

Violence against Women and Domestic Violence: The European Commission's Directive Proposal

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The Commission proposed to enshrine in the law of the European Union minimum standards to criminalise certain forms of violence against women; protect victims and improve access to justice; support victims and ensure coordination between relevant services; and prevent these types of crimes from happening in the first place. In particular, the Commission's proposal would make it possible, on the one hand, to surmount the gaps existing in some Member States and, on the other hand, to standardise the various national legislations with a single discipline valid in all the countries of the European Union. This paper focuses on the contents of the European Commission's proposal by highlighting and reflecting on the key points.

Keywords: *Violence against women; Domestic violence; Directive proposal; European Commission; Minimum standards*

Introduction

Violence against women and domestic violence are widespread in all Member States: according to the European Union Agency for Fundamental Rights (FRA), they affect one in three women in the EU. In 2014, one in ten women reported that they had been victims of sexual violence and one in twenty had been raped. More than one in five women have suffered domestic violence. Cyber violence is also widespread¹: In 2020, one in two young women experienced gender-based cyber violence². In addition, around one third of all women in the EU have experienced sexual harassment in the workplace.

In her political guidelines³, President Ursula von der Leyen stressed the need to prevent and combat violence against women, protect victims and punish the perpetrators of these crimes, making it a key priority of the European Commission. Later, the Gender Equality Strategy 2020-2025⁴ announced EU measures to prevent these forms of violence, protecting victims, prosecuting offenders, and implementing related comprehensive and coordinated policies. The European

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¹Jurasz & Barker (2021).

²See European Parliamentary Research Service (EPRS), *Combating gender-based violence: Cyberviolence, European added value assessment*, 2021, available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662621/EPRS_STU\(2021\)662621_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/662621/EPRS_STU(2021)662621_EN.pdf)

³See von der Leyen (2019).

⁴See *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 5 March 2020, A Union of Equality: Gender Equality Strategy 2020-2025*, COM (2020) 152 final.

Pillar of Social Rights Action Plan⁵ confirms this effort to combat gender-based violence and propose legislation to this effect⁶.

Most EU Member States have introduced measures to combat violence based on gender or sexual orientation. However, this phenomenon is not yet effectively addressed because of the dearth of a common definition and rules. This creates legal uncertainty about rights of such victims across the EU. Moreover, while there are existing pieces of EU legislation currently contributing to this goal, they are not sufficiently effective.

It is necessary to have a comprehensive legal instrument to address the problem in all its components. Only in this way, it will be possible to trigger the change by effectively contributing to the elimination of violence against women.

On several occasions, the European Parliament⁷ has asked for European legislation to be introduced in this regard, with watchful attention to safeguarding the rights of women, both as citizens and as a vulnerable category⁸. Recently, it adopted the *Resolution of 6 October 2021 on the impact of intimate partner violence and custody rights on women and children*⁹, in which it expressed its disapproval of the failure to complete the process of accession by the European Union to the Council of Europe's *Convention on preventing and combating violence against women and domestic violence*¹⁰, known as the Istanbul Convention¹¹, adopted on 7 April 2011¹². The European Parliament also blamed

⁵See *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 4 March 2021, The European Pillar of Social Rights Action Plan*, COM (2021) 102 final.

⁶Abels & Mushaben (2020).

⁷Roggeband (2021).

⁸See *European Parliament resolution of 13 February 2019 on experiencing a backlash in women's rights and gender equality in the EU*, P8_TA(2019)0111; *European Parliament resolution of 28 November 2019 on the EU's accession to the Istanbul Convention and other measures to combat gender-based violence*, P9_TA(2019)0080; *European Parliament resolution of 21 January 2021 on the EU Strategy for Gender Equality*, P_TA(2021)0025; *European Parliament resolution of 16 September 2021 with recommendations to the Commission on identifying gender-based violence as a new area of crime listed in Article 83(1) TFEU*, P9_TA(2021)0388. In this latest resolution, the European Parliament called on the Commission to establish the legal basis for including gender-based violence among EU crimes and for establishing common legal definitions and standards by setting minimum criminal sanctions across the EU. Previously, the European Parliament called - in the *European Parliament resolution of 11 February 2021 on challenges ahead for women's rights in Europe: more than 25 years after the Beijing Declaration and Platform for Action*, P9_TA(2021) 0058 – a European directive to prevent and combat gender-based violence in all its forms. On this occasion, Members of the European Parliament called on the European Commission to develop a European Union Protocol on gender-based violence in times of crisis and to include protection services for victims, such as helplines, safe accommodation and health services as 'essential services' in the Member States.

