



*Committee on Civil Liberties, Justice and Home Affairs
Committee on Women's Rights and Gender Equality*

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DRAFT REPORT

with recommendations to the Commission on identifying gender-based violence as a new area of crime listed in Article 83(1) TFEU (2021/2035(INL))

Committee on Civil Liberties, Justice and Home Affairs
Committee on Women's Rights and Gender Equality

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(Initiative – Rule 47 of the Rules of Procedure)
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CONTENTS

	Page
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION.....	3
ANNEX TO THE MOTION FOR A RESOLUTION:.....	8
EXPLANATORY STATEMENT	10

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

with recommendations to the Commission on identifying gender-based violence as a new area of crime listed in Article 83(1) TFEU (2021/2035(INL))

The European Parliament,

- having regard to Articles 2 and Article 3(3) of the Treaty on European Union,
- having regard to Articles 8 and 10, Article 83(1) and Article 225 of the Treaty on the Functioning of the European Union,
- having regard to the Charter of Fundamental Rights of the European Union, and in particular Articles 7, 8, 10, 11, 12, 21, 23, 24, 25, 26 and 47 thereof,
- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms,
- having regard to the Council of Europe Convention on preventing and combating violence against women and domestic violence,
- having regard to the Beijing Declaration and Platform for Action adopted by the Fourth World Conference on Women on 15 September 1995 and to the subsequent outcome documents adopted at the United Nations Beijing+5 (2005), Beijing +15 (2010) and Beijing +20 (2015) special sessions,
- having regard to the glossary of the European Institute for Gender Equality,
- having regard to the agreed conclusions of the sixty-fifth session of the United Nations Commission on the Status of Women that took place from 15 to 26 March 2021;
- having regard to the provisions of the United Nations legal instruments in the area of human rights, in particular those concerning women's rights, and to other United Nations instruments on violence against women, including the United Nations Declaration on the Elimination of Violence against Women of 20 December 1993,
- having regard to the survey by the European Union Agency for Fundamental Rights entitled 'Violence against women: an EU-wide survey', published in 2014,
- having regard to its resolution of 25 February 2014 with recommendations to the Commission on combating Violence Against Women¹,
- having regard to its resolution of 12 September 2017 on the proposal for a Council decision on the conclusion, by the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic

¹ OJ C 285, 29.8.2017, p. 2.

violence²,

- having regard to its resolution of 13 February 2019 on experiencing a backlash in women’s rights and gender equality in the EU³,
 - having regard to its resolution of 28 November 2019 on the EU’s accession to the Istanbul Convention and other measures to combat gender-based violence⁴,
 - having regard to its resolution of 21 January 2021 on the EU Strategy for Gender Equality⁵,
 - having regard to Rules 47 and 54 of its Rules of Procedure,
 - having regard to the joint deliberations of the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women’s Rights and Gender Equality under Rule 58 of the Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women's Rights and Gender Equality (A9-0000/2021),
- A. whereas equality between women and men is a core value of the Union enshrined in Article 2 of the Treaty on European Union (TEU);
- B. whereas, pursuant to the third subparagraph of Article 83(1) of the Treaty on the Functioning of the European Union (TFEU) on the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in that paragraph;
- C. whereas gender-based violence is violence directed against women because they are women and it affects women disproportionately; whereas LGBTI persons are also victims of gender-based violence because of their gender, gender identity, gender expression and sex characteristics; whereas gender-based violence is rooted in gender stereotypes, patriarchal structures and power asymmetries;
- D. whereas the European Institute for Gender Equality defines femicide as the killing of women and girls because of their gender;
- E. whereas there is a lack of comprehensive and comparable disaggregated data on all forms of gender-based violence;
- F. whereas Union action aiming to eradicate violence against women and girls and other forms of gender-based violence demands that the Commission pursue several parallel avenues.

Causes and impact of, and ensuring a holistic approach in preventing, gender based violence

² OJ C 337, 20.9.2018, p. 167.

