

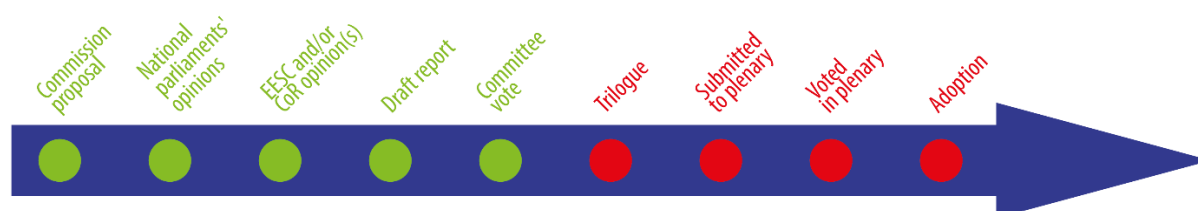
Combating violence against women and domestic violence

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. In July 2023, based on the joint report drafted by its Committees for Gender Equality (FEMM) and Civil Liberties (LIBE), the Parliament decided to enter into interinstitutional negotiations. It will need to find agreement with the Council, particularly on the extent of EU competences to criminalise at EU level certain forms of violence against women. The position adopted by the Council weakens the proposal significantly by removing rape and other crimes, because the Council considers that there is no legal basis in the Treaties to define them at EU level.

Proposal for a directive of the European Parliament and of the Council on combating violence against women and domestic violence		
<i>Committees responsible:</i>	Women's Rights and Gender Equality (FEMM) and Civil Liberties, Justice and Home Affairs (LIBE), jointly under Rule 58	COM(2022) 105 final 8.3.2022 2022/0066(COD)
<i>Co-rapporteurs:</i>	Frances Fitzgerald (EPP, Ireland) Evin Incir (S&D, Sweden)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
<i>Next steps expected:</i>	Trilogue negotiations	



Introduction

Gender-based violence against women (GBVAW) encompasses physical, sexual, psychological or economic 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.¹ 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 a partner or ex-partner, whilst 43 % of women have experienced some form of psychologically abusive and/or controlling behaviour in a relationship. Homicide [data](#) from EU countries show that over 70 % of all murder victims killed by an intimate partner are women.

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 need for support 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, [rooted](#) in cultural, legal, economic and political factors. GBVAW 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](#) which [imply](#) that violence against women should be treated as a human rights violation and as a specific form of violence linked to discrimination against women. This means 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. The EU finalised its ratification process in May 2023, thus effectively becoming a party, but only to the extent of its exclusive competences in the matters covered by the Convention.

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)², 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](#) of the Treaty on the Functioning of the European Union (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 Victims' Rights Directive ([Directive 2012/29/EU](#)) establishes minimum standards for the protection of all victims of crime, including victims of gender-based violence. Two further legal instruments ensure EU-wide protection for victims of domestic violence: [Directive 2011/99/EU](#) on the European Protection Order and [Regulation \(EU\) No 606/2013](#) on mutual recognition of protection measures in civil matters oblige Member States to recognise criminal and civil protection orders issued in other Member States, enabling cross-border enforcement.
- 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 as 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.³

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](#).⁴ 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.⁵ 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](#)

(Austria, Belgium, Denmark, Finland, France, Italy, Malta, the Netherlands, Portugal, Spain and Sweden, all evaluated by December 2020).⁶ For each article of the Convention, the evaluation identifies challenges and examples of promising 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.

It is a stated aim of the proposal to achieve the objectives of the Istanbul Convention within the areas of EU competence. The ratification of the Istanbul Convention by the EU on [28 June 2023](#) after a protracted process, and the Court of Justice of the European Union's [ruling](#) that a qualified majority was sufficient to ratify it,⁷ is an important development in the context of the proposed directive. The directive will become the EU's main legal instrument for implementing its provisions. Moreover, the directive has the potential to affect the scope itself of EU accession to the Convention; the EU has acceded to the Convention on a narrow basis, to the extent of its exclusive competences, as stated in the Council ratification acts. Such exclusive competences arise if common EU rules in relevant areas are likely to be affected or their scope altered by the accession to the Convention (according to [Article 3\(2\) TFEU](#)). Thus, once adopted, by establishing common rules, the directive could give rise to such exclusive competences for the EU.⁸

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.
- 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.