⁹P9_TA(2021)0406.

¹⁰Berthet (2022).

¹¹The Istanbul Convention – currently ratified by thirty-four countries – is the most important international instrument containing rules that provide for the States that have ratified it the obligation to adopt internal provisions aimed at preventing violence against women, protecting the victims and punishing those responsible.

¹²The Commission and the Presidency of the Council signed the Istanbul Convention on 13 June 2017, but the EU accession process has not been finalised as the Council has not yet adopted the final decision. Recently, the Court of Justice of European Union ruled that the EU may decide to

the six EU Member States (Bulgaria, Czech Republic¹³, Hungary, Lithuania, Latvia and Slovakia) that have not yet ratified it, and expressed concern at Poland's willingness to withdraw from the Istanbul Convention, similarly to Turkey's previous decision. The Parliament noted that not ratifying the Convention "would be a serious setback with regard to gender equality, women's rights and the struggle against gender-based violence"¹⁴.

However, in the Resolution of 6 October, the European Parliament also expressed its concerns about the solutions adopted by the member states who have ratified the Istanbul Convention, above all due to the fragmented nature of the interventions carried out at the state level.

The European Parliament has insisted that the European Commission present proposals on combating gender-based violence and cyber violence¹⁵, because failing to address violence against women and domestic violence is also costly on the financial level. Violence against women has a considerable impact on those involved, including victims, witnesses, perpetrators, national authorities, companies, and the wider community and society. However, some of the negative social and health impacts also gives rise to costs of an economic nature¹⁶, as estimated by the European Institute for Gender Equality (EIGE)¹⁷.

Although the completion of EU's accession to the Istanbul Convention remains a priority for the Commission, on 8 March 2022 it advanced a proposal¹⁸ for a Directive of the European Parliament and of the Council *on combating violence against women and domestic violence*¹⁹, since combating them is part of the European Commission's action to protect the core EU values and to ensure compliance with the EU Charter on Fundamental Rights. This proposal aims at achieving the objectives of the Istanbul Convention²⁰ within the EU's remit of

accede to the Istanbul Convention even if not all Member States consent or have ratified the Convention: see Grand Chambre, opinion 1/19 of 6 October 2021.

¹³Regarding the directive proposal, the Czech Chamber of Deputies issued a reasoned opinion on subsidiarity grounds, expressing concerns that the criminalisation of offences should be left to the Member States, and suggesting instead an amendment to the victims' rights directive: see *Parliament of the Czech Republic, Chamber of Deputies, Committee on Constitutional and Legal Affairs, Resolution No. 31 of 18 May 2022*, available at <https://secure.ipex.eu/IPEXL-WEB/document/COM-2022-0105/czpos>.

¹⁴P9_TA(2021)0406, § 5.

¹⁵See *European Parliament resolution of 14 December 2021 with recommendations to the Commission on combating gender-based violence: cyberviolence*, P9_TA(2021)0489.

¹⁶Cavaghan (2017).

¹⁷See EIGE (2021).

¹⁸The proposal is included in the 2022 Commission work programme (*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 19 October 2021, Commission work programme 2022: Making Europe stronger together* COM (2021) 645 final) and in the joint declaration on EU legislative priorities for 2022 (*Joint Declaration of the European Parliament, the Council of the European Union and the European Commission, EU Legislative Priorities for 2022*, 2021/C 514 I/01).

¹⁹COM (2022) 105 final.

²⁰Although the provisions of the Istanbul Convention currently do not have a binding legal value in EU law, they have recently been invoked by way of interpretation in a judgment before the Court of Justice of the EU. In case C-930/19, X vs. État Belge, Advocate General Szpunar stated that, "although the Istanbul Convention does not, for the time being, have a direct impact on the

complementing the existing EU acquis and Member States' national legislation in the areas covered by the Convention. Once the EU accedes to the Istanbul Convention, the Directive shall be an implementation of it²¹.

There is currently no EU legislation that specifically addresses violence against women and domestic violence. However, the issue falls within the scope of various directives and regulations²² adopted in the areas of criminal justice, gender equality and asylum. The suitability of the legal framework, currently in force at the EU level to address the issues raised by these phenomena, was assessed for the purpose of preparing the proposal under consideration. In that context, it was found to be insufficient, since the relevant legislation of the EU has been ineffective in preventing and combating violence against women and domestic violence.

