Combating violence against women and domestic violence

OVERVIEW

Violence directed against a woman because she is a woman, or that affects women disproportionately (‘gender-based violence against women’) is a violation of fundamental rights, and a major obstacle to gender equality in all EU Member States. Despite increased attention, national legislation does not offer equal protection for women against all forms of gender-based violence across the EU, and there are significant gaps in the measures adopted at EU level.

On 8 March 2022, the European Commission adopted a legislative proposal on combating violence against women and domestic violence, to enshrine minimum standards in EU law for criminalising certain forms of gender-based violence, improve access to justice, protection and support for victims, ensure coordination between relevant services and prevent these types of crime. On 12 January 2023, Parliament’s joint rapporteurs from the Committee on Women’s Rights and Gender Equality (FEMM) and the Committee on Civil Liberties, Justice and Home Affairs (LIBE) presented their draft report to a joint meeting of the two committees. On 28 February 2023, a further joint committee meeting took note of 1,481 amendments tabled on the draft report.

<table>
<thead>
<tr>
<th>Proposal for a directive of the European Parliament and of the Council on combating violence against women and domestic violence</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Committees responsible:</strong></td>
</tr>
<tr>
<td><strong>Co-rapporteurs:</strong></td>
</tr>
<tr>
<td><strong>COM(2022) 105 final</strong></td>
</tr>
<tr>
<td><strong>Next steps expected:</strong></td>
</tr>
<tr>
<td><strong>Ordinary legislative procedure (COD)</strong></td>
</tr>
</tbody>
</table>

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Introduction

Gender-based violence against women (GBVAW) encompasses physical, sexual and psychological violence and can take many forms, such as harassment, stalking, rape, female genital mutilation (FGM), domestic violence, forced sterilisation and femicide. It manifests in different settings, including the family and intimate relationships, the workplace, public spaces and online.

Full prevalence data on gender-based violence against women in the EU are lacking. However, the most comprehensive EU-level survey, published by the EU Agency for Fundamental Rights (FRA) in 2014, paints a stark picture of its nature and extent. It finds that 1 in 10 women in the EU has experienced some form of sexual violence since the age of 15, and 1 in 20 women has been raped. Over one in five women has experienced physical and/or sexual violence from partner or ex-partner, whilst 43% of women have experienced some form of psychologically abusive and/or controlling behaviour in a relationship. Homicide data shows that in many countries, over half of all female murder victims are killed by a partner or relative.

It also finds that only a minority of incidents are ever reported, meaning that the scale of violence against women is not reflected in official data. Research shows that specific groups, such as migrant women, older women, women with disabilities, and LBTI women, are more likely to experience violence and intersecting forms of violence. Cyber-violence is a growing problem, particularly for women with intersecting identities, young women and women in public life. The prevalence and intensity of some forms of GBVAW, particularly domestic violence, increased during the COVID-19 pandemic, which also revealed deficiencies in EU Member States' responses. Russia's war of aggression on Ukraine has highlighted the support needed by particular groups of victims.

Gender-based violence against women has serious immediate and long-term consequences for victims. The impacts of online violence can be as severe as for offline violence. Besides the human suffering caused and the impacts on individuals and families, GBVAW imposes a significant economic burden on society, in the form of healthcare, social, policing and legal costs and lost productivity. According to the European Institute for Gender Equality (EIGE), it costs the EU €289 billion per year. EPRS research quantifies the cost of cyber-violence against women and girls at €49.0 to €89.3 billion per year. Violence against women in public life, such as women's rights activists, journalists and politicians may have a chilling effect on their participation and therefore on democracy.

International standards frame GBVAW as a human rights violation and severe form of discrimination against women, since it is primarily inflicted on women and girls by men, stems from and perpetuates unequal power relations between women and men and impedes women's enjoyment of their fundamental rights. Under the EU's founding Treaties and the Charter of Fundamental Rights, the EU and its Member States are committed to combating all forms of discrimination based on sex and promoting gender equality. All EU Member States have also endorsed international human rights instruments requiring violence against women to be treated as a human rights violation and as a specific form of violence linked to discrimination against women. This implies that they should prohibit all forms of gender-based violence against women, take measures to prevent it, provide adequate protection for survivors, end impunity for perpetrators and ensure redress, using gender-sensitive approaches.

