

## **We demand a gender-inclusive and safe digital world that is free from violence for all!**

**29-05-2023**

Dear Members of the European Parliament,

The undersigned organisations send this open letter to express our collective recommendations to ensure that those experiencing or who have experienced digitally facilitated gender-based violence (DGBV) are protected.

DGBV has far-reaching impacts, [with 38% of women globally having experienced online violence](#). Therefore, we welcome the ambition and commitment of the EU institutions in taking a holistic approach to tackling all forms of gender-based violence (GBV), including cyber violence. However, we are concerned that the Directive, in its current state, takes an approach too centered on criminalisation.

The European Parliament should take an inclusive approach to combating GBV that centres the needs of survivors and addresses underlying social issues rather than increased criminalisation, where it may not be appropriate or proportionate. This does not mean looking away from online behaviours that perpetuate GBV but shifting the focus to those who experience GBV in order to respond to their needs effectively.

More concretely, we have identified the following issues and suggestions:

### **1. Terminology and definition issues**

- This Directive does not provide Member States with clear definitions and has problematic definitions instead, which makes the transposition process even more challenging to certain Member States. More than that, criminal law must be applied as a measure of last resort addressing clearly defined and delimited conduct.
- "Intimate image" is not defined<sup>1</sup>.
- "Initiating an attack", "harassment", and several others are not adequately defined.
- The victim-centred approach should be coherent throughout. Use survivor terminology instead.

### **2. Lack of intersectionality**

The Directive should acknowledge and respond to the ways that women with multiple intersecting identities, i.e. women of colour (especially Black women), disabled women, LGBTQIA+ women, immigrant women and sex workers are disproportionately vulnerable to DGBV, and understand the intersection of gender with other inequalities/oppressions (e.g., sexuality, gender identity, ethnicity, indigeneity, immigration status, disability) in the context of DGBV.

### **3. Focus on criminalisation: the burden of proof is on the victim/survivor**

As highlighted, the approach towards criminalisation with broadly defined crimes risks

<sup>1</sup>Suggested definition: Intimate images, videos, or sound files are those that depict sexual activity or nudity or partial nudity, or a person engaged in a private act in a circumstance in which that person has a reasonable expectation of privacy. Contextual review, such as cultural considerations or legitimate interest of the general public, is vital to understanding whether an image is "intimate" and therefore in determining whether an offence has occurred and instances should be assessed on a case-by-case basis.

unintentionally impacting vulnerable groups and may lead to additional harm or secondary victimisation. For example, amendments proposed by the European Parliament to criminalise the sending of unsolicited images can be used maliciously against anyone. The consent may be given/taken verbally, for example, and once the image is sent, the party who received the image may argue that this was unsolicited. As a result, this article can be weaponized by men against women. The threat here is even more significant when it comes to already criminalised communities such as sex workers. For example, people who pose as clients could blackmail sex workers, using this provision, once sex workers send images upon the clients' requests.

Our stance here is that the unsolicited sending of images should not be criminalised in this way. The issue should be tackled in other ways, such as enabling effective reporting mechanisms on online intermediaries services and increasing accountability in responding to reports by users.

#### **4. Including DSA due diligence obligations**

The EU should holistically address cyber violence. This means that this Directive should be concretely aligned with the mandatory due diligence obligations of the Digital Service Act, specifically the risk assessments and mitigation measures, researcher access to data and independent audits. Online platforms must be held to account and do much more to address gendered harms proliferating on their platforms.

#### **5. Privacy concerns**

The Directive needs to be mindful and not derogate from existing EU legislation, e.g. GDPR and user data privacy, as well as the need to protect encrypted services. The latter is of huge priority in this context as encrypted services have been increasingly used by GBV service providers to speak safely with survivors and [is an essential tool of women human rights defenders and journalists in order to conduct their vital work](#).

Moreover, we would like to strengthen the accountability of the platforms in case they don't collaborate/reply to survivors when the survivors exercise their rights derived from other legal frameworks, like GDPR (e.g. access to data). In digitally-facilitated forms of violence, survivors need to gather data for evidence. As such, besides the collaboration of service providers with law enforcement agencies, we are convinced that the service providers' **obligation** to collaborate with survivors should be strengthened more.

We thank you very much for your consideration of those important issues and remain at your full disposal for any questions you may have.

Yours sincerely,

*CDT Europe, DATAWO, European Digital Rights (EDRi), ESWA, Glitch, Superr Lab.*

#### **Supported by:**

Alternatif Bilişim - Turkey

Aprosex - Spain

Associazione Radicale Certi Diritti - Italy

Associazione SWIPE - Italy

Berufsverband erotische und sexuelle Dienstleistungen e.V. (BesD) – Germany  
Centre for Democracy and Technology- Europe  
Colectivo de Prostitutas de Sevilla (CPS) - Spain  
Comitato per i Diritti Civili delle Prostitute ApS - Italy  
Comite de Apoyo a las Trabajadoras del Sexo (CATS) - Spain  
DATAWO - Greece  
Digitale Gesellschaft - Germany  
Elektronisk Forpost Norge (EFN) - Norway  
Espace P - Belgium  
European Center for Human Rights - France  
European Digital Rigths (EDRi) - Europe  
European Network for the Promotion of Rights and Health among Migrant Sex Workers (TAMPEP) - Europe  
European Sex Workers Rights Alliance (ESWA) - Europe and Central Asia  
FTS Finland  
Gemeinnützige Stiftung Sexualität und Gesundheit (GSSG) – Germany  
Glitch- United Kingdom  
Homo Digitalis - Greece  
horizontl Collaborative - United Kingdom  
HPLGBT - Ukraine  
LEFÖ – Counselling, Education and Support for Migrant Women - Austria  
Movimento dxs Trabalhadorxs do Sexo (MTS) - Portugal  
National Trans Coalition Human Rights NGO - Armenia  
National Ugly Mugs - United Kingdom  
OTRAS - Spain  
Paloma - France  
Positive Voice, the Greek association of people living with HIV - Greece  
ProCoRe - Switzerland  
Prostitution Information Centre (PIC) - Netherlands

Red Edition - Austria

Red Umbrella Athens - Greece

Red Umbrella Sexual Health and Human Rights Association - Turkey

Red Umbrella Sweden - Sweden

Right Side HRD NGO - Armenia

Sex Work Polska - Poland

Sex Workers' Empowerment Network (SWEN) - Greece

STAR-STAR Skopje - North Macedonia

Superrr Lab - Germany

SXA-Info - Austria

The Black Sex Worker Collective - Germany

Trans United Europe - Europe

UgluMugs NL - Netherlands

Ugly Mugs Ireland - Ireland