workplace, custody of children) are not necessarily dealt with through criminal proceedings. Therefore, it is relevant that the scope of this Directive extends to civil proceedings as well.
-

p.34 - Article 4 (Definitions) (g)

Text proposed by the Commission:

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

- (a) “violence against women” means gender-based violence 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, 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;
- (b) “domestic violence” means all acts of violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering, 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;
- (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, including child witnesses of such violence;
- (d) “cyber violence” means any act of violence covered by this Directive that is committed, assisted or aggravated in part or fully by the use of information and communication technologies;
- (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 2 point (f) of Regulation (EU) YYYY/XXX of the European Parliament and of the Council [Regulation on a Single Market for Digital Services];
- (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;

- (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;
- (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.

Proposed amendments:

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

- (a) “violence against women” means **gender-based all acts of violence 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, 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; **It constitutes an intrinsic part of sex-based discrimination as defined in Art 1 of the Convention on Elimination of all forms of Discrimination Against Women (CEDAW)**
- (b) “domestic violence” means all acts of violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering, 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. **The majority of such violent acts are carried out by men in their immediate social environment, most often by partners and ex-partners, and affect women disproportionately. ;**
- (b’) “femicide” means **intentional murder of women because they are women;**
- (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, including child witnesses of such violence;
- (d) “cyber violence” means any act of violence covered by this

Directive that is committed, assisted or aggravated in part or fully by the use of information and communication technologies;

- (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 2 point (f) of Regulation (EU) YYYY/XXX of the European Parliament and of the Council [Regulation on a Single Market for Digital Services];
- (g) “sexual harassment at work” means any form of unwanted verbal, non-verbal or physical conduct **or practice** of a sexual nature, where it occurs in the course of, linked with, or arising in matters of employment, occupation and self-employment, **including informal and undocumented work, such as domestic and care work**, with the purpose or effect of violating the dignity of the victim, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment. **Sexual harassment may include instances where, without being directly targeted, the victim is subjected to provocations and obscene or vulgar pictures or behaviors which become unbearable;**
- (h) “child” means any person below the age of 18 years;
- (i) **“woman” means a person of female sex, including girls under 18 years old.**
- (j) “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.
- (k) “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.
- (l) **“sexual exploitation” means abuse of someone's position of vulnerability, dependence, differential power or trust, to obtain sexual acts, including by offering money or other material, social, economic or political advantages. It includes the exploitation of the prostitution of others and forced marriage; child marriage is considered as forced marriage.**
- (m) **“reproductive exploitation” means abuse of someone's position of vulnerability, dependence, differential power or trust, to dictate their reproductive behavior. It shall include, as a minimum, forced**

abortion, forced pregnancy, surrogacy, ovocytes sales.

(n) “forced marriage” means forcing, coercing or luring an adult to enter into a marriage. Child marriages and “arranged marriages” constitute forced marriage.

Justifications:

- There are important **differences between male violence against women and female violence against men**, namely the amount, severity and impact. Women experience higher rates of repeated victimisation and are much more likely to be seriously hurt (Walby & Towers, 2017; Walby & Allen, 2004) or killed than male victims of domestic abuse (ONS, 2020A; ONS, 2020B). Further to that, women are more likely to experience higher levels of fear and are more likely to be subjected to coercive and controlling behaviours (Dobash & Dobash, 2004; Hester, 2013; Myhill, 2015; Myhill, 2017). Domestic abuse perpetrated by men against women is rooted in women’s unequal status in society and is part of the wider social problem of male violence against women and girls.
- **Femicide** differs from male homicide in specific ways. For example, most cases of femicide are committed by partners or ex-partners, and involve ongoing abuse in the home, threats or intimidation, sexual violence or situations where women have less power or fewer resources than their partner. Preliminary findings of an ongoing study by WHO and the London School of Hygiene and Tropical Medicine show that more than 35% of all murders of women globally are reported to be 2 committed by an intimate partner. It is crucial to define this serious and widespread nature of this form of violence against women to properly include it in the scope of this Directive.
- **Clear definitions and use of terms sex and gender:** The directive should not use the terms sex and gender interchangeably (“sex or gender”). The two terms are different linguistically, in feminist thought and in jurisprudence. The United Nations’ Committee on the Elimination of Discrimination against Women defines the term sex as follows: “*The term “sex” here refers to biological differences between men and women.*” (General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of CEDAW). Both in national, EU and international jurisprudence ‘sex’ is understood as a biological category that distinguishes women (females) and men (males). “Gender”, on the other hand, has no coherent definition in the EU law or policy. It is a linguistic term that acquired conflicting meanings in theory, law and policy. The CEDAW committee General Recommendation aforementioned provides a definition of “gender”¹. The only European (Council of Europe) instrument that defines ‘gender’ is the Istanbul Convention². However, several European Union instruments already conflate

¹ “*Socially constructed identities, attributes and roles for women and men and society’s social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men and disadvantaging women*”. (CEDAW, GR 28)

² “gender” shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men (Istanbul convention, Art 3 c)

gender and sex (e.g. recently adopted by the European Parliament Directive on Women on Boards refers to “persons of each gender”). This conflation is harmful as it undermines the feminist definition of gender enshrined in the Istanbul convention that addresses violence against women from the perspective of unequal and gendered power relations between the women and men. Naturalising gender, and treating it in law as a category interchangeable with sex, leads to the normalisation of stereotypes, harmful practices and men’s violence against women. As such it must be avoided. Furthermore, the term gender does not exist in non-romanic/germanic languages, and when legal instruments are translated, gender is often translated as sex (e.g. the Finnish translation of the Istanbul convention of Art 3). In those languages where the term exists (e.g. Spanish, French) it is generally understood as the socially constructed stereotypes that a progressive society must strive to abolish as they amount to inequalities between women and men. Using gender interchangeably with sex undermines this important feminist work, leading to an increase in violence against women.

- **Sexual Harassment of women in undocumented situations/without employment contracts:** migrant women in irregular situations or with undocumented status or without an employment contract face exacerbated *de jure* and *de facto* discrimination and violence, including in the workplace.³ Undocumented migrant women are often employed in individualized or isolated work environments such as the domestic and care sectors where there are fewer opportunities for worker solidarity and visibility. As pointed out in the Fundamental Rights Agency’s thematic paper *Out of Sight: Migrant Women Exploited in Domestic Work*, the types of discrimination against female domestic workers, overwhelming majority of whom are migrants (European Union and Third Country Nationals), concern their remuneration, working hours, violations of health and safety, humiliating and degrading treatment, as well “*the most severe forms of labour exploitation, equalling slavery, servitude and forced labour.*” The directive must ensure that undocumented women and women employed without a contract are covered by the scope of the directive, and definition of ‘sexual harassment at work’ should apply to their situations so they can effectively be properly protected.
- **Behaviour with sexual connotations** must be criminalised not only with regard to its purpose, i.e. the objective pursued by the perpetrator, but also with regard to its effects, i.e. the violation of dignity or the creation of a hostile and offensive working environment.
- **Sexual exploitation:** The Directive proposal by the European Commission includes the crime of “*sexual exploitation*” however depriving it of its core definition “*the exploitation of prostitution of others*” as established in EU and International law⁴. In both EU (Anti-trafficking Directive - 2011/36/EU) and international law (Palermo Protocol), the “*exploitation of prostitution of others*” is considered to be a “*form of sexual exploitation*”. Under international human rights law, the scope of

³ Please refer to report of June 2022, “Undocumented Migrant Women in Europe: A Neglected Chapter in Fundamental Rights Protection” (ENOMW & Trust Law of Thomson Reuters Foundation)

(<https://www.migrantwomennetwork.org/2022/06/23/new-report-undocumented-migrant-women-a-neglected-chapter-in-fundamental-rights-protection/>)

⁴ Please refer to the policy brief of November 2022 on Sex Trafficking and Prostitution:

<https://usercontent.one/wp/www.migrantwomennetwork.org/wp-content/uploads/COALESCE-POLICY-BRIEF-2-1.pdf>

States' obligations to suppress all forms of "exploitation of the prostitution of others" is defined in the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. The latter prohibits the exploitation of prostitution in all its forms and enshrines the criminalisation of any person who makes a profit from, or facilitates, the prostitution of another person, even with the consent of that person. In addition, article 6 of the CEDAW Convention (ratified by all 27 members of the EU) expressly calls on States to eliminate "all forms of traffic in women and exploitation of prostitution of women". In EU law, the Directive 2011/93/EU on "combating the sexual abuse and sexual exploitation of children and child pornography", recognises that « *sexual exploitation* » includes "recruiting", "profiting from" or "otherwise exploiting" the prostitution or pornography of another person (in this context, a child) is a form of sexual exploitation. The European Parliament further recognises in its resolution of 26th of February 2014 A7-0071/2014 "on sexual exploitation and prostitution and its impact on gender equality" that the term "sexual exploitation" includes above all prostitution and its exploitation.

