Combating violence against women and domestic violence


This briefing provides an initial analysis of the strengths and weaknesses of the European Commission’s impact assessment (IA) accompanying the above-mentioned proposal, submitted on 8 March 2022 and referred to the European Parliament’s Committee on Women’s Rights and Gender Equality (FEMM).

European Commission President Ursula von der Leyen announced in her political guidelines for the Commission’s 2019-2024 term that the EU accession to the Council of Europe’s Istanbul Convention on preventing and combating violence against women and domestic violence remains a key priority, and that the EU should do all it can to prevent domestic violence, protect victims and punish offenders (IA, p. 6).

The proposal is included in the 2022 Commission work programme and in the joint declaration on EU legislative priorities for 2022. The EU gender equality strategy 2020-2025 reiterates that gender-based violence and harassment have reached alarming levels, and remain under-reported and overlooked. It announces that action will be taken to tackle violence against women (VaW) and domestic violence. According to the Commission, the proposal sets out targeted rules for the protection of victims of VaW and domestic violence in order to strengthen the actions taken by the Member States. The proposal aims to ensure minimum rules on the level of protection across the EU against such violence, regardless of whether it takes place online or offline.

In Europe, all EU Member States have signed the Istanbul Convention, but six have not ratified it. According to the IA, the scope of this proposal covers all types of VaW and domestic violence against any person, corresponding to the scope of the convention (IA, p. 8). In addition to covering the scope of the convention, this proposal also deals with cyberviolence and sexual harassment, in particular at work (IA, p. 8). This follows European Parliament recommendations to the Commission, for instance those in its resolution of 14 December 2021 on combating gender-based violence: cyberviolence, and in multiple resolutions on sexual harassment at work. Parliament’s recommendations to the Commission, expressed in its resolution of 16 September 2021 on identifying gender-based violence as a new area of crime listed in Article 83(1) TFEU, are not taken up within the preferred policy option (see section on ‘Assessment of impacts’ below).

Problem definition

The IA gives a rather general insight into the problems, their drivers, and their context, which somewhat lacks structure and depth. The problem description (IA, pp. 12-20) does not entirely match the intervention logic scheme included in the IA (p. 30). Problem drivers include structural gender inequality and harmful social norms and stereotypes, and failure to recognise the specificities of crimes of VaW and domestic violence (IA, p. 27). The IA describes the following problems the proposal aims to solve:
1 **High prevalence of VaW and domestic violence in the EU.** The IA illustrates the prevalence of various types of VaW, such as sexual violence, cyberviolence, violence at work, and domestic violence, which increased under Covid-19 isolation rules, when victims were confined with their perpetrators, and had limited possibilities of help and escape. One in 10 women reported experiencing some form of sexual violence, and one in 20 has been raped (data from a 2014 European Fundamental Rights Agency (FRA) survey). In the age group of women between 18 and 29 years, 20 % had experienced cyberviolence since the age of 15. (IA, p. 11; data from an EPRS added value assessment study on cyberviolence). The occurrence rate of domestic violence is estimated at 21.2 % (in 2019), with 46.9 % of the victims having experienced severe health consequences (IA, p. 12, data from the European Institute for Gender Equality (EIGE)). Moreover, EIGE estimates show that the cost of gender-based violence in the EU reaches €290 billion a year (IA, p. 51).

2 **Legislative and implementation gaps at national level** indicate that ineffective progress has been made in the problem areas identified in the Istanbul Convention, for instance regarding prevention and protection from violence, access to justice and support for victims of violence, and policy coordination. Annex 8 analyses legislative gaps in the Member States and the EU, and illustrates the ineffectiveness of existing measures, for example: awareness-raising campaigns are not reaching the target groups meaningfully; trainings for professionals working with victims are not compulsory in most Member States; perpetrator programmes are not available, or attended, sufficiently; measures for child victims and witnesses are not ensuring specific protection; etc. It is, however, not clear what benchmarks the IA uses to determine the measures' sufficient level of effectiveness.

