



European Added Value Assessment

Combatting violence against women

An assessment accompanying the
European Parliament's Legislative own-Initiative Report
(Rapporteur Antonia Parvanova, MEP)

European Added Value Assessment

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Combatting violence against women

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This paper has been undertaken by the European Added Value Unit of the Directorate for Impact Assessment and European Added Value, within the Directorate-General for Parliamentary Research Services (DG EPRS) of the General Secretariat of the European Parliament.

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On 9 November 2012, the **Committee for Women's Rights and Gender Equality** (FEMM) requested a European Added Value Assessment (EAVA) to prepare the legislative initiative report of Ms Antonia Parvanova with recommendations to the Commission on combatting violence against women (2013/2004(INI)).

This paper has been drafted by the **European Added Value Unit** of the Directorate for Impact Assessment and European Added Value, within the Directorate-General for Parliamentary Research Services (DG EPRS) of the General Secretariat of the European Parliament.

This assessment draws on previous work and documents provided by the Library of the European Parliament and by Policy Department C for Citizens' Rights and Constitutional affairs. Additional expertise, commissioned specifically for the purpose of this Assessment, has been provided by:

- Myriam Benlolo-Carabot, Clémentine Bories, Stéphanie Hennette-Vauchez and Mathias Möschel, of the Université Paris Ouest Nanterre La Défense (REGINE research programme on Gender);
- Professor Sylvia Walby and Philippa Olive, Lancaster University.

Abstract

Violence against women is a complex, omnipresent problem in the EU, affecting, in one way or the other, around one fifth of the female population. It directly affects women victims and has a short and longer term impact on society as a whole, in terms of general well-being, health and safety, productivity and public expenditure. The economic cost of violence against women in the EU has been estimated at EU 228 billion annually.

Despite undeniable progress, the current legal EU framework for combatting violence against women presents important lacunae. Swift action at EU level is hence necessary to fill the gaps in the existing national, international and EU legislation, to ensure better protection for women, enhance legal certainty and coherence of EU action.

Complementing the current framework requires a global approach, including the adoption of a legal act with measures to promote and support Member States' action in the field of prevention.

Contents

Executive summary	5
1. Violence against women: a persistent and burning problem in the EU.....	7
2. Added Value of action at EU level- remedying the legal gaps.....	10
Unequal protection at national level	10
The international framework- lack of effectiveness in national legal orders	12
EU law: a fragmented and often non-binding approach.....	15
3. Benefits from EU action on combatting violence against women	18
Enhancing legal certainty for women	18
Deepening the area of Freedom, Security and Justice	18
Enhancing the internal/ external coherence of EU action	20
Affirming the EU's identity as a human rights based polity	22
Reducing the economic costs of violence.....	23
The need for a comprehensive approach.....	26
Overcoming the legal obstacles.....	27
Establishing rules on prevention	29
Establishing a system for collecting statistics on violence against women	29
Launching the procedure for EU accession to the Istanbul Convention.....	30
Complementing the existing framework with other measures.....	32
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Annexes

- I - **Assessing the necessity and effects of intervention at EU level**
by Myriam Benlolo-Carabot, Clémentine Bories, Stéphanie Hennette-Vauchez and Mathias Möschel, REGINE research programme on Gender (Université Paris Ouest Nanterre La Défense)

- II - **Economic aspects and legal perspectives for actions at EU level**
by Professor Sylvia Walby and Philippa Olive (Lancaster University)

Executive summary

The EU is a champion of human rights, and is therefore duty-bound to fight violence against women both as an expression of (gender-based) discrimination and as one of the most pervasive violations of human rights within its territory. Around one fifth to one quarter of women in Europe have experienced acts of physical violence at least once during their adult lives and over one tenth have suffered sexual violence involving the use of force.

Over and above the adverse and onerous consequences for female victims, violence against women brings with it significant costs for communities, societies and nations, affecting public well-being, health and safety, productivity, law enforcement and public budgets.

It is estimated that the annual cost to the EU-28 of gender-based violence against women amounted to **EUR 228 billion in 2011**, or **1.8% of EU GDP**, of which EUR 45 billion a year in costs to public and state services and EUR 24 billion in terms of lost economic output, or **0.5% of EU GDP**. The remaining **EUR 159 billion** represent the value the public places on avoiding pain and suffering.

Although this problem, and the urgent need to address it, has been acknowledged, the current EU framework for fighting violence against women presents important shortcomings at different levels: national legislations of the 28 EU Member States offer unequal protection of women against all forms of violence; several international and regional instruments on combatting violence against women have been adopted but lack effectiveness in national legal orders; and despite undeniable progress, the measures adopted at EU level present important lacunae, notably in terms of prevention.

Complementing the current framework on violence against women would provide better and more uniform protection to women, and ensure legal certainty throughout the EU. As such, it would contribute to the deepening of the Area of Freedom, Security and Justice. It would also enhance the coherence of EU action. It would represent a significant step in the on-going process of transforming the EU into a genuine community based on shared values and respect of human rights. It would also contribute to eliminating the considerable financial burden that affects women and puts an economic burden on Member State economies.

A holistic approach on combatting violence against women is needed to complement and include current instruments. An analysis of regulatory options reveals that improving the existing EU legal framework is challenging but feasible. It could encompass a combination of legislative and non-legislative measures, including:

- the adoption of a legal act supporting the action of Member States in the field of prevention of violence;
- the establishment of a coherent system for collecting statistics on gender-based violence in Member States;
- the activation by the EU Council of the *passerelle clause*, by adopting a unanimous decision to include gender based violence as an area of crime listed under Article 83(1) TFEU;
- the launching of the procedure for the accession of the EU to the Istanbul Convention
- the adoption of an EU-wide Strategy and Action Plan to combat violence against women.

1. Violence against women: a persistent and burning problem in the EU

Violence against women is an omnipresent scourge. It is not only a serious violation of human rights and a form of gender-based discrimination but is also the main structural expression of inequality between women and men. At the same time it is the root cause of gender inequality, as it is an obstacle to women's full participation in economic, social, political and cultural life.

Box 1 - Definitions

Gender based-violence: Violence that is directed against a person because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately. It may result in physical, sexual, emotional or psychological harm, or economic loss, to the victim. Gender-based violence is understood to be a form of discrimination and a violation of the fundamental freedoms of the victim and includes violence in close relationships, sexual violence (including rape, sexual assault and harassment), trafficking in human beings, slavery, and different forms of harmful practices, such as forced marriages, female genital mutilation and so-called 'honour crimes'.

Source: Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime

Gender-based violence against women is violence that is directed against a woman because she is a woman or that affects women disproportionately, and includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty'.