- **Reproductive exploitation:** Reproductive exploitation is an extremely lucrative and one of the fastest growing forms of violence against women globally. It affects the most disenfranchised and powerless women.⁵ In order to become a truly comprehensive EU legal instrument that leaves no woman or girl behind, the violence inflicted upon women through reproductive exploitation must be included in the new Directive. Reproductive exploitation is a fast growing global multi-million industry and a form of violence against women. To satisfy someone else's parental wishes, women are subjected to physical, economic, medical and psychological violence which has been widely documented. Women's reproductive capacity should only serve their own parental projects, not that of others, which is exploitative. In surrogacy, the mothers exploited as "surrogates" relinquish all their rights throughout the process. Worldwide, the contract and/or regulation governing this practice disposes of human beings, both the mothers exploited as surrogates and the future child (making use of them depriving them of their freedoms and rights). In Europe, most countries aware of this violation of the fundamental human rights enshrined in the EU Charter, have outlawed this practice on their territory. However, these provisions are systematically undermined by the development of cross-border surrogacy.

CHAPTER 2 - OFFENCES CONCERNING SEXUAL EXPLOITATION OF WOMEN AND CHILDREN AND COMPUTER CRIME

p.36 - Article 5 (Rape)

Text proposed by the Commission:

1. Member States shall ensure that the following intentional conduct

⁵ Please refer to the October 2022 report-study "Migrant Women and Reproductive Exploitation in the Surrogacy Industry", by ENOMW and ICASM (<https://www.migrantwomennetwork.org/2022/10/21/migrant-women-and-reproductive-exploitation-in-the-surrogacy-industry-joint-investigation-by-enomw-and-icasm/>)

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 nonresistance or past sexual conduct.

Proposed amendments:

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. **Consent is not considered to have been given if the crime is committed by violence, coercion, deceit, threats or surprise.**
3. **Member States shall ensure that rape committed by a spouse or ex-spouse or by a former or current partner with whom the victim is or has been living in a partnership recognised by the national law, or causing a spouse or ex-spouse or a former or current partner to engage in non-consensual acts of a sexual nature with a third**

person shall be considered an aggravating circumstance be considered in the determination of the sentence.

4. 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 nonresistance or past sexual conduct. **Consent shall be informed and specific.**

Justification:

- Specifying the definition of 'voluntarily given consent' by highlighting the various forms in which consent can be extorted from a victim makes the definition of rape more precise and protective.
- According to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the intimacy and trust connected with the relationship makes rape between such current or former intimate partners an aggravating circumstance that must be considered in the determination of the sentence.
- As we are witnessing a normalization of practices such as "stealthing" (non-consensual condom removal or purposeful damaging of a condom), BDSM, strangulation during sex, etc. that expose victims to potential sexually transmitted infections (STIs) such as HIV/AIDS, unwanted pregnancies or physical harm, it is instrumental to guarantee that consent shall be informed and specific (consenting to a sexual intercourse does not mean consenting to any sexual practice).

p.37 - Article 7 (Non-consensual sharing of intimate or manipulated material)

Text proposed by the Commission:

Article 8 - Non-consensual sharing of intimate or manipulated material

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

- (a) making intimate images, or videos or other material depicting sexual activities, of another person without that person's consent accessible to a multitude of end-users by means of information and communication technologies;
- (b) producing or manipulating 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;
- (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.

Proposed amendments:

Article 7 - ~~Non-consensual sharing of intimate or manipulated material~~ **Image-based sexual abuse**

1. Member States shall ensure that the following intentional conduct is punishable as a criminal offence:
 - (a) **the taking of intimate images, or videos, or other material depicting sexual activities or nudity of another person without that person's consent;**
 - (b) making intimate images, or videos or other material depicting sexual activities **or nudity**, of another person without that person's consent accessible to ~~a multitude of~~ end-users by means of information and communication technologies, **including through resharing;**
 - (c) producing or manipulating 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, **or as though another person is nude**, without that person's consent;
 - (d) threatening to engage in the conduct referred to in points (a), (b) and (c) ~~in order to coerce another person to do, acquiesce or refrain from a certain act.~~
2. **Member States shall ensure that online platforms, including social media and pornographic platforms exercise effective verification methods to avoid the publication of material referred to in points (a) (b) and (c).**
3. **As referred to in article 5(2), consent shall be given voluntarily. Consent is not considered to have been given voluntarily if it was obtained but violence, coercion, deceit, threats or surprise or in cases 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.**

Justification:

- The term 'image-based sexual abuse' refers to all forms of the non-consensual creating, taking or sharing of intimate images or videos, including altered or manipulated media, and threats to

distribute such material. It is an 'umbrella' term capturing a range of interrelated forms of abuse, and not therefore limited to the non-consensual distribution of intimate materials.

- The taking of intimate images without consent is experienced as a fundamental violation of privacy and sexual autonomy and should be proscribed by the criminal law as such.
- Article 7(b) only applies to material manipulated so that the person appears to be 'engaged in sexual activities'. What might constitute 'sexual activities' is likely to vary considerably and give rise to definitional confusion. It is unclear whether this provision will apply to nudity per se, as not all nudity is sexual. The current definition is also likely to exclude material produced through 'nudification' apps and subsequently distributed without consent.
- The condition to make the material 'accessible to a multitude of end-users' is excessive in view of the proposal's legal basis being its status as a computer crime, thereby already recognised as having a serious, cross-border dimension and being likely to reach a broad audience. The current phrasing is likely to lead to interpretation that will exclude many harmful experiences, such as the material being shared with a limited number of closed ones, family members, employers, colleagues and so on.
- The limitation of this provision to only cases where it can be proven the threat was designed to coerce the individual into specific acts or omissions should be removed. A threat to distribute such material, without consent, is harmful, regardless of the motives. The focus should be on the harm to victims, not the specific motives of perpetrators.
- On 4 December 2020, an investigation published by the New York Times reported that videos posted on Pornhub showed victims, sometimes minors, being raped in the context of pornographic shoots and that the videos were distributed without the consent of the women concerned. The Pornhub site then announced the removal of videos posted by users who had not gone through the site's "verification" process, amounting to several million pieces of content, which showed how lacking this verification actually is. In France, around 100 victims in two trials against pornographic platforms 'Jacquie et Michel' and 'French Bukake' testify that they were raped during pornographic shoots and that they did not consent to the videos being posted. Even while the investigation is undergoing, it is almost impossible to delete the videos from the Internet, amounting to catastrophic consequences for the victims (social ostracization, sexual harassment and violence, post-traumatic stress disorder, anxiety, depression, etc.). In other cases, such as the one of Nicole Fox (Ireland), 21 years old woman who committed suicide after years of harassment following the posting and sharing of her intimate pictures, contents of 'revenge porn' are disseminated on social media platforms to such an extent that it becomes impossible to have the videos removed from the Internet. The need to ensure that online platforms, including social media and

pornographic platforms, exercise effective verification methods is crucial to protect women and girls rights to dignity and private life.

p.36-37 - Article 10 (Cyber incitement to violence or hatred)

Text proposed by the Commission:

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 disseminating to the public material containing such incitement by means of information and communication technologies is punishable as a criminal offence.

Proposed amendments:

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** is punishable as a criminal offence.

- (a) by disseminating to the public material containing such incitement by means of information and communication technologies
- (b) by engaging in public communication intended to insult or harm a woman, including sexist and lesbophobic insults and threat of rape or other sexual violence and physical violence by means of information and communication technologies**

Justification:

According to the International Association of Women in Radio and Television (IAWRT) and the Gender Mainstreaming Project (2018), attacks on women, online abuse and harassment on social media have intensified over the years, while journalists and public figures have been particularly exposed to this type of violence. Harassment on social media constitutes an everyday, routine occurrence, with researchers finding 9,764,583 messages referencing bullying on Twitter over the span of two years (Bellmore et al. 2015). In other words, Twitter users post over 13,000 bullying-related messages on a daily basis. Repeated research documents that bullying victims suffer from a host of deleterious outcomes, such as low self-esteem (Hinduja and Patchin 2010), emotional and psychological distress (Ybarra et al. 2006), and negative emotions (Faris and Felmlee 2014; Juvonen and Gross 2008). Compared to those who have not been attacked, victims also tend to report more incidents of suicide ideation and attempted suicide (Hinduja and Patchin 2010). Several

studies document that the targets of cyberbullying are disproportionately women (Backe et al. 2018; Felmlee and Faris 2016; Hinduja and Patchin 2010; Pew Research Center 2017). Online aggression toward women aims to reinforce traditional feminine norms and stereotypes. It includes sexist insults such as “bitch,” “cunt,” “slut,” or “whore”. The use of “replies,” “retweets,” and “likes” can further victimize a target.

p.38 - Proposal of articles to be added on sexual and reproductive exploitation of women (following art.10)

Art. A - Pimping, procuring and running a brothel

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

- (a) Procuring, hiring, or enticing another person for the purpose of prostitution or pornography;
- (b) Obtaining any profit from the prostitution of another person, or the exploitation of another person in pornography;
- (c) Helping, assisting, or protecting the prostitution of another person, or the exploitation of another person in pornography;
- (d) Maintaining, monitoring, running, financing, or managing a brothel or any place suspected of accommodating prostitution;
- (e) Knowingly letting or renting a building or other place or any part thereof for the purpose of the prostitution of others.
- (f) Using digital, information and communication technologies to facilitate the sexual exploitation of another person in prostitution or pornography.

