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COVER NOTE

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SEC(2022) 150 final
Subject:	REGULATORY SCRUTINY BOARD OPINION Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence

Delegations will find attached document SEC(2022) 150 final.

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EUROPEAN COMMISSION

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REGULATORY SCRUTINY BOARD OPINION

Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence

COM(2022) 105
SWD(2022) 60-63

EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: Impact assessment / Preventing and combatting violence against women and domestic violence

Overall 2nd opinion: NEGATIVE

(A) Policy context

One woman in three in the EU has experienced some form of physical or sexual violence. One in 20 has been raped. Women get harassed online. In addition, the COVID pandemic has led to an increase in domestic violence. The 2011 Istanbul Convention aims to prevent violence against women and domestic violence, to protect victims and end the impunity of perpetrators. The Convention has been signed by all Member States and ratified by 21 so far. EU accession to the Convention has been reviewed by the Court of Justice of the European Union, which recently ruled on its modalities. This initiative aims to review the existing EU policy framework on violence against women and domestic violence and to pursue the objectives of the Istanbul Convention within the area of EU competences.

(B) Summary of findings

The Board notes the efforts made to improve the report in response to the Board's previous opinion.

However, the Board maintains its negative opinion, because the revised report still contains the following significant shortcomings:

(1) The baseline does not sufficiently reflect the impact of several actions at EU and Member State level.

(2) The report is not sufficiently clear on the overall objective to be achieved. The need for a comprehensive approach is not sufficiently justified.

(3) The concrete measures envisaged and for which type of crime and victim under each option are unclear. It is not clear on what basis specific measures are combined in the different options and whether the structure of the options ensures that the best possible set of measures is selected as the preferred option.

(4) The revised analysis of costs and benefits does not fully incorporate the revised set of options. The comparison of options is based on unclear and debatable criteria and a biased scoring methodology.

This opinion concerns a draft impact assessment which may differ from the final version.

(5) The report does not sufficiently assess the proportionality of the preferred option, including the chosen comprehensive lex specialis approach.

(C) What to improve

(1) The report is not sufficiently clear on the extent to which Member States have, de facto, taken or initiated measures to comply with the requirements of the Istanbul Convention (and other international obligations). While the report now includes a **gap analysis**, it should bring out more clearly where individual Member States still lack measures to comply with the Istanbul standards (including the 6 Member States that have not yet ratified the Istanbul Convention). Possible best practices observed in some Member States and going beyond the Istanbul requirements could be added in a second step. This differentiation is critical to allow a proper assessment of the scale of the problem and its evolution under the baseline.

(2) While the report encourages Member States to extend the envisaged minimum standards for female victims to men and non-binary people victims, it still needs to justify more convincingly why an all victims' inclusive approach should not also guide the **problem analysis** of the current initiative. Alternatively, it should more systematically demonstrate that violence against women has specific causes and consequences that need to be tackled by specific measures. For instance, as regards the problems of cyber violence and harassment at work (and irrespective of the fact that women represent the largest victim group) the report needs to better argue why all affected victims should not benefit from the envisaged measures. The report should also better demonstrate why these problems cannot be tackled via existing horizontal instruments (e.g. Victims' Rights and Gender Equality Directives). The argued absence of a gender-sensitive or holistic approach does not, per se, imply ineffectiveness of the existing horizontal legal instruments, in particular as their full evaluation is still to be carried out. As regards sex-based harassment in relation to work, the size of the problem remains unclear as most Member States seem to have taken action that is broader than in EU law.

(3) While the report provides a more developed **baseline**, it continues to consider that many measures under the baseline – both at Member State and EU level – are ineffective, without providing a convincing and evidence-based justification. The report acknowledges that prevalence rates tend to change very slowly over time and that a visible impact in terms of a reduction in prevalence rates can realistically be expected only in the long run. However, this reasoning is not consistently applied when assessing the impact of adopted measures at Member State level, including those taken by Member States to ensure compliance with the Istanbul Convention or likely to be taken by Member States in absence of further EU measures. The report should therefore better acknowledge and integrate more consistently these impact delays (in terms of observed changes to prevalence rates) when assessing the effects of baseline measures (and also later when assessing the impact of options). On that basis, the report should clarify how the above is reflected in the baseline cost estimates and reconsider the significant impact differences between the baseline scenario and the moderate option of ensuring compliance with the Istanbul Convention.

(4) The report needs to be clearer on the overall **objectives** the initiative aims to achieve, in line with the limits of the chosen legal basis. While it states that the objective is not to achieve harmonised, equal protection everywhere in the EU, but to establish minimum standards, this is not clearly expressed in the objectives section, which is of a more ambitious nature. The report should therefore clearly explain the concept of minimum

standards used and how it differs from more ambitious and best practice inspired requirements (such as mandatory measures or the creation of a new legal basis for minimum rules). It should clarify whether the requirements of the Istanbul Convention (which the initiative ultimately aims to achieve) should be considered as such minimum standards. In any event, the parallel use of the terms minimum standards and higher minimum standards is confusing and should be avoided as this prevents a clear identification and comparison of options.

(5) The report should be clear about the precise measures the **options** actually contain and how they aim to tackle the problems for each of the relevant victim groups. It should explain and justify which of the measures described in annex 5 are included in the various options (in Table 5.1). For instance, it is not clear why measures on cyber violence and sexual harassment are not also envisaged under the moderate policy option as otherwise this option cannot tackle all the identified essential problems and is thus ineffective by design. The report should also clarify why the right to claim compensation is not part of the moderate option, despite being part of the Istanbul Convention.

(6) The report should explain more convincingly why alternative combinations of measures to create **alternative policy options**, for instance combining selective soft and hard law measures, have not been considered more thoroughly. The presented options provide only very limited choice and risk not sufficiently anticipating alternative and potentially better performing combinations of measures that may emerge in the political discussions. The finding that only comprehensive legislative policy options can tackle the identified problems needs to be better argued and substantiated with evidence.

(7) The **analysis of impacts** and costs and benefits needs to be presented more completely in the main report and based on a more realistic set of assumptions. For instance, while the report explains better the basis for the assumptions, the assumed changes in prevalence reduction (ranging from 15% to 32% after 5 and 10 years respectively) as a result of the new measures seem overly optimistic and not sufficiently reflecting the revised set of measures and the timespan needed to observe structural changes, argued elsewhere in the analysis. The report needs to acknowledge better that some of the already adopted measures at Member State and EU level will have an impact only in the years to come and that the new measures envisaged will become visible in terms of changes to prevalence rates only in the long run. It should therefore more transparently and critically assess the robustness of these and other benefit estimates, including by testing more conservative estimates. This should help to avoid overestimating the benefits and costs that can realisticly be expected from this initiative. The report should assess impacts on SMEs in line with the 'think small first' principle and explain why no exemptions or mitigating measures have been considered. This analysis should be also informed by the views of SMEs.

(8) The report should present a much more balanced **comparison of options** on the basis of 'smarter' objectives, clear and relevant criteria and a transparent scoring methodology that is not designed to validate a pre-selected preferred option. The applied efficiency concept is confusing as regards social impacts, ignores total costs and benefit-to-cost ratios and inflates total net benefits. For instance, the report is not clear why the comprehensive policy options get a 200% higher qualitative score for total net benefits even though these are in absolute terms just 30% higher than for the moderate option. The report should also justify why proportionality is assessed under effectiveness rather than in relation to efficiency or as a self-standing category.