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.¹⁰ A [public consultation](#) took place from 8 February to 10 May 2021.

On 8 March 2022, the European Commission released the proposal for a directive and its compulsory [impact assessment](#) (IA) despite the negative [opinion](#)¹¹ of its Regulatory Scrutiny Board (RSB). The final 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;
- 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.

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 cyber stalking 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.

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. Thirteen national parliamentary chambers completed their subsidiarity check, but none issued a red card. 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 views¹²

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 – comprehensive legislation. While trade

unions and employers supported the objective of combating sexual harassment, and welcomed additional measures, employers had reservations about the obligations they would incur.

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 \(Nordic\) 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 network has [welcomed](#) the Parliament's position for trilogue and criticised the Council's proposals that weaken the directive, among other things with regard to specialised women's services.

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. It included 178 amendments with a view to strengthening the Commission's proposal. On 28 February 2023, a further joint committee meeting took stock of 1 481 amendments tabled on the draft report. The LIBE and FEMM committees voted on a [consolidated text](#) consisting of 297 amendments to the Commission proposal on 28 June 2023. The July plenary session confirmed the decision to go into interinstitutional negotiations based on this joint report.

In the Council, the proposal was [examined](#) in the [Working Party on Judicial Cooperation in Criminal Matters](#) (COPEN), which started work on the file in [March 2022](#). COPEN asked for the opinion of the Council's legal service, which was presented in November 2022. While this opinion is not publicly available, seemingly it found that the Treaties do not provide the EU with the competence to criminalise rape at EU-wide level. After several meetings, in which the working party examined various revisions of the proposal's chapters submitted by the Czech and Swedish Presidencies, the Swedish Presidency was finally able to secure a difficult compromise, endorsed in May 2023 at working party level. Based on this text, the 'Justice and Home Affairs' Council [adopted](#) the Council's ['general approach'](#) on 9 June 2023. However, several countries issued statements to express their reservations. Poland fully rejected the approach as legally flawed because it circumvents the unanimity requirement under Article 83 TFEU for the definition of several crimes addressed by the directive. Czechia, Hungary and Estonia criticised the interpretation given to the provisions of Article 83 concerning computer crimes, which in their view should only cover offences which can be committed exclusively through the use of technology. This is not the case with crimes committed online as defined in the directive, which can also be committed offline.

The Council position includes some far-reaching changes. It strikes down the EU-wide definition of rape because the Council considers that it lacks a legal basis in the Treaties (a position [contested](#), however, by some countries such as Belgium, Greece, Italy, Luxembourg and Ireland). The Council further considers that the cyber-crimes covered by the directive, namely cyber harassment, cyber stalking, the non-consensual sharing of intimate images online, and cyber incitement to violence or hatred, should only be defined as EU-wide crimes where they reach a certain degree of gravity. The first three crimes should be likely to cause serious harm, including of a psychological nature, to the victim, or to cause the victim to seriously fear for their own safety or that of their dependants. Cyber incitement to violence or hatred should be likely to disturb public order or be threatening, abusive or insulting. The Council reduces the minimum penalties proposed by the Commission for the criminal offences defined at EU level. It makes specific changes with regard to the protection of victims and access to justice, to victim support and the prevention provisions, to provide more flexibility to Member States.

At the terminological level, the Council deletes the definition of 'gender', but proposes to use this term exclusively in the text, while eliminating the term 'sex' where they appear together. Poland and Bulgaria insisted that the term gender could only be interpreted as meaning the same as sex in line with the EU Treaties and, respectively, Bulgaria's constitutional provisions.

The Parliament's position for the interinstitutional negotiations presages difficult negotiations with the Council. Unlike the Council, which weakens it considerably, the Parliament wishes to strengthen the Commission proposal. Particularly on the issue of crimes to be defined by the EU, the Parliament stands in stark opposition to the Council, but their disagreement is not so much substantive, as related to the interpretation of the extent of EU competences under the TFEU. The Parliament retains rape as a crime which the EU has the competence to define and criminalise at EU level. The

two rapporteurs have endorsed the Commission's view that the TFEU provides a sufficient legal basis. They [declared](#) the inclusion of rape a 'red line' for the Parliament.