Domestic violence: 'all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim'.

Source: Convention on preventing and combatting violence against women and domestic violence, Council of Europe, 2011.

Cutting across socio-economic, educational, cultural and religious differences, violence against women takes many different forms - including physical and sexual violence, psychological violence, harassment, female genital mutilation (FGM), forced marriages - even at childhood age, forced abortion and sterilisation, honour crimes, etc. At the individual level, it leads often to a troubling number of fatalities. Women, who are subject of violence, face long term severe psychological and physical traumas.

Violence against women has also a short and longer term impact on society as a whole. Besides the significant economic burden it imposes in the form of healthcare costs, policing and legal costs, lost productivity and wages, violence against women has serious repercussions on future generations. Apart from the pain and suffering it causes for the children who witness it, it also perpetuates the cycle of violence: a child's exposure to the father abusing the mother is the strongest risk factor in transmitting violent behaviour from one generation to the next. The persistence of male violence against women in our societies puts into question our vision of human security and peace: are we really living in peace when half of the population is experiencing or might experience some form of male violence just because they are female?

It is increasingly recognised that violence against women is a widespread as well as an underestimated phenomenon in the European Union. While the current lack of comparable data on different types of violence against women makes it difficult to ascertain the real extent of the problem - partly due to the lack of common legal definitions at European level, partly because many acts of violence against women are simply not reported - the available estimates are alarming. Around 20 to 25 per cent of women in Europe have experienced acts of physical violence at least once during their adult lives and over 10 per cent have suffered sexual violence involving the use of force. As many as 45 per cent of women have endured some form of violence¹; 12 to 15 per cent of women in Europe are victims of domestic violence and seven women die every day in the European Union from it².

There is now sufficient evidence that the economic crisis literally hits women hardest: it aggravates the unequal power relations between men and women and leads to an increase of harassment, domestic violence, trafficking in women and a rise in prostitution³. Moreover, the recession seriously undermines social policies in many Member States resulting in shelters for women victims of violence being shut down, prevention projects being discontinued and national equality budgets being slashed⁴.

¹ Council of Europe Convention on preventing and combating violence against women and domestic violence

² Figures for 2006. See: *Estimated mortality related to domestic violence in Europe, summary of scientific report*, Psytel, June 2010, p. 5. The scientific report and summary are available at: <http://www.psytel.eu/en/>.

³ European Parliament resolution of 12 March 2013 on the *Impact of the economic crisis on gender equality and women's rights*, P7_TA-PROV(2013)0073

⁴ Opinion of the European Economic and Social Committee on *Eradicating domestic violence against women*, 18 September 2012, SOC/465

In recent years, the issue of violence against women has gained increased attention among citizens and politicians. According to a recent Eurobarometer survey⁵, violence against women is cited as the second most important issue (after the gender pay gap) for candidates in the next European elections in 2014 to tackle.

The European Union has repeatedly expressed “*its political will to treat the subject of women’s rights as a priority and to take long-term action in that field*”⁶. Various EU documents - such as the European Commission's Stockholm Programme, the Women's Charter, the Strategy for equality between women and men, as well as a number of Council Conclusions - recognise gender-based violence as a priority issue in order to achieve genuine gender equality and strengthen the EU's commitment to put in place a comprehensive and effective policy framework to combat it more effectively.

However, despite the recognition of the pertinence of the matter and the numerous calls of the European Parliament on the need for urgent action, the current EU framework for fighting violence against women leaves much to be desired.

Most recently, in the frame of the legislative initiative report with recommendations to the Commission on Combating violence against women (rapporteur Antonyia Parvanova), the European Parliament reiterates its call on the Commission to submit a proposal for a legislative act establishing measures to promote and support action of Member States in the field of prevention of violence against women.

This European Added Value Assessment provides arguments in favour of this approach.

⁵ European Parliament Eurobarometer Flash survey (EB flash 371) on *Women and gender Inequalities in the context of the Crisis*, 26 February 2013

⁶ See e.g.: *EU Guidelines on violence against women and girls and combating all forms of discrimination against them*, General Affairs Council of 8 December 2008.

2. Added Value of action at EU level- remedying the legal gaps

The EU has achieved a high level of awareness of the scale and seriousness of violence against women within its territory, the severe socio-economic consequences and has recognised this issue as a priority.

The challenge therefore is not to establish the need for action, but rather the way the problem should be tackled and how extensive and comprehensive the EU's contribution should be.

Unequal protection at national level

Depending on the specific national history, the power relations between men and women, the role of religion in the public sphere, the structure of the legal system, and the role of women's movements, Member States have adopted different approaches to the problem of violence against women. There are mainly three broad ways Member states have attempted to regulate this predicament ranging from a unitary and comprehensive approach, through piecemeal legislation with some recognition of the gender dimension of violence against women to absent or gender-blind provisions.

Box 2 - Ways of regulating violence against women at national level

Unitary, comprehensive and gender-specific regulation of violence against women

Spain's 2004 Act on Violence Against Women⁷ best corresponds to such a definition with the introduction of broad protection and preventive measures that encompass education and awareness-raising in schools, media and hospitals as well as the creation of specialised courts and specialised public prosecutors that will deal with such legislation.

Piecemeal legislation with the explicit recognition of the gender dimension of violence

This model concerns the majority of EU Member States. For example, Germany introduced a statute protecting women against domestic violence in 2001⁸, followed by legislation protecting against stalking in 2006⁹. Sexual harassment was introduced in the same year but through a different enactment on equal treatment¹⁰ thanks to

⁷ Ley Orgánica 1/2004 de Medidas de Protección Integral contra la Violencia de Género, 28 December 2004.

⁸ Gesetz zum zivilrechtlichen Schutz vor Gewalttaten und Nachstellungen, 11 December 2001 (BGBl. I, p. 3513).

⁹ Gesetz zur Strafbarkeit beharrlicher Nachstellungen vom 30. November 2006, introducing a new Article 238 into the existing Criminal Code.

¹⁰ Allgemeines Gleichbehandlungsgesetz (AGG), 14 August 2006 (BGBl. I, p. 1897).

which Germany adapted its national legislation to various European non-discrimination directives. One can observe a similar trend in Italy. In 1996 sexual violence was re-characterised as 'crime against the person' instead of as 'crime against morality'. This theoretical shift permitted the introduction of successive enactments, in particular statutes protecting women against domestic violence and stalking¹¹.

Absence of specific legislation on gender violence, gender-blind provisions

Examples of this model include the Netherlands where domestic violence is protected 'only' by the general provisions of criminal law (such as rape, sexual assault, abuse, manslaughter or murder), or the UK, where the Protection from Harassment Act 1997 or the Domestic Violence, Crime and Victims Act of 2004 do not specifically envisage women as victims, even though they were initiated by victims of stalkers.