In addition, violence against women and children, particularly domestic violence, has increased since the outbreak of the COVID-19 pandemic. However, it is necessary to consider this over time in order to understand if this increase in incidence is temporary or if it is indicative of a trend.

During this period, in which the increase in risk factors for violence (such as, for example, isolation, stress, work from home) was accompanied by a decrease in accessibility to various forms of support for victims, several stakeholders noted an increase in contacts to help lines for victims of violence against women and domestic violence, requests for specialised support services (emergency accommodations, counselling services), as well as referrals to law enforcement

interpretation of Article 13, par. 2, of Directive 2004/38, the same cannot be said in respect of the legal developments it entails which are bringing about political and social changes relating the protection of victims of domestic violence. In so far as Article 59(1) of that convention allows victims to obtain the necessary protection from authorities without fearing that the perpetrator will retaliate by withdrawing or threatening to withdraw residence benefits under the perpetrator's control, it seems to me that it would be inconsistent, whether or not the European Union accedes to that convention, to ignore the risk of 'blackmail with threats of divorce' or 'blackmail with threats of departure' when interpreting Article 13, par. 2, of Directive 2004/38. Moreover, this would prevent victims from being entitled to the protection provided for by that provision, whereas its purpose is precisely to protect the spouse who is a third-country national and who has, inter alia, been 'a victim of domestic violence while the marriage or registered partnership was subsisting', by maintaining his or her right of residence in the host Member State" (*Opinion of Advocate General Szpunar delivered on 22 March 2021*, par. 107). In essence, the Istanbul Convention could serve as a source of inspiration for interpreting EU regulatory acts.

²¹See COM (2022) 105 final, *Explanatory Memorandum*.

²²In particular, there are fourteen acts of the Union which, for this purpose, can be considered relevant, as they establish general rules applicable also to this particular category of victims or specific rules referring to particular forms of such violence: for example, the provisions on protection and access to justice contained in the Victims' Rights Directive (*Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 on establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*), the directive against the sexual abuse of minors (*Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and the sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA*) and the anti-trafficking in human beings directive (*Directive 2011/36/EU of the European Parliament and the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA*).

and protection order requests.

Thus, the directive proposal would make it possible, on the one hand, to overcome the gaps existing in some Member States, especially those that have not ratified the Istanbul Convention. On the other hand, it may facilitate standardising the various national legislations with a single discipline valid in all the countries of the European Union.

Furthermore, the proposed measures are based on the recommendations of the Group of Experts on Action Against Violence Against Women and Domestic Violence (GREVIO), the independent expert body responsible for monitoring the implementation of the Istanbul Convention. The measures may factor in recommendations by international experts and organisations in the field, including those under the auspices of the United Nations, and their reflections on internationally accepted good practices in combating violence against women and domestic violence.

However, the Commission's proposal is different to the Istanbul Convention, as it sets minimum standards for Member States within the areas of EU competence, including the criminalisation of cyber violence offences that is not specifically covered by the Istanbul Convention²³. In any case, the proposal does not prevent Member States, especially those that are already parties to the Istanbul Convention, from maintaining higher standards.

This contribution aims at analysing the contents of the European Commission's proposal by highlighting the key points and reflecting on them.

The Proposal's Content

The European Commission notes that "violence against women is a persisting manifestation of structural discrimination against women, resulting from historically unequal power relations between women and men. It is a form of gender-based violence, which is inflicted primarily on women and girls, by men. It is rooted in the socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for women and men, generally referred to under the term 'gender'"²⁴. Domestic violence is also a serious social problem which often remains insidious²⁵: It can take on various forms (physical, sexual, psychological and financial) and may occur whether the offender shares or has shared a household with the victim²⁶.

An open public consultation on *protecting victims and punishing offenders* was held on the Commission's consultations website from 8 February until 10 May 2021. The survey exhibited the problem that the public was not sufficiently aware of this kind of violence, or that they view it as a private matter²⁷.

Therefore, the European Commission believes it is necessary to lay down a

²³De Vido & Sosa (2021)

²⁴COM (2022) 105 final, recital no. 7.

²⁵Podaná (2021).

²⁶Recital no. 8.