In addition, the following actions will be understood as pimping and procuring; and be met with the same punishment:

- (g) Attempts to commit the above-mentioned acts or offenses;
- (h) Acting as an intermediary or accomplice to the above-mentioned acts;
- (i) Disseminating advertisements that promote prostitution.

Justification:

The Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence should be harmonized with Article 6 of the Convention on the Elimination of Discrimination against Women (CEDAW) and General Recommendations N12, N35, N38, and with Directive 2011/26/EU on preventing and combatting trafficking in human beings and protecting its victims.

Art. B - Purchase of sexual acts

Member States shall take the necessary measures to ensure that the intentional soliciting, accepting or obtaining relations of a sexual nature from a person, including on an occasional basis, in exchange for remuneration, a promise of remuneration, the provision of benefits in kind or the promise of such benefits is punishable.

Justification:

Several hundreds of thousands of women and children are trafficked within, and to, the EU for one reason: meeting the male demand for paid sexual acts and generating huge profits for brothel owners, pimps and traffickers. According to the ILO, trafficking in human beings generates 150 billion USDs of profit every year. 66% of these profits are made in one criminally controlled activity, the sex trade. The international and EU anti-trafficking frameworks recognise that the exploitation of prostitution is one of the main “purposes” and “destinations” of the trafficking crime and urges States to adopt or strengthen measure, including legislative, to *“discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking”*.

The European Parliament and the Parliamentary Assembly of the Council of Europe have already recognised that the criminalisation of the purchase, not the selling, of sex is a *“way of combating the trafficking of women and under-age females for sexual exploitation and improving gender equality”*.

Art D - Forced marriage

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

- (a) forcing, coercing or luring an adult or a child to enter into a marriage
- (b) arranging, or facilitating an arrangement of, a marriage for an adult by using position of power and/or vulnerability and/or without her informed consent and/or for an exchange of material or other compensation or false promises
- (c) luring an adult or a child to the territory of a Member State or State other than the one she or he resides in with the purpose of forcing this adult or child to enter into a marriage

In addition, Member States shall take the necessary legislative or other measures to ensure that:

(d) victims of forced marriage brought into another country for the purpose of the marriage and who, as a result, have lost their residence status in the country where they habitually reside, may regain this status.

(e) marriages concluded under force may be voidable, annulled or dissolved without undue financial or administrative burden placed on the victim.

Justification:

In 2021, the European Parliament recognized forced marriage as a form of sexual exploitation, along with prostitution and pornography. The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) obliges to criminalise the intentional conduct of forcing a person to enter into a marriage but so far only seven EU Member States have introduced a specific forced marriage crime. According to Article 8 of the Treaty on the Functioning of the European Union (TFEU), the Union “*aims to eliminate inequalities and promote equality between women and men in all its activities*”. Declaration No. 19 on Article 8 of the TFEU annexed to the final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon states that “*in its general efforts to eliminate inequalities between women and men, the Union will aim in its different policies to combat all kinds of domestic violence. The EU Member States should take all necessary measures to prevent and punish these criminal acts and to support and protect the victims*”. The Victims’ Directive (2012/29/EU) obliges EU Member States to ensure that victims of crime receive appropriate information and support. It notes that forced marriage is a form of gender-based violence and that victims require special support and protection because of the high risk of secondary and repeat victimization, of intimidation and of retaliation connected with such violence. The Family Reunification Directive (2003/86/EC) which regulates the right of third-country nationals residing in an EU Member State to bring their family members, contains specific measures to prevent forced marriage.

Art E - Reproductive exploitation

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

- (a) performing an abortion on a woman without her prior and informed consent;
- (b) performing surgery which has the purpose or effect of terminating a woman’s capacity to naturally reproduce without her prior and informed consent or understanding of the procedure.
- (c) recruiting a woman to gestate and give birth to one or more children, whether they are conceived with her own oocytes or not, in exchange for payment, and through a contract, to give the child or children away, thus renouncing parental rights, to one or more people (called commissioners, clients or buyers) designated as the parents of the child or children.

Justification:

- Forced sterilisation of persons with disabilities is a pervasive abuse and a gross violation of their fundamental rights. Nevertheless, it is ongoing and widespread across Europe and worldwide (Report on forced sterilisation in the EU – 2022, European Disability Forum)
 - The European Parliament has condemned surrogacy in multiple occasions:
 - In 2015, as a violation of human dignity;
 - In 2017, in the context of trafficking in human beings, as a source of human rights violations;
 - In 2021, from a commercial point of view and at the global level, because of the risks of exploitation and trafficking in human beings, its impact on the health of surrogate mothers and the disruption of equality between men and women;
 - In 2021, as sexual exploitation, along with forced marriages, prostitution and pornography;
 - In 2022, the European Parliament reiterated all its condemnations in the context of the war in Ukraine.
 - The European Parliament qualified surrogacy as sexual exploitation for reproductive purposes and therefore unacceptable as a violation of human dignity and rights which particularly affects the poorest and/or most vulnerable women. The EP called on the European Union (EU) and the Member States to investigate "the dimensions of this industry" as well as the economic situation of women and the consequences on their physical and mental health.
-

p.38 - Article 13 (Aggravating circumstances)

Text proposed by the Commission:

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 to 10, Member States shall ensure that they may be regarded as aggravating circumstances in relation to those offences:

- (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;

...

Proposed amendments:

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 to 10, Member States shall ensure that they may be regarded as aggravating circumstances in relation to those offences:

- (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~~ **woman or girl** 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, **or made vulnerable by undocumented and refugee status, including women and girls seeking asylum, or under international or temporary protection;**

...

Justification:

Undocumented, refugee, asylum seeking and migrant women and girls are particularly vulnerable to violence against women (Undocumented Migrant Women: A Neglected Chapter in Fundamental Rights Protection, European Network of Migrant Women, 2022). The Council of Europe also emphasizes the vulnerability of this target group to situations of violence and exploitation in its Recommendation on Protecting rights of migrant, refugee and asylum-seeking women and girls (2022).

CHAPTER 3 PROTECTION OF VICTIMS AND ACCESS TO JUSTICE
p.39-40 - Article 16 (Reporting of violence against women or domestic violence)

Text proposed by the Commission:

1. In addition to the rights of victims when making a complaint under Article 5 of Directive 2012/29/EU, Member States shall ensure that victims can report criminal offences of violence against women or domestic violence to the competent authorities in an easy and accessible manner. This shall include the possibility of reporting criminal offences online or through other information and communication technologies, including the possibility to submit evidence, in particular concerning reporting of criminal offences 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 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.

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

Proposed amendments:

1. In addition to the rights of victims when making a complaint under Article 5 of Directive 2012/29/EU, Member States shall ensure that victims can report criminal offences of violence against women or domestic violence to the competent authorities in an easy and accessible manner. This shall include:

- (a) the possibility of reporting criminal offences online or through other information and communication technologies, including the possibility to submit evidence, in particular concerning reporting of criminal offences of cyber violence.
- (b) **training of all law-enforcement personnel on sexism, cybersexism, sexist hate speech and violence against women in order to facilitate the reporting to police of such behaviour and avoid ill-treatment of the victims.**
- (c) **the possibility for victims to be reimbursed for costs incurred as a result of their active participation in the criminal proceedings. The conditions or procedural rules under which the victim may obtain reimbursement shall be determined by national law**

2. **Member States shall ensure that reported offences of violence against women or domestic violence are processed and transferred without delay to the competent authorities for prosecution and investigation. Specific sanctions should be applied to law-enforcement officials refusing to file complaints in cases of violence against women and domestic abuse.**

Justification:

- Sexist and misogynistic prejudices and stereotypes persist in the judiciary and the police and hinder trust in women, particularly with regard to allegedly false allegations. Therefore, ensuring that law-enforcement personnel have mandatory access to gender-sensitive training is instrumental in protecting women and girls access to justice. This need is also highlighted by the Council of Europe in its Recommendation on Preventing and combating sexism (2019).
- It is recognised that one of the main obstacles to the participation of women victims of violence in criminal proceedings is financial. Criminal proceedings can

imply many costs (going to judicial appointments, hearings, psychological expertise, confrontation). In order to ensure everyone's access to justice, these expenses should be reimbursed in a timely and effective manner.