3 **Legislative and implementation gaps at the EU level** (IA, pp. 12-20). The dedicated analysis concludes that the relevant EU legislation 'has been ineffective' in preventing and combating VaW and domestic violence (IA, p. 20), see section on 'Simplification' below. Moreover, the analysis states that the EU legal framework 'is insufficiently in line' with the requirements of the Istanbul Convention regarding prevention, among others (Annex 8, p. 11). It is, however, not clear – neither from the IA nor from the dedicated gap analysis in Annex 8 – how the national differences in legislation and practice lead to ineffective prevention and combating of violence, and why insufficient alignment to the Istanbul Convention is problematic per se. Among other gaps, the IA indicates that there is 'no requirement in EU law' to collect disaggregated data specifically on VaW and domestic violence, and 'efforts remain dependent on the political will at national level' (IA, Annex 8, p. 33).

The evidence base for the problem description includes various studies and reports from international organisations, including the Council of Europe, FRA, the United Nations (UN), the European Parliament, and EIGE, as well as academic literature. The IA provides evidence of the scale of the problems in the EU, reliable within the limits of data availability, as shortcomings in data collection and disaggregation are highlighted (IA, p. 19). The stakeholders affected, for instance specific groups of victims, are not clearly identified.

The IA argues that the prevalence of VaW and domestic violence is not likely to decrease significantly without additional policy intervention, and that the legislative gaps are likely to persist. It is, however, not clear why a new instrument is necessary, and why the Istanbul Convention – together with existing EU legislation – is not enough per se to address the problems identified, all the more so since the existing instruments have not all been evaluated. It would have been helpful to see more examples illustrating the possible progress (or lack thereof) in addressing the problems identified over a given time, in order to strengthen the argument base for the problem definition (for example, a comparison between the countries having ratified the Istanbul Convention against those which have not, an indication of the prospects of full EU ratification of the convention, or any similar illustration that data availability would permit to make).
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Subsidiarity / proportionality

The IA is accompanied by a dedicated subsidiarity grid (SWD(2022) 60), as recommended by the Better Regulation Guidelines (BRG) (Tool # 5). According to the IA and the subsidiarity grid, the proposal is based on the combined legal bases of Articles 82(2) and 83(1) and (2) of the Treaty on the Functioning of the EU (TFEU), which set out cross-border judicial cooperation in criminal matters in the area of victims’ rights and criminal offences as a shared competence. The IA explains that the proposal builds up on the Victims’ Rights Directive, with respect to prevention, protection and support to victims, and their access to justice. The proposal also includes cross-border elements of VaW and domestic violence, regarding for instance cyberviolence and trafficking for sexual exploitation (IA, pp. 31-33). The IA argues that the differing approaches across Member States create legal uncertainty on the rights of victims of VaW and domestic violence, with more substantial fragmentation observed at regional and local levels (IA, p. 34). This initiative would oblige the six Member States not having ratified the Istanbul Convention to take ‘measures that correspond to the minimum level of protection needed to tackle’ VaW and domestic violence (IA, p. 34). The subsidiarity grid explains that the proposal’s minimum standards will ensure a targeted and coordinated approach at EU level for the first time, and allow flexibility to Member States in implementing those standards. Several national parliaments have scrutinised the proposal by the scrutiny deadline of 19 May 2022. The Czech Chamber of Deputies issued a reasoned opinion on subsidiarity grounds, expressing concerns that the criminalisation of offences should be left to the Member States, and suggesting instead an amendment to the Victims’ Rights Directive. The IA assigns a proportionality score to each option, but barely explains how these scores were obtained.

Objectives of the initiative

The IA explains that the proposal’s general objective is ‘to prevent and combat [VaW] and domestic violence as criminal acts and a form of discrimination between women and men’ (IA, p. 35). The five specific objectives reiterate the five areas of national legislative and implementation gaps described above, i.e. ensuring effective prevention, protection of victims, access to justice, victim support, and strengthened coordination (IA, pp. 35-36). The objectives correspond to both the problems described and the intervention logic (summarised in Figure 2 on p. 36 of the IA). However, they appear to be only partly ‘SMART’ (specific, measurable, achievable, relevant and time-bound), as it is not clear how they are going to be measured or achieved. The operational objectives, defined in terms of the deliverables of specific policy actions, as required by the BRG, are presented in the IA’s Annex 7 dedicated to monitoring and evaluation.

Range of options considered

Under the baseline (IA, pp. 36-38), the IA envisages the Digital services act (DSA, yet to be adopted) to address certain risks emerging in the online space. The IA notes, however, that the DSA’s coverage would be limited to behaviours that are illegal under national legislative frameworks. Moreover, the baseline envisages non-legislative measures, such as a code of conduct between online platforms and stakeholders, and continued funding for action by Member States and non-governmental organisations against VaW and domestic violence under the citizens, equality, rights and values programme. The IA expects the impact of these existing measures at EU level to remain limited, and considers that the Member States not having ratified the Istanbul Convention lack incentives to address national deficiencies. At the same time, reforms under way in the Member States to introduce the convention’s measures are considered too lengthy.

In addition to the baseline, the IA discusses only two options. These are cumulative regarding the measures they contain, but do not constitute actual alternatives to choose from. Policy option 1 is considered a moderate approach consisting of ‘targeted measures to fill gaps in the prevention and combating of [VaW] and domestic violence based on the level of protection required by the Istanbul Convention (in the areas of EU competence)’ (IA, p. 40). Policy option 2 is deemed a more comprehensive approach building on ‘the measures outlined in the moderate option and
introduc[ing] more comprehensive and detailed measures to ensure higher minimum standards and facilitate their enforceability and to address additional gaps, including on cyberviolence against women and sexual harassment’ (no more details are given as to what higher minimum standards mean). Policy option 2 consists of two sub-options, 2A and 2B, with sub-option 2B containing wider obligations ‘on sexual harassment, access to justice, victim protection and data collection’ (IA, p. 40). The measures under the options are structured according to the five problem areas in which legislative and implementation gaps are identified.

Table 1 – Policy options (preferred option in light blue)

<table>
<thead>
<tr>
<th>Five problem areas</th>
<th>Measures under option 1</th>
<th>Measures under option 2A</th>
<th>Measures under option 2B</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prevention</td>
<td>Obligation on MS to provide targeted information for and raise awareness of the general public</td>
<td>Obligation on MS to provide targeted information for and raise the awareness of groups at risk</td>
<td>Same as 2A</td>
</tr>
<tr>
<td></td>
<td>Obligation on MS to have (voluntary) perpetrator programmes in place</td>
<td>Obligation on MS to make available voluntary perpetrator programmes to all those at risk of offending, and mandatory programmes for re-offenders</td>
<td>Obligation on MS to make available voluntary perpetrator programmes to all those at risk of offending, and mandatory programmes to all offenders</td>
</tr>
<tr>
<td></td>
<td>Obligation on MS to provide specialised training and targeted information for professionals likely to come into contact with victims and managers</td>
<td>Obligation on MS to provide specialised, regular and mandatory training for professionals likely to come into contact with victims, and mandatory training for managers on sexual harassment at work and the effects of domestic violence on the workplace</td>
<td>Same as 2A</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Obligation on MS to ensure that sexual harassment at work is addressed in national policies; obligation on MS to ensure that company risk assessments cover sexual harassment at work</td>
<td>Same as 2A</td>
</tr>
<tr>
<td>Protection from violence</td>
<td>Obligation on MS to ensure availability of emergency barring orders and protection orders</td>
<td>Obligation on MS to ensure effectiveness through minimum standards on the issuance, conditions and enforcement of emergency barring orders and protection orders</td>
<td>Same as 2A</td>
</tr>
<tr>
<td></td>
<td>Obligation on MS to conduct risk assessments on the seriousness of the threat of violence to victims</td>
<td>Obligation on MS to conduct risk assessments speedily and in cooperation with support services</td>
<td>Same as 2A</td>
</tr>
<tr>
<td></td>
<td>Obligation to provide age-appropriate psychosocial counselling for child victims and witnesses of domestic violence</td>
<td>Obligation on MS to ensure the protection of children by providing for surveyed safe places for visits in cases of allegations of domestic violence</td>
<td>Same as 2A</td>
</tr>
<tr>
<td>Access to justice</td>
<td></td>
<td>EU-level criminalisations: additional approximation of criminal definitions and sanctions on the basis of the legal bases of computer crime (information and communications technology)</td>
<td>EU level criminalisations: introduction of VaW and domestic violence as a new area of EU crime</td>
</tr>
</tbody>
</table>
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<table>
<thead>
<tr>
<th>Obligation on MS to encourage reporting of violence by third parties</th>
<th>Obligation on MS to ensure easy and accessible reporting, including child-friendly reporting mechanisms and online reporting</th>
<th>Same as 2A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right of victims to obtain full compensation from the perpetrator in one single procedure and within adequate time limits</td>
<td>Sub-option 2A plus obligation on MS to provide state compensation in cases where victims cannot obtain compensation from the perpetrator or other sources</td>
<td></td>
</tr>
<tr>
<td>Besides general support services, obligation on MS to ensure comprehensive and holistic specialised support for victims (including rape crisis centres, shelters and a national helpline)</td>
<td>Obligation on MS to facilitate access to specialised support services for groups at risk, such as children, migrant and asylum-seeking women, and women with disabilities; connect national helplines to EU-level helpline</td>
<td>Sub-option A plus obligation on MS to provide one shelter space per 10 000 inhabitants</td>
</tr>
<tr>
<td>Obligation on MS to provide specific support for victims of sexual harassment at work (including medical care and complaint mechanisms)</td>
<td>Sub-option A plus obligation on MS to provide special compensated leave for workers victim of VaW or domestic violence</td>
<td></td>
</tr>
<tr>
<td>Obligation on MS to establish both on- and offline support for victims of cyberviolence against women</td>
<td>Same as 2A</td>
<td></td>
</tr>
<tr>
<td>Measures strengthening multi-agency cooperation</td>
<td>Obligation on MS to provide one-stop online access to relevant protection and support services; encouragement to locate support services in the same premises</td>
<td>Obligation on MS to locate multi-agency support services for victims in the same premises</td>
</tr>
<tr>
<td>Voluntary participation in surveys coordinated at EU-level</td>
<td>Obligatory participation by MS in surveys coordinated at EU-level</td>
<td>Same as 2A</td>
</tr>
<tr>
<td>Obligation to regularly collect disaggregated relevant administrative data</td>
<td>Obligation to collect disaggregated relevant administrative data regularly in line with a number of harmonised minimum requirements</td>
<td>Integrated centralised data collection system at national level</td>
</tr>
</tbody>
</table>