²⁷COM (2022) 105 final, at 13.

comprehensive set of rules addressing the persisting problem of violence against women and domestic violence in a targeted manner that caters to the specific needs of victims of such violence. As such, it proposes to codify in EU law minimum standards to criminalise certain forms of violence against women, to protect victims and improve access to justice, to support victims and ensure coordination between relevant services, to prevent these types of crimes from happening. Member States should take measures to prevent the cultivation of harmful gender stereotypes to eradicate the idea of the inferiority of women or stereotyped roles of women and men, and preventative measures should also take place in formal education. It is crucial to address gender stereotypes starting from early childhood education and childcare because, from a very young age onwards, children are exposed to gender roles that shape their self-perception and influence their social, academic and professional choices.

Moreover, the Commission proposes to make EU-wide data collection an obligation, being that the availability of EU-wide data on the scale of the problem is currently limited. Policy for adequately tackling violence against women and domestic violence can only be formulated based on comprehensive and comparable disaggregated data. Member States should regularly conduct surveys to gather data and transmit them to the Commission, allowing them to effectively monitor developments in the Member States and fill the gaps.

The Offences that the Commission Proposes to Criminalise

The proposed directive is based on the combined provisions of Article 82(2) and Article 83(1) of the TFEU. Article 82(2) TFEU provides the legal basis for establishing minimum standards regarding the rights of victims of crime to the extent necessary to facilitate mutual recognition of judgments and judicial decisions, as well as to enhance police and judicial cooperation in criminal matters for issues of a transnational dimension. Article 83(1) of the TFEU provides the legal basis for the minimum standards relating to the definition of offenses and sanctions relating to the sexual exploitation of women and children and of cyber crime²⁸.

In accordance with the view of international human rights bodies, including the Council of Europe, the Commission proposes the criminalisation of rape²⁹. Article 5(1) of the proposal defines conduct such as rape punishable: “a) engaging with a woman in any non-consensual act of vaginal, anal or oral penetration of a sexual nature, with any bodily part or object; b) causing a woman to engage with another person in any non-consensual act of vaginal, anal or oral penetration of a sexual nature, with any bodily part or object”. Therefore, it is conceived as a crime that can only be perpetrated against a woman, while for the other crimes – of non-consensual sharing of intimate or manipulated material, cyber stalking, cyber harassment and cyber incitement to violence or hatred – the victim is referred to simply as a person.

Article 5(2 and 3) also specifies that “Member States shall ensure that a non-consensual act is understood as an act which is performed without the woman’s

²⁸Persák (2022).

²⁹Rigotti (2022).

consent given voluntarily or where the woman is unable to form a free will due to her physical or mental condition, thereby exploiting her incapacity to form a free will, such as in a state of unconsciousness, intoxication, sleep, illness, bodily injury or disability. Consent can be withdrawn at any moment during the act. The absence of consent cannot be refuted exclusively by the woman's silence, verbal or physical non-resistance or past sexual conduct". It is important that the proposal refers to the non-consensual act rather than the use of force, threats or coercion for the crime of rape: this choice intends to overcome the fact that, although rape is criminalised in all Member States, eighteen of them require the use of force, threats or coercion for it to be punishable. Only the approach of non-consensual act achieves the full protection of the sexual integrity of victims. Therefore, it is necessary to ensure equal protection throughout the European Union by providing the non-consensual act as a constitutive element of the crime of rape of women.

Cyber stalking is a modern form of violence, which is often perpetrated against family members or former partners to intensify coercive control and surveillance, but specific provisions are rarely present in the domestic legal system. Therefore, minimum rules on cyber stalking should be established.

Cyber harassment covers attacks, such as threats, insults or other offensive behaviour against individuals, notably women and girls, which typically takes place through social media or other online services³⁰. This form of violence particularly impacts women active in public life, such as politicians, journalists and human rights activists. Although cyber harassment can have the effect of silencing women, hindering their societal participation and undermining the principle of democracy as protected in the Treaty on European Union, currently this form of violence is addressed only in four Member States. The Commission proposes to criminalise cyber harassment where it may have the effect of causing significant psychological harm and where the attacks occur on a vast scale.

The proposal also criminalises non-consensual sharing of intimate images. At present, some Member States already punish this offense, which can be particularly harmful for the person concerned due to its propensity for easy, rapid and widespread distribution and perpetration.

Female genital mutilation is explicitly addressed in criminal law in only fifteen Member States, while other Member States cover it with general offences, such as bodily injury, mutilation and crimes against health. This exploitative practice causes irreparable harm to victims and is performed for the purpose of exerting social control over the sexuality of women and girls and preserving and asserting male domination over them.

