



EDPS Formal comments on the Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence

1. Introduction and background

1. On 8 March 2022, the European Commission issued a Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence ('the Proposal')¹.
2. The objective of the Proposal is to provide a comprehensive framework to effectively prevent and combat violence against women and domestic violence throughout the Union. It does so by strengthening and introducing measures in the following areas: the definition of relevant criminal offences and penalties, the protection of victims and access to justice, victim support, prevention, coordination and cooperation². The proposal thus contributes to the establishment of an area of freedom security and justice (Title V TFEU). An important point of reference for the proposal is the 2014 Council of Europe Convention on preventing and combating violence against women and domestic violence ('Istanbul Convention')³, as the most extensive international framework to comprehensively address violence against women and domestic violence. This Proposal aims to achieve the objectives of the Convention within the EU's remit by complementing the existing EU acquis and Member States' national legislation in the areas covered by the Convention. According to the memorandum of understanding of the Proposal, the need for action appears both in Member States that have ratified the Istanbul Convention and in those that have not.
3. The present formal comments of the EDPS are issued in response to a consultation by the European Commission of 9 March 2022, pursuant to Article 42(1) of Regulation 2018/1725⁴ ('EUDPR'). In this regard, the EDPS also positively notes that he was already previously informally consulted pursuant to Recital 60 of the EUDPR. The EDPS welcomes the reference to this formal consultation in Recital 71 of the Proposal.
4. These formal comments do not preclude any additional comments by the EDPS in the future, in particular if further issues are identified or new information becomes available. They are limited to the provisions of the Proposal that are relevant from a data protection perspective.

¹ COM/2022/105 final.

² Recital 1 of the Proposal.

³ Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210).

⁴ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, (OJ, 21.11.2018, L.295, p.39).



2. Comments

2.1. General comment

5. The EDPS notes that the Proposal aims at establishing minimum rules concerning the definition of criminal offences and penalties in the areas of sexual exploitation of women, and children and computer crime. It would also introduce minimum rules on the rights of victims of all forms of violence against women or domestic violence before, during or after criminal proceedings and concerning victims' protection and support⁵. Member States may introduce or maintain provisions with higher standards, including such which provide a higher level of protection and support for victims⁶. In addition, it is clear from Article 49 of the Proposal that nothing in the Proposal shall be construed as lowering, limiting or derogating from any of the rights and procedural safeguards that are guaranteed under the law of any Member State which provides a higher level of protection. Member States shall not lower that higher level of protection guaranteed at the time of entry into force of the proposed Directive.
6. The EDPS welcomes Recital 66 of the Proposal confirming that any processing of personal data carried out pursuant to the Proposal should be carried out in accordance with Regulation (EU) 2016/679⁷, Directives 2016/680/EU⁸ and 2002/58/EC⁹ and that any processing of personal data by Union institutions, bodies, offices or

⁵ See Article 1 of the Proposal.

⁶ See Article 46 of the Proposal.

⁷ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), (OJ L 119, 4.5.2016, p. 1).

⁸ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, (OJ L 119, 4.5.2016, p. 89).

⁹ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), (OJ L 201, 31.7.2002, p. 37).

agencies should be carried out in accordance with Regulations (EU) 2018/1725¹⁰, 2018/1727¹¹ and 2016/794¹², or any other applicable Union rules on data protection.

2.2. The role of the service providers

7. The EDPS takes note of Article 25 of the Proposal which reflects the need to have in place measures for removal or disabling access to on line material resulting from certain offences of cyber violence referred to in Articles 7-10 of the Proposal¹³. Those measures shall include the possibility for competent judicial authorities of issuing binding legal orders addressed to relevant providers of intermediary services¹⁴ to remove or disable access to such material¹⁵. In that context, the EDPS positively notes the fact that the Proposal does not impose a general monitoring obligation or active fact-finding obligation on the providers of intermediary services. It is also to be noted that Article 48(1)(f) and Recital 42 specify that the relevant rules contained in the future Digital Services Act remain unaffected.
8. The EDPS also welcomes Article 25(4) and Recital 41 of the Proposal which further express the need to ensure that those orders and other measures, mentioned in the paragraph above, can only be taken in a transparent manner and that adequate safeguards are provided for, so as to ensure that they remain limited to what is necessary and proportionate, legal certainty is ensured, all affected parties can exercise their right to effective judicial redress in accordance with national law, and a fair balance is struck between all rights and interests involved, including the fundamental rights of all parties concerned in compliance with the Charter.

¹⁰Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, (OJ L 295, 21.11.2018, p. 39).

¹¹Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA, (OJ L 295, 21.11.2018, p. 138).

¹²Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, (OJ L 135, 24.5.2016, p. 53).

¹³ It concerns non-consensual sharing of intimate or manipulated material, cyber stalking, cyber harassment and cyber incitement to violence or hatred.

¹⁴ According to Article 4(f) of the Proposal, “providers of intermediary services” would mean providers of the services as defined in Article 2 point (f) of the future Regulation on a Single Market for Digital Services currently under negotiations. The EDPS understands that it refers to first paragraph, point (f) of Article 2, of the Proposal for such Regulation, i.e. that it means “a ‘mere conduit’ service that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network”. This definition is undergoing some modifications by the co-legislators: <https://data.consilium.europa.eu/doc/document/ST-5620-2022-INIT/x/pdf>

¹⁵ See Article 25, paragraph 1 of the Proposal.

9. Finally, he considers positively the clarification in Article 44(4) and Recital 65 that data collected for research (statistics) shared with the public shall not contain personal data.

Brussels, 4 April 2022

(e-signed)
Wojciech Rafał WIEWIÓROWSKI