(9) The **proportionality** analysis should better reflect the clarified objectives (i.e. minimum standards vs enhanced harmonisation), subsidiarity considerations (i.e. principle

of primary responsibility of the Member States) and the limitations of the legal basis (i.e. necessity of a comprehensive approach). It should be based on a more realistic and balanced assessment and comparison of costs and benefits, clearly acknowledging the significant effiency differences of options. It should better justify the necessity of a 'lex specialis' approach given the broad scope of victims and crimes covered and the increased risk of legal fragmentation and complexity as regards the existing horizontal legal instruments. Overall, the report needs to provide a more convincing, balanced and evidence-based analysis in support of its preferred option.

(10) The report should put **data and evidence** better into context, distinguishing between stock and flow data and between maximum values (perception and survey data) and minimum data (number of registered cases, convictions, etc.). It should acknowledge more explicitly the limitations of the evidence base, given that evaluations of relevant legislative instruments are on-going or will be carried out only the future.

(11) The **costs table** in Annex 3 should apply the required template. Costs for businesses and public authorities should be clearly separated. Though recurrent costs for businesses are estimated at EUR 1.9 bn, there is no distinction between administrative and adjustment costs as required.

(12) While the **stakeholder views** have been better integrated, the report still needs to present Member States' views better, particularly as regards respect of subsidiarity and support for the preferred option.

(13) The report still needs to define more clearly the differences between the concepts of violence against women as opposed to gender-based violence against women and domestic violence affecting all victims and use the **clarified definitions** consistently throughout the report.

(D) Conclusion

The Board's opinion is in principle final. The DG should seek political guidance on whether, and under which conditions, this initiative may proceed further.

Full title	Preventing and combatting violence against women and domestic violence
Reference number	PLAN/2020/9290
Submitted to RSB on	1 December 2021
Date of RSB meeting	Written procedure

EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
RSB

Opinion

Title: **Impact assessment / Preventing and combating gender-based violence against women and domestic violence**

Overall opinion: NEGATIVE

(A) Policy context

One woman in three in the EU has experienced some form of physical or sexual violence. One in 20 has been raped. Women get harassed online. In addition, the COVID pandemic has led to an increase in domestic violence.

The 2011 Istanbul Convention aims to prevent violence against women and domestic violence, to protect victims and end the impunity of perpetrators. The Convention has been signed by all Member States and ratified by 21 so far. EU accession to the Convention has been reviewed by the Court of Justice of the European Union, which recently ruled on its modalities.

This initiative (and the parallel fitness check) aims to review the existing EU policy framework on violence against women and domestic violence and to pursue the objectives of the Istanbul Convention within the area of EU competences.

(B) Summary of findings

The Board acknowledges the additional information provided in advance of the meeting and commitments to make changes to the report.

However, the Board gives a negative opinion, because the report contains the following significant shortcomings:

(1) The report is not sufficiently clear on what categories of victims and types of violence would be covered by the initiative, and what would justify limiting the application of certain measures specifically to women. It does not sufficiently justify and substantiate with evidence the problems related to cyber-based violence and harassment in the workplace.

(2) The report does not sufficiently reflect the evolving legislative context, in particular the recent Court of Justice Opinion on the legal base and modalities of the Istanbul Convention.

(3) The report does not present a complete baseline. It is not sufficiently clear on the future effects of more recent measures taken by the Member States. It does not assess the impacts that would result from further Member State implementation efforts of the Istanbul Convention obligations in the absence of further EU action.

The remaining scale of the problems and the need for further EU action is not sufficiently clear.

(4) The report does not bring out clearly enough the available policy choices, the rationale behind options and the content of the measures.

(5) The report is not sufficiently clear on the costs and benefits of the option packages. The presentation of the limitations and uncertainties in assessing these and the resulting benefit-to-cost ratios is underdeveloped.

(6) The report does not sufficiently assess the effectiveness and proportionality of the preferred option. It is not clear why only a small part of the investments is foreseen for prevention measures and why the option with the best benefit-to-cost ratio is not selected.

