

# Moving Forward, but Not Far Enough: the EU Directive on Combating Violence against Women and Domestic Violence

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*In early May, the EU Directive on combating violence against women and domestic violence was adopted. It represents a significant step forward in addressing the pervasive issue of gender-based violence across the European Union. This brief delves into the key aspects of this Directive, the context surrounding it, its significance, and its shortcomings.*

## Introduction

Gender extends beyond binary categories, and violence against individuals who do not conform to traditional gender norms counts as gender-based violence as well. However, 'gender-based violence' and 'violence against women' are often used interchangeably, as violence against women is typically rooted in gender-based reasons and affects them disproportionately.<sup>1</sup> The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) is the most comprehensive international tool in the field that provides a framework for state parties to prevent violence, protect victims, and prosecute perpetrators of gender-based violence.<sup>2</sup> It defines violence against women as "all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life"; and domestic violence as "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".<sup>3</sup>

Violence against women and domestic violence remain persistent and widespread issues across the European Union (EU), affecting millions of women and girls every year. The various forms of such violence often have devastating and long-lasting effects on victims. While some EU legislation touches upon related issues, there has been a need for a comprehensive legal instrument to address the multifaceted nature of gender-based violence.<sup>4</sup> The recent adoption of the EU Directive on combating violence against women and domestic violence<sup>5</sup> signifies a crucial step forward in addressing these pressing issues.

1 'What Is Gender-Based Violence?', Gender Matters - Council of Europe, n.d., <https://www.coe.int/en/web/gender-matters/what-is-gender-based-violence>.

2 'Council of Europe Convention on preventing and combating violence against women and domestic violence' (Council of Europe, 11 May 2011), <https://rm.coe.int/168008482e>.

3 'Council of Europe Convention on preventing and combating violence against women and domestic violence', 3.

4 Marta Picchi, 'Violence against Women and Domestic Violence: The European Commission's Directive Proposal', Athens Journal of Law 8, no. 4 (October 2022): 395–408.

5 'EU Adopts First Law Tackling Violence against Women', DW, 7 May 2024, <https://www.dw.com/en/eu-adopts-first-law-tackling-violence-against-women/a-69018272>.

# The need for EU-wide legislation on combating violence against women and domestic violence

The need for EU-wide legislation to address violence against women and domestic violence has been both evident and urgent for many years. Numerous studies and surveys over the past decade have highlighted the pervasive nature of this issue. For instance, an EU-wide survey conducted by the European Union Agency for Fundamental Rights revealed that one in three women in the EU has experienced physical or sexual violence.<sup>6</sup> Additionally, a subsequent Eurostat survey found that over nine in ten rape victims and over eight in ten victims of sexual assault are women.<sup>7</sup> The COVID-19 pandemic further underscored the severity of the problem. During the lockdowns, there were alarming spikes in domestic violence reports, starkly reminding us that women often face the greatest danger from individuals within their own homes.<sup>8</sup>

In addition to the persistent physical violence faced by women, there is a growing concern over cyber harassment targeting women and girls. While cyber violence may be perceived as less significant, its impact is far-reaching.<sup>9</sup> As digital and offline spaces become increasingly interconnected, cyber violence often serves as a precursor to or amplifies violence and victimisation in the physical world. Online platforms have become fertile grounds for a myriad of violent behaviours, including online sexual harassment, image-based sexual abuse (commonly known as ‘revenge porn’), the creation and dissemination of deepfakes, various forms of online stalking, the propagation of psychological violence such as online sexist hate speech, online incitement of violence based on sex and gender, etc.<sup>10</sup> Thus, the emergence of new avenues for perpetrators to target and harass women has made it imperative to update legal frameworks to address these evolving non-traditional forms of violence.