The Commission's proposal for an EU directive on combating violence against women and domestic violence reflects a longstanding demand for EU legislation on the part of the European Parliament and civil society organisations. In putting forward its proposal, the European Commission has stressed the high prevalence, severe impacts and costs of gender-based violence against women, legislative gaps in the Member States and the ineffectiveness of the existing EU legislation in preventing and combating it. The Commission has also foregrounded the need to align EU law with established international standards, notably those set out in the Council of Europe's Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).
which is considered a gold standard owing to its comprehensive approach to the problem. As of March 2023, the EU and all EU Member States have signed the Convention, but six (Bulgaria, Czechia, Latvia, Lithuania, Hungary and Slovakia) have not ratified it and Poland has announced its intention to withdraw.²

**Context**

In her political guidelines, the current President of the European Commission, Ursula von der Leyen, highlighted the gravity of gender-based violence against women and announced that EU action to prevent domestic violence, protect victims and punish offenders would be a priority for the Commission’s 2019-2024 term. She pledged to move forward with an existing proposal for the EU to accede to the Istanbul Convention and, should progress stall, to propose EU legislation to achieve the same objectives as the Convention, within the limits of EU competence. The Commission took up these commitments in its 2020-2025 gender equality strategy, which makes ending gender-based violence a priority. The proposal for a directive on combating violence against women and domestic violence, published on 8 March 2022, is a priority in the Commission’s 2023 work programme, which notes that the ‘Union of equality’ would be further reinforced by co-legislators finding agreement on the initiative.

**Existing situation**

The EU does not currently have a specific legal instrument that addresses gender-based violence against women comprehensively. However, certain forms and aspects come within the scope of existing EU law. The applicable directives and regulations fall into the areas of equality between women and men, judicial cooperation in criminal matters (especially as regards crime prevention, the rights of victims of crime and violence with a cross-border element, where the EU has the strongest competence for crime-related action)³, asylum and digital services.

- The EU has regulated three crimes related to gender-based violence against women – sexual harassment, trafficking and child sexual exploitation and abuse. The Equal Treatment Directives (Directive 2006/54/EC; Directive 2010/41/EU and Directive 2004/113/EC) prohibit harassment on the grounds of sex and sexual harassment as a form of sex discrimination in the context of employment and the offer or supply of goods or services. The directive on combating and preventing trafficking in human beings (Directive 2011/36/EU) recognises the gendered nature of this crime (Article 1). Sexual abuse and sexual exploitation of children and child pornography is addressed in Directive 2011/93/EU. Since trafficking in human beings and sexual exploitation of women and children are listed in Article 83 TFEU as areas of particularly serious crime with a cross-border dimension (‘EU crimes’), the two latter directives set minimum rules for defining criminal offences and sanctions.


- The EU asylum directives on qualification, procedures and reception conditions (Directive 2011/95/EU, Directive 2013/32/EU, and Directive 2013/33/EU) recognise certain gender-based types of persecution, such FGM and sexual violence, as grounds for an asylum claim. The definition of vulnerable groups includes victims of sexual violence and Member States are instructed to make procedures more gender-sensitive and establish procedural guarantees for these groups.
In October 2022, the Council and the Parliament signed the Digital Services Act, proposed by the Commission to ensure a safer, more accountable online environment and thereby help to address the problem of online violence against women and girls. Work is ongoing on a Commission proposal to add hate crime and hate speech based on protected grounds, including sex, to the list of areas of serious crime included in the EU Treaties.

At national level, every EU Member State has taken steps to combat GBVAW. Nevertheless, comparative assessments conclude that the uneven transposition and implementation of the existing EU legislation, and the diversity of legislative and policy approaches, are resulting in unequal levels of criminalisation, protection and support for victims, and prevention, and that current approaches fall short of the standards set in the Istanbul Convention in many instances.4

A 2021 study for the European Commission found that few EU Member States explicitly recognised GBVAW as a form of discrimination or equality issue as required by the Istanbul Convention and the case law of the European Court of Human Rights.5 Only six had adopted a legal definition of GBVAW, as recommended to take account of the gender dimension and ensure that women’s specific safety and protection needs are addressed. Similarly, most EU Member States had not recognised intersectional discrimination in relation to violence against women or the particular vulnerability of certain groups of women. Many Member States had taken a gender-neutral approach to defining offences, had not introduced gender as an aggravating factor for sanctions on offences or had not adopted gender-sensitive guidelines to inform prosecution or victim support measures. The study argued that when GBVAW is criminalised through general rather than specific offences, the lack of such guidelines leads to divergent judicial interpretations across countries and varying degrees of protection for victims.