The Parliament adds further crimes such as sexual assault (defined as 'any non-consensual act of a sexual nature'), intersex genital mutilation, forced sterilisation, forced marriage, sexual harassment in the world of work and the unsolicited receipt of sexually explicit material to the list of crimes which need to be defined at EU level. The Parliament also broadens the understanding of non-consensual acts, emphasising that consent can be withdrawn at any given moment, and that situations in which a victim is unable to form free will due to fear, intimidation, unconsciousness, intoxication, sleep, illness, bodily injury or disability or any otherwise particularly vulnerable situation are non-consensual. 'Stealthing', the removal of contraceptive means during the act, should also qualify as a non-consensual act, and thus as either rape or sexual assault.

The Parliament retains the cyber-crimes defined by the Commission and enhances their definition. Furthermore, the Parliament adds to aggravating circumstances those offences committed against a 'public representative, a journalist or a human rights defender', as well as those committed to punish the victim for their sexual orientation or to restore the honour of the family. The Parliament strengthens protection measures, by introducing provisions that oblige Member States' authorities to consider arresting immediately a perpetrator who poses a risk of severe violence to the victim and dependents. If arrest-substitution measures are used, electronic monitoring should be put in place. Parliament also wishes to add provisions on access to sexual and reproductive healthcare for victims of sexual violence and support for victims of sexual harassment in the workplace.

The first trilogue discussion took place in July 2023, and the next round is expected to take place in October 2023.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

Walkey C. et al, [The legislative frameworks for victims of gender-based violence \(including children\) in the 27 Member States](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, October 2022.

Zandersone L. with Rustige J., [Combating violence against women and domestic violence](#), EPRS, European Parliament, June 2022.

Hahnkamper-Vandenbulcke N., [Violence against women and domestic violence – The new European Commission proposal in light of European Parliament requests](#), EPRS, European Parliament, June 2022.

Fernandes M., Lomba N. and Navarra C., [Combating gender-based violence: Cyber-violence](#), EPRS, European Parliament, March 2021.

Navarra C., Fernandes M. and Lomba N., with García Muñoz M., [Gender-based violence as a new area of crime listed in Article 83\(1\) TFEU](#), EPRS, European Parliament, June 2021.

Shreeves R., [Briefing: Violence against women in the EU – State of play](#), EPRS, European Parliament, November 2022.

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 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.
- ³ See: [Criminalisation of gender-based violence against women in European States, including ICT-facilitated violence](#), S. De Vido and L. Sosa, European Network of Legal Experts in Gender Equality and Non-discrimination, European

- Commission, 2021. [The legislative frameworks for victims of gender-based violence \(including children\) in the 27 Member States](#), Policy Department for Citizens' Rights and Constitutional Affairs, European Parliament, October 2022. [Combating Cyber Violence against Women and Girls](#), EIGE, October 2022. [Violence against women and domestic violence – The new European Commission proposal in light of European Parliament requests](#), Nora Hahnkamper-Vandenbulcke, EPRS, European Parliament, June 2022, pp. 3-4.
- ⁴ 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.
 - ⁵ See Table 3. Overview of EU-27 national legal frameworks on cyber violence, p. 25.
 - ⁶ In the meantime, GREVIO has published monitoring reports for all the remaining EU parties but Greece and Ireland.
 - ⁷ 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, Utrilla D., [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.
 - ⁸ The directive is listed in the [annex](#) to the [Declaration of the European Union](#) submitted to the Council of Europe, as future EU legislation likely to modify the scope of EU competences under the Convention.
 - ⁹ 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.
 - ¹⁰ 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.
 - ¹¹ The RSB [issued](#) two negative opinions. In the second and final opinion, on 12 January 2022, the RSB maintained much of its serious criticism of many of the IA's components. It considered that the report was not sufficiently clear on the objective to be achieved, the concrete measures envisaged under each policy options were unclear, the comparison of options was based on 'unclear and debatable criteria and a biased scoring methodology', and the proportionality of the chosen comprehensive legislative approach was not sufficiently assessed. To respond to the RSB's criticism, the Commission issued a [follow-up to the second opinion](#), but did not make changes to the IA itself.
 - ¹² 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'.

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Second edition of a briefing, the first edition of which was drafted by Rosamund Shreeves. The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure.