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COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

Accompanying the document

**PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL**

on combating violence against women and domestic violence

{COM(2022) 105 final} - {SEC(2022) 150 final} - {SWD(2022) 61 final} -
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Subsidiarity Grid

1. Can the Union act? What is the legal basis and competence of the Unions' intended action?
1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?
The proposal is based on the combined legal bases of Articles 82(2) and 83(1) TFEU. Article 82(2) TFEU provides the legal basis for the establishment of minimum rules concerning the rights of victims of crime to the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. Article 83(1) TFEU provides the legal basis concerning the introduction of minimum rules on the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. These areas of crime include sexual exploitation of women and children and computer crime.
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?
In the case of judicial cooperation in criminal matters, the Union's competence is shared.
<i>Subsidiarity does not apply for policy areas where the Union has exclusive competence as defined in Article 3 TFEU¹. It is the specific legal basis which determines whether the proposal falls under the subsidiarity control mechanism. Article 4 TFEU² sets out the areas where competence is shared between the Union and the Member States. Article 6 TFEU³ sets out the areas for which the Unions has competence only to support the actions of the Member States.</i>
2. Subsidiarity Principle: Why should the EU act?
Does the proposal fulfil the procedural requirements of Protocol No. 2⁴:
- Has there been a wide consultation before proposing the act? In preparation of the legislative initiative, the Commission consulted extensively with stakeholders to gather up-to-date information and expertise and to develop effective measures to counter gender-based violence against women and domestic violence⁵. Results are summarised in the impact assessment report accompanying the proposal. It includes the specific targeted consultations for Member States: an online survey and a workshop. The online survey gathered views and information on the measures taken to prevent and combat violence against women and domestic violence. Responses were received from all Member States except for Malta. The consultation workshop with the Member States provided Member States with the preliminary results from the evaluation and the existing criminal law provisions applied to violence against women and domestic violence, and gathered Member States' views on the options considered by the Commission for the legislative initiative.
- Is there a detailed statement with qualitative and, where possible, quantitative indicators

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E003&from=EN>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E004&from=EN>

³ <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E006:EN:HTML>

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN>

⁵ Cf. Annex 2 to the Impact assessment as resubmitted on 1 December 2021.

allowing an appraisal of whether the action can best be achieved at Union level?

The Commission consulted extensively with stakeholders and the general public. The initiative is supported by a large majority of stakeholders. The outcome of the consultations is summarised in detail in Annex 2 of the Impact Assessment. The explanatory memorandum and the impact assessment (chapter 3) contain a section on the principle of subsidiarity. See question 2.2 below.

2.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?

Due to the high EU-wide prevalence of violence against women and domestic violence, exacerbated by the Covid-19 pandemic, concerted action across the Union is needed. Its impact on millions of EU citizens and ensuing fundamental rights' violations, including the Union's fundamental value of equality, as well as the costs created by these types of violence, create a special need to combat violence against women and domestic violence on a common basis at EU level.

In addition, cyber violence against women and in the context of domestic violence has emerged as a new form of such violence, spreading and amplifying beyond individual Member States through the internet. Given its inherent cross-border dimension, interventions by one Member State will be insufficient to solve the issue.

Furthermore, while mutual recognition of national orders which are of crucial importance to protect the safety of women is foreseen in EU law, the current initiative ensures that such orders exist under national law.

While the physical cross-border dimension only concerns certain elements of the proposal, cyber violence is inherently cross-border and the Directive's policy objectives can effectively only be met if minimum rules apply equally to all cases of violence against women and domestic violence and the rights of victims are ascertained regardless of whether they find themselves in a physical cross-border situation.

All Member States have addressed violence against women and domestic violence in legislation and policies, but to different degrees. Differences in the approaches create legal uncertainty on the rights of such victims across the EU. This fragmentation is more substantial at regional and local levels. The EU already supports the Member States in addressing this kind of violence through funding and policy measures, as well as relevant horizontal legal instruments.

Targeted action at EU level would increase the effectiveness of the existing measures and fill the existing gaps by specifying minimum rules. This is rather evident for the six Member States which are not parties to the Council of Europe Convention on preventing and combatting violence against women and domestic violence (Istanbul Convention) and have thus not implemented it into their national legal orders. Even for the Member States parties to the Istanbul Convention, the EU measures are designed to fill gaps in its implementation, bring in enhanced protection given the evolution, particularly in the online environment, since the Convention adoption. It would enable further measures to be taken in a coordinated manner across the EU, as well as enable EU-level enforcement. The proposal aims at striking the balance between ensuring effectiveness of the obligations it lays down while leaving flexibility to Member States to implement the provisions in a manner that allows them to take into account their national specificities and needs.