³ OJ C 449, 23.12.2020, p. 102.

⁴ Texts adopted, P9_TA(2019)0080.

⁵ Texts adopted, P9_TA(2021)0025.

1. Condemns all forms of violence against women and girls and other forms of gender-based violence, such as violence against LGBTI persons, and deplores the fact that women and girls continue to be exposed to psychological, physical, sexual and economic violence, including sexual exploitation and trafficking in human beings, both online and offline;
2. Denounces femicide as the more extreme form of gender-based violence against women and girls and a very severe violation of human rights;
3. Stresses that violence against women and other forms of gender-based violence are the result of the unequal distribution of power, patriarchal structures, and gender stereotypes, that have led to domination over and discrimination against women by men; underlines that this situation is aggravated by social and economic inequalities;
4. Underlines the wide range of psychological impacts that gender-based violence has on victims, including stress, concentration problems, anxiety, panic attacks, low self-esteem, depression, post-traumatic stress disorder, lack of trust and of sense of control; recalls that gender-based violence also has a social and economic impact;
5. Stresses that the Council of Europe Convention on preventing and combating violence against women and domestic violence (the ‘Istanbul Convention’) remains the international standard and a key tool for the eradication of gender-based violence by following a holistic and coordinated approach that places the rights of the victim at the centre and addresses the issues from a wide range of perspectives;
6. Denounces the fact that the combat against gender-based violence is negatively affected by the attack on women’s rights and gender equality; condemns the actions of anti-gender and anti-women movements in Europe and worldwide that aim to overturn existing laws on women’s rights and LGBTI+ rights;
7. Insists on actions to prevent gender-based violence by addressing the underlying causes, including counteracting sexism, gender stereotypes and patriarchal values; underlines the need for gender equality to have a central place in education and the need for awareness-raising campaigns;
8. Calls on the Commission and the Member States to improve the regular availability and comparability of quality, disaggregated data on all forms of gender-based violence through cooperation with Eurostat, the European Union Agency for Fundamental Rights and the European Institute for Gender Equality;

Addressing all forms of gender-based violence

9. Highlights the need for targeted policies to address the situation of survivors who experience intersectional forms of discrimination, such as women refugees, asylum seekers and migrants, indigenous women, racialised women, women from religious and ethnic minorities, lesbian, bisexual and trans women, elderly women and women with disabilities;
10. Recalls that violations of sexual and reproductive rights are a form of violence against women and girls;

11. Notes that the Commission must address the particular situation of migrant women's protection against gender-based violence, and recalls that under Directive 2012/29/EU of the European Parliament and of the Council⁶ access to appropriate protection, support services and effective remedies must be available to all victims of gender-based violence, independent of their residence status;

Protection, Support and Reparation

12. Calls on Member States to take all necessary measures to promote the protection of women and girls in all their diversity and all survivors of gender-based violence against all forms of violence;
13. Underlines the obligation on Member States to ensure that there is support and services for survivors of gender-based violence; recalls the importance, in that context, of support to independent civil society and women's shelter organisations;
14. Calls on the Member States to step up their work in order to ensure that victims have access to justice, and to guarantee that the rights of the victim are placed at the centre in order to avoid discrimination, traumatisation or revictimisation during judicial, medical and police proceedings;
15. Calls on the Member States to improve the resources and training of practitioners, law enforcement officers and all professionals dealing with victims of gender-based violence; calls on Member States to ensure that victims have the right to state-funded legal aid before and during legal proceedings;

Next steps at Union level

16. Stresses that gender-based violence is a serious crime and a widespread violation of fundamental rights in the Union which needs to be addressed with greater efficiency and determination on a common basis; stresses that gender-based violence is the result of a patriarchal society that has a cross-border dimension; points, in particular, at the growing anti-gender and anti-women movements, which are well organised and have a cross-border nature;
17. Stresses that the special need to combat violence against women and girls and other forms of gender-based violence on a common basis also results from the need to establish minimum rules concerning the definition of criminal offences and sanctions;
18. Requests that the Commission submit, on the basis of the third subparagraph of Article 83(1) TFEU, a proposal for a Council decision identifying gender-based violence as a new area of crime, following the recommendations set out in the Annex hereto and requests the Commission to use that new area of crime as a legal basis for a holistic directive to prevent and combat all forms of gender-based violence;
19. Calls on the Commission to propose a directive on gender-based violence that implements the standards of the Istanbul Convention and includes the following