- Victims of domestic abuse and violence against women and girls often report that law-enforcement personnels have refused to take their complaint, contrary to national law provisions. In addition to training, and the dissemination of specific guidelines, this problem should be tackled through the implementation of sanctions for those refusing to take the complaints and thus not respecting the law.

p.40 - Article 17 (Investigation and prosecution)

Text proposed by the Commission:

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

Proposed amendments:

1. Member States shall ensure that
 - (a) persons, units or services investigating and prosecuting violence against women or domestic violence have sufficient expertise and effective investigative tools to effectively investigate and prosecute such crimes, especially to gather, analyse and secure electronic evidence in cases of cyber violence **and enhance police powers to seize and secure evidence of online abuse, with due regards for the independence of the judiciary.**
 - (b) **in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of this Directive, culture, custom, religion, tradition or so-called “**
 - (c) **” shall not be regarded as justification for such acts, neither shall be the victim's past sexual conduct.**
 - (d) **Member States shall ensure that the offences established in accordance with this Directive are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness including, when necessary, monitoring or supervision of convicted persons and withdrawal of parental rights, if the best interests of the child, which may include safety of the victim, cannot be guaranteed in any other way.**
 - (e) **Member States shall ensure that restorative justice is not encouraged in cases of domestic violence.**

Justification:

- The digital space remains an area where violence against women and girls, although very widespread, goes largely unpunished. One of the causes is the difficulty to secure evidence of online abuse. Giving proper authority and means for the police to obtain and exploit such evidence is a key aspect of tackling online violence against women and girls.
- Custom, religion, stereotypes are at the basis of the system that justifies and condones violence against women and girls. Too often, in criminal proceedings, the defense uses arguments engrained on a patriarchal vision of gender roles to attack the victim and win the case. This practice needs to be tackled in order to protect victims of violence against women and girls and protect women's right to justice. In its General Recommendation No. 33 of 2015 on women's access to justice, the Committee on the Elimination of Discrimination Against Women recognised that stereotypes and gender prejudices in the judicial system impede access to justice and may particularly affect women, victims and survivors of violence. The Committee further recognized that such stereotyping could cause judges to misrepresent or misapply the law and can result in perpetrators of violence not being held legally accountable for violations of women's rights, thereby upholding a culture of impunity.
- The Council of Europe, in its recommendation on Preventing and combating sexism highlight that effective, proportionate and dissuasive sanctions are needed to meaningfully tackle violence against women and girls. Withdrawal of parental rights can be needed to protect the victim as well as the children.
- Domestic violence represents serious risk to the victims of such offences and is often subject to a complex and protracted investigation. As such there will be little opportunity for the use of restorative justice in the vast majority of such offences. Restorative justice could be potentially harmful for victims of domestic abuse and, in some cases, be another way for perpetrators to continue their control and abuse.

p.43 - Article 21 (Emergency barring, restraining and protection orders)

Text proposed by the Commission:

1. Member States shall ensure that, in situations of immediate danger for the victim's or their dependant's health or safety, the competent authorities issue orders addressed at an offender or suspect of violence covered by this Directive to vacate the residence of the victim or their dependants for a sufficient period of time and to prohibit the offender or suspect from entering the residence or to enter the victim's workplace or contacting the victim or their dependants in any way. Such orders shall have immediate effect and not be dependent on

a victim reporting the criminal offence.

2. Member States shall ensure that the competent authorities can issue restraining or protection orders to provide long-term protection 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 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.

Proposed amendments:

1. Member States shall ensure that, in situations of immediate danger for the victim's or their dependant's health or safety, the competent authorities issue orders addressed at an offender or suspect of violence covered by this Directive to vacate the residence of the victim or their dependants for a sufficient period of time and to prohibit the offender or suspect from entering the residence or to enter the victim's workplace or contacting the victim or their dependants in any way. Such orders shall have immediate effect and not be dependent on a victim reporting the criminal offence.
2. Member States shall ensure that the competent authorities can issue restraining or protection orders to provide long-term protection 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 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. Member States shall ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this Directive are taken into account.

6. Member States shall ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of the victim or override a protection order.

6. 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.

Justification:

Globally, 1 in 3 women has experienced violence in their lives – most of it taking place within the home or family. However, not enough attention is given to the interconnections between domestic violence and abuse and issues of child custody and parental relations. In 2019, the Platform of independent expert mechanisms on the elimination of discrimination and violence against women voiced its concern over patterns across various jurisdictions of the world that ignore intimate partner violence against women in determining child custody cases. Since then, the OHCHR Special Rapporteur on violence against women and girls has received reports and cases from different countries all over the world, in which such violence has been ignored and mothers have been penalized for making allegations by law enforcement and the judiciary responsible for determining custody cases. In order to prevent revictimization of the victim and the child, it is crucial that domestic violence is considered in custody cases.

p.43-44 - Article 25 (Measures to remove certain online material)

Text proposed by the Commission:

1. Member States shall take the necessary measures to ensure the prompt removal of material referred to in Article 7, points (a) and (b), Article 8, point (c), and Articles 9 and 10. Those measures shall include the possibility for their competent judicial authorities to issue, upon application by the victim, binding legal orders to remove or disable access to such material addressed to relevant providers of intermediary services.

Proposed amendments:

1. Member States shall take the necessary measures to ensure the prompt removal of material referred to in Article 7, points (a) (b) **and (c)**, 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, **in an effective and timely manner. These orders must be easily accessible by all victims.**

Justification:

In cases of image-based sexual abuse, the existence of the non-consensually shared material online creates a risk for the victim: social ostracisation, psychological, physical and sexual assault, anxiety, PTSD, etc. Timely, accessible and effective pathways to enable victims to take away the content from the Internet, therefore exercising their right of erasure and right to private life, is indispensable to allow them to supersede the violence they experienced. However, in many occurrences, these pathways do not exist. In France, in two ongoing legal proceedings (case against Jacquie and Michel platform and 'French Bukkake cases') around 70 victims of sexual violence whose videos were posted on pornographic websites struggle to have them taken away the Internet, even though the investigation is ongoing and 12 producers and actors have been put in preventive detention, according to Osez le féminisme! French organization of general interest, civil party in the two proceedings.

CHAPTER 4 - VICTIM SUPPORT
p.46 - Article 27 (Specialist support to victims)

Text proposed by the Commission:

1. Member States shall ensure that specialist support services referred to in Article 9(3) of Directive 2012/29/EU are available for victims of acts of violence covered by this Directive. The specialist support services shall provide:
 - (a) advice and information on any relevant legal or practical matters arising as a result of the crime, including on access to housing, education, training and assistance to remain in or find employment;
 - (b) referrals to medical forensic examinations;
 - (c) support to victims of cyber violence, including advice on judicial remedies and remedies to remove online content related to the crime.

2. Specialist support referred to in paragraph 1 shall be offered in-person and shall be easily accessible, including online or through other adequate means, such as information and communication technologies, tailored to the needs of victims of violence against women and domestic violence.
3. Member States shall ensure sufficient human and financial resources to provide the services referred to in paragraph 1, especially those referred to in point (c) of that paragraph, including where such services are provided by non-governmental organisations.

....

Proposed amendments:

1. Member States shall ensure that specialist support services referred to in Article 9(3) of Directive 2012/29/EU are available for victims of acts of violence covered by this Directive. The specialist support services shall provide:
 - (d) **trauma-informed** advice and information on any relevant legal or practical matters arising as a result of the crime, including on access to housing, education, training and assistance to remain in or find employment;
 - (e) referrals to medical forensic examinations;
 - (f) **trauma-informed** support to victims of cyber violence, including advice on judicial remedies and remedies to remove online content related to the crime.
 - (g) exit programs and access to a documented status for victims of sexual exploitation in prostitution.**
2. Specialist support referred to in paragraph 1 shall be offered in-person, **by a person of the same sex when requested or appropriate**, and shall be easily accessible, including online or through other adequate means, such as information and communication technologies, tailored to the needs of victims of violence against women and domestic violence.
3. **Specialist support referred to in paragraph 1 shall be available to victims regardless of their nationality, citizenship, place of residence, or residence status.**

When needed, interpretation shall be provided.

4. Member States shall ensure sufficient human and financial resources to provide the services referred to in paragraph 1, especially those referred to in point (c) of that paragraph, including where such services are provided by non-governmental organisations.

....

Justification:

- Trauma-informed care recognizes how trauma affects the brain. Hyperactivity in the lower areas of the brain, the amygdala and hippocampus, overrides the prefrontal cortex, which is in charge of rational choices and modulating emotional responses. This keeps a person in survival mode. Traumatic memories can also be made inaccessible by the brain through a protection mechanism. Post-Traumatic Stress Disorder (PTSD) is a specific set of symptoms that some trauma survivors develop. According to the National Institute for Mental Health, people with PTSD relive the traumatic event, avoid situations that remind them of the past, and have negative thoughts about themselves or the world. They also experience hyper-arousal (being anxious and on the lookout for danger, having trouble sleeping, or getting angry or irritable). Trauma-informed care takes into account the physical and mental effects of trauma. Through this holistic approach, it offers survivors of violence a chance to rebuild themselves while mitigating risks of re-traumatization that can occur with artificially imposed requirements for receiving services. Awareness of the effects of trauma, safety and empowerment for survivors and inclusiveness are at the basis of the trauma-informed approach that is needed to properly support victims of violence against women and girls.
- The needs of women seeking to exit prostitution can be complex and varied. The main reasons given as barriers to women exiting prostitution, as told by support services, are financial reasons and a lack of choice, with poverty being the main driver. The lack of alternatives can make the cycle for women particularly difficult to break. Acknowledging the complex journeys women face when exiting prostitution, including the possibility of returning to prostitution at times of financial hardship or relapses into drug dependency, evidence of success offered by civil society organizations across Europe (including by members of the European Network of Migrant Women, the European Women's Lobby and CAP International) as well as survivors-led networks such as SPACE International, include giving women the opportunities to make informed choices, improvements in safety, quality of life more generally, and to increase options available, enabling them to eventually move out of prostitution. As a result, exit programs including support to find accommodation and employment, to access health and legal status and support networks are key in enabling all women and girls to make actual free decisions about exiting prostitution.
- GREVIO monitoring shows that a recurrent problem is the limited access to support services for migrant women without a residence permit. In Denmark and in

Sweden, for example, the support available to these women is extremely limited as they cannot access any of the general social services or specialised support services such as shelters. In some countries, victims are required to “regularise” their stay in order to access a shelter. Likewise, asylum seeking women also often do not have access to specialised services for victims of violence against women or to domestic violence shelters outside of reception facilities. During the COVID19 crisis and as documented in the 2022 European Network of Migrant Women’s report *Undocumented Migrant Women: A Neglected Chapter in Fundamental Rights Protection*, many support services for victims of violence against women and girls, including emergency shelter, were rendered not accessible to undocumented women, thus increasing their vulnerability and their likeliness to be revictimised. Protection from violence should be guaranteed to all women and girls, regardless of legal status.

p.47 - Article 31 (Helplines for victims)

Text proposed by the Commission:

1. Member States shall set up state-wide round-the-clock (24/7) telephone helplines, 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 shall ensure the provision of such service also through other information and communication technologies, including online applications.
2. Member States shall take appropriate measures to ensure the accessibility of services referred to in paragraph 1 for end-users with disabilities, including providing support in easy to understand language. Those services shall be accessible in line with the accessibility requirements for electronic communications services set in Annex I to Directive 2019/882/EU of the European Parliament and of the Council¹⁸.
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 shall ensure that the service under paragraph 1 for victims of violence against women is operated under the harmonised number at EU level “116 016” and that the end-users are adequately informed of the existence and use of such number.]

Proposed amendments:

1. Member States shall set up **specialised** state-wide round-the-clock (24/7) telephone helplines, free of charge, to provide advice for victims of violence against women and domestic violence **or support the development of existing national helplines in those States where they are in place, to provide counselling, support, advice and information to victims of violence against women and domestic violence. The counselling, advice and information shall cover all forms of violence against women, including domestic violence, which disproportionately affects women.** Advice shall be provided confidentially or with due regard for their anonymity. Member States shall ensure the provision of such service also through other information and communication technologies, including online applications.
2. Member States shall take appropriate measures to ensure the accessibility of services referred to in paragraph 1 for end-users with disabilities, including providing support in easy to understand language. Those services shall be accessible in line with the accessibility requirements for electronic communications services set in Annex I to Directive 2019/882/EU of the European Parliament and of the Council¹⁸.
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 shall ensure that the service under paragraph 1 for victims of violence against women is operated under the harmonised number at EU level “116 016” and that the end-users are adequately informed of the existence and use of such number.]

Justification:

The provisions of the Directive must clearly allow for the continuation of existing national helplines, which currently fulfills the objectives of the Directive and meet the requirements of the Istanbul Convention. The provisions of the Directive must avoid the introduction of a call for tenders for the management of a European number, which would entail a risk of losing the quality of service provided to women by existing, established and experienced helplines and other services offered nationally or locally by civil society organizations. This continuity is crucial in order to strengthen the network of support for women victims of violence, and not weaken it.

p.49 - Article 32 (Safety of children)

Text proposed by the Commission:

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

Proposed amendment:

- The shelters and other appropriate interim accommodations as provided for in Article 9(3), point (a), of Directive 2012/29/EU shall address the specific needs of women victims of domestic violence and sexual violence. They shall assist them in their recovery, providing adequate and appropriate living conditions with a view on a return to independent living.
2. The shelters and other appropriate interim accommodations shall be equipped to accommodate the specific needs of children, including child victims.
 3. The shelters and other appropriate interim accommodations shall be available to victims regardless of their nationality, citizenship, place of residence or residence status.
 4. Article 27(3) and (6) shall apply to shelters and other appropriate interim accommodations.
 - 5. Member States shall ensure that victims are accommodated in single-sex facilities or separately from persons of the other sex in shelters. These provisions shall also apply to girl-children who shall be entitled to accommodation based on sex.**

Justification:

In some European countries (Finland, Belgium, Denmark), according to the GREVIO committee, victims of violence against women are placed in mixed facilities (as opposed to women only facilities). The instances of re-traumatisation and repeated sexual violence against those women inside such facilities are well documented. Finland and Denmark for instance have been taking a progressively “gender neutral approach” to policy and practice, as a result most shelters are mixed.

p.48 - Article 34 (Safety of children)

Text proposed by the Commission:

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.

Proposed amendments:

Member States shall ensure that, in the determination of custody and visitation rights of children, incidents of violence covered by the scope of this Directive are taken into account.

Member States shall ensure that the best interests of the child is protected through procedures related to the determination of custody and visitation rights, including by ensuring that family mediation is not applied to cases of domestic violence and that concepts lacking a universal clinical or scientific definition such as the ‘Parental Alienation Syndrome’ are not used in legal courts.

Member States shall ensure that the exercise of any visitation or custody rights does not jeopardise the rights and safety of children, including establishing and maintaining 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.

Justification:

Although the ‘parental alienation syndrome’ and other related concepts lack a universal clinical or scientific definition, emerging patterns across various jurisdictions of the world indicate courts worldwide are using them explicitly or are allowing for its instrumentalisation. The vast majority of those accused of ‘alienating’ their child while alleging abuse are women. Consequently, many women victims of violence and abuse face double victimization as they are punished for alleging abuse, including by losing custody or at times being imprisoned. Children who are victims of violence and abuse by a parent (in many cases the father) often continue to be subjected to such violence and abuse, against themselves and the other parent (in most cases the mother) post-separation, through imposed contact with the abusive parent. These dynamics often allow women to be intimidated, coerced or forced by their abusive ex-partners and pressured by the courts to withdraw their allegations of abuse or to agree to a specific custody arrangement. States have a responsibility to take all measures necessary to prevent violence against women and children. Article 19 of the Convention on the Rights of the Child provides that the right for the child should be protected from all forms of physical or mental violence, injury, abuse, or maltreatment, including sexual abuse, while in the care of parents. Where it occurs, the failure to address intimate partner violence and violence against children in custody rights and visitation decisions is a form of violence against women and their children and a violation of the human rights to life and security that could amount to torture. It also violates the best interest of the child legal standard. In 2014, the CEDAW Committee recommended that any history of domestic violence and abuse must be considered when determining visitation schedules to ensure that these do not endanger women or children. In the case *Gonzalez Carreño versus Spain* (2014), the Committee found that, by ordering unsupervised visits without giving sufficient consideration to the background of domestic violence, Spanish authorities had failed to fulfill their due diligence obligations under the Convention (para. 9.7). Since then, the CEDAW Committee has issued a number of Concluding Observations in which it directed States Parties to abolish the use of the concept of parental alienation in court cases. Regional monitoring bodies such as GREVIO, which monitors the Istanbul Convention, and MESECVI, which follows up on the implementation of the Belem do Para Convention, have also made similar requests.

p.48-49 - Article 35 (Targeted support for victims with specific needs and groups at risk)

Text proposed by the Commission:

1. Member States shall ensure the provision of specific support to victims at an increased risk of violence against women or domestic violence, 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 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 protocols are in place to adequately and swiftly address such reports in accordance with the requirements in Article 18, 19 and 20.

Proposed amendments:

1. Member States shall ensure the provision of specific support to victims at an increased risk of violence against women or domestic violence, 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 in prostitution, lesbian women, underage girls** 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 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 to 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 protocols are in place to adequately and swiftly address such reports in accordance with the requirements in Article 18, 19 and 20.

3. Member States shall ensure that victims of domestic violence whose residence status depends on that of the spouse or partner are granted an autonomous residence permit irrespective of the duration of the marriage or the relationship. The possibility to obtain an independent residence permit on the ground of being a victim of violence against women shall not be subjected to disproportionate evidentiary requirements and shall not lead to the victims separation from children.

4. Member States shall ensure that victims of domestic violence may obtain the suspension of expulsion proceedings initiated in relation to a residence status dependent on that of the spouse or partner to apply for an autonomous residence permit.

5. Member States shall ensure that violence against women is recognised as a form of persecution within the meaning of the 1951 Geneva Convention and as a form of serious harm giving rise to complementary/subsidiary protection. Victims of violence against women who are in need of protection, regardless of their status or residence, shall not be returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment. Women-focused, victim-centred and trauma informed guidelines and shall be provided for reception and asylum procedures, including refugee status determination and application for international protection.