The proposal supports the EU's ongoing accession process to the Istanbul Convention. Once accession is finalised, it will implement the Convention in areas of EU competence.

To strengthen the protection, access to justice and support of victims throughout the EU, the initiative will ensure upward convergence through minimum rules on the rights of victims of violence against women and domestic violence, aimed at preventing and combating this kind of violence before, during or after criminal proceedings, and introduce definitions of and sanctions on conduct where gaps in criminalisation exist. The sanctions are defined by reference to the minimum level of

the maximum sanction applicable to the offenses defined in the proposal. The proposal therefore leaves it to Member States to set the minimum levels.

2.2 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?

- (a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

As explained in paragraph 3.2 of the Impact Assessment, in some cases, violence against women and domestic violence includes a cross-border element. In the EU-27 more than 19 million women in the EU-27 have experienced physical violence in the past five years⁶. Although it is not possible to establish the precise share, women victims of violence against women and domestic violence in cross-border situations are likely to be in the order of several hundreds of thousands in Europe annually, also taking into account possible underreporting.

In other cases, the cross-border nature may arise at a certain point during proceedings, for instance, if a suspect flees or a victim moves to another country. Even after criminal proceedings have concluded with a final judgment imposing a sentence on the defendant in the Member State of nationality, the case can necessitate judicial cooperation between Member States.⁷ Cross-border elements may equally arise when criminal cases are transferred to another Member State.⁸

Cyber violence against women and in intimate partnerships has emerged as a new form of violence spreading and amplifying beyond individual Member States. The internet is inherently a cross-border environment, where content hosted in one Member State can be accessed from another Member State. As noted in the Digital Services Act proposal, interventions by one Member State will be insufficient to solve the issue.⁹

- (b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty¹⁰ or significantly damage the interests of other Member States?

The Union is founded on the values of respect for human dignity, equality and respect for human rights. It aims at guaranteeing the well-being of its peoples and offer its citizens an area of freedom, security and justice through appropriate measures in preventing and combating crime. Given the stagnant high prevalence of this kind of crime across the Union, which affects the fundamental rights and well-being of citizens, the absence of EU-level action would be in conflict with the above objectives. Member States already take national action in this field. Such national action does not significantly damage the interests of other Member States. The EU-level action aims at ensuring upward convergence in victim protection, filling gaps identified at the national level and ensuring that Member States take a minimum level of measures in all relevant areas.

⁶ *Supra Error! Bookmark not defined..*

⁷ European Commission, *Commission Staff Working Paper: Impact Assessment accompanying the Proposal for a Directive on the rights of access to a lawyer and of notification of custody to a third person in criminal proceedings*, SEC(2011) 687 final, p. 23.

⁸ European Commission, *Commission Staff Working Paper: Impact Assessment accompanying the Proposal for a Directive establishing minimum standards on the rights, support and protection of victims of crime*, SEC(2011) 580 final), p. 18.

⁹ European Commission, *Commission Staff Working Document: Impact Assessment accompanying the Proposal for a Regulation of the European Parliament and of the Council on a Single Market for Digital Services (Digital Services Act) and amending Directive 2000/31/EC*, SWD(2020) 348 final, 15 December 2020, pp. 35-36.

¹⁰ https://europa.eu/european-union/about-eu/eu-in-brief_en.

(c) To what extent do Member States have the ability or possibility to enact appropriate measures?
Member States have already put in place measures against this kind of violence and 21 of them have taken measures to implement their obligations under the Council of Europe Convention. The minimum rules do not prevent Member States from maintaining the existing measures or enacting further measures, as long as these are in line with the minimum rules.
(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?
The causes of the problem are nearly identical at national, regional and local levels. Some evidence suggests that elements of the problem might be further exacerbated in some regions or municipalities, e.g. rural areas, due to the insufficient availability of protection and support services, as well as stronger harmful stereotypes among the general public and the relevant professionals. The problem has spill-over effects in physical cross-border cases, where mutual recognition of national protection measures may be involved, as enabled by Directive 2011/99/EU and Regulation (EU) No 606/2013. In addition, the internet is by definition cross-border and enables illegal gender-based content to spread from one Member State to another.
(e) Is the problem widespread across the EU or limited to a few Member States?
Violence against women and domestic violence are widespread across the EU and happen in all Member States in the Union. The first and last ever EU-wide survey on violence against women, conducted in 2011-2012 by the Fundamental Rights Agency, showed that one woman in three aged 15 or above reported having experienced some form of physical and/or sexual violence. One in 10 women had been victim to some form of sexual violence, and one in 20 had been raped. Just over one in five women has suffered physical and/or sexual violence from either a current or previous partner, whilst 43% of women have experienced some form of psychologically abusive and/or controlling behaviour when in a relationship. Women make up to 80% of victims of domestic violence. Data on male and child victims is not readily available. The European Institute for Gender Equality (EIGE) provides a composite measure of gender-based violence across the EU in terms of prevalence, severity and disclosure. Prevalence measures the share of women who have experienced physical and/or sexual violence since the age of 15 and it was estimated at 21.2% for EU-28 in 2019. Regarding severity measures, the percentage of women who experienced health consequences of physical and/or sexual violence was estimated at 46.9% for EU-28. Regarding disclosure measures, the reporting (to anyone) of violence experienced in the past 12 months was estimated at 14.3% for EU-28¹¹.
(f) Are Member States overstretched in achieving the objectives of the planned measure?
No. The objectives of the planned measure will be achieved in a manner that supports the existing measures taken by the Member States, including measures taken to implement existing EU law, such as the Victims' Rights Directive. The accompanying impact assessment estimates the additional costs for the Member States to be between EUR 5 and 6.6 billion (in total for the EU), of which 1.9 billion on employers.