The Commission proposes criminalising cyber incitement to violence or hatred. The increase in internet and social media usage has led to a sharp rise over the past years in public incitement to violence and hatred, including those based on sex or gender. Women are often the target of sexist and misogynous hate online, which can escalate into hate crime offline. For these reasons, such conduct should be intercepted from the earliest stages.

³⁰Stringhi (2022).

Reporting of Violence against Women or Domestic Violence

The proposal considers the widespread problem of the scarcity of complaints concerning acts of violence perpetrated against women. It also considers the contention that victims should be able to easily report crimes of violence against women or domestic violence, without being subject to secondary or recurring victimisation. To this end, the Commission proposes the introduction of new, safer, simpler and more accessible reporting methods (including online).

Furthermore, it provides that if a well-founded imminent risk of serious physical harm is reported, professionals dealing with violence (for example, health professionals or psychiatrists) would no longer be hindered by the rules for the protection of privacy.

Additionally, the authorities should carry out individual risk assessments from the moment of the first contact between the victim and the competent authorities, to be able to assess to what extent the perpetrator may represent a risk. The individual assessment shall focus on the risk emanating from the offender or suspect, including the risk of repeated violence, the risk of bodily harm, the use of weapons, the proximity of the offender or suspect possibly living with the victim, an offender or suspect's drug or alcohol misuse, child abuse, mental health issues or stalking behaviour. It is important that the assessment consider the victim's individual circumstances, including whether they experience discrimination based on a combination of sex and other grounds and therefore face a heightened risk of violence, as well as the victim's own account and assessment of the situation. It shall be conducted in the best interest of the victim, paying special attention to the need to avoid secondary or repeated victimisation.

Then, based on the individual assessment, the authorities shall adopt adequate protection measures by issuing urgent removal measures or protection orders.

Protection of the Victim's Private Life and Compensation from Offenders

The European Commission proposes that evidence or questions relating to the victim's private life, especially his or her sexual history, can only be used if strictly necessary: Once again, the aim is to avoid possible forms of secondary victimisation.

Furthermore, to avoid secondary victimisation, victims should be able to obtain compensation during criminal proceedings. Compensation from the offender should be full and should not be restricted by a fixed upper limit. It should cover all harm and trauma experienced by victims and costs incurred to manage the damages including, among other things, therapy costs, impact on the victim's employment situation, loss of earnings, psychological damages and moral prejudice due to the violation of dignity.

Victim Support

The Commission proposes that Member States shall provide for appropriately equipped, easily accessible rape crisis or sexual violence referral centres to ensure effective support to victims of sexual violence, including assisting in the preservation and documentation of evidence. In any case, victims at greatest risk of violence³¹, including women fleeing armed conflict, should receive targeted support. Member States should ensure that national helplines are operated under the EU-harmonised number and that this number be widely advertised as a public number, free of charge and available round-the-clock.

Furthermore, if the victim is a minor, the authorities should provide her with age-appropriate support, to protect the best interests of the minor.

Victims of cyber violence should also have adequate support, including advice on how to obtain legal help and how to remove certain online material.

Appropriately, the proposal considers that an individual assessment to identify the victim's protection needs should be conducted upon the very first contact of competent authorities with the victim, or as soon as suspicion arises that the person is a victim of violence against women or domestic violence.

In any case, the primary concern should lie in safeguarding the victim's safety and providing tailored support, considering, among other matters, the individual circumstances of the victim.

Because victims of violence against women and domestic violence are often in need of specific support, the competent authorities should refer victims to appropriate support services, especially when an individual assessment has established the victim's support needs. In that case, support services should be able to reach out to the victim even without the victim's consent.

Although harassment and sexual harassment in the workplace is already prohibited in the EU³² and under criminal or civil legislation in the Member States, many victims do not know where to turn when it happens. This means that support, protection and prevention are not sufficient³³. While the Commission does not propose the criminal offense definition per se, it deems it necessary that sexual harassment at work – not only sexual harassment of a physical nature, but all forms of unwanted verbal, non-verbal or physical conduct of a sexual nature – is addressed in relevant national policies, while Member States should provide dedicated support for victims of sexual harassment at work. Moreover, given that sexual harassment at work has significant negative consequences both for the victims and the employers, advice on adequately addressing such instances at the

³¹Naik (2022).

³²See *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; Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast); Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC.*

³³Elomäki, Kantola & Koskinen Sandberg (2022).

workplace, on legal remedies available to the employer to remove the offender from the workplace, and providing the possibility of early conciliation, if the victim so wishes, should be provided by external counselling services to both victims and employers.