Justification:

- The expression “women sex workers” needs to be replaced by the expression “women in prostitution” and “women victims of sexual exploitation” in line with the

so-called “Equality model”/ “Nordic model” and with the European Parliament resolution on sexual exploitation and prostitution and its impact on gender equality adopted by the European Parliament in February 2014. Indeed, the choice of the wording is meaningful in this case since sexual exploitation cannot be banalised through the “sex work” expression as 9/10 women in prostitution would leave sex trade if they could; more than $\frac{2}{3}$ of them reported trauma on par with soldiers returning from war and 62% of them have reported having been raped since entering prostitution.

- Underage girls are a group particularly at risk of violence (sexual violence, forced marriage, female genital mutilation, etc.). However, data disaggregated by both sex and age are lacking. Invisibilised because they fall into the broader categories of ‘children’ or ‘women’, underage girls often face a lack of protection that makes them all the more vulnerable.
- Women are often held out in abusive relationships for far too long in order to secure an independent residence permit. Most Member States require spouses or partners to remain married or in a relationship for a period ranging from one to three years in order to be granted an autonomous residence status. In its monitoring practice, GREVIO has observed that many States have introduced the possibility for victims of violence against women to obtain an independent legal status in legislation; however, barriers persist in practice. First of all, in several Member States, insufficient information is made publicly available or provided directly to migrant women and, as a result, women in abusive relationships are unaware that they can apply for an independent residence permit. Secondly, some evidence such as police records, a court conviction, a barring or protection order, medical evidence, an order of divorce, social services records or reports from women’s NGOs are not considered sufficient in many Member States. In a number of States monitored by GREVIO, for instance, the evidentiary requirement is considered to be satisfied only where a police report has been lodged or conviction of the perpetrator has been handed down. Reports by other entities such as social services, domestic violence shelters or Victim Support Offices are not recognised. This presents difficulties for women of migrant background who, for a wide range of reasons, do not report or disclose their exposure to violence to the authorities but turn to NGO-run services instead. There are other countries, such as Italy which provide for additional conditions such as the need to prove that the victim be routinely exposed to acts of violence
- Asylum law has long failed to address the difference between women and men in terms of why and how they experience persecution. This gender blindness in the establishment of refugee status and of international protection has resulted in situations where claims of women fleeing from gender-based violence such as female genital mutilation, dowry related violence, serious domestic violence, have gone unrecognised. In the examination of the grounds for persecution, gender-based violence is often seen to fall within the ground of “membership of a particular social group”, overlooking the other grounds. Ensuring a gender sensitive interpretation implies recognising and understanding how gender can have an impact on the reasons behind the type of persecution or harm suffered. Regarding persecution on the grounds of race or on the grounds of nationality, for example, women may face certain types of persecution that specifically affect them. Examples are sexual violence and control reproduction in cases of racial

and ethnic “cleansing”.

- Reports drafted by GREVIO, including Italy, have addressed the recent policies and practices of abandoning sea rescue, closing of ports to boats carrying rescued migrants, and relinquishing responsibility for search and rescue operations to authorities which are unwilling or unable to protect rescued migrants from torture or inhuman or degrading treatment or are in a state of civil war. GREVIO has noted that these practices pose a serious risk of refoulement of women migrants who have experienced violence. Other recent reports have noted that failure to carry out vulnerability assessments, in particular those in the framework of accelerated procedures, with a view to properly detecting victims of gender-based violence can also lead to deportations or returns in violation of the obligation of non-refoulement.

CHAPTER 5 - PREVENTION

p.49-50 - Article 36 (Preventive measures)

Text proposed by the Commission:

1. Member States shall take appropriate actions to prevent violence against women and domestic violence and consider legislative reform that condemns sexism and that defines and criminalises sexist hate speech
2. Preventive measures shall include awareness-raising campaigns, research and education programmes, where appropriate developed in cooperation with relevant civil society organisations, social partners, impacted communities and other stakeholders.
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 addressed to groups at risk, including children, according to their age and maturity, and persons with disabilities, taking into consideration language barriers and different levels of literacy and abilities. Information for children shall be formulated in a child-friendly way.
5. Preventive measures shall in particular aim at challenging harmful gender stereotypes, promoting equality between women and men, encouraging all, including
6. Preventive measures shall develop and/or increase sensitivity about the harmful practice of female genital mutilation.
7. Preventive measures shall also specifically address cyber violence. In particular, Member States shall ensure that

education 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 services and competent authorities to develop and implement measures to tackle cyber violence.

8. Member States shall ensure that sexual harassment at work is addressed in relevant national policies. Those national policies shall identify and establish targeted actions referred to in paragraph 2 for sectors where workers are most exposed.

Proposed amendments:

1. Member States shall take appropriate actions to prevent violence against women and domestic violence and consider legislative reform that condemns sexism and that defines and criminalises sexist hate speech **and are applicable to all media, as well as reporting procedures and appropriate sanctions. More proactive detecting and reporting procedures for sexist hate speech should also be encouraged in respect of all media, including the internet and new media, social media and pornographic platforms.**
2. Preventive measures shall include awareness-raising campaigns, research and education programmes, where appropriate developed in cooperation with relevant civil society organisations, social partners, impacted communities and other stakeholders.
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, **regardless of ethnicity, nationality or legal status.**
4. Targeted action shall be addressed to groups at risk, including children, according to their age and maturity, migrant, **refugee and asylum seeking women and girls** and persons with disabilities, taking into consideration language barriers and different levels of literacy and abilities. Information for children shall be formulated in a child-friendly way.
5. Preventive measures shall in particular aim at challenging harmful gender stereotypes, promoting equality between women

and men, encouraging all, including

6. Preventive measures shall develop and/or increase sensitivity about the harmful practices of female genital mutilation, **forced marriage, virginity testing and related practices, extreme dietary restrictions, including during pregnancy, binding, scarring, branding, corporal punishment, stoning, widowhood practices, infanticide and incest.**
7. Preventive measures shall also specifically address cyber violence. In particular, Member States shall ensure that education 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 services and competent authorities to develop and implement measures to tackle cyber violence.
8. Member States shall ensure that sexual harassment at work is addressed in relevant national policies. Those national policies shall identify and establish targeted actions referred to in paragraph 2 for sectors where workers are most exposed **and shall include dispositions related to undocumented workers.**
- 9. Member States shall integrate a gender equality perspective in all policies, programmes and research in relation to artificial intelligence to avoid the potential risks of technology perpetuating sexism and gender stereotypes and examine how artificial intelligence could help to close gender gaps and eliminate sexism.**
- 10. Member States shall support research on the prevalence and impact of sexist portrayals of women and girls in the media and in pornographic material, the extent to which they exacerbate gender inequalities and violence against women and girls, and also on their impact on women's physical, sexual and psychological health.**
- 11. Member States shall ensure children, teenagers and adults have access to evidence-based, age-appropriate and gender sensitive sexuality education, regardless of their place of residence, their ethnicity, nationality or legal status. Content specific to disabled persons shall be included. Sexuality education curricula shall include prevention on violence against women and a critical approach to pornography.**

Justification:

- “Sexist hate speech” as a legal term is only present in some national laws but legal documents support its inclusion (such as the Istanbul Convention). Sexist hate speech targeting women has been referred to in several terms such as “sexualised hate speech”, “sexist hate speech”, “cyber gender harassment”, or “cybersexism”. The aims are to humiliate and objectify women, to destroy their reputation and to make them vulnerable and fearful. It is a form of “social shaming”, spreading the message that the woman is not a full human being. Gender motivated hate speech instills deep fear and creates, reinforces and perpetuates gender hierarchy in public places, including the digital space. The specificity of anonymity on social media should not be a deterrent to legislate. As gender discrimination, sexist hate speech “has a set of core features: (1) its victims are female [men are less targeted], (2) the harassment is aimed at particular women, and (3) the abuse involves the targeted individual’s gender in sexually threatening and degrading ways” (Danielle Keats Citron, “Law’s Expressive Value in Combating Cyber Gender Harassment”, 2009) .The European Court of Human Rights (ECtHR) has recognised the importance of the Internet as “one of the principal means by which individuals exercise their right to freedom of expression and information” and the UN Human Rights Council has referred to the Internet as having become “a site of diverse forms of violence against women, in the form of pornography, sexist games and breaches of privacy.” Indeed, women receive threats and insults of a sexual character on a daily basis online which is why the digital space should be clearly included in any disposition aiming at tackling sexist hate speech.
- Ethnicity, nationality and legal status are factors that can impair one’s access to justice and rights, targeted actions are needed to ensure women from marginalized groups have access to proper information about the legal actions and support services they can access as victims of violence.
- Forced marriage, virginity testing and related practices, extreme dietary restrictions, including during pregnancy, binding, scarring, branding, corporal punishment, stoning, widowhood practices, infanticide and incest are all harmful practices listed in the Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices.
- Undocumented migrant women are often employed in individualised or isolated work environments such as the domestic and care sectors where there are fewer opportunities for worker solidarity and visibility. The definition of ‘sexual harassment at work’ should apply to their situations so they can effectively be properly protected.
- Artificial intelligence poses specific challenges in relation to gender equality and gender stereotypes. The use of algorithms can transmit and strengthen existing gender stereotypes and therefore may contribute to the perpetuation of sexism. The Council of Europe, in its Recommendation on preventing and combating sexism highlights the need to integrate a gender equality perspective in all policies, programmes and research in relation to artificial intelligence in order to mitigate the risks it poses to women and girls’ safety and well-being.
- Citizens, including children, are increasingly confronted, against their will, with

pornography, whereas it encourages certain forms of undesirable social behavior, in particular with regard to women, and whereas respect for the integrity of the individual and, in particular, the protection of children and women is of fundamental importance in the field of pornography. Research on the concrete impacts of the exposition to violent and misogynistic pornographic content is needed to produce evidence-based and effective prevention policies.

