



EUROPEAN COMMISSION

*Brussels, 16.08.2022
C(2022) 5825 final*

Dear President,

The Commission would like to thank the Poslanecká Sněmovna for its Reasoned Opinion on the proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence {COM(2022) 105 final}.

The Commission would like to express its appreciation for the Poslanecká Sněmovna's support of the objective of the proposal to combat violence against women and children, as well as to empower victims.

The introduction of a robust and comprehensive framework to combat violence against women and domestic violence at Union level would, amongst others, contribute to ensuring a high level of security and the full enjoyment of fundamental rights within the Union. The latter includes the right to equal treatment and non-discrimination between women and men. Violence against women and domestic violence have remained prevalent across the European Union for many years. The Covid-19 pandemic has exacerbated the scale of this type of violence. Concerted action is therefore needed to ensure common protection of victims throughout the Union.

The Commission notes the Poslanecká Sněmovna's concerns on the proposal's compliance with the principle of subsidiarity and would like to provide a number of clarifications.

The proposal for a Directive on combating violence against women and domestic violence has been carefully drafted especially taking into consideration the principles of legality, subsidiarity and proportionality. The preparatory work for the proposal included a comprehensive impact assessment, academic studies and broad stakeholder consultations to ensure these principles were respected.

This preparatory work concluded that only a comprehensive approach at EU level would be effective in reaching the goal of combating violence against women and ensuring that victims are empowered. Targeted EU measures are needed to address the specific issues related to violence against women. The large majority of gender-based violence victims are women. For instance, data show that 9 out of 10 rape victims and 8 out of 10 sexual

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violence victims are women. Women also constitute up to 80% of domestic violence victims. The need for a targeted instrument on violence against women and domestic violence, rather than a general instrument on victims' rights, is also reflected by international law, including the Council of Europe Convention on preventing and combating violence against women and domestic violence.

On the basis of a diligent analysis of the feasibility of concerted action, the Commission concluded that the existing legal bases of the Treaty on the Functioning of the European Union provide the framework to reach the aims of this proposal. Its content has been designed to regulate only aspects to the extent necessary. The proposed harmonised definitions of crime and penalties are limited in number, rather than proposing an extension of the areas of crime under Article 83(1) of the Treaty on the Functioning of the European Union, and criminalising on that basis any form of crime amounting to violence against women and domestic violence.

The Poslanecká Sněmovna's Reasoned Opinion has been forwarded to the relevant Commission services that will participate in the negotiations between the co-legislators, the European Parliament and the Council, and will inform the discussions on the proposal.

In response to the more technical comments in the Opinion, the Commission would like to refer to the attached annex.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Poslanecká Sněmovna and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Margrethe VESTAGER
Executive Vice-President*

The Commission has carefully considered the issues raised by the Poslanecká Sněmovna in its Reasoned Opinion and would like to offer the following observations, grouped by topic.

Violence against women and domestic violence are widespread across the European Union. Their prevalence and scale have been examined most comprehensively in the 2014 survey on violence against women¹ of the Fundamental Rights Agency of the European Union (FRA) and confirmed in multiple studies and surveys carried out since then. The administrative data collected by the European Institute for Gender Equality (EIGE) show that the prevalence of violence against women and domestic violence may be estimated at 21.2% (2019 figures), meaning that one in five women in the European Union have experienced violence against women or domestic violence. This figure is based on administrative data and only includes acts reported to the authorities.

As far as the legal basis is concerned, the Commission considers that Article 83(1) of the Treaty on the Functioning of the European Union (TFEU) is sufficient for the harmonisation of the crimes in question. Article 83(1) TFEU allows for the introduction of minimum rules concerning the definition and sanctions in the area of crime of ‘sexual exploitation of women and children’ and for the area of crime of ‘computer crime’. Both rape and female genital mutilation are forms of sexual exploitation of women and girls. The Commission followed the well-established precedent of Directive 2011/93/EU² (the ‘Child Sexual Abuse Directive’) which i.a. harmonises the offence of child sexual abuse.

The cyber violence offences covered by the proposal form a part of the area of crime of ‘computer crime’ under Article 83(1) TFEU. The Commission has ensured the proposed offences are those that are intrinsically linked to the use of computer systems. This approach also follows the well-established precedent of Directive 2013/40/EU³ which includes crimes committed by means of information systems.

With regard to the view of Poslanecká Sněmovna that issues of criminal liability and criminal sanctions should be left in the hands of the Member States, the Commission would like to point to the competences bestowed upon the Union by the Treaties. Aside from the formulation of the constituent elements of culpable conduct falling within the respective areas of crime, Article 83(1) TFEU allows for the introduction of minimum rules concerning the sanctioning of crime. The Union legislator has consistently made

¹ FRA, *Violence against women: an EU-wide survey. Main results report*, 2014; EPRS, *Combating gender-based violence: Cyberviolence*, European added value assessment, 2021. The FRA survey on violence against women is based on face-to-face interviews with 42,000 women across the EU. The survey presents the most comprehensive survey worldwide on women’s experiences of violence.

² 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, and replacing Council Framework Decision 2004/68/JHA, OJ L 335, 17.12.2011, p. 1–14.

³ Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA, OJ L 218, 14.8.2013, p. 8–14.

use of this competence, for instance in the above-mentioned directives, but also in Directive 2011/36/EU (the ‘Anti-Trafficking Directive’)⁴, Directive 2017/541/EU (the ‘Counter-Terrorism Directive’)⁵ and Directive 2017/1371/EU⁶ to name a few. Therefore, this proposal follows long-standing practice and the competences accorded by the Treaties.

The Poslanecká Sněmovna furthermore suggests extending the areas of crime under Article 83(1) TFEU in order to address gender-based violence comprehensively. The Commission agrees that the phenomenon of gender-based violence needs to be addressed in an encompassing manner. However, the existing legal bases already allow for such an approach to the extent necessary.

Indeed, in accordance with the principles of subsidiarity and proportionality, the Commission opted to only propose the harmonisation of a limited number of criminal offences amounting to violence against women where Union action is needed. In order to identify where criminalisation was insufficient to provide effective protection of victims and effective prosecution, the Commission commissioned an extensive legal report identifying the need