Furthermore, managers in the public and private sectors should receive training on how to detect sexual harassment at work, provide support to victims and respond in an adequate manner.

Prevention

The directive proposal is concerned with ensuring effective prevention of violence against women and domestic violence. To this end, it introduces, for example, the obligation for Member States to carry out awareness campaigns, to launch research and education programmes and to disseminate relevant information on a vast scale. All this encompasses the aim of tackling harmful gender stereotypes, to promote equality between women and men and to encourage everyone, including men and boys, to serve as positive role models to facilitate behavioural change throughout society.

In addition, professionals most likely to come into contact with victims should receive appropriate training and obtain information at a level appropriate to their contact with victims. This will ensure that professionals will be enabled to identify, prevent and deal with the victims' cases of violence against women or domestic violence and interacting with the victims in a manner consistent with the trauma, gender dimension and age of any minors.

Moreover, the directive proposal provides for the establishment of targeted and effective intervention programmes, aimed at minimising the risk that crimes of violence against women or domestic violence are committed or repeated. These programmes should also be open to the voluntary participation of people who fear they might commit similar crimes.

Coordination and Cooperation

To streamline national policies and ensure an effective multilevel response to these types of violence, the directive proposal requires Member States to designate or set up an official body to coordinate, implement, monitor and evaluate policies in this area. Added to this is the obligation to establish adequate mechanisms to ensure, at a national level, effective coordination and cooperation between all those involved in aiding victims.

Since non-governmental organisations play a key role in aiding victims and preventing violence, Member States should cooperate with them and consult them on relevant policies.

To ensure that victims of online violence offenses can effectively exercise the right to remove illegal material relating to those offenses, Member States should encourage cooperation between intermediary service providers. To ensure that such material is promptly identified and effectively combated and that victims are adequately assisted and supported. Member States should facilitate the adoption of

self-regulatory measures by the intermediary service providers themselves.

The directive proposal also aims at facilitating cooperation between Member States in ensuring the exchange of best practices and mutual consultation on individual cases, including through Eurojust and the European Judicial Network in Criminal Matters. The proposal also urges the exchange of information and best practices with relevant Union agencies and assistance to Union networks dealing with issues directly related to violence against women and domestic violence.

Data collection and research are essential for the formulation of appropriate policy measures in this area. For this reason, Member States must establish a system for the collection, development, production and dissemination of statistics on violence against women and on domestic violence. The European Institute for Gender Equality (EIGE) will have to assist Member States in defining a common methodology and collection of data, considering its expertise and current work in the field. To effectively monitor developments on the ground, with reference to all forms of violence covered by the Directive, it is also envisaged that Member States should conduct periodic surveys using the Commission's harmonised methodology (Eurostat) to collect data and transmit them to the Commission itself.

Brief Reflections

The European Commission is clear in stating that the directive proposal aims to effectively combat violence against women and domestic violence, which also includes the harmonisation of rape law.

Rape is one of the most serious offences breaching a person's sexual integrity and is a crime that disproportionately affects women. It entails a power imbalance between the offender and the victim, which allows the offender to sexually exploit the victim for purposes such as personal gratification, asserting domination, gaining social recognition, advancement or possibly financial gain. According to the proposal, rape includes all types of sexual penetration, with any bodily part or object, and the lack of consent is appropriately a central and constitutive element of the definition of rape, given that, frequently, no physical violence nor use of force is involved in its perpetration.

This choice is an important step forward that allows the protection of victims to be extended, especially in those Member countries where the use of force or threat is still required by definition.

Nonetheless, the crime of rape can be caused by unbalanced power relations between offender and victim that depend on multiple grounds of discrimination. Consequently, the constitutive elements of the lack of consent, and of the protection of the sexual autonomy of every individual must lead to the conception of rape in neutral terms, guaranteeing equal protection to all individuals regardless of gender.

In the hope that the directive proposal be adopted urgently and without delay, it is important to express appreciation for the attention it pays to the issue of secondary victimisation. Moreover, it should be remembered that this issue is raised more and more often by the European Court of Human Rights, highlighting

the inadequacy of the internal regulations of the Member States and the fact that this problem is also the result of cultures that are characterised by gender stereotypes. Only appropriate education and professional training can reverse the trend of this phenomenon, while the inability to detect the signs of violence together with sexist preconceptions delay interventions or prevent careful assessments of cases, leading to dreadful repercussions.

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