⁶ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).

elements: prevention, including through gender-sensitive education programming directed at both girls and boys, and empowerment of women and girls; support services and protection measures for survivors; combating all forms of gender-based violence, including violations of women's sexual and reproductive health and rights; and minimum standards for law enforcement;

20. Calls on the Commission to appoint a coordinator against violence against women and other forms of gender-based violence;
21. Instructs its President to forward this resolution and the accompanying recommendations to the Commission and the Council.

ANNEX TO THE MOTION FOR A RESOLUTION:

COUNCIL DECISION

on the identification of gender-based violence as an area of crime that meet the criteria specified in Article 83 of the Treaty on the Functioning of the European Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 83(1) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) Equality between woman and men is at the core of Union values and is a fundamental principle of the Union enshrined in the Treaties and recognised in Article 23 of the Charter of Fundamental Rights of the European Union (the ‘Charter’).
- (2) Article 8 of the Treaty on the Functioning of the European Union (TFEU) requires the Union, in all its activities, to aim to eliminate inequalities, and to promote equality, between women and men.
- (3) Pursuant to the third subparagraph of Article 83(1) TFEU, the Council can adopt a decision identifying areas, other than those specified in the second subparagraph of Article 83(1) TFEU, 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.
- (4) When adopting such a decision under the third subparagraph of Article 83(1) TFEU, the Council is to act unanimously after obtaining the consent of the European Parliament.
- (5) Gender-based violence is violence directed against women because they are women and it affects women disproportionately. LGBTI persons are also victims of gender-based violence because of their gender, gender identity, gender expression and sex characteristics. Gender-based violence is rooted in gender stereotypes, patriarchal structures and power asymmetries.
- (6) Under the Council of Europe Convention on preventing and combating violence against women and domestic violence (the ‘Istanbul Convention’), gender is defined as “the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men”, which recalls that many forms of violence against women are rooted in power inequalities between women and men.
- (7) Gender-based violence constitutes a violation of fundamental rights such as the right to security and the rights to life and to physical integrity enshrined in Articles 6, 2 and 3 of the Charter, respectively.

- (8) Gender-based violence is a serious crime and a widespread violation of fundamental rights in the Union which needs to be addressed with greater efficiency and determined on a common basis.
- (9) The adoption of regional and international instruments, such as the Istanbul Convention, the United Nations Declaration on the Elimination of Violence against Women and other United Nations resolutions, demonstrates the need to combat all forms of gender-based violence on a common basis.
- (10) The special need to combat violence against women and girls and other forms of gender-based violence on a common basis also results from the need to establish minimum rules concerning the definition of criminal offences and sanctions, as well as the key issues of prevention, under-reporting, victim protection, support and reparation, and the prosecution of perpetrators, where the approaches and level of commitment of Member States vary significantly.
- (11) Gender-based violence meets the criteria to be added as a new area of crime under Article 83(1) TFEU,

HAS ADOPTED THIS DECISION:

Article 1

Gender-based violence is hereby identified as an area of crime that meets the criteria specified in Article 83(1) of the Treaty on the Functioning of the European Union.

Article 2

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council
The President*

EXPLANATORY STATEMENT

Violence against women and girls and other forms of gender-based violence, such as violence against LGBTI people, are rooted in gender stereotypes, patriarchal structures and power asymmetries and clearly represent one of the greatest violations of human rights in the history. Gender-based violence needs to be eradicated in order to achieve full gender equality.