Source: Compiled by the author, based on the IA, Table 5.1., pp. 43-44, and information provided on p. 67.

Note: MS stands for Member States.

The IA (pp. 39-40) describes several discarded options, as required under the BRG. They included a non-legislative option, legislative measures on one or two of the problem areas (both rejected for reasons of effectiveness), and measures to amend the relevant 14 instruments of EU law (rejected for lack of a coordinated and consistent approach; see section on ‘Simplification’ below). The policy options’ contents are overall presented with sufficient clarity, although some terms are not clearly defined (e.g. ‘groups at risk’, ‘at risk of offending’). The presentation of options is balanced. The preferred option is option 2A (IA, p. 67).
Assessment of impacts

The IA provides a mostly qualitative assessment of the fundamental rights and social impacts, and a qualitative and quantitative assessment of economic impacts; no environmental impacts are expected. Annex 5 features a comprehensive overview assessing in detail the impacts of individual measures on specific stakeholder groups in achieving the five specific objectives. Measures contain cumulative benefits for the stakeholders; however, the logic of how the measures are combined is not described in the IA, so that it is unclear how options compare as packages of measures.

All options are expected to have a positive impact on fundamental rights, although to varying degrees. The IA reiterates that one of the proposal’s aims is to ensure the fundamental rights of the women victims of violence and of victims of domestic violence. As the provisions under each option are cumulative, sub-option 2B envisages the furthest-reaching obligations, and thus performs best regarding fundamental rights (IA, pp. 45-46). For example, option 2A would criminalise at EU level certain forms of VaW and domestic violence on the basis of existing legal bases, while option 2B would also introduce VaW and domestic violence as a new area of EU crime (Article 83 TFEU), which can be expected to deter potential perpetrators (IA, p. 47).

Options 1 and 2 would have positive social impacts on victims’ health, safety and quality of life. Both options are expected to foster changes in society towards perceiving abusive behaviour, including sexual harassment at work, as unacceptable (IA, p. 51). Social impacts comprise, for instance, improved access for victims to compensation, general healthcare and social services, including for migrant and ethnic minority women, and women with disabilities (IA, pp. 185 and 191). All options are expected to increase victims’ and witnesses’ awareness about available support and protection, as well as establishing a victim-centred approach among support services (IA, p. 50). Among the measures for specialised victim support, improved forensic capabilities in rape crisis or sexual violence referral centres would facilitate investigation, prosecution and sanctioning of perpetrators (IA, p. 198). The obligation to set up state-wide, free helplines could reach perpetrators willing to change, and more reporting through helplines could ensure more perpetrators being brought to justice (IA, p. 214).