The necessity for EU legislation arises from the need for consistency and harmonisation across Member States in addressing violence against women and domestic violence. While individual Member States have attempted to combat these issues through legislation, the varying degrees to which this is done has resulted in disparities in legal frameworks and protections.<sup>11</sup> This inconsistency creates a landscape of legal uncertainty for victims throughout the EU. By establishing comprehensive EU-wide legislation, a common baseline of rights and protections can be ensured for all victims, regardless of their location within the EU.<sup>12</sup> Importantly, violence against women and domestic violence often transcend national borders, with perpetrators and victims moving freely within the EU. Therefore, EU legislation becomes indispensable in effectively addressing the cross-border nature of these crimes and providing a unified approach to combating them.<sup>13</sup>

6 ‘Questions and Answers: The Commission’s Proposal for New EU-Wide Rules to Stop Violence against Women and Domestic Violence’, European Commission, 8 March 2022, [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_22\\_1534](https://ec.europa.eu/commission/presscorner/detail/en/qanda_22_1534).

7 ‘Violent Sexual Crimes Recorded in the EU’, Eurostat, 23 November 2017, <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/EDN-20171123-1>.

8 ‘The Covid-19 Pandemic and Intimate Partner Violence against Women in the EU’ (European Institute for Gender Equality, 2021), [https://eige.europa.eu/publications-resources/publications/covid-19-pandemic-and-intimate-partner-violence-against-women-eu?language\\_content\\_entity=en](https://eige.europa.eu/publications-resources/publications/covid-19-pandemic-and-intimate-partner-violence-against-women-eu?language_content_entity=en).

9 ‘Combating Cyber Violence against Women and Girls’ (European Institute for Gender Equality, 2022), [https://eige.europa.eu/publications-resources/publications/combating-cyber-violence-against-women-and-girls?language\\_content\\_entity=en](https://eige.europa.eu/publications-resources/publications/combating-cyber-violence-against-women-and-girls?language_content_entity=en).

10 Adriane van der Wilk, ‘Protecting Women and Girls from Violence in the Digital Age: The Relevance of the Istanbul Convention and the Budapest Convention on Cybercrime in Addressing Online and Technology-Facilitated Violence against Women’ (Council of Europe, December 2021), <https://rm.coe.int/the-relevance-of-the-ic-and-the-budapest-convention-on-cybercrime-in-a/1680a5eba3>.

11 ‘Questions and Answers: The Commission’s Proposal for New EU-Wide Rules to Stop Violence against Women and Domestic Violence’.

12 Ibid.

13 European Commission, ‘Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on combating violence against women and domestic violence’ (EUR-Lex, 8 February 2022), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0105>.

## Building on existing frameworks: the Istanbul Convention and other EU Directives

The Council of Europe Istanbul Convention serves as a cornerstone in international efforts to combat gender-based violence. Adopted in 2011 and in effect since 2014, the Convention mandates signatory states to implement measures for preventing violence, protecting victims, and prosecuting perpetrators. It also includes provisions for monitoring and supporting these efforts through comprehensive data collection.<sup>14</sup> While the EU signed the Convention in 2017, the ratification process was stalled for several years due to legal uncertainties regarding competencies and the lack of consensus among the Member States. The ratification process was finally completed in 2023, with the Convention entering into force in the EU on October 1, 2023.<sup>15</sup> Despite this, several EU Member States have still not ratified the Convention (Bulgaria, Czechia, Hungary, Latvia, Lithuania, and Slovakia).<sup>16</sup> However, the EU ratification does not exempt the remaining Member States from ratifying it themselves,<sup>17</sup> as the EU's limited competences mean that its ratification alone cannot ensure the full and effective implementation of the Convention's provisions across all relevant areas of law and policy affecting violence against women.