The inequality and violence suffered by women and girls result in physical, sexual, psychological, and economic harm which cannot be accepted in a just and democratic society. Unfortunately, despite the existence of more information and awareness, the continued high prevalence and threats of gender-based violence affects and limits women's lives everywhere.

Many women experience intersectional forms of discrimination, which increases their vulnerability, such as women refugees, asylum seekers and migrants, indigenous women, racialized women, women from religious and ethnic minorities, LBT women, elderly women and women with disabilities. We must not forget that for many women, filing a complaint against their abusive husband, means putting themselves at risk of losing their legal status and being deported. This should not be the case.

Equally, LGBTI persons can as a direct consequence of breaking with patriarchal gender norms, be victims of gender-based violence because of that person's gender, gender identity, gender expression and sex characteristics.

The most comprehensive survey on violence against women at the EU level was done in 2014 by the EU Agency for Fundamental Rights. The results reflected very well the magnitude and the cruelty of the problem.

The survey data shows that one third of women in the EU have experienced physical and/or sexual violence. In the private sphere, the survey concluded that approximately 50 women lose their lives to domestic violence every week and 75% of women within a professional setting or those in top management jobs have experienced sexual harassment.

Even though this survey was very valuable to understand the seriousness, the extent and the complexity of the issue, there is a severe lack of data and underreporting. For this reason, it is crucial to call on the Commission and the Member States to improve the availability and comparability of quality disaggregated data on all forms of GBV.

GBV has been historically a serious breach of human rights. However, COVID19 has even exacerbated the violence perpetrated against women. Government agencies, women's rights groups and civil society partners in several Member States have indicated an increase in domestic violence reports during the pandemic, together with an increased demand for emergency shelters. The United Nations has called it a "shadow pandemic".

In the same vein, access to Sexual and Reproductive Health and Rights (SRHR) has been restricted in several European countries due to the current sanitary situation and its impact on health care services as well as to the confinement measures taken to contain it. In this sense, full respect for women's sexual and reproductive health and rights has to be an essential obligation for the European Union no matter what the context is. It has to be taken into account that the fight against GBV will not be effective without the full realisation of women's SRHR.

It is important to point out that the eradication of gender-based violence requires an approach where criminal law measures are only one part, and where the main focus must be on different strategies to increase gender equality, empowering and supporting survivors, and strengthening social and economic autonomy for women. For this end, broader political, legal, social and economic policy action must also be taken to combat segregation, inequality and discrimination.

During the eighth parliamentary term, the European Parliament found that the Victim's Rights Directive and the European Protection Order have not been fully implemented across the EU, especially when it comes to access to support services, and that differences between judicial systems are obstructing the use of European Protection Orders (EPOs).

Also, since 2009, the Parliament has been urging the Commission to draw up a comprehensive proposal for a directive on preventing and combating violence against women and all other forms of GBV to ensure that all women in the EU have the same level of protection from violence. In its resolution of 25 February 2014, it also called on the Council to add violence against women to the areas of particularly serious crime listed in Article 83(1) TFEU, and asked the Commission to launch the procedure for EU accession to the Council of Europe's Istanbul Convention, as complementary to a future EU directive. However, this has still not been done till today.

The absence of a comprehensive EU strategy to combat GBV and the loopholes and disparities in Member States' national legislation is a real problem. Thus, it is necessary to elaborate a directive in order to require all Member States to put an end to this systematic form of violence. Moreover, a directive, in order to be holistic, inclusive and effective, should be accompanied by the introduction of GBV as a new area of crime listed in Article 83(1) TFEU which would serve as a legal basis to ensure common legal definitions and common minimum standards in EU's legislative framework for preventing and combating GBV in the area of freedom, security and justice.

Finally, it is important to recognise that throughout the European Union exists an attack against women's rights and gender equality. Anti-gender and anti-women movements are trying to overturn existing laws on women's rights and LGBTI rights. This situation is also related to a broader deterioration of democratic institutions, the rule of law and fundamental rights. It is important in this regard to stress that rule of law and democracy can only exist when gender equality exists.