

## CRIMINALIZING GENDER-BASED VIOLENCE IN THE EUROPEAN UNION

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### Introduction

In April 2024 the European Union took a long-awaited step towards tackling gender-based violence in Europe. With adopting a legally binding framework, the “*first ever EU rules on combating violence against women*”, the EU seeks to criminalize different types of gender-based violence in its member states (European Parliament, 2024a). While the legislation is an important step in deculturizing gender-based violence in the EU with acknowledging the internal nature of the problem, the EU law fell short on addressing the problem comprehensively.<sup>1</sup>

The European Union has been historically invested in the fight for gender equality (GE), but the early years of dedication to the topic was primarily employment and equal opportunity focused (Peto and Manners, 2006). The Maastricht Treaty also addressed gender equality from this angle, specifically to ensure “*equality between men and women with regard to labour market opportunities and treatment at work*” (Maastricht Treaty, 1992). Subsequently, the adoption of the Lisbon Treaty in 2007 further reinforced the EU’s commitment vis-à-vis gender equality with proclaiming that the Union “*shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men*” (European Union, 2007). However, gradually moving away from the employment and economic focus of gender equality was not easy due to the lack of specificity in the Treaties as a long-standing hurdle for the EU to directly tackle gender-based violence specifically, as well as advance its policies with legally binding instruments. This also contributed to different conceptualizations and arguments to address gender-based violence in the EU, such as increasingly framing domestic violence as a public health concern instead of referring to it as a human rights issue (Lombardo and Meier, 2008).

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<sup>1</sup> See more on the culturalization of violence in the EU in Montoya and Rolandsen Agustín, 2013.

By the 2020's, internal changes, such as new provisions on GE in the Lisbon Treaty, together with external influences, like the development of the Women, Peace and Security agenda<sup>2</sup> as an international norm on gender and conflict, made the EU's journey vis-à-vis gender equality as unique as the Union itself (Walby, 2004; Montoya, 2013; Deiana and McDonagh, 2018). These rather idiosyncratic circumstances of the EU, its institutions and policies as well as its historic commitment to gender equality through several constitutional documents made it possible to achieve the adoption of this one-of-a-kind legally binding EU law to address gender-based violence in 2024.

### **Institutional ownership and the legislative process**

In the context of this historic commitment, the "*EU directive on combating violence against women and domestic violence*" was introduced by the European Commission (EC) in early 2022 (European Commission, 2022). An important preliminary milestone enabling this step to the proposal – based on the request of the European Parliament and numerous civil society organizations – was the recognition of gender-based violence "*as a new area of crime listed in Article 83(1) TFEU*" in 2021 (European Parliament, 2021). Moreover, the process was further strengthened and supported by the strong commitment of President Ursula von der Leyen to advance gender equality during her tenure (von der Leyen, 2019; Zamfir, 2023).

Subsequent to the 2022 EC legislative proposal, institutional and individual ownership in the Parliament played a key role in advancing the issue of the EU's first law on gender-based violence. The two responsible members of the European Parliament (MEPs), rapporteurs were Irish MEP, Frances Fitzgerald from the Women's Rights and Gender Equality Committee (FEMM Committee) and Swedish MEP, Evin Incir from the Civil Liberties, Justice and Home Affairs (LIBE Committee) (Zamfir, 2023). FEMM Committee is responsible for the "*the definition, promotion and protection of women's rights in the Union and related Union measures*" (FEMM, 2024, p. 4). As a result of the direct influence of the mandate of FEMM being a primarily women-centered committee, violence against women as the most important and most prevalent form of gender-based violence is prioritized in the legislation itself. Moreover, LIBE Committee being responsible for "*the protection within the territory of the Union of citizens' rights, human rights and fundamental rights*" reinforced the human rights aspect of gender-based violence in the directive (European Parliament, 2023). Combining the mandate of the two responsible committees together underpins how the institutional ownership of the legislation laid down the underlying assumption that the legislation is a)

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<sup>2</sup> Women, Peace and Security agenda refers to the United Nations Security Council resolutions starting with the adoption of the first resolution, UNSCR 1325 on Women, Peace and Security.

specialized for the protection of women; b) primarily understood gender-based violence through human rights and justice lens constituting violence against women and domestic violence as a different types of human rights violations.

The time period between July 2023 and February 2024 served as a window in the legislative process for political and interinstitutional dialogue between different stakeholders, which ended with a highly contested preliminary decision early this year (European Parliament, 2024c). The main debate around the legislation was with regards to the criminalization of rape as an act of gender-based violence, which was previously introduced in the EC's proposal. However, while the EC and the EP were in favor of the criminalization of rape as non-consensual act of violation of women, the Council opposed a direct legislation arguing that the EU has no legal jurisdiction in this regard (Zamfir, 2023, 2024). While, as a result, the interinstitutional dialogue weakened the text, the Union was able to consolidate the directive, which was adopted with 522 votes in favor, 27 votes against, and 72 abstentions in April 2024 (European Parliament, 2024b).

The new legislation appeared in the Official Journal of the European Union on 14<sup>th</sup> of May 2024 from which EU member states have three years to implement it in their respective national legislations (European Commission, 2024). The final text of the new EU law against gender-based violence focuses on several different offenses and countermeasures: female genital mutilation; forced marriage; measures for rape prevention and awareness raising for the importance of consent; "cyber-flashing" understood as distributing personal information online without consent; and victim-support and assistance (European Parliament, 2024b). The enhanced protection against cyber aspects of gender-based violence is crucial part of the directive as it not only covers cyber harassment, but also addresses the growing threat of sharing edited or artificial intelligence-manipulated intimate online material (European Union, 2024, p. 2).

Finally, while the European Union and its institutions seem to use gender-based violence and violence against women often interchangeably it is strategic communication, the directive's specific focus is violence against women and domestic violence as a form a gender-based violence. In other words, the legislation addresses "gender-based violence against women" (Zamfir, 2023). Additionally, the EU directive acknowledges the intersectional nature of violence against women and requires member states to tailor the implementation of this EU law into their national legislation accordingly (European Union, 2024). This solution for the "dilemma of naming" specifically addressing violence against women and highlighting the intersectional aspect of these crimes is particularly important with regards to rape prevention and victim support measures (Carbin, 2021, p. 96). This provides a window of opportunity for members states to reflect on the intersectional nature of violence faced by women of color, women in refugee

or migrant communities or ethnic and religious minorities when implementing the directive nationally.

### Concluding thoughts

While the new legislation is far from being comprehensive or perfect, with the adoption of this legally binding directive on gender-based violence the EU overcame the long-standing critique of having no legal framework internally addressing violence against women. This internal legitimation will further contribute to the EU's self-determination as a "gender equality champion" and can reinforce the gender equality connotations of EU external action in connection with diplomacy, as well as foreign and security policy of the Union around the world.

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