A 2022 study for the European Parliament found that no form of GBVAW is consistently criminalised across the EU. While most Member States criminalise FGM, forced marriage, forced abortion and forced sterilisation, only three have done so by making them specific offences. Only 15 have criminalised all four forms of domestic violence (physical, psychological, sexual and economic) covered in the Istanbul Convention and only two have explicitly criminalised femicide. Definitions used to criminalise rape vary, with few Member States focusing on the lack of sexual consent, contrary to the Istanbul Convention and the case law of the European Court of Human Rights. Criminalisation of cyber-violence (cyber stalking, cyber harassment, cyber bullying, online gender hate speech and non-consensual sharing of intimate images) is also very mixed.6 In addition, procedural law frameworks vary across the EU, with regard to sanctions for criminal offences, child custody and visitation rights in cases involving GBVAW, provisions for protection orders and the protection of victims in judicial proceedings. Many Member States do not meet recommended standards for victim support, including hotlines, shelters, rape crisis centres, services for specific groups of victims and measures to encourage reporting. There are also gaps in other safety measures such as procedures for risk assessment, coordination between the police and other services, and training for law enforcement and other public officials dealing with gender-based violence. With regard to prevention, the regularity of awareness-raising campaigns, the level of funding and coverage of different forms of GBVAW varies significantly between EU countries. Information on the financial resources allocated specifically to GBVAW is limited. In addition, Member States capture data on GBVAW in different ways, complicating the collection of comparable statistics at EU level to assess the scale of the problem and effectiveness of responses.

Comparative elements

The Council of Europe has set up a body (GREVIO) to monitor the implementation of the Istanbul Convention. Its mid-term evaluation, issued in February 2022, illustrates the progress made by the 11 EU Member States that had ratified the Convention and so far been subject to monitoring (Belgium, Denmark, Spain, France, Italy, Malta, the Netherlands, Portugal, Finland and Sweden).7 For each article of the Convention, the evaluation identifies challenges and examples of promising
Combating violence against women and domestic violence

practice that could be replicated in other countries. For example, Spain and Sweden are cited as positive examples of framing violence against women as a gender equality issue. Research for the European Parliament concludes that ratification of the Istanbul Convention has contributed directly to the creation of services for victims in a number of countries.

Parliament's starting position

The European Parliament has consistently taken a strong stance on the issue of violence against women and has repeatedly called for action to prevent and combat it in order to ensure that all women in the EU enjoy the same level of protection. It has supported a dual approach of combining EU accession to the Istanbul Convention and an EU directive on violence against women. Parliament has argued that this would send a robust message about the EU's commitment to eradicating violence against women and establish a coherent European legal framework for doing so. A 2022 study by the Ex-Post Evaluation Unit (EVAL) within DG EPRS, commissioned by the FEMM committee, summarises Parliament's recommendations for EU action in this area. It includes detailed analysis of the demands Parliament has made since 2009 with regard to EU legislation, in particular in two recent legislative-initiative resolutions adopted immediately prior to the Commission proposal under discussion.

➢ In its resolution of 16 September 2021, based on a legislative-initiative report from Parliament's FEMM and LIBE committees, Parliament reiterated a longstanding demand for a unanimous Council decision adding gender-based violence to the list of serious crimes listed in Article 83(1) TFEU, to provide a clear and solid legal basis for a comprehensive EU directive on GBVAW.8

➢ In its resolution of 14 December 2021, based on a legislative-initiative report from Parliament's FEMM and LIBE committees, Parliament called on the Commission to use its proposal for a directive on combating gender-based violence to criminalise gender-based cyber-violence, as a cornerstone for the harmonisation of existing and future legal acts.9

In these and previous resolutions, Parliament identified specific elements that it would like to see included in a directive on GBVAW.