As regards economic impacts, the IA expects both options to reduce the cost of violence in the EU (IA, p. 52). The IA examines impacts under a short-term, 5-year assumption, and a long-term, 10-year assumption, based on data from 1994 and 2014 (IA, p. 53). In focusing on the options’ potential to reduce prevalence of violence, the IA follows on a June 2021 EPRS EU added value assessment, Gender-based violence as a new area of crime listed in Article 83(1) TFEU (IA, pp. 52). The violence reduction rate assessed for option 1 is 15 % (short term) and 20 % (long term), bringing an annual economic benefit of €39.6 and €53.1 billion, respectively. For option 2A, the IA assumes a decrease in prevalence of violence of 20 % (short term) and 30 % (long term), with an estimated economic benefit of €53.1 and €82.7 billion, respectively. Measures under option 2B are expected to bring an even higher reduction of prevalence: 22 % (short term) and 33 % (long term), with the estimated economic benefit of €57.8 billion and €87.6 billion, respectively. (IA, p. 54). Both options include compliance costs for Member States and employers, which are said to fall short of current societal costs of VaW and domestic violence, with annual running costs varying significantly: between €793.5 and €2 198.1 million under option 1, between €4 968.3 and €6 581.4 million under option 2A, and between €7 054.1 and €14 201.4 million under option 2B (IA, p. 55). For example, the total running costs of providing improved medical care and counselling services for all victims of gender-based work harassment are expected to amount to between €198.5 and €627.1 million (IA, p. 206).

The new one-in, one-out (OI-OO) requirement under the BRG for assessing the administrative burden to be offset is not presented in the IA, but in a separate Annex 2 to the follow-up to the second opinion of the Commission Regulatory Scrutiny Board (RSB) and additional information (SWD(2022) 61); this document accompanying the proposal was prepared in addition to the IA (see section on ‘Follow-up to the opinion’ below). The administrative burden is estimated at €1.89 billion in the form of recurrent direct adjustment costs borne by businesses. No special measures are
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provided for small and medium-sized enterprises (SMEs) (follow-up document, p. 11), nor are impacts on the SMEs assessed, which is contrary to the BRG requirements. For example, requirements for smaller businesses to mitigate the risk of cyberviolence (Annex 5, p. 145) or sexual harassment at work could affect smaller companies differently from big companies, including as regards costs due to absenteeism among victims of VaW and domestic violence.

The IA compares the options, based on unweighted scores, against the criteria of effectiveness (including proportionality), efficiency and coherence. The preferred option 2A is expected ‘to provide extensive protection of fundamental rights and improve the social situation of victims and society at large’ compared with option 1, because of more comprehensive obligations and expected economic net benefits of €48.1 billion in the short term and €76.1 billion in the long term (IA, p. 67). While the Parliament had requested for gender-based violence to be included in the list of EU crimes under Article 83(1) TFEU, as envisaged under option 2B, the IA considers this disproportionate owing to wide overlaps with national criminal law (IA, p. 63), and expects option 2B to yield lower net benefits overall (IA, p. 67).

Simplification and other regulatory implications

According to the IA and the complementary evidence presented in the follow-up document mentioned above, ‘14 EU instruments are relevant to various aspects of combating [VaW] and domestic violence’ (IA, p. 39; follow-up document, pp. 9-10). This complex legislative context is mapped out in Annex 5, providing a legislative gap analysis at both the EU and Member State levels in the five problem areas identified in the IA. The existing horizontal instruments include: the Victims’ Rights Directive, the European Protection Order Directive, the Compensation to Crime Victims Directive, the Child Sexual Abuse Directive, the Anti-Trafficking Directive, the Reception Conditions Directive, the Asylum Procedures Directive, the Return Directive, the Qualification Directive, and Article 16 of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) (Annex 8). The IA explains that ‘the mentioned acts do not criminalise offences of [VaW] and domestic violence in general’ (follow-up document, p. 10), and ‘EU law provisions [thus] fail to address the specific protection needs of victims of [VaW] and domestic violence as required by the Istanbul Convention’ (IA, Annex 8, p. 21). According to the IA, a ‘targeted EU-level instrument dedicated to this group of victims would supplement and support the application of the above EU standards’, and ‘create simplification for the benefit of the relevant professionals and victims by focusing the relevant EU rules in a single instrument in a transparent manner’ (IA, p. 39).