¹¹ A large amount of indicators related to violence against women are collected in the [Gender Equality Strategy Monitoring portal](https://composite-indicators.jrc.ec.europa.eu/ges-monitor): an online tool that supports with data the monitoring of the Gender Equality Strategy, developed by DG JRC, DG JUST and EIGE, available at: <https://composite-indicators.jrc.ec.europa.eu/ges-monitor>.

(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?
In the open public consultation, 63% of respondents indicated that regional differences exist in the availability of services regarding violence against women and domestic violence. Most respondents indicated strong differences between rural and urban areas in the availability of support services, with rural areas more at risk as most services are city-based. In the targeted consultations carried out, the majority of Member States did not raise concerns regarding further action at EU level.
2.3 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?
(a) Are there clear benefits from EU level action?
Targeted EU action will guarantee that the objectives of preventing and combating violence against women and domestic violence are achieved at Union level. Given the persistently high prevalence of violence against women, measures taken at national level so far have proven insufficient to effectively tackle this phenomenon. Minimum rules will oblige all Member States to provide for a minimum level of measures in all those policy areas that are considered relevant for effectively addressing this kind of violence. Those rules will be enforceable at EU-level, and enable further measures that are ultimately expected to lead to a reduction in prevalence, as well as the better safeguarding of the fundamental rights of this group of crime victims.
(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?
While there are no economies of scale as such, the objectives can be more efficiently achieved at EU level. The proposal will facilitate the exercise of the right to free movement by victims of this kind of crime in situations where one of the parties to proceedings moves or otherwise exercises this right during the proceedings. The functioning of the internal market will be improved through the introduction of EU-level criminalisations of certain forms of gender-based cyber violence, which will define illegal gender-based content and support the framework of the Digital Services Act.
(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?
The proposal does not replace existing or upcoming national policies. It establishes minimum rules at EU-level, while leaving flexibility to Member States as regards the content of the measures. Member States may provide for a higher level of protection, e.g. due to corresponding international obligations or national policy considerations.
(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?
Violence against women is a daily reality across EU. The proposal establishes minimum standards, which together with the related enforcement measures set benchmarks to Member States and their relevant authorities in ensuring that the rights of this group of crime victims are properly implemented and enforced across the EU. Such an approach leaves flexibility to the Member States in maintaining or setting more favourable standards and taking into account features specific to their national situations, including national, regional and local circumstances. The benefits of the EU-level minimum standards hence outweigh the burden on Member States.

(e) Will there be improved legal clarity for those having to implement the legislation?

The multitude of national approaches creates legal uncertainty on the rights of victims of violence against women and domestic violence. The fragmentation is more substantial at regional and local levels, where differences in access to protection and support services are observed. The proposal will provide legal clarity on the minimum measures to be taken in the relevant problem areas to effectively prevent and combat this kind of violence. It will build on and support the applicability of relevant general frameworks of EU law, e.g. the Victims' Rights Directive and the Digital Services Act.

3. Proportionality: How the EU should act

3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?

¹²The preferred policy option is expected to provide extensive protection of fundamental rights and improve the social situation of victims and the society at large through the comprehensive set of minimum rules it entails.

By setting EU-wide minimum standards, the proposal will enhance legal certainty with regard to the rights of this group of crime victims in the EU and provide for their effective enforcement. Through a set of minimum standards it establishes, for the first time at EU level, a targeted and coordinated approach to tackle violence against women and domestic violence. The standards are set in such a way that they add value to existing national, European and international rules by filling in identified gaps in protection, while leaving flexibility to Member States in their implementation.