- Persisting taboos around sexuality education feed disinformation, disempowerment and sexual violence. Children are not provided with keys and tools to understand their own wants, needs and limitations and express them. In addition, when targeted with violence, they are not able to recognize it and seek support. In parallel, professionals working with children are rarely formed to identify children victims of sexual violence. CEDAW Committee recommendation 31 underlines the importance of “age-appropriate education, which includes science-based information on sexual and reproductive health. Sexuality education should be based on facts, informed by realities and tailored to the target audience.

p.53 - Article 41 (Cooperation with non-governmental organisations)

Text proposed by the Commission:

Member States shall cooperate with and consult civil society organisations, including nongovernmental organisations working with victims of violence against women or domestic violence, in particular in providing support to victims, concerning policy making 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.

Proposed amendment:

Member States shall cooperate with, consult **and fund** civil society organisations, including nongovernmental organisations working with victims of violence against women or domestic violence, in particular in providing support to victims, concerning policy making 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.

Justification:

Funding organisations supporting victims of violence against women and girls or focused on awareness raising and prevention is key to provide a comprehensive and effective response to tackle this widespread phenomenon, as highlighted by the Council of Europe in its Recommendation on preventing and combating sexism.

p.52 - Article 43 (Union level cooperation)

Text proposed by the Commission:

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 best practices 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;
- (c) providing assistance to Union networks working on matters directly relevant to violence against women and domestic violence.

Proposed amendment:

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 best practices 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;
- (c) providing assistance to Union networks working on matters directly relevant to violence against women and domestic violence.
- (d) encouraging cross-border cooperation to control and delete digital content referred to in article 7(b) and 7(c), and content showing or promoting violence against women and girls, including sexual and physical violence and pedopornographic content.**

Justification:

On EU competence to deal with pornography, EP Resolution on pornography A3-0259/93 states that *"while the prevention and possible repression of pornography remain the responsibility of the Member States, in the exercise of their police powers, the Community cannot disregard this problem, particularly when some of its dimensions are linked to the abolition of internal borders between the Member States"*. It therefore affirms the legitimacy of EU competence in view of *"the new framework within which the search for*

national public orders is carried out, namely an area without borders in which persons and goods, services and capital, theoretically enjoy freedom of movement"

PROPOSED AMENDMENTS TO THE RECITALS OF THE DIRECTIVE

p.22 - recital 11

Text proposed by the Commission:

- (11) ... In particular, 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.

Proposed amendment:

- (11) ... In particular, lesbian **and** bisexual, ~~trans, non-binary, intersex and queer (LBTIQ)~~ women, **as well as women who do not conform to gender stereotypes**, women with disabilities and women with a minority racial, or ethnic background, **women lacking legal status, elderly women and girls under 18 years old** are at a heightened risk of experiencing **gender-based** violence **against women**.

Justification:

In the initial wording of recital 11, the reference to 'trans woman', which relates to males who perceive themselves as having female or feminine identities, excludes from the scope of the directive those females who perceive themselves as having an identity other than female (identifying as, for example, men, non-binary, gender queer, gender fluid, poly-gender, agender, etc) . As the directive focuses specifically on women and girls and not other target groups that may face discrimination, the list of recital 11 should therefore refer to factors that are susceptible to expose women and girls to heightened risk of experiencing violence, not to other groups aggregated under an contested definitions or acronym. To that extent, the wording 'lesbian and bisexual women as well as women who do not conform to gender stereotypes' does include all women, without invisibilizing those who may define themselves differently.

Violence against women and girls occurs in relation to sex: rape and sexual harassment (Brownmiller, 1975), compulsory heterosexual intercourse (Dworkin, 1987 , Barry, 1979), attacks on sexual and reproductive health and rights, etc. The way patriarchy oppresses women does vary from woman to woman, depending on factors such as legal status, ethnic background, sexual orientation, etc, but women's bodies remain central to women's oppression. The categorisation of sex (biological differences existing between women and men) must take precedence over concepts that undermine the possibility of data collection on men's violence against women, or the European Union foundational principle of equality between women and men and the very purpose of the directive, which is to address violence against women and girls.

In addition, the acronyms 'LGBIQ' or 'LGBTQI' encompass various groups with very different needs, experiences, interests and legal definitions. It also mixes sexual

orientation, with identity/sense of belonging to a group and variations in sex development (medically known as “disorders of sex development/DSD”). As a result, this acronym is used to designate in an undifferentiated manner people who form, in fact, very heterogeneous and distinct groups, creating a confusion that does not allow for proper protection of women and girls.

The categories ‘non-binary’ and ‘queer’ do not correspond to a concrete definition within the European Union or the international legal frameworks. They are contested terms that may be understood differently according to contexts. Translation difficulties linked to the use of words and concepts that do not exist in many European languages and do not possess a generally and legally agreed upon definition adds to the inevitable confusion that will weaken the proper and effective implementation of the directive. The term ‘intersex’ is also contested and even considered offensive by some. It relates to a varied group of DSDs which do not relate to sexual orientation or what is known as “gender identity”.

Lesbian women have historically protested their assimilation with other groups within the so-called ‘LGBT’ community, stating that the apparent neutrality of the acronym invisibilises the specificities, needs and interests as well as the specific violences suffered by lesbian women. The divide between the gay rights movement and the lesbian-feminist movement has been highly documented. Rich, for instance, highlighted the sexism of the gay men’s movement, as well as the risk of erasing the specific oppression of females by equating lesbians’ experiences with those of gay men (Rich, 1977). Frye maintained that the parallels between experiences of oppression between gay men and lesbians were at best superficial, and any alliance between them was based solely on the fact that members of both groups are labeled “deviant” for not conforming to sex stereotypes and refusing heterosexuality (Frye, 1983). Many lesbian feminists describe the lesbian walk-out of the gay movement which led to the creation of the Women’s Liberation Movement (Stanley, 1982, Dixon, 1988, Jeffreys, 2003 and Brackx, 1980). In more recent years, movements such as ‘Get the L Out’ have emerged across Europe to state that the ‘LGBT’ group as a whole does not represent nor advocate for lesbians.

Women lacking legal status, girl-children below 18 years old and older women are groups that face heightened risks of violence due to the intersection of various discrimination factors, as developed in other sections of this document.

p.30 - recital 56

Text proposed by the Commission:

- (56) Victims 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 sex workers, detainees, or older women, should receive specific protection and support.

Proposed amendment:

(56) Victims 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 sex workers~~ **women in prostitution**, women detainees, or older women, should receive specific protection and support.

Justification:

The European Parliament recognises in its resolution of 26th of February 2014 A7-0071/2014 on sexual exploitation and prostitution and its impact on gender equality that the term “sexual exploitation” includes above all prostitution and its exploitation and that prostitution is a *“highly gendered issue and violation of human dignity, contrary to human rights principles, among which gender equality, and therefore contrary to the principles of the Charter of Fundamental Rights of the European Union, including the goal and the principle of gender equality”*. A violation of the dignity of the human person cannot be recognised as a work by the European Union that promotes and protects access to decent work. The expression “women sex workers”, used twice in the Directive proposal is contrary to the European Union agreed language and shall be replaced by “women in prostitution”.

EXPLANATORY STATEMENT

This explanatory statement aims at providing further context and justification for the new proposed articles following Art 10 of the directive, presented in p.14, 15 and 16 of the present document

There is currently no specific legal instrument that comprehensively addresses violence against women at European Union level. The most comprehensive international framework is the Council of Europe Convention on Preventing and Combating Violence against Women and Girls (**Istanbul Convention**), which defines **violence against women** as “**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, coercive or arbitrary deprivation of liberty, whether occurring in public or private life**”. It also recognises that violence against women constitutes “a violation of human rights and a form of discrimination against women”.

In this context, the new proposal for a Directive to combat violence against women and girls aims to provide for **standards to be set for prevention, protection and access to justice, as well as criminalisation of specific forms of violence against women**. The Directive is designed as an **European Union instrument, with binding obligations on Member States, enforceable by the Commission**. This Directive criminalizes **certain forms** of violence that disproportionately affect women and strengthens the rights of victims, using the existing legal basis in **Articles 82(2) and 83(1) TFEU**.