Monitoring and evaluation

Monitoring and evaluation is discussed in the IA in Section 8.8 and in Annex 7, the latter featuring a table with the specific objectives, operational objectives, performance indicators, sources, and tools envisaged (IA, pp. 246 et seq.). The IA suggests that the implementation will be monitored against the specific objectives across the five problem areas (Annex 7). The annex refers to some qualitative indicators of perceived prevalence, developed in cooperation with Eurostat and EIGE and available at an online dashboard. Other indicators proposed consist essentially of the number of measures taken, the audience reached, and the number of procedures handled within the proposed legislation’s scope. However, it is not clear how the indicators proposed may in fact reflect progress in achieving the objectives identified. An evaluation of the initiative’s success is proposed to be carried out ‘in about 5 years’ time’. The preferred option’s strengthening and harmonisation of data-collection and -disaggregation requirements are expected to facilitate such evaluation. The details of the reporting process are to be set out in a ‘monitoring and enforcement plan’, which neither the IA nor the proposal elaborate on (IA, p. 68; proposal, p. 17). Deviating from the 5-year period put forward in the IA, the proposal sets the first evaluation deadline to 7 years after entry into force (article 47).
Stakeholder consultation

As part of a comprehensive consultation strategy on the proposal, the Commission held an open public consultation between 8 February and 10 May 2021, which yielded submissions from 767 respondents (IA, Annex 2, p. 88). Among the potential prevention measures presented to respondents, targeted education in schools and awareness-raising among the general public were most widely supported. The responses to some questions are broken down by country for Hungary, Germany and Italy, the three countries from which the bulk of responses (around 75%) originated. In addition, the Commission organised targeted consultations with Member States, and a series of workshops with NGOs (including victims’ organisations), social partners and international organisations, alongside additional events and expert group meetings. It also took into account information from previous consultations, and a 2016 Eurobarometer study on gender-based violence (IA, p. 88). In the targeted consultations, NGOs, social partners, international organisations and academics expressed support for a broad range of measures, including some of those opted for in the IA. According to the IA, NGOs and international organisations ‘note that without further action at EU level, national legislation and practice are unlikely to develop sufficiently’ (IA, p. 30); however, there is only limited support for this statement in the consultations’ synopsis reports in Annex 2. Employer organisations largely resisted additional obligations, and considered the current EU framework sufficient (IA, p. 102). Stakeholder views are generally well-integrated within the IA, notably in the problem description and the discussion of measures, but their views are not well broken down throughout.

Supporting data and analytical methods used

The Commission based the IA on an external underlying study, which is referred to, but neither referenced nor publicly available at the time of writing, going against the BRG’s transparency requirements. Two EPRS studies (EU added value assessments) are used extensively in designing the options and assessing their economic impacts: Gender-based violence as a new area of crime listed in Article 83(1) TFEU from June 2021 (already mentioned above), and Combating gender-based violence: Cyber violence from March 2021. Reports, such as that from EIGE, and data from a FRA survey from 2014 (most recent EU-wide data), and the Commission’s own reports and other literature, are referenced generally. The IA indicates problems with data collection: there appears to be a lack of recent, uniform, and disaggregated data in the EU, combined with low reporting levels. Overall, the abundant supporting evidence available could have improved the IA’s quality, and substantiated the preferred option more effectively, had it been included more usefully in the main text of the IA.

Follow-up to the opinion of the Commission Regulatory Scrutiny Board

The RSB issued two negative opinions, the second one on 12 January 2022. In cases such as this, the BRG require green light from the vice president responsible for ‘better regulation’ for the initiative to proceed (BRG, p. 31). In its second negative opinion, the RSB expressed serious criticism on many of the IA’s components. Improvements were required in core steps, such as problem analysis and scope, baseline, objectives, options and concrete measures contained therein, alternative options, analysis of impacts, comparison criteria and scoring methodology of options, as well as data and evidence, including the cost-benefit analysis. Furthermore, it considered that better presentation of the proportionality and lex specialis approaches, and Member State views (in particular on the questions of subsidiarity and support for the preferred option) was required. Lastly, clear definitions of VaW and domestic violence were deemed missing.