European network of legal experts in gender equality and non-discrimination European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs¹³ Several policy options were considered for reaching the objectives of this proposal. They mainly consisted of, on the one hand, implementing the Istanbul Convention standards in EU law insofar as covered by EU competence, and, on the other hand, updating such standards with more targeted action on cyber violence.

This proposal is based on the second policy option, since it provides for the most effective set of measures, while respecting the principle of proportionality. This is based on a prior in-depth analysis of the various policy options in terms of impacts on fundamental rights, social and economic impacts as well as a careful analysis of their effectiveness, efficiency and coherence. Overall, the second option proved to perform better in contributing to these areas and with a higher net benefit.

3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?

The proposal is considered an appropriate way to achieve the intended objectives. The initiative aims to address only the legal issues identified during the preparatory work in support of the initiative,

¹² See section 7.2 of the Impact assessment report.

¹³ European network of legal experts in gender equality and non-discrimination. *Criminalisation of gender-based violence against women in European States, including ICT-facilitated violence. A special report*, 2021, available at <https://www.equalitylaw.eu/downloads/5535-criminalisation-of-gender-based-violence-against-women-in-european-states-including-ict-facilitated-violence-1-97-mb> (EELN 2021); *Tackling violence against women and domestic violence in Europe – The added value of the Istanbul Convention and remaining challenges*, 2020, available at [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658648/IPOL_STU\(2020\)658648_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658648/IPOL_STU(2020)658648_EN.pdf); see also De Vido, [EJLS 9\(2\)](#), 'The Ratification of the Council of Europe Istanbul Convention by the EU: A Step Forward in the Protection of Women from Violence in the European Legal System'.

including the gap analysis conducted by the Commission.
(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?
The proposal addresses the gaps identified during the consultation activities conducted in 2021 and in the studies conducted by the European Commission, which assessed the situation vis-à-vis this group of crime victims at the EU and Member State level. The assessment included a background study, which looked into the role of the relevant EU law in safeguarding the rights of this group of victims. The assessment drew on insufficiencies and best practices identified by international monitoring bodies and the EU in its relevant monitoring activities, as well as interviews with national authorities. This background material indicates that persisting problems remain in several problem areas in preventing and combating violence against women and domestic violence remains and the effective enforcement of the existing measures, which cannot be achieved by Member States satisfactorily on their own in systematic manner. The proposal hence introduces minimum rules to be implemented across the EU. Since 21 Member States are parties to the Istanbul Convention, the EU acting on the shared competence moreover supports the implementation of the Convention in those Member States. Additional non-legislative measures on tackling this kind of violence are included in the EU Gender equality strategy 2020-2025.
(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?
The legal bases chosen for the proposal provide for the adoption of directives in accordance with the ordinary legislative procedure as the appropriate instrument. This proposal is aimed at creating simplifications for the benefit of the relevant professionals and victims by focusing the relevant EU rules in a single instrument in a transparent manner. A specific directive on violence against women and domestic violence is chosen rather than an amendment of the existing instruments. The rules of this directive will supplement those laid down in the Victims' Rights Directive, which constitutes the general legal framework in EU law on victims' rights. This directive lays down specific measures which complement the general rules, as done for victims of other specific types of crime, such as victims of anti-trafficking, child sexual abuse, and terrorism.
(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument or approach?)
Action at the EU level establishing minimum standards regarding this kind of violence and the related enforcement measures would ensure that the national measures to prevent and combat these kinds of criminal acts, also referred to in Declaration on Article 8 of TFEU, are effective and that all victims can claim their rights according to the same minimum standards applicable in all Member States. This is a balanced measure at the EU-level, which takes into account existing effective examples of national measures and the positions of Member States, social partners and citizens, and helps addressing the problem through a uniform approach across the Union.
(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?
The initiative creates additional costs. For the Union, the proposal is envisaged to incur some costs

related to the enhanced administrative data collection obligation. These costs have been detailed in the legislative financial statement annexed to the proposal. Member States will also incur some costs, which however are largely offset by the expected benefits of the proposal.

(e) While respecting Union law, have special circumstances applying in individual Member States been taken into account?

The proposal takes into account specific circumstances in the Member States. In particular, it takes into account the circumstances in those Member States experiencing difficulty in ratifying the Istanbul Convention by addressing the topic of violence against women and domestic violence in line with the principles expressed in Opinion CDL(2019)035 of the Council of Europe Venice Commission on the Constitutional implications of the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), by Armenia.