There already is some EU legislation that contributes to addressing gender-based violence, including directives on victims' rights, child sexual abuse, human trafficking, and asylum policy.<sup>18</sup> These frameworks provide important protections and support for victims but fall short of comprehensive legislation targeting all aspects of the problem.<sup>19</sup> In March 2022, the European Commission put forward a proposal for a more comprehensive directive aimed at addressing violence against women and domestic violence, which was designated as a priority in the Commission's 2023 work programme.<sup>20</sup> The proposal aimed to achieve the objectives of the Istanbul Convention within the EU's scope by complementing and increasing the effectiveness of existing instruments, as it was found that additional EU action was necessary for Member States, regardless of whether they had ratified the Istanbul Convention. Key areas for action included criminalising forms of violence that disproportionately affect women and are insufficiently addressed at the national level, strengthening victims' access to justice and protection, providing tailored support, preventing violence, and enhancing coordination and data collection at both national and EU levels.<sup>21</sup>

The main objective of the proposal was to ensure equal treatment of victims of violence against women and domestic violence across the EU by establishing minimum rules on victims' rights, rules on definitions of specific acts, and penalties for offences.<sup>22</sup> The offences for which harmonised criminalisation was proposed included rape (defined as a penetrative act without consent, emphasising the significance of consent in accordance with the Istanbul Convention), female genital mutilation, cyberstalking, cyber harassment, non-consensual sharing of intimate images, and cyber incitement to violence or hatred based on gender.<sup>23</sup> Notably, the Istanbul Convention does not specifically address the digital realm, so the proposal aimed to fill that gap, among other things. Moreover, the proposal aimed to introduce changes to the Child Sexual Abuse Directive,<sup>24</sup> recognising rape as a further aggravating circumstance and emphasising the lack of consent for children above the age of sexual consent.<sup>25</sup>

14 'EU Accession to the Istanbul Convention', EUR-Lex, 12 October 2023, <https://eur-lex.europa.eu/EN/legal-content/summary/eu-accession-to-the-istanbul-convention.html>.

15 'EU Accession to the Council of Europe Convention on preventing and combating violence against women ('Istanbul Convention')', European Parliament, 20 April 2024, <https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-eu-accession-to-the-istanbul-convention>.

16 Ibid.

17 'Combating Violence against Women: MEPs Back EU Accession to Istanbul Convention', European Parliament, 10 May 2023, <https://www.europarl.europa.eu/news/en/press-room/20230505IPR85009/combating-violence-against-women-meps-back-eu-accession-to-istanbul-convention>.

18 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; Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims; Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography; Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted; etc.

19 Picchi, 'Violence against Women and Domestic Violence: The European Commission's Directive Proposal', 398.

20 Legislative Proposal on combating violence against women and domestic violence', European Parliament, 20 March 2024, <https://www.europarl.europa.eu/legislative-train/theme-a-new-push-for-european-democracy/file-legislative-proposal-on-gender-based-violence>.

21 European Commission, 'Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on combating violence against women and domestic Violence'.

22 Ibid.

23 Ibid.

24 Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography.

25 'Questions and Answers: The Commission's Proposal for New EU-Wide Rules to Stop Violence against Women and Domestic Violence'.

## Progress and remaining issues: assessing the new EU Directive

Following extensive negotiations and overcoming various legal and political hurdles, including initial resistance from some Member States regarding specific provisions, the Directive was finalised in early 2024.<sup>26</sup> The Directive outlines the following criminal offences: female genital mutilation, forced marriage, non-consensual sharing of intimate or manipulated material, cyberstalking, cyber harassment, and cyber incitement to violence or hatred.<sup>27</sup> Penalties for these offences are also prescribed, ranging from a maximum term of imprisonment of at least one year for offences such as cyber harassment and non-consensual sharing of intimate material to a maximum term of imprisonment of at least five years for female genital mutilation.<sup>28</sup> Furthermore, the Directive mandates Member States to establish extensive specialist support services for victims, including helplines, shelters and rape crisis centres.<sup>29</sup> Additionally, it requires Member States to implement measures for the prevention of violence and improve reporting mechanisms to tackle under-reporting, including online reporting options, particularly for offences like non-consensual sharing of intimate or manipulated material and cyber incitement to violence and hatred.<sup>30</sup> The Directive's adoption represents a crucial step in ensuring that women across the EU receive equal protection and support, aligning EU law with international standards like the Istanbul Convention.<sup>31</sup>