(C) What to improve

(14) The report should better present the underlying legal framework, the respective competences and measures put in place at national and EU level (including their interaction) as well as the legal obligations resulting from the Istanbul Convention. On that basis, it should clearly introduce the concepts used (violence against women as opposed to gender-based violence; domestic violence affecting all victims) in a consistent manner. Where certain types of crimes or victims are excluded from the scope (e.g. male victims), this should be clearly presented and justified.

(15) The report should better explain and substantiate with robust evidence the identified problems related to cyber-violence and workplace harassment. This should include an explanation why the existing or proposed framework (e.g. the Victims Rights Directive and the Digital Services Act) are insufficient in tackling these problems.

(16) The report should better reflect the evolving legislative context, in particular the recent Court of Justice Opinion on the legal base and modalities of the Istanbul Convention. It should be clear on the types of measures that could be taken at the EU level, in view of Member States' primary role and competence in this area. It should make clear that potential EU action would be subsidiary to Member States' action.

(17) The report should provide a better overview and analysis of Member States' measures. It should explain what has been achieved, what is missing and what can be considered best practice. It should clearly identify and substantiate with evidence any remaining legislative and implementation gaps (including by benchmarking against the Istanbul Convention standards).

(18) The report needs to present a fully developed baseline to allow a proper assessment of the scale of the problem. It should clarify to what extent the baseline reflects the legal obligation of the Member States that have ratified the Istanbul Convention to adopt measures to fulfil their commitments. In particular, it should assess the impacts that would result from likely further Member State implementation efforts of the Istanbul Convention obligations (e.g. follow-up on GREVIO recommendations) in the absence of further EU action. It should also assess the effects of more recent national measures taken by the Member States, which are expected to materialise only in the years to come (e.g. support services, protection orders) but seem to have a large potential to tackle the problems. The report should clarify how the above is reflected in the baseline cost estimates (leading to the figure of EUR 290 bn).

(19) The report should be more explicit about the rationale behind the policy options and

better explain the content of the proposed measures. It should bring out more clearly the difference between the options and better justify the selection of the measures for each option, including why it is considered necessary to go beyond the Istanbul Convention standards. It should clarify whether other packages of measures have been considered. In terms of the envisaged single legal delivery instrument, the report should better justify this choice, including by explaining how coherence with the horizontal violence and protection instruments will be ensured and additional legal complexities avoided.

(20) The analysis of costs and benefits and of impacts should be strengthened. It should provide a clearer presentation of the costs that will be imposed on businesses and national authorities, including substantive compliance costs and administrative costs. It should acknowledge limitations and uncertainties in the cost and benefit estimates, such as reliance on non-EU evidence sources (e.g. cost data from a UK study and effectiveness evidence from a US example). It should clarify how to reconcile widely diverging cost estimates with comparable scales of benefits.

(21) The effectiveness and proportionality analysis of the preferred option needs further development. The report should justify why the option with clearly the best benefit-to-cost ratio is not selected. It should also justify why only a small part of the investments is foreseen for prevention measures despite the fact that these are likely to have the greatest impact. It should explain why overall the impact of EU intervention would be more effective than the interventions by Member States to date and in the future. Given that EU funding and assistance has been available for years to support implementation, the expected value added of any new intervention should be clearly demonstrated.

(22) The report should present more information on the views of stakeholder groups to inform the discussion of problems and options. While the report is transparent overall about the very limited support from the Member States, it should better explain why they seem to see no need for further EU measures.

(23) The future monitoring framework should define what success would look like. It should specify indicators to monitor the prevalence and types of violence against women and domestic violence. It should indicate how data would be gathered and by whom. The report should commit to conduct an evaluation and specify its timing.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The lead DG must revise the report in accordance with the Board's findings and resubmit it for a final RSB opinion.

Full title	Preventing and combating gender-based violence against women and domestic violence
Reference number	PLAN/2020/9290
Submitted to RSB on	15 September 2021
Date of RSB meeting	13 October 2021