As a consequence, the outcome and level of protection of the female population against all forms of violence differ widely from one EU Member State to the other.

Box 3 - Concrete examples of differing levels of protection against violence against women

Domestic violence

Today a woman who becomes a victim of domestic violence in Spain can count on a whole system that has been specifically sensitised to the issue of violence against women: hospitals where she might have needed to get treatment and the police personnel which may have been called in are all alerted and educated to the specific issues of domestic violence. If the facts of a case give rise to a lawsuit, a special jurisdiction (*juzgados de violencia contra la mujer*) with broad civil and criminal powers and a special prosecutor (*fiscal contra la violencia sobre la mujer*) will intervene. If the same domestic violence had happened in the Netherlands, it would be punished by regular criminal law provisions and principles (causing bodily harm, abuse, manslaughter...) and referred in ordinary courts. Hence, the specific aspects of violence against women risk getting lost and, in case the wife and the husband are legally separated, prosecution is only possible following a complaint by the victim.

Stalking

In Italy the statutory penalty for stalking (*atti persecutori*) ranges from 6 months to 4 years of imprisonment¹². In Austria the penalty for stalking (*beharrliche Verfolgung*) is imprisonment of up to one year¹³ whereas in the UK the maximum imprisonment is 6 months and/or a fine not exceeding 5000£¹⁴. Comparability of penalties given in concrete cases is extremely difficult given that the interplay of other factors such as mitigating or aggravating circumstances, repeat offences and/or concurring crimes or

¹¹ Decreto legge 23 febbraio 2009, n. 11, introducing a new Article 612 *bis* into the existing Criminal Code.

¹² Article 612 *bis* Codice penale.

¹³ § 107a Strafgesetzbuch.

¹⁴ Protection from Harassment Act 1997.

misdemeanours sensibly change the picture. For example, in Italy, sentences below two years imprisonment benefit from automatic parole if the judge believes that the convicted will not commit other crimes.

A comprehensive unified approach including *inter alia* prevention, gender-specific formulation of the laws fighting crimes or misdemeanours, dedicated institutions and procedural adaptations is arguably the most effective model in terms of protecting women from violence. Violence against women needs to be seen through a single lens not only in order to obtain enhanced protection for its victims but also to achieve harmonisation and legal certainty. A legislative instrument would bring about minimum standard characteristics of such a unitary model, without necessarily demanding harmonisation of national legislation in criminal matters.

The international framework- lack of effectiveness in national legal orders

The added value of an EU instrument on violence against women has also to be assessed with respect to other instruments that have been adopted at international (United Nations) and regional (Council of Europe) level.

There is an extensive body of instruments at international level which deal with issues related to violence against women and which EU Member States have signed up to.

Box 4 - International instruments on violence against women

At the UN level, instruments such as the UN Convention for the Elimination of Discrimination against Women (CEDAW), the Rome Statute of the International Criminal Court, and practice in international legal tribunals (International Criminal Tribunals for former Yugoslavia and Rwanda and the Special Court for Sierra Leone) have recognised different forms of violence against women as a specific humanitarian and human rights violation. The instruments of the Council of Europe, relevant to violence against women, include the European Convention of Human Rights, the rulings of the European Court of Human Rights that interpret the Convention, the Convention on Action Against Trafficking in Human Beings (which deals with one specific, sectorial aspect of violence against women) and the 2011 Istanbul Convention on preventing and combatting violence against women and domestic violence.

While most of these instruments represent partial approaches to establishing a prohibition of violence against women, the Istanbul Convention represents the first attempt to regulate and combat the phenomenon of violence against women in the broadest possible way and from an all-encompassing perspective. This

constitutes important progress, recognised as such by the EU as a whole and underlined by the European Parliament, which has called on EU Member States to ratify the Convention¹⁵. To date, the Convention has not come into force as only six States, including Portugal and Italy, the only EU Member States, have ratified it. However, even when all Member States become parties to this Treaty, an EU instrument would remain necessary. Such an instrument would become the regulatory addition that would complement and reinforce the existing international conventions (in particular the Istanbul Convention) and national laws.

Indeed, instruments at the international level present a number of weaknesses, in terms of impact on national legal orders, compared to binding EU legislation. First and foremost, those instruments do not have direct effect as EU laws do, nor do they propose the same type of measures. Thus, in cases of violation or non-implementation of an EU directive there would be, under certain circumstances, access to the Court of Justice of the EU through the preliminary reference procedure¹⁶. This is clearly not the case for international conventions. For example, the UN Convention for the Elimination of Discrimination against Women (CEDAW) and the Istanbul Convention monitoring mechanisms result in state reports on violence against women, which lack means of implementation. When an individual recourse against States which have a record of violence against women are referred to the European Court of Human Rights or (under certain circumstances) to the CEDAW Optional Protocol, those instruments' judgments often lack legal enforceability. Therefore in most instances their judgements are more of a persuasive character than judgments by the CJEU which are immediately enforceable. The jurisprudence of these international instruments shows that judges often tend to deny direct effect to provisions of international human rights conventions, which is not normally the case when applying the EU law. Even EU directives (alongside EU regulations) constrain national judicial authorities as a minimum judicial enforcement must be guaranteed.

Secondly and closely related to the above point, the monitoring procedures of international instruments are not at all the same as the EU ones. Usually, international human rights treaties dealing with issues related to violence against women only contain state reporting obligations. For instance, the Istanbul

¹⁵ See for instance EP plenary debate of 8 October 2013 on the Convention on preventing and combating violence against women (Istanbul convention).

¹⁶ ECJ/CJEU case-law on violence against women is rare (see CJEU, 15 September 2011, *Magatte Gueye and Valentín Salmerón Sánchez*, C-483/09 and 1/10), but it should grow in the next years, given that recent directives which have not been implemented yet at the national level deal with certain aspects of violence against women (see *infra*, Part II.B.2).

Convention establishes a reporting mechanism to a Committee of experts who can order or perform country visits. However, no individual recourse is envisaged. And even where such individual recourse is envisaged, as is the case under the ECHR, the judgements usually consist of financial compensation only but are powerless when it comes to obliging states to change their existing legislations.