Council starting position

From 1998 onwards, the Council of the European Union has issued a number of recommendations on violence against women. The 2011 'Council conclusions' on the European pact for gender equality for the period 2011–2020 reaffirmed the EU's commitment to combating all forms of violence against women. In 2014, following the results of the EU-wide survey on violence against women, the Council adopted conclusions on preventing and combating all forms of violence against women and girls, including female genital mutilation. These recognise that gender-based violence constitutes a breach of fundamental rights and requires 'coordinated policies and a comprehensive approach targeting the key issues of prevention, under-reporting, protection, victim support, and the prosecution of perpetrators'. The conclusions also call for a review of existing legislation and enforcement to verify that it is sufficient to tackle the problem effectively, including new and emerging forms, such as cyber-violence. The Council conclusions on women, peace and security adopted in November 2022 reaffirm that gender equality and human rights are at the core of universal values and constitute stand-alone priorities mainstreamed across all EU policies. They express the Council's concern about the prevalence of sexual and gender-based violence, on- and offline and its commitment to enhance its efforts to prevent and counter it, and stress that the EU will apply a coordinated approach to risk mitigation and prevention and ensure that responses, including access to sexual and reproductive healthcare services, are victim- and survivor-centred.

On 15 February 2023, the Council reached an agreement in principle on EU accession to the Istanbul Convention, launched by the European Commission in 2016. Two Council decisions on the
conclusion of the Convention, on behalf of the EU, are to be put to the European Parliament for its consent. The agreement in the Council was reached following a long process of discussion and a European Court of Justice ruling that a qualified majority was sufficient to ratify the Convention.10 The divergences that emerged on the extent of EU competence with respect to violence against women, the legal basis for EU legislation in this area and the gendered approach to violence against women in the Convention, may also arise in the Council in relation to the proposed directive.

Preparation of the proposal

To initiate its work on the proposal, the Commission conducted a fitness check to evaluate the existing relevant EU legislation and map the broader situation as regards preventing and combating violence against women and domestic violence in the EU Member States.11 A public consultation took place from 8 February to 10 May 2021.

On 8 March 2022, the European Commission released its compulsory impact assessment (IA) accompanying the proposal for a directive. The IA concluded that existing provisions at EU and national levels have been insufficient to combat and prevent violence against women and domestic violence effectively. It identified five problem areas where there are gaps and shortcomings:

- ineffective prevention of violence, due to uneven awareness raising, targeted training and work with perpetrators to prevent re-offending;
- ineffective protection from violence, due to inadequate individual assessment of the specific protection needs of victims of violence against women and domestic violence;
- ineffective access to justice for victims due to divergences in national criminal law and insufficient access to compensation;
- insufficient victim support and specifically specialised support services;
- the need for better coordination between agencies and in relation to data collection.

The IA explored three options for further action: a baseline, with non-legislative measures; moderate legislative measures to prevent violence against women and domestic violence, provide access to justice and victim support, and strengthen coordination; and more comprehensive EU legislation to address these issues, including additional rules on sexual harassment and cyber-violence. The IA concludes that the third option, establishing binding minimum standards in areas of EU competence, is preferable. The Commission Regulatory Scrutiny Board (RSB) issued two negative opinions on the draft version of the IA report. In the second, on 12 January 2022, the RSB expressed serious criticism of many of the IA’s components. It required improvements in various areas including the problem analysis and scope of the proposal, the methodology for scoring the options and data and evidence, including the cost-benefit analysis. Furthermore, it considered that better presentation of the approaches to proportionality and the views of the Member States (in particular on the questions of subsidiarity and support for the preferred option) was required. Lastly, it deemed that clear definitions of violence against women and domestic violence were missing. To respond to the RSB’s criticism, the Commission issued a ‘follow-up to the second opinion’, which explained further efforts to improve the proposal, but did not make changes to the IA itself.

In June 2022, the European Parliamentary Research Service (EPRS) published an initial appraisal of the European Commission impact assessment, which found that the evidence base was satisfactory but not adequately reflected in the definition of the problem, design of policy options, assessment of impacts or monitoring requirements. It also considered the IA’s subsidiarity justification and evidence base for the EU added-value to be rather poor.