However, despite including robust prevention measures addressing consent in sexual relationships, the Directive falls short in two crucial aspects. Firstly, the failure to reach an agreement on criminalising rape based on lack of consent at the EU level,<sup>32</sup> as originally proposed, leaves a critical gap. This omission has drawn sharp criticism from civil society, which, while acknowledging positive aspects, finds it unacceptable that some Member States managed to derail the opportunity to adopt a unified definition of rape based on consent.<sup>33</sup> The other shortcoming pertains to undocumented migrant women's protection. While the Directive acknowledges that being undocumented deters migrant women from reporting out of fear of deportation,<sup>34</sup> it lacks provisions safeguarding undocumented women's personal data from being transmitted to immigration authorities.<sup>35</sup>

In conclusion, this Directive was urgently needed to provide a comprehensive framework for preventing violence, protecting victims, and prosecuting perpetrators across the EU. For that reason, its adoption marks a significant milestone. The Directive represents progress in ensuring higher minimum standards and addressing gaps, particularly by criminalising online offences. However, its shortcomings cannot be overlooked. The failure to criminalise rape based on lack of consent at the EU level is deeply concerning, as, without a unified definition of rape, the risk that some instances of sexual violence may go unrecognised and unprosecuted remains very high.

Similarly, the Directive's oversight in protecting the personal data of undocumented migrant women not only leaves a vulnerable population unprotected but also undermines the Directive's overarching goal of ensuring equal protection and support for all victims of gender-based violence. It is important to recognise that the Directive sets minimum standards for combating violence against women and domestic violence across the EU. Thus, while these standards provide a crucial foundation for action, Member States have the autonomy and responsibility to go beyond these minimum requirements to better protect and support victims within their jurisdictions. For instance, despite the Directive's failure to criminalise rape with a consent-based definition at the EU level, Member States that have not yet done so can take proactive steps to adopt consent-based laws within their national legal frameworks.

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26 'Legislative Proposal on combating violence against women and domestic violence'.

27 'Directive of the European Parliament and of the Council on combating violence against women and domestic violence', 25 April 2024, 53–56, <https://data.consilium.europa.eu/doc/document/PE-33-2024-INIT/en/pdf>.

28 'Directive of the European Parliament and of the Council on combating violence against women and domestic violence', 57–58.

29 'Directive of the European Parliament and of the Council on combating violence against women and domestic violence', 77.

30 'Directive of the European Parliament and of the Council on combating violence against women and domestic violence', 62.

31 'Commission Welcomes Political Agreement on New Rules to Combat Violence against Women and Domestic Violence', European Commission, 6 February 2024, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_24\\_649](https://ec.europa.eu/commission/presscorner/detail/en/ip_24_649).

32 'EU Fails to Agree on Legal Definition of Rape', DW, 7 February 2024, <https://www.dw.com/en/eu-fails-to-agree-on-legal-definition-of-rape/a-68195256>.

33 'Joint Civil Society Reaction to the Adoption of the EU Directive on combating violence against women and domestic violence', ILGA Europe, 7 May 2024, <https://www.ilga-europe.org/news/joint-civil-society-reaction-to-the-adoption-of-the-eu-directive-on-combating-violence-against-women-and-domestic-violence/>.

34 'Directive of the European Parliament and of the Council on combating violence against women and domestic violence', 23.

35 'Joint Civil Society Reaction to the Adoption of the EU Directive on combating violence against women and domestic violence'.

By aligning their legislation with international best practices, they can strengthen legal protections for survivors of sexual violence and send a clear message that rape and sexual assault will not be tolerated under any circumstances. The feedback from civil society underscores the ongoing imperative for vigilance and advocacy to ensure legislative measures adequately address the complexities of gender-based violence. Moving forward, sustained dialogue between policymakers, civil society organisations, and affected communities becomes increasingly vital in refining and fortifying the Directive to better cater to all those affected by the problem. Additionally, continuous efforts to raise awareness, promote education on consent and healthy relationships, and offer comprehensive support for victims remain fundamental pillars of the collective approach to combating gender-based violence.