Adopting a binding EU instrument on violence against women would thus be a powerful way to implement the EU's international commitments, and in particular the Istanbul Convention. Indeed, there are major lingering gaps between the latter's provisions and legal actions that are planned within the EU (both at EU-level and Member States-level). Among the many steps the signatories to the Convention need to take for compliance with the Convention, an important one is to actually change domestic laws so that they include specific criminal offences for all forms of violence against women (stalking, psychological violence, sexual violence, forced marriage, etc). Given its nature and impact, a binding EU instrument would therefore be a perfect regulatory addition to complement existing international conventions and their shortcomings and to enforce them in the EU.

Box 5 - The role of an EU legislative act in compensating for the shortcomings of international Conventions

French law was modified as a result of the requirements of the Council of Europe Convention on Action against Trafficking in Human beings, the European Court of Human Rights' decisions finding that France had violated certain provisions of the European Convention on Human Rights, and the need to comply with and to transpose EU Directive 2011/36 on preventing and combatting trafficking in human beings and protecting its victims. In its function of monitoring the Council of Europe Convention, the Group of experts on action against trafficking in human beings (GRETA) expressed concern, and formulated recommendations. However, it could not compel French authorities to adopt a new definition of trafficking. Interestingly enough, it asked to be informed of the new definition French authorities would be likely to adopt in order to transpose Directive 2011/36 into national law. The implementation of a hard-law EU instrument, subject to Court of Justice of the European Union scrutiny, combined with French international obligations, proved to be efficient incentives to improve French legislative framework.

Hence, because of the impact it generally has in national legal frameworks, an EU legal instrument on violence against women would have considerable added value by complementing the existing international instruments, addressing their shortcomings and thus considerably enhancing the effectiveness of women's protection against violence.

EU law: a fragmented and often non-binding approach

The EU has adopted in the last few years a number of important measures to combat and eradicate violence against women. Besides a string of non-binding communications, strategies, guidelines and important programmes (Daphne) - which have positioned gender-based violence as one of the priorities for EU action but which do not create new rights for women that are enforceable before European and national tribunals-, the EU has taken a number of initiatives by dealing with violence against women through decisions and directives.

These binding EU law instruments lack however certain characteristics to be fully effective in the combat against violence against women. First of all, the EU law remains fragmented and fails to tackle the issue of violence against women in a global and coherent manner, both in terms of the forms of violence addressed and the types of remedies provided.

Harassment and sexual harassment have been addressed in the context of equal treatment directives, such as the Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, Directive 2002/73/EC and Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. This last Directive defines harassment and sexual harassment as discrimination on the grounds of sex¹⁷ and stipulates that harassment should be prohibited not only in the workplace, but also in access to employment, vocational training and training. It also acknowledges the importance of preventive actions in order to tackle the sources of sexual harassment. The same approach was adopted in Council Directive 2004/113/EC of 13 December 2004, implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

The so-called "victims' package" was adopted in order to implement a comprehensive set of measures on victim's rights. The Directive on the European protection order¹⁸ establishes rules allowing a judicial authority in a Member State, in which a protection measure has been adopted so as to protect a person against a criminal act by another person which may endanger his life or physical, psychological or sexual integrity, to issue a European protection order enabling the authority in another Member State to continue the protection of the person in the territory of that other Member State. The directive marks a significant step for the deepening of an Area of Freedom, Security and Justice. However, it is based on the principle of mutual recognition of judgments and does not interfere at all

¹⁷ Article 2, (2), a, of the Directive 2006/54.

¹⁸ Directive 2011/99/EU of 13 December 2011, OJ L 338, 21 December 2011, p. 2.

with the definition of the crimes which are prosecuted or punished in national laws. It does not deal with the prevention of violence either.

The Directive establishing minimum standards on the rights, support and protection of victims of crime¹⁹ takes a more ambitious approach. It strengthens the rights of victims, especially information rights and access to victim support. These provisions could be very important for women, as this directive encourages Member States to pay particular attention to the specific needs of victims: in addition to general support services, Member States shall take measures to establish specialist support services that are free of charge and confidential "for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships". These provisions could fill an important gap in current EU and national legislation: indeed, specialised services are insufficient and unequally distributed in and among the Member States. According to a report of the European Institute for Gender Equality (EIGE), only 12 out of the 27 EU Member States have developed state-funded specialised services for women victims of violence. Provisions across the EU vary significantly.

Despite being tailored for victims with special needs, this instrument does not adopt a general approach on gender-based violence. It deals with the *protection* of victims, not with the prevention of violence or prosecution of crime and does not set out core elements of definitions of violence against women. Once recognised as a "victim" a woman would be entitled to a uniform treatment in procedural proceedings throughout the EU. However, as the definitions of violence against women and the sanctions vary considerably from one Member State to the other, this gives rise to potential inequalities of treatment: if the violence a woman suffers is not prosecuted in her State (i.e. stalking is still not punishable in many EU legal systems, she may then not be recognised as "a victim" and would not be able to invoke the Directives.

Secondly, the existing instruments often fail to specifically address the issue through a gender-based approach. The Directive on preventing and combatting trafficking in human beings and protecting its victims, replacing the Council Framework Decision 2002/629/JHA²⁰ is a case in point. The ambit and the scope of the Directive are particularly wide compared to the previous Council Framework Decision. The Directive "adopts an integrated, holistic, and human rights approach to the fight against trafficking in human beings"²¹. In particular,

¹⁹ Directive 2012/29/EU of 25 October 2012, OJ L 315, 14 November 2012, p. 57.

²⁰ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011, OJ L 101, 15 April 2011, p. 1.

²¹ Recital (7) of the Directive, OJ, p. 2.

it “recognizes the gender-specific phenomenon of trafficking and that women and men are often trafficked for different purposes”. For this reason, “assistance and support measures should also be gender-specific where appropriate”²². It sets ambitious objectives, such as more rigorous prevention, prosecution and protection of victims’ rights, which seem to fully take into account gender-based violence. Pursuant to Article 1, the Directive establishes “minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking of human beings. It also introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims thereof”.

However, in spite of these general assertions, the detailed provisions of the Directive fail to ensure gender-specific protection for women. When the Directive mentions certain human rights it seeks to ensure and respect, it mentions neither gender equality and non-discrimination, nor the rights of women, while (rightly) insisting on the rights of the child. Moreover, the Directive does not take into account the specific case of gender-based violence in the prevention and victims’ protection measures it aims to implement. Article 11, dealing with assistance and support for victims of trafficking in human beings, provides that “Member States shall attend to victims with special needs when those needs derive, in particular, from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered”²³. The Directive contains general provisions, support and protection measures for child victims of trafficking in human beings, but none for women.

Despite undeniable progress, the current EU framework for combatting violence against women presents important lacunae. Swift action at EU level is hence necessary to fill the gaps in the existing national, international and EU legislation.

²² Recital (3) of the Directive, *OJ*, p. 1.