The changes the proposal would bring

The proposed directive to combat violence against women and domestic violence would require Member States to criminalise certain offences, take steps to protect and support victims of all forms
of violence against women, prevent such violence, improve access to justice, and ensure coordination between relevant authorities and services.

The proposal is made up of seven chapters. After establishing the scope and defining key terms (Chapter 1) it covers criminalisation of certain offences (Chapter 2), protection of victims of any form of violence against women and domestic violence and access to justice (Chapter 3), victim support (Chapter 4), prevention (Chapter 5); cooperation and coordination (Chapter 6) and final provisions, including reporting obligations (Chapter 7). To transpose the directive, Member States would have to take the following action.

**Criminalisation:** Member States would be required to criminalise specific forms of violence on the existing legal basis of Article 83(1) TFEU, which recognises sexual exploitation and computer crime as particularly serious crimes for which common legal definitions and common minimum rules for sanctions may be established. Specifically, they would have to criminalise rape (of women) as a (sexual) penetrative act without consent, FGM, non-consensual sharing of intimate images, cyber stalking, cyber harassment and cyber incitement to hatred or violence (Articles 5-10). They would also have to set 'minimum maximum penalties' for these offences (Article 12) and ensure that certain circumstances are classified as aggravating circumstances (Article 13). The sentences set in the proposal are: a maximum of at least 8 years for rape, 5 years for FGM, 2 years for cyberstalking and cyber incitement to hatred or violence based on sex or gender, and 1 year for non-consensual sharing of intimate images and cyber harassment. The proposal also introduces child rape as an aggravating circumstance for a maximum prison sentence of at least 12 years (Article 45). Member States would be able to impose higher maximum sentences and decide on minimum sentences.

With regard to cyber-violence, the proposal would complement the Digital Services Act by defining illegal online content related to cyber-violence. It would also allow for rapid initiation of legal proceedings to have illegal online content removed (Article 25).

**Protection for victims:** This part of the proposal is intended to complement the existing EU legislation by setting rules to cater more specifically for the needs of victims of all forms of GBVAW. Member States would have to make it easier for victims to report GBVAW by allowing for online reporting and ensuring that health, education or other relevant professionals are not held liable for breach of confidentiality if they report (Article 16). On first contact with a victim, before any formal report, an individual assessment would have to be made of their specific needs, taking account of factors such as the risk presented by the offender and the risk of repeated violence (Article 18). To follow up the assessment, emergency barring orders, restraining orders and protection orders would have to be available, together with effective, proportionate, dissuasive penalties for breaches. Victims’ children and dependants would have to be accorded the same protection (Article 21).

**Access to justice:** In criminal proceedings, it would be prohibited to use evidence concerning the past sexual conduct of the victim or other aspects of their private life unless strictly necessary (Article 22). In addition, Member States would be obliged to adopt child, gender- and trauma-sensitive guidelines for law enforcement and judicial authorities (Article 23). Victims would be entitled to compensation from offenders for damages, including the costs of healthcare, support services and physical and psychological harm (Article 26). Member States would have to designate one or more bodies to provide independent assistance and advice for victims of all forms of violence against women or domestic violence, with legal standing to act on behalf or in support of individual victims or several victims together, for example to apply for compensation or get illegal online content removed (Article 24).

**Victim support.** Member States would have to provide a free national helpline, available 24 hours a day, 7 days a week, to support victims of violence against women and domestic violence (Article 31). They would also have to provide dedicated specialist support services, including rape crisis centres for victims of sexual violence, support for victims of FGM and sexual harassment at work and support for particular groups at risk, such as women with disabilities, undocumented migrant women, sex workers and women fleeing armed conflict (Articles 27-30, 35). In addition, they
would have to provide shelters appropriate for victims of GBVAW, equipped to meet children's needs (Article 33) and ensure other measures to support children who have experienced or witnessed violence, including safe spaces for contact with a parent who is an offender or suspect (Articles 33 and 34).

**Prevention:** Member States would have to take steps to prevent GBVAW, including awareness-raising campaigns, education and research, action to tackle gender stereotypes, specific steps to prevent cyber-violence, mandatory training for professionals who come into contact with victims and programmes for (potential) perpetrators (Articles 36-38).