Having carried out an exhaustive analysis of the current text of this Directive, we, the European Network of Migrant Women, as well as our partners at European level fighting for women’s rights, are truly concerned.

Overall, the Directive provides a non-exhaustive list of violence against women and girls (VAWG) without a structured framework that would allow a good understanding and acknowledgement of the deeply rooted causes of VAWG and its various manifestations. According to our analysis, VAWG could be divided into three broad categories:

- **Sexist violence / hatred; hate speech:** harassment, psychological violence, gynecological-obstetrical violence (hyper hormonation, induction of labor, unwarranted cesarean sections, etc.), physical violence (assault and battery, feminicide, acid), vicarious violence (vicarious cases of child blackmail or child murder), sexual violence, rape (individual, corrective, weapon of war), female mutilation (excision, masectomy, vulvoplasty)
- **Sexual exploitation:** pimping, prostitution and pornography, forced marriage, trafficking in women and girls for the purposes of exploitation in prostitution
- **Reproductive exploitation:** prohibition of abortion, forced abortion, forced embryo reduction, forced pregnancy, exploitation in surrogacy, ovocyte selling

All of these types of violence can occur according to different **vectors** such as social media (in the case of cyberstalking, **imaged-based sexual abuse**, stolen images, upskirting), **direct** or **through an intermediary** (e.g. sequestration, murder of children). It can vary in **intensity** (threatening or carrying out such acts) and **occurs in all spheres of society** (public space, work, domestic space). There are also **factors increasing the risks** for women to be subjected to male violence, they must be taken into consideration and considered as aggravated circumstances when the violence was perpetrated as a

direct consequence of them (economic precarity, sexual orientation, ethnic, cultural and religious background, skin color, age, disability, etc.).

While the Directive does address *some* of the aforementioned types of violence, it creates a dichotomy in the way they are considered. **Forced marriage**, for instance, although at the intersection of sexist violence, sexual and reproductive exploitation, is merely mentioned. In addition, **various forms of sexual and reproductive exploitation are completely disregarded, in spite of the existing European and international legal frameworks.**

L/SEXUAL EXPLOITATION: PROSTITUTION

The Directive proposal by the European Commission includes the crime of “*sexual exploitation*” however depriving it of its core definition “*the exploitation of prostitution of others*” as established in EU and International law.

In both the European Union **Anti-trafficking Directive** (2011/36/EU) and the **Palermo Protocol**, the “*exploitation of prostitution of others*” is considered to be a “*form of sexual exploitation*”. Under international human rights law, the scope of States’ obligations to suppress all forms of “*exploitation of the prostitution of others*” is defined in the **United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others**. The latter prohibits the exploitation of prostitution in all its forms and enshrines the **criminalisation** of any person who makes a profit from, or facilitates, the prostitution of another person, even with the consent of that person. In addition, article 6 of the **CEDAW Convention (ratified by all 27 members of the European Union)** expressly call on States to eliminate “*all forms of traffic in women and exploitation of prostitution of women*”.

In European Union law, **the Directive 2011/93/EU** on “combating the sexual abuse and sexual exploitation of children and child pornography”, recognises that « *sexual exploitation* » includes “**recruiting**”, “**profiting from**” or “**otherwise exploiting**” **the prostitution or pornography of another person** (in this context, a child) is a form of sexual exploitation.

The European Parliament further recognises in its resolution of 26th of February 2014 A7-0071/2014 “on sexual exploitation and prostitution and its impact on gender equality” that **the term “sexual exploitation” includes above all prostitution and its exploitation.**

Several hundreds of thousands of women and children are trafficked within, and to, the European Union for one reason: meeting the male demand for paid sexual acts and generating huge profits for brothel owners, pimps and traffickers. **According to the ILO, trafficking in human beings generates 150 billion USDs of profit every year. 66% of these profits are made in one criminally controlled activity, the sex trade.** The international and European Union anti-trafficking frameworks recognise that the exploitation of prostitution is one of the main “purposes” and “destinations” of the trafficking crime and urges States to adopt or strengthen measure, including legislative, to

“discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking” .

The **European Parliament** and the Parliamentary Assembly of the Council of Europe have already recognised that the criminalisation of the purchase, not the selling, of sex is a *“way of combating the trafficking of women and under-age females for sexual exploitation and improving gender equality”*.

II./ PORNOGRAPHY

On European Union competence to deal with pornography, the European Parliament Resolution on pornography A3-0259/93 states that *“while the prevention and possible repression of pornography remain the responsibility of the Member States, in the exercise of their police powers, the Community cannot disregard this problem, particularly when some of its dimensions are linked to the abolition of internal borders between the Member States”*. It therefore affirms the legitimacy of EU competence in view of *“the new framework within which the search for national public orders is carried out, namely an area without borders in which persons and goods, services and capital, theoretically enjoy freedom of movement”*

Content hosted in pornographic platforms often include acts that are criminalised under international and European law, such as torture, inhuman or degrading treatment or punishment, incitation to commit crimes, racism, and sexual violence. These offenses are presented as fiction and sexualised which often leads to them being overlooked by national legislations. **The Human Rights Committee** has thus recalled that this industry has very real consequences and hinders women's equal access to their rights and freedoms (***Council of Europe Recommendation on preventing and combating sexism***). The methods used by the pornographic industry could, for a large part, be subject to repression under the heading of the fight against trafficking in human beings, in accordance with the definition adopted by the **Palermo Protocol** (2000). Indeed, women and children are recruited, transported, supplied and obtained for sexual acts, through the use of several forms of coercion, including deception, abduction, abuse of authority or of a situation of vulnerability, and for which the pornography pimps achieves exorbitant financial benefits. Therefore, **as stated in the Model Law on Trafficking in Persons (UNODC, 1990), pornography can be considered a form of sexual exploitation.**

Citizens, including children, are increasingly confronted, against their will, to pornography, whereas pornography **constitutes an affront to human dignity and encourages certain forms of undesirable social behavior, in particular with regard to women,** and whereas **respect for the integrity of the individual and, in particular, the protection of children and women is of fundamental importance.**

Victims of filmed sexual abuse can experience profound *“social rupture”* – a major devastation that drastically alters all aspects of their lives. Despite the large number pornography platforms stating they have policies against non-consensual material on their websites, such material is easily and freely available. There are many genres on porn websites specific to image-based sexual abuse including upskirting, spycams, hidden cams, revenge porn, leaked, stolen and many more terms and categories. However, the Chapter of the Directive proposal on cyberviolence completely overlooks the issue of pornography.

III./ REPRODUCTIVE EXPLOITATION:

The Directive should include reproductive violence and exploitation understood as a form of violence against women to satisfy the desires of others, **women are subjected to physical, economic, medical and psychological violence** through this practice that affects them exclusively.

Surrogacy is a social practice that consists of recruiting a woman to gestate and give birth to a human being - or several human beings - conceived with or without her own ovocytes, in exchange for financial remuneration and through a contract, in order to hand it over to one or several persons - called contractors, intended parents, clients or buyers - who wish to be designated as the parents of the newborn child.

The European Parliament has reiterated its condemnation of this practice:

- In 2015, as a violation of human dignity;
- In 2017, in the context of trafficking in human beings, as a source of human rights violations;
- In 2021, from a commercial point of view and at the global level, because of the risks of exploitation and trafficking in human beings, its impact on the health of surrogate mothers and the disruption of equality between men and women;
- In 2021, as sexual exploitation, along with forced marriages, prostitution and pornography;
- In 2022, the European Parliament reiterated all its condemnations in the context of the war in Ukraine.

IV./ FORCED MARRIAGE:

Forced marriage is marriage without consent. In Europe, it is a form of violence against women that disproportionately affects migrant women and girls. Where domestic law allows for certain aspects of marriage to be regulated by the law of a foreign spouse, safeguards are important to avoid situations where European Union Member States find themselves obliged to accept third-country norms which deprive victims of protection against forced marriage.

The Council of Europe Convention on preventing and combating violence against women and domestic violence (**Istanbul Convention**) obliges to criminalise the intentional conduct of forcing a person to enter into a marriage but so far only seven European Union Member States have introduced a specific forced marriage crime.

According to **Article 8 of the Treaty on the Functioning of the European Union** (TFEU), the Union “*aims to eliminate inequalities and promote equality between women and men in all its activities*”. Declaration No. 19 on Article 8 of the TFEU annexed to the final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon states

that “*in its general efforts to eliminate inequalities between women and men, the Union will aim in its different policies to combat all kinds of domestic violence. The EU Member States should take all necessary measures to prevent and punish these criminal acts and to support and protect the victims*”.

The Victims’ Directive (2012/29/EU) obliges EU Member States to ensure that victims of crime receive appropriate information and support. It notes that **forced marriage is a form of gender-based violence and that victims require special support and protection because of the high risk of secondary and repeat victimization, of intimidation and of retaliation connected with such violence.**

The Family Reunification Directive (2003/86/EC) which regulates the right of third-country nationals residing in an EU Member State to bring their family members, contains specific measures to prevent forced marriage.