²³ Article 11, (7), of the Directive.

3. Benefits from EU action on combatting violence against women

Protecting women from exposure to abuse, violence and harassment is not only a moral duty for the EU but also a decisive step towards a more equitable society. A radical improvement of the current state of play would bring undeniable ethical, social and economic benefits and enhance the EU's image as a champion of human rights in the world.

Enhancing legal certainty for women

A specific EU instrument on violence against women would present enormous added value in effectively completing the existing framework and offering improved, more effective and more complete legal protection to women.

It would allow listing all forms of harm to women that to this day remain essentially beyond the ambit of the EU's legal framework and thus affirm at EU level that violence against women is unacceptable. The existence of a legal category, corresponding to the prejudices a woman is confronted with is crucial for those women who want to take legal action to protect their rights.

Box 6 - Importance of recognising forms of violence against women as legal categories

The issue of marital rape is a classic example in the field of violence against women and illustrates the importance of the mere existence of legal categories that name forms of harm. Until well into the last decades of the 20th century, in many countries marital rape was not conceivable in the sense that it could not be articulated (formulated) in legal terms. Consequently, judges kept failing to offer any kind of protection to women who, because they were married, were thought to be ever-consenting to all forms of sexual intercourse with their husbands. A harm that has no name cannot be punished or sanctioned in any way.

A specific EU legal instrument aimed at combatting all forms of violence against women would thus give voice to the victims, ensure that they are no longer excluded from the consideration of the law, nor stuck in legal blind spots. It will provide all women with the tools for speaking up and acting upon their rights.

Deepening the area of Freedom, Security and Justice

As we have seen, the significant discrepancies between Member States' regimes constitute unequal and uneven protection for women at the European level since

violence against them is sanctioned and addressed in many different ways. This, as a consequence, impairs the construction of a European Area of Freedom, Security and Justice (AFSJ).

First, it limits the freedom of movement of women within the EU, because of the uncertainty that their dignity, physical, psychological and sexual integrity would be equally protected in other Member States. In this respect, an EU instrument on violence against women would favor free movement of women throughout the EU territory, because of the confidence that they will be treated according to minimum legal standards of protection and in a non-discriminatory manner wherever they are in the EU.

The fact that potentially 50 per cent of the EU's female population is exposed to some kind of violence while this is dealt with differently in the Member States fragments that European Area of Security and Justice. In Article 3 paragraph 2 TEU, the Lisbon Treaty provides that "The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combatting of crime". Article 67 paragraph 4, TFEU also provides that "The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters".

Legal action at EU level on combatting violence against women would serve these core objectives, by deepening the link between prevention of violence, freedom of movement, and access to justice. Free movement of women could be enhanced throughout the territory of the EU, because of the confidence women would have that they will be treated according to minimum legal standards of protection and in a non-discriminatory manner wherever they are in the EU.

Such an initiative would also be consistent with central policy priorities expressed by EU institutions, such as in the Stockholm Programme. In that fundamental roadmap for EU tasks in the Area of Freedom, Security and Justice for the period 2010-2014, the European Council states that promoting citizenship and fundamental rights are the EU's main priorities. It admits that "vulnerable groups in particularly exposed situations, such as women who are the victims of violence or of genital mutilation or persons who are harmed in a Member State of which they are not nationals or residents, are in need of greater protection, including legal protection"²⁴.

²⁴ European Council, *The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens*, OJ C 115, 4 May 2010, p. 10.

Thus, legal action on combatting violence against women is a significant and coherent step for the EU in view of the deepening of the Area of Freedom, Security and Justice.

Enhancing the internal/external coherence of EU action

On the international scene the EU clearly acts as an advocate of women's rights, with a special focus on violence against women. Its behaviour in this field is part of the EU general policy towards the international protection of human rights and has given birth to a large spectrum of actions and affects its relationships with the all the countries around the world, regional groups and international organisations. Be it for political or legal purposes, as part of a preventive approach or with actually binding effect, the EU already defends women internationally against gender violence when perpetrated by and/or in third countries. This mainstream EU external action regarding violence against women plays out at different levels.

Firstly, reducing gender violence has become a priority of the EU's development and humanitarian policy as well as of its relations with the European Neighbourhood' countries. The European Consensus on Humanitarian Aid thus recognises that a focus on violence against women is necessary in all humanitarian assistance policies and strengthening EU support to partner countries in combatting gender-based violence and all forms of discriminations against women and girls has become one of the Specific Objectives mentioned in the Operational Framework of the *EU Plan of Action on Gender Equality and Women's Empowerment in Development* for the 2010-2015 period. The Strategic Partnership with Africa and the cooperation with African, Caribbean and Pacific countries also deal with violence against women issues. In its relationship with the EuroMed countries, the EU has continuously stressed the importance of the status of women and of the elimination of violence against them and has given rise to manifold national policies from part of both EU Member States and Mediterranean countries. Moreover, where there is no specific agreement with a state, the EU acts in favour of combatting violence against women via the EU instrument for Democracy and Human Rights. Violence against women is a permanent point of discussion in the Human Rights Dialogues that the EU pursues with many third countries.

The EU often also takes part, and even leads, international broader initiatives to reduce violence against women in international fora. The EU regularly affirms

the importance it grants the topic throughout various statements²⁵, it is involved in programs and actions within the UN system and in particular behaves like a central actor of the Security Council policy and fight against violence against women in war and peace-building contexts.

Finally, the EU requires that candidates for EU membership effectively prevent and sanction gender violence within their national legal orders. The community *acquis* supposes for candidates to address and reduce violence against women throughout both national and international efforts and the EU has systematically used this leverage, most recently towards Turkey, Serbia, Albania as well as Iceland.

In the diplomatic sphere, the EU thus appears to draw much attention to the respect of international law of human rights requirements regarding violence against women. Not only does the EU promote women's rights and try to prevent violence but it also requires from third countries that they themselves fight against that grim reality.

If the EU continues to impose such standards on third States but not on its own institutions and Member States, it places itself at risk of being accused of abiding by "double standards". In that context, a specific instrument on violence against women would strengthen and legitimise EU's actions on violence against women, as it would reinforce the EU's position as an independent political entity meeting its own ends and defining its own priorities using proper means.

Furthermore, while acknowledging the fact that EU actions inside and outside the EU are of a different legal nature and that the EU external actions dealing with violence against women do obviously not generate a domestic legal competence, they do however create a favourable context for the adoption of a binding instrument on the topic. According to Article 21 of the Treaty on European Union, EU foreign policy must be guided by the same principles and objectives that gave birth to the EU and were used to make of the EU a real political entity. Moreover, Article 21, § 3, TEU provides that "The Union shall ensure consistency between the different areas of its external action and between these and its other policies". Therefore, the adoption of such a legal text is not only politically desirable. It can also be considered a legal necessity as it would contribute to a better consistency between the external action of the EU and its other policies.