**Coordination:** Member States would have to designate or set up an official body to coordinate and oversee policies in this area (Article 39). They would also be required to ensure coordination and cooperation between relevant authorities and agencies and with civil society (Articles 40 and 41). Member States would be required to have a system for the collection of disaggregated data on violence against women and domestic violence, including a survey every 5 years (Article 44). They would also be required to improve the implementation of the directive by exchanging good practices (Article 43).

**Evaluation:** Member States would be expected to provide information on the application of the directive no later than 7 years after its entry into force (in essence 5 years after the transposition deadline), to allow the Commission to draw up an assessment report.

The 2022 EPRS study on the proposal for a directive concludes that it fills significant gaps in relation to combating violence against women and domestic violence in the EU and is likely to contribute to upward convergence in terms of prevention, protection and prosecution of crimes of gender-based violence. It concludes that many of Parliament’s specific requests have been met, particularly in relation to prevention and victim support. However, the proposal does not provide a common definition of ‘gender-based violence’ and does not provide for criminalisation of all forms of such violence, including some (such as forced abortion, forced marriage or forced sterilisation, which could possibly be covered under the chosen legal basis. In addition, provision of free legal aid and psychological support does not apply for all victims of gender-based violence and a minimum number of shelters is not set. The proposal does not meet some of Parliament’s specific requests regarding data collection and dissemination.

**Advisory committees**

On 13 July 2022, the European Economic and Social Committee adopted an opinion welcoming the Commission proposal, while calling for the inclusion of additional measures to strengthen it. The Committee recommends that the directive should set out a definition of gender-based violence and be extended to further forms (including: institutional violence, sexual and reproductive exploitation, harassment at work, gender-based violence occurring in the family, chemical submission, street harassment, gender and/or sex-based sexual harassment and forced sterilisation of women with disabilities). The Committee regrets that the proposal does not include a financial memorandum to guarantee sufficient public funding for the measures to be implemented effectively.

**National parliaments**

The subsidiarity deadline for national parliaments to submit comments on the proposal was 19 May 2022. The Czech Chamber of Deputies adopted a reasoned opinion, in which it argues that the proposal does not comply with the principle of subsidiarity. While supporting the intent of the draft directive, it considers that it has not been adequately thought through, that there is an insufficient legal basis for the provisions regarding certain harmonised offences and that, if the criminal law framework for gender-based violence needs to be adopted in such comprehensive way, a proposal to extend the list of ‘euro crimes’ in Article 83(1) TFEU should have been submitted beforehand. It also considers that it would be more appropriate for the issue of protection and support for victims to be addressed in the context of the revision of the directive on victims of crime.
The German Bundesrat welcomed the proposal as a ‘significant and urgently needed step in combating and preventing gender-based violence’. In Austria, the European Affairs Committee of the Federal Council asked the federal government to work towards conclusion of the negotiations of the directive on combating violence against women and domestic violence as soon as possible, on the grounds that it would create real added value in terms of violence prevention and victim protection. The Spanish Parliament considered the proposal in conformity with subsidiarity.

**Stakeholder views**

The European Commission states that its open public consultation attracted over 700 responses and that a large majority of respondents called for further EU measures on violence against women and domestic violence. Targeted consultations with non-governmental and international organisations showed broad support for the most ambitious option. While trade unions and employers supported the objective of combating sexual harassment and welcomed additional measures, employers had reservations about the obligations that would be imposed on them. Following the Commission proposal, the European Trade Union Confederation (ETUC) called for stronger measures on workplace violence, including provisions on collective bargaining for women workers and a requirement for employers to implement policies to tackle harassment and gender-based violence, including cyber-violence.

European women’s organisations, women’s specialist services and other civil society organisations have welcomed the Commission proposal, while suggesting their own additions and amendments. The European Women’s Lobby (EWL), Europe’s main umbrella organisation for women’s rights, has been calling for an EU directive for many years and set out its own recommendations ahead of the Commission’s proposal. In May 2022, EWL analysed the Commission’s proposal, welcoming it as a landmark, while calling for improvements. For EWL, violence against women should be recognised as an area of serious crime listed in the Treaties, so as to provide the EU institutions with a clear legal basis to tackle all forms of male violence against women. The directive should criminalise all forms of violence against women, including violence resulting from violations of sexual and reproductive rights. The text should be aligned with international treaties and adopt a stronger gender-sensitive approach, and the definition of sexual exploitation should be aligned with the ‘equality model’. This matches EWL’s call for the EU to adopt legislation to end prostitution and sex trafficking by criminalising the purchase of sex.

