



GENDER-BASED VIOLENCE AS A CRIME UNDER ARTICLE 83 TFEU

Presentation for LIBE and FEMM Committee

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SUBSTANTIVE CRIMINAL LAW COMPETENCE UNDER ARTICLE 83(1) TFEU

Article 83(1) TFEU imposes three conditions for adding a crime to the list of Euro crimes:

- 1. Particularly serious crime**
- 2. Cross-border dimension**
- 3. Unanimous Council decision**



1 PARTICULARLY SERIOUS CRIME

- **A political decision** not likely to be subject to judicial scrutiny
- Nonetheless, **gender-based violence** imposes **very serious harm** to individuals and society
- The Draft Report underlines the wide range of **adverse psychological, economic and social impacts** that gender-based violence has on victims, including stress, concentration problems, anxiety, panic attacks, low self-esteem, depression, post-traumatic stress disorder, lack of trust and of sense of control



2 CROSS-BORDER DIMENSION OF GENDER-BASED VIOLENCE I

- The key issue not addressed in the Draft Report is the **cross-border dimension** of gender-based violence
- Potentially a contentious issue as competence to harmonise criminal law has been conferred on the EU on the assumption that the EU could better address **collective action problems** of cross-border crime than the Member States
- Article 83(1) TFEU explicitly states that the cross-border dimension is an inherent condition to be adhered to by all **Euro crimes**



2 CROSS-BORDER DIMENSION OF GENDER-BASED VIOLENCE II

- The cross-border dimension may result from:
 - I. the **nature** of the offence,
 - II. the **impact** of the offence, or
 - III. a **special need** to combat the offence on a common basis.
- However, no clear **reasoning or evidence** in the EP Draft Report to the effect that gender-based violence would be a cross-border offence **by nature**
- **Transnational movement** or any tangible **cross-border impact** of the offence not necessarily required



KEY POINTS

- It appears clear that gender-based violence satisfies the criterion of being a **particularly serious crime**
- Nonetheless, there is no convincing case made in the EP Draft Report that gender-based violence has a **cross-border dimension**