²⁵ See for example EU Statement on the International Day for the Elimination of Violence against Women, OSCE Permanent Council Nr 933, Vienna, 29 November 2012.

Affirming the EU's identity as a human rights based polity

A legal action on violence against women would certainly affirm EU identity as a firmly human rights-grounded polity. The incorporation of human rights both at the foundation and the horizon of EU action (be it internal or external) has been a crucial step in the evolution of the EU over the past decades and has contributed immensely to the affirmation of the EU as an actual polity. It is now well accepted that the EU is not solely an economic organisation striving for market integration. The EU Charter of Fundamental Rights has constituted a decisive moment in this respect. As recognised in article 6 TFEU, the rights, freedoms and principles set out in the Charter have the same legal values as the Treaties. In light of the gaps identified earlier, the adoption of a comprehensive legal tool to combat violence against women would significantly contribute to making the core human rights values proclaimed in the Charter, and namely human dignity, equality and solidarity more concrete.

It would also contribute to reinforcing the general values and principles that the EU is based upon, as referred to by the preamble or Articles 2 and 3 of the TEU, such as: "economic and social progress", "democracy", "cohesion", "equality", "human dignity" and "justice". Indeed, the available social data establish the breadth of the long-term effects of public policies aimed at combatting violence, in terms of those principles. Combatting violence is also a way of enhancing public health, economic growth, inclusion and participation and the elevation of general quality of life standards. As a matter of fact, the EU has acknowledged this virtuous circle effect for a long time: the Daphne Programme for instance considers "important to recognise the serious immediate and long-term implications for health, psychological and social development, and for the equal opportunities of those concerned, that violence has for individuals, families and communities and the high social and economic costs to society as a whole".

Finally, remaining inactive in the field of violence against women is a cost for the EU in terms of its image and credibility as a human rights based polity. Indeed, for an entity such as the EU, the decision not to legislate in an area that cries for improvement is just as important as that to do so and risks tarnishing its internal and external image. And eventually, the EU will not be able to eternally escape political accountability for not addressing violence against women at a time where it is both undisputed and well-documented as a severe social issue and technically explored in terms of regulatory options²⁶.

²⁶ See part 4 The choice of instrument: rationale for EU action.

Reducing the economic costs of violence

Very few thorough evaluations on the economic costs to Europe of violence against women have been made. This is no doubt due to the fact that comparable data on different types of violence against women in Member States across the European Union are not collected on a regular basis, which makes it difficult to estimate the real extent of the problem at EU level.

A number of studies conducted at Member State level have provided estimates of the total cost of violence against women for a particular city, region or country. Most of these studies have focussed on domestic violence and, while methodological approaches vary, in general three different kinds of information are used: incidence or prevalence rates of violence, rates of how many women sought help at particular services as a consequence of domestic violence, and the costs of these particular services and activities. Violence against women generates many different types of costs in a very broad range of areas and sectors that ought to be taken into account: health care, social services, economic output, police, criminal justice and civil legal sector and housing, as well as more indirect, intangible or long-term costs such as lost wages, disruption in the lives of victims, psychological or psychosomatic illnesses.

In the near future there is likely to be a more accurate overall estimate, when the EU-wide survey on violence against women, currently being conducted by the Fundamental Rights Agency (FRA), is published in the course of 2014. Until that happens, obtaining precise figures from the existing fragmented studies is difficult due to the considerable differences in their methodology and scope.

A 2006 study of the Council of Europe²⁷ provides a rough comparative analysis of the various cost estimates conducted in the Council of Europe area. The study concludes that the cost of domestic violence alone is estimated to lie in a range of about EUR 20 to EUR 60 (2006 prices) for every person in the population per year. These figures should however be considered underestimates as they do not fully take into account many of the direct as well as indirect costs.

Among attempts to quantify the costs of violence against women at EU level, two studies are worth mentioning. A study²⁸ funded by the European Commission under the Daphne programme, focusing on domestic violence, estimated the economic cost of the latter at EUR 16 billion annually for EU Member States (calculated in 2006 financial year). The numbers, include medical, justice and

²⁷ *Combating violence against women, Stocktaking study on the measures and actions taken in Council of Europe Member States*, Carol Hagemann-White, 2006

²⁸ *Estimated cost of domestic violence in Europe* » (IPV EU_cost - 2006), Psytel, Ingénierie de l'information

police, social and economic costs. The study also suggests that every additional euro spent on prevention work, protection and assistance to victims would create savings of EUR 87 million on the total cost of domestic violence.

A more recent evaluation was conducted specifically at the request of the European Parliament for the purpose of this paper. This research presents the best estimates of the annual costs of gender based violence against women in the EU. Based on an extrapolation of an estimation of annual national costs of domestic violence for England and Wales in 2001, the study relies on statistics from administrative organs as its main sources of data rather than relying on expert or speculative judgements to calculate the prevalence of violence and the costs of related services and on in-depth studies of the impact of injuries over four years on lost employment to quantify the cost of lost economic output. It also includes a more comprehensive range of items than any other studies, both in terms of forms of violence as well as types of impacts analysed, including a cost for the pain and suffering of the victims²⁹.

The cost to the EU of gender-based violence against women is estimated at EUR 228 billion in 2011, i.e. 1,8% of EU GDP.

Annual costs of gender based violence against women in the EU in 2011

Type of cost	EUR million
State/public services	45 056
Economic output	23 980
Pain and suffering of victim	158 988
Total	228 024

This figure includes EUR 45 billion a year in public and state services and EUR 24 billion of lost economic output. It further includes EUR 159 billion as the value the public places on avoiding pain and suffering for equivalent injuries. If this component were to be left aside and only the cost of public services and the lost economic input alone were retained, the estimate is EUR 69 billion annually, i.e. 0.5% of EU GDP.

This figure is almost certainly an underestimate: the study examines numerous forms of violence (domestic violence, sexual assault and stalking), but it is not exhaustive (female genital mutilations (FGM), forced marriage, and trafficking).

²⁹ For the full methodology and findings, see Annex II, Part I Economic aspects of the added value of measures to combat violence against women

It estimates the cost of the use of major public services, including legal, health, housing but not the much smaller costs of specialised services. It calculates the cost of lost economic output insofar as this is captured by time lost from employment due to physical injuries, but fails to include the impact of mental injuries on capacity to sustain employment, second generation costs borne by children whose capacity is diminished by the violence, because data limitations do not enable these costs to be captured robustly. Therefore, the calculations presented by the research do not describe the full scope of the problem.