The WAVE network, representing women’s specialist services such as shelters, centres, helplines, and prevention services across Europe, sees an EU directive on GBVAW as a critical step toward achieving gender equality in Europe. However, considering that the proposed draft falls short of expectations, WAVE has called on the European Parliament to strengthen the legal text and drafted its own amendments on individual articles. It calls for the directive to recognise violence against women and girls as a human rights violation, for better understanding of the effects of intimate partner violence on children, and for more attention to the specific role of specialised support services and to the need for Member States to work with feminist civil society organisations.

The International Planned Parenthood Federation’s European Network, which advocates for sexual and reproductive health and rights, has called for the directive to recognise gynaecological and obstetric violence, forced pregnancy, and the denial of abortion care, as violence. It considers that the directive should refer explicitly to the importance of access to sexual and reproductive healthcare for victims of sexual violence. It also calls for the definition of rape to be extended to protect all victims, regardless of their sex and gender.

Several regional organisations advocating for the rights of the LGBTI+ community (ILGA-Europe, TGEU, EL*C, IGLYO and OII Europe) have welcomed the proposal, but consider that certain elements need to be amended, to ensure that the directive achieves its objective of being fully inclusive, particularly for LGBTI women. Their joint policy proposals include specific amendments to the text.
The European Disability Forum (EDF) proposes that the directive should criminalise forced sterilisation, with penalties similar to those for FGM. It is also calling for provisions requiring shelters to be accessible, training for professionals on the needs and rights of victims with disabilities and for data to be disaggregated by ability, together with other amendments to specific articles.

The Council of European Municipalities and Regions (CEMR) stresses that implementation of the directive would require multi-level cooperation and has called for more comprehensive recognition of the role of subnational authorities in areas such as prevention, working with boys and men, the workplace and victim support. It also calls for specific provisions and penalties to tackle violence against women in politics and for harmonised protocols for data collection, including at local and regional levels.

**Legislative process**

The European Parliament’s Committee on Women’s Rights and Gender Equality (FEMM) and Civil Liberties, Justice and Home Affairs (LIBE) have joint responsibility for this file under Rule 58 of the Rules of Procedure (rapporteurs: Frances Fitzgerald, EPP, Ireland and Evin Incir, S&D, Sweden).

On 12 January 2023, the co-rapporteurs presented their draft report to a joint meeting of the committees. The draft puts forward 178 amendments with a view to strengthening the Commission’s proposal. The rapporteurs suggest amending the text to specify that violence against women is a violation of human rights that requires a specific response due to its gendered nature. With regard to criminalisation, they propose extending the current list of offences to include ‘forced sterilisation’ and ‘sexual exploitation through the prostitution of others and purchase of sexual acts’. They also propose extending the definition of rape to include non-consensual acts whose gravity is comparable to penetration, expanding the definition of consent and introducing a new article to cover situations where the perpetrator was grossly negligent regarding the absence of consent.

The proposed amendments would indicate that rape victims are not exclusively women. Other amendments would make harm to victims’ family members, ‘honour’ crimes and violence against public figures, journalists or human rights defenders aggravating factors. The draft report also introduces amendments to the provisions on victim protection and support. For instance, it adds that electronic monitoring should be used to ensure the enforcement of emergency barring, restraining and protection orders and that Member States should consider using arrest and detention in situations where the victim or their dependents are in immediate danger. The rapporteurs also add provisions on access to sexual and reproductive health care for victims of sexual violence and support for victims of sexual harassment in the workplace. In their explanatory memorandum, the co-rapporteurs stress that another key focus of their proposals is to suggest improvements to recognise children who have witnessed violence against women and domestic violence as victims.

On 28 February 2023, a further joint committee meeting took stock of 1481 amendments tabled on the draft report. Some of the amendments suggest broadening the crimes covered by the directive beyond the additions already put forward by the rapporteurs. It was announced that the LIBE and FEMM committees will vote on a consolidated text in May 2023 and that they envisage submitting the report to Parliament during the July plenary session, with a view to starting interinstitutional negotiations in the summer of 2023.