To respond to the RSB’s criticism, the proposal was complemented by the above-mentioned ‘Follow-up to the second opinion’, which contained additional evidence. In the follow-up document, the Commission provides more comprehensive details and improvements to the IA. The description of the baseline includes tables comparing legislative gaps in the Member States and within the EU framework against the proposal’s provisions (Annex 1 to the follow-up). Regarding the objectives, the follow-up explains that all measures have been assessed against the main and specific
objectives. To improve monitoring and implementation, a comprehensive approach with a targeted single EU act is considered to ensure this objective most effectively; however, no more details are given on monitoring indicators than in the IA (see section on 'Monitoring and Evaluation' above). While the follow-up promises an overview of the administrative burden to be offset under the OI-OO principle, Annex 2 of the document merely states that the administrative costs are negligible. The follow-up further states that the changes are also quite marginal in terms of costs and did not trigger a revision of the costing of options (p. 13). On proportionality, the proposal is said to present a *lex specialis* to the Victims' Rights Directive, and to ensure that Member States have maximum flexibility to achieve the objectives by setting minimum rules. Indeed, the follow-up further explains that some provisions concerning the support services to victims have been removed from the proposal, for instance relating to access to free legal representation, legal aid and trial support, psychosocial support during proceedings, accessibility solutions for victims with disabilities, access to interpretation, one-stop shops, and standards on geographical availability. According to the IA, however, part of the problem is precisely the lack of or limited support for victims in rural regions. To provide for more robust data in the future, the proposal is said to contain 'the grounds for more convergence in the administration of data and survey data collection' (p. 14). The integration of stakeholder input is said to be improved in the proposal's explanatory memorandum, including the contributions from the Member States, while the memorandum merely says that the 'Member States expressed their openness on EU action and found the envisaged measures relevant' (p. 13).

Both the subsidiarity grid and Annex 1 to the follow-up document, which compares the measures proposed with the gap analysis, provide more details and clarity on the legal basis and the legislative gaps the proposal aims to bridge. Generally, however, the IA, together with the follow-up document, could have supported the proposal and the need for a new legislative instrument more effectively, as the follow-up appears to only partly respond to the RSB criticism. The follow-up does not provide more details on the proposal’s scope regarding clear categories of victims and crimes.

**Coherence between the Commission’s legislative proposal and IA**

While by and large, the proposal’s provisions correspond to the direction taken in the preferred option, there are discrepancies between the two. For instance, the proposal appears to have been somewhat toned down, both as regards the Member States’ obligation to make intervention programmes mandatory for re-offenders, and specialised regular trainings for managers and professionals likely to deal with victims (IA, p. 43). The proposal now merely requires the Member States to ‘ensure’ that these programmes are provided for those groups (articles 37 and 38). Moreover, while the preferred option in the IA envisages an obligation on the Member States to establish both on- and offline support for victims of cyberviolence against women, there is no equivalent dedicated provision in the proposal. Finally, some provisions concerning the support services for victims have been removed from the proposal (see section above).
ENDNOTES

1 Bulgaria, Czechia, Latvia, Lithuania, Hungary and Slovakia. For more details, see EU accession to the Council of Europe Convention on preventing and combating violence against women, Legislative Train Schedule, European Parliament (as of 24 April 2022).

2 European Parliament resolution of 11 September 2018 on measures to prevent and combat mobbing and sexual harassment at workplace, in public spaces, and political life in the EU (2018/2055(INI).

3 The RSB in its criticism pointed to the fact that full evaluation of some horizontal legal instruments still has to be carried out.

4 For more details on gender equality measures at local and regional levels, including on VaW, see C. Collovà and L. Zandersone with E. Habib, European gender equality strategy and binding pay transparency measures, Pre-legislative synthesis of national, regional and local positions on the European Commission’s initiatives, EPRS, European Parliament, November 2020.


6 Eurostat is currently conducting a survey on VaW; however, some Member States chose not to participate.

7 This briefing analyses the IA as it was presented to the RSB for the second opinion, and published together with the proposal. Where necessary, the briefing also includes information from the follow-up document.

This briefing, prepared for the Committee on Women’s Rights and Gender Equality (FEMM), analyses whether the principal criteria laid down in the Commission’s own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the impact assessment. It does not attempt to deal with the substance of the proposal.

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