In any event, the precise measurement of the costs of violence against women is less important than the fact that it adds an argument to the list of moral, legal, sociological arguments for the prevention and eradication of violence against women. While the economic angle is only one way among many to consider the implications of violence against women for policy, it is nonetheless an important one with significant implications for EU-level policy.

It is important to highlight the order of magnitude of the problem and compare it to the cost of implementing measures to combat violence against women. An economic lens shows that violence against women is a detriment to the economy through increasing social exclusion and reducing economic output. Actions to reduce violence against women are of benefit to the economy by increasing output and productivity, and thereby increasing the likelihood of greater economic growth. An EU instrument to combat violence against women would contribute to eliminating the considerable financial burden that impacts both the abused European women and the national economies.

4. The choice of instrument: rationale for EU legislation

There is a variety of ways to rectify the deficiencies of instruments at EU level for combatting violence against women. They range from improvements to the existing mechanisms and conventions to the introduction of new and all-embracing instrument. However the immensity of the task and the urgent need to significantly reduce the harmful direct and side effects of violence against women plead for the latter.

The need for a comprehensive approach

A global action tackling all forms of violence against women in a comprehensive manner, i.e. including a criminal component, would have the greatest impact. Indeed, to be effective, instruments on violence against women must adopt an all-inclusive approach, ranging from prevention, support measures, definition of main offences to prosecution, sanctions, to the assistance of victims of gender-based violence.

This comprehensive approach, including an EU specific binding instrument on violence against women has been consistently promoted by the European Parliament, throughout its various reports and resolutions.

Box 7 - The European Parliament and violence against women

Resolution of 26 November 2009 on the elimination of violence against women, the EP called on the Commission to "establish a clear legal basis for combatting all forms of violence against women, including trafficking and to start work on drafting a proposal for a comprehensive directive on action to prevent and combat all forms of violence against women".

Resolution of 25 November 2009 on the Stockholm Programme: the EP calls "for issuing of a directive and a European action plan on violence against women".

Resolution of 5 April 2011 on priorities and outline of a new EU policy framework to fight violence against women (Svensson report): the EP calls for "a new comprehensive policy approach against gender-based violence, including a criminal-law instrument in the form of a directive against gender-based violence".

Resolution of 6 February 2013 on the 57th session on UN CSW: Elimination and prevention of all forms of violence against women and girls: EP calls on the Commission to devise a strategy for tackling violence against women, which would include the drafting of a directive laying down minimum standards.

Overcoming the legal obstacles

It must however be recognised that a global directive on violence against women would necessarily touch upon many areas of law where the competence of the EU is limited. According to Article 5, § 2 TEU, “Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaty remain with the Member States”. The regulation on violence against women cuts across multiple domains of law, such as criminal, family, civil, social welfare, asylum, immigration, administrative, police, labour and equality law, which are not equally dealt within the EU law. Whereas the EU competence appears to be very well established in some areas, such as labour law, the EU cannot nevertheless claim exclusive competence in most of the aforementioned areas.

This patchwork of competences prevents EU Institutions from any overly one-dimensional approach, but leaves scope for important progress in combatting violence against women.

In particular, the possibility to act in the area of criminal violence is of great importance in view of the gaps in the EU framework identified in previous sections and the necessity to improve women's protection against gender-based violence in the EU. Article 83 TFEU provides tools that enable to harmonise substantively the criminal law, albeit in a limited number of areas.

Box 8 - Article 83 paragraph 1, Treaty on the Functioning of the European Union (TFEU)

The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

On the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament.

In the second part of the paragraph 1, article 83 refers to crime areas of sexual exploitation of women and organised crime. This means that violence against women occurring in the context of sexual exploitation (i.e. violence to prepare, facilitate, accompany, cover up sexual exploitation of women) could be subject to minimum rules in criminal law definitions and sanctions by means of an EU directive as long as this is done simultaneously with criminal law rules on sexual exploitation of women as such. The same stands for organised crime. From this perspective, existing instruments, such as for instance Directive 2011/36/EU on preventing and combatting trafficking in human beings and protecting its victims could be revised in order to fully take into account the gender dimension. These initiatives, however, could not be considered as global instruments on violence against women.

Article 83 paragraph 1 covers some aspects of violence against women, but leaves aside the majority of them, such as domestic violence, rape, stalking, female genital mutilation, etc. The fact that gender-based violence is not, as such, listed in this article is the main obstacle for the recourse to this legal basis for a directive on combatting violence against women. But the last part of the paragraph opens the possibility to create a new legal basis in criminal matters through a "*passerelle clause*". The Council might take a decision, by unanimity and after consent of the European Parliament, to extend the list of offences contained in this provision. EU institutions could then propose minimum standards of definition and legal penalties in order to combat violence against women at a larger scale.

The requirement of unanimity is certainly an obstacle hard to overcome but the other conditions of application of article 83 do not raise major obstacles. Not all cases of violence raise cross-border issues, however, as was demonstrated above, the unequal treatment of women victims of violence contradicts the principle of freedom of movement, which is at the very foundation of the EU project.

Defining new offences regarding violence against women on a larger scale would result "from a special need to combat them on a common basis" as required in Article 83 paragraph 1: this special need results first from the gaps and divergences of national approaches in this field, which could only be overcome by a legislative instrument defining minimum standards in full respect with the principles of subsidiarity and proportionality. Furthermore, this need comes from the special kind of threat to society violence against women constitutes. As it has already been highlighted, statistics are eloquent about the devastating effects of violence against women – well beyond the violent acts themselves. Because violence generates violence, all kind of offences to women impact not only physical and psychological health-related aspects, but also generate much broader social costs in the longer term. For these reasons, there is a pressing need

for the EU Council to activate without delay the "*passerelle clause*", in order to add gender based violence to the list of crimes covered by article 83 TFEU.

Establishing rules on prevention

Criminal law definitions and legal penalties in the area of violence against women require the creation of a legal basis in criminal matters. Article 84 TFEU already offers an appropriate legal basis for establishing measures to promote and support the action of Member States in the field of prevention of violence. This provision could serve as a useful legal basis for a directive which would not seek to harmonise national legislations, but to efficiently supplement the existing EU law on victims.

Box 9 - Article 84 Treaty on the Functioning of the European Union (TFEU)

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to promote and support the action of Member States in the field of crime prevention, excluding any harmonisation of the laws and regulations of the Member States.

As stated earlier, taking into account the dimension of prevention when combatting violence against women is indeed a crucial part of the comprehensive approach which is necessary in that field. On the basis of this article, the EU should therefore promote measures for gathering and exchanging information, education and training for the officials involved, exchange of experiences and good practices, information and awareness-raising, and other relevant activities of this kind..

Establishing a system for collecting statistics on violence against women

Experience has shown that reliable and comparable data on the prevalence of violence against women in the EU Member States is an important element of any strategy designed to combat this phenomenon at EU level.

The European Parliament has in several resolutions urged Member States to provide data on violence against women. Moreover, the Council in its conclusions of December 2012 has called to improve the collection and dissemination of comparable, reliable and regularly updated data concerning all forms of violence against women at both national and EU level. The on-going Europe-wide survey on violence against women will provide valuable indications on the extent of problem, but will be a snapshot of the situation. Today there are few indicators that can measure violence against women since no

principles of crime classification systems for statistical purposes has been established in the EU and there is no agreed common methodology for obtaining comparable administrative data. This was one of the main reasons why the Gender Equality Index by EIGE could not take violence against women properly into account.

In June 2011 the Commission submitted a Proposal for a Regulation on European statistics on safety from crime (COM(2011)335 final), based on article 338 TFEU, aiming at establishing a common framework for producing European statistics, based upon a household/personal survey in the respective Member States. The Commission's proposal has been questioned by Parliament, among other, as regards to the suggested budget (considered to be high and unjustified), the statistical methodology (considered to be too subjective) and the scope of the proposal (allowing namely for some exceptions for certain Member States). As a consequence, the EP rejected the proposal in plenary and called for a new one to be submitted by the Commission. There is therefore still a need for a new proposal for EU legislation which establishes a coherent system for collecting statistics on violence against women in the Member States.

Launching the procedure for EU accession to the Istanbul Convention

The possibility of the EU accession to the Istanbul Convention also needs to be pursued, as called for by the European Parliament. This prospect is already being examined by the Commission, which is indeed preparing an internal study on the feasibility of the accession to the Convention by the EU, its legal implications and added value³⁰.

While awaiting the results of the internal study, it is evident that the EU's accession would project a capital political message. Above all, it would be a way for the EU to affirm itself as a world leader and promoter of human rights. Secondly, it would provide a guarantee against risks of incoherencies or even double standards in the field of violence against women. Greater integration of the EU with relevant international mechanisms is manifestly the most plausible and serious perspective in order to be effective in this the area. In this respect, the accession of the EU to the Istanbul Convention, despite the internal legal and political difficulties it may entail, will give the world a robust message about the EU's commitment to fight this scourge.

³⁰ In its Follow-up to the European Parliament resolution on equality between women and men in the European Union (2010), adopted on 22 June 2011, the European Commission states that "it will carefully review the adopted text (the Istanbul Convention) and consider the possibility to propose the Council that the EU accedes to the Convention. The Convention will then become legally binding for the EU where it has competence under the Treaty.

**Box 10 - The example of the UN Convention
on the Rights of Persons with Disabilities**

The Convention has been ratified by the EU given the strong convergences that existed with previous the EU actions. The European Disability Strategy 2010-2020 has consequently been based on the UN Convention's requirements.

It is however noteworthy, that the situation was different from that of violence against women today: the fact that every Member State had already signed the Convention on the Rights of Persons with Disabilities had a real impact on the decision of the EU to ratify the Convention. To this date, the Istanbul Convention has been signed by 20 and ratified by three EU Member States.

If the EU does ratify this treaty, the Convention would probably remain without direct effect within the EU legal order, even if all 28 Member States had ratified it as well. A proper EU instrument will thus still be necessary and the question of coherence between the two mechanisms would naturally arise. For the two legal instruments to be more coherent and complementary and without having to reproduce the international treaty's provisions, the EU instrument should mention the Istanbul Convention as a source for its rules and principles, just as the ECJ and the Treaties refer to the ECHR when speaking about general principles of Union's law in connection to human rights. There are indeed many similar examples of legislative action by the EU, aligning itself to Council of Europe conventions (see box 11 below).

**Box 11 - The fight against trafficking- example of coordination
between a Council of Europe convention and EU directive**

Directive 2011/36/EU of the European Parliament preventing and combatting trafficking in human beings and protecting its victims explicitly mentions the UN³¹ and Council of Europe³² instruments, takes due notice of the existence of an evaluation mechanism monitored by the Group of experts on action against trafficking in human beings (GRETA) and a Committee of the Parties, and mentions the need for coordination so as to avoid duplication of efforts due to the coexistence of the two mechanisms.

Given the importance that EU's accession to the Istanbul Convention will have on the fight against violence against women, the European Commission should

³¹ United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention against Transnational Organised Crime, 2000.

³² Council of Europe Convention on Action against Trafficking in Human Beings, 2005

immediately launch the procedure for such accession once it has finalised its impact assessment on EU existing policies.

Complementing the existing framework with other measures

While legally binding EU action is necessary in order to prevent violence and punish the perpetrators, a comprehensive approach to the problem entails the adoption of a number of measures to enhance protection of women against violence. These measures include addressing specific forms of violence, improving policy making coordination, exchanging of best practices to raising awareness.

For instance, building on the public consultation launched this year the results of which are expected to be published around the international day against violence against women (25 November), further action should be proposed on Female Genital Mutilation. An EU action plan on FGM should be adopted, addressing several issues like prevention and protection, and covering both internal and external aspects of the problem.

In addition, the EIGE's competences should progressively be extended in order to evolve into a European observatory on violence against women. She thinks that it will be more appropriate to frame it inside EIGE's competences. Placed in the context of gender equality and fundamental rights, the new mandate would allow better coordination and coherence among EU institutions, EU agencies, Member States and international actors, as well as to further develop existing and propose new EU policies to combat violence against women.

Finally, an EU Year to End Violence against women should be established in the next three years in order to raise awareness among EU citizens about this pressing problem.

The above list of actions is indicative and certainly non-exhaustive. But it sets nonetheless clearly the priorities that the European Parliament believes should be an integral part of an EU-wide Strategy to combat violence against women, which the European Commission needs still to present. In its Action Plan implementing the Stockholm Programme, the Commission had pledged to present, in the course of 2011-2012, a 'Communication on a strategy to combat violence against women, domestic violence and female genital mutilation, to be followed up by an EU action plan'. Given the importance of this issue, such a Strategy is long overdue.

RECOMMENDATION

The EU should adopt, on the basis of Article 84 TFEU, a legal act establishing measures to promote and support the action of Member States in the field of prevention of violence and all other necessary steps, outlined in this European Added Value Assessment, to address the problem of violence against women.

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