

The legislative frameworks for victims of gender-based violence (including children) in the 27 Member States¹

ABSTRACT

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the FEMM Committee, provides an overview of the legislative frameworks for victims (including children) of gender-based violence in the 27 Member States. It provides analysis of measures in place at both Member State and EU level, and recommendations to prevent and combat gender-based violence.

Aim and background

This study outlines the current situation for victims of gender-based violence (GBV) in the 27 European Union Member States (EU-27), focusing on women and child victims, through an analysis of legal and policy provisions and their implementation. Assessments are against the benchmarks in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), as the only international instrument to set legally binding standards on combating violence against women (VAW) and domestic violence, through a holistic and gender-sensitive approach.

The study aims to support the European Parliament's efforts to address disparities in Member States' laws and policies on preventing and combating GBV. It assesses whether current gaps are addressed by the European Commission's proposed Directive on combating violence against women and domestic violence ('the proposed Directive') published in March 2022, and makes recommendations in light of measures in the proposed Directive.

Methods

The study primarily uses desk research. It also draws on research commissioned by the European Commission as part of its initiative to propose new legislation on combating VAW and domestic violence. Findings are complemented by interviews with national police representatives and original policy and legal analysis to ensure that findings reflect new developments.

¹ Full study in English: [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/738126/IPOL_STU\(2022\)738126_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/738126/IPOL_STU(2022)738126_EN.pdf)



Key findings

The study analyses six topics: criminal law frameworks; procedural law frameworks; victim support; interaction with professionals; prevention and reparation measures; data collection methods and financial resources. Gaps are identified across these topics, and the proposed Directive is considered to address many of these gaps. Recommendations contained in this report therefore seek to build on, rather than replace, the proposed measures to further strengthen its impact on preventing and combating GBV.

On **criminal law frameworks**, findings show that levels of criminalisation for different forms of GBV vary across the EU, including whether they are criminalised directly or through aggravating circumstances. The proposed Directive focuses on criminalising online forms of VAW. The recommendation here is to adopt a more comprehensive approach and introduce GBV as a new area of crime pursuant to Article 83(1) of the Treaty on the Functioning of the European Union (TFEU), as it is a particularly serious crime, with a cross-border dimension.

Procedural law frameworks for GBV vary considerably, likely reflecting the limited EU competence in this area. Procedural rules on the burden of proof vary, with a high or discretionary burden of proof in 12 Member States potentially making a conviction less likely. Similarly, criminal sanctions vary substantially and are widely regarded as insufficiently dissuasive. Only six Member States ensure that violence is taken into account in custody decisions, suggesting that children in other Member States may be at risk of violence through continued contact with the perpetrator. Only Spain has a specialist court to deal with GBV, and the specialist knowledge of professionals is shown to lead to higher prosecution and conviction rates. The proposed Directive has no measures related to procedural law, which is largely outside EU competence. The recommendation in this report is to shift the burden of proof for sexual harassment, obliging an employer to prove there has been no discrimination ⁽²⁾. Further measures are recommended at Member State level to reduce the burden of proof and increase training for judges to ensure dissuasive sanctions and best practice in custody decisions.

Measures to **protect victims** in judicial proceedings are outlined in the Victims' Rights Directive (2012/29/EU). However, key measures to implement these provisions are missing, and this is recommended to be addressed at Member State level. For example, only eight Member States have a legal obligation to minimise victims' interactions with the justice systems. Other important protection measures, such as emergency barring orders, are in place in only 18 Member States, although mid-term and long-term protection orders are available in all Member States. The proposed Directive increases the availability of emergency barring orders and criminalises breaches of those orders. The focus of the recommendations is thus for Member States to address the gaps identified in implementation through training of police.

Access to **victim support services** such as shelters and rape crisis referral centres is lacking across much of the EU compared to Council of Europe targets. The Victims' Rights Directive (2012/29/EU) specifically mandates the provision of general and specialist support for victims of GBV. The proposed Directive builds on this by specifying forms of specialist support (e.g. rape crisis referral centres) and more targeted support for particular groups of victims. The recommendation in this report is to set targets for levels of provision.

Support for victims to report crimes – and thus tackle widespread under-reporting – is hindered by confidentiality rules that restrict third-party reporting by professionals. Similarly, online reporting of GBV can be more accessible for some victims, but only two Member States have an online reporting mechanism with specific provisions related to GBV. Current gaps are addressed by comprehensive measures in the proposed Directive and no further recommendations are made in this report.

Awareness-raising campaigns that challenge negative gender norms, ideas and attitudes that perpetuate GBV are a key means to prevent GBV. Member States are obliged to raise awareness of the rights contained in

⁽²⁾ European Commission, *Evaluation of the provisions in the Directive 2006/54/EC implementing the Treaty principle on 'equal pay'*, Publications Office of the European Union, Luxembourg, 2010, pp. 25-27.

the Victims' Rights Directive (2012/29/EU), which specifically include victims of GBV. The proposed Directive builds on this and offers more targeted provisions, but findings indicate that this could be further strengthened through provisions on the regularity, level of funding, and coverage of different forms of GBV within such campaigns. Recommendations also call for regular EU-specific campaigns, which are currently driven primarily by international efforts.

Perpetrator programmes – which seek to change the behaviour of perpetrators – are not regulated specifically under EU law but have been established in all Member States, except Hungary. They vary in their availability and measures to ensure take-up, however. A crucial step is taken in the proposed Directive, which mandates Member States to establish 'targeted and effective' perpetrator programmes.

There are legal provisions for victims of GBV to access **compensation** as a form of reparation from perpetrators and the State in all Member States. The proposed Directive increases access to compensation from the perpetrator by setting up minimum rules on the provision of such compensation. However, eligibility criteria can restrict access to compensation, particularly for non-physical forms of violent intentional crimes. This is recommended to be addressed at Member State level, in accordance with the Compensation Directive (2004/80/EC).

Data on GBV can provide crucial information about the current situation and facilitate evaluation of the effectiveness of the measures in place. Administrative data from police and judicial sources capture rates of reporting, prosecution and conviction for GBV. However, Member States vary in the forms of GBV captured, and harmonisation of administrative data at EU level is complicated by the different definitions used. Population surveys can help to capture a more complete picture of rates of GBV, as many instances are unreported and do not appear in administrative data. At EU-level, a 2014 pan-European survey by the European Union Agency for Fundamental Rights (FRA) is set to be repeated in 2022-2023. The proposed Directive offers extensive measures to ensure the collection and harmonisation of administrative data, as well as regulating an EU-level population survey every five years. Given the comprehensive nature of these measures, no further recommendations are made in this report.

Information on levels of **financial resources** allocated specifically to GBV is very limited, although experts believe that resources are insufficient given the scale and cost of the problem. The proposed Directive indicates that there should 'sufficient resources' for specialist support services, investigations and prosecutions. The focus of recommendations in this report is to ensure holistic funding across relevant areas.

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