In the Council, the proposal is being examined in the Working Party on Judicial Cooperation in Criminal Matters (COPEN), which started work on the file in March 2022. On 21 December 2022, the working party held an exchange of views, following a presentation of an amended text of Chapters 1 and 2 (Articles 1-15) of the draft directive from the Czech Presidency. The Working Party’s following meetings on 13 January, 31 January, and 13 and 14 February 2023 included further revision of these chapters and a presentation and exchange of views on a revised draft of Chapters 3 and 4.
by the Presidency. The meeting in COPEN on 7 March 2023, included a presentation and exchange of views on a revised draft of Chapters 5, 6 and 7.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS


OTHER SOURCES

*Combating violence against women and domestic violence*, Legislative Observatory (OEIL), European Parliament.

ENDNOTES

1 Eurostat is expected to publish the results of a follow-up survey in 2023, covering eight Member States. This will be coordinated with survey work by EIGE and FRA to provide comparable EU-wide data. The new data would support Member States with the data collection obligations under the proposed directive on combating violence against women and domestic violence.

2 In July 2020, the Polish government announced its intention to withdraw from the Convention, but this has not yet been enacted. At the time of ratification, Poland also made a declaration stating that it would 'apply the Convention in accordance with the principles and the provisions of the Constitution of the Republic of Poland'. Austria, Finland, the Netherlands, Norway, Sweden and Switzerland objected to this declaration, considering it a reservation that puts Poland's commitment to the Convention in doubt.

3 The relevant legal bases being Articles 82, 83 and 84 TFEU. For more detailed analysis see for example, Section 2.1.1 ‘EU competence in the area of criminal law’ in the study, *Legal implications of EU accession to the Istanbul Convention*, published for the European Commission in 2015.


5 In 2009, the European Court of Human Rights ruled (*Opuz v Turkey*) that gender-based violence is a form of discrimination under the European Convention on Human Rights. The case law of the European Court of Human Rights requires states to act against all forms of gender-based violence, including domestic violence and sexual violence. The Court's factsheets on *Case law on violence against women* and *Case law on domestic violence* summarise the case law up to November 2022.

6 See Table 3. Overview of EU-27 national legal frameworks on cyber violence, p. 25.

7 In the meantime, GREVIO has published monitoring reports for Poland, Romania and Slovenia.

8 In an opinion issued on 10 February 2023, Parliament's Committee on Civil Liberties, Justice and Home affairs also proposes that Article 8 TFEU could be amended to include 'a reference to gender inequalities and an obligation for the Union to aim in its different policies to combat all kinds of gender-based violence, including by taking all necessary measures to prevent and punish these criminal acts and to support and protect the victims'. The opinion relates to the ongoing legislative initiative procedure on proposals of the European Parliament for the amendment of the Treaties (2022/2051(INL)).
Accompanying EPRS European added value assessments on Gender based violence as a new area of crime listed under Article 83 TFEU and Gender-based cyber-violence were published in June and March 2021, respectively.

The European Parliament asked for the opinion from the European Court of Justice in its resolution of 4 April 2019, in order to clarify the appropriate legal basis and therefore the scope of EU accession and the ratification procedure. For further analysis on the issues addressed in the ruling, see for example, D. Utrilla, ‘Insight on the powers of the EU and its Member States for the ratification of mixed human rights agreements: the Court of Justice’s pending Opinion on the Istanbul Convention’, EU Law Live, 13 October 2020.

The preparatory work for this proposal was also coordinated with evaluations of the Victims’ Rights Directive, the Child Sexual Abuse Directive and the Anti-Trafficking Directive.

This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal. Additional information can be found in related publications listed under ‘European Parliament supporting analysis’.

The co-rapporteurs propose to replace the term ‘sex worker’ by the term ‘women in prostitution’. This is in line with Parliament’s previous positions, but divergent positions exist between and within the political groups. In parallel, the FEMM committee is preparing an own-initiative report entitled ‘Regulation of prostitution in the EU: its cross-border implications and impact on gender equality and women’s rights’ (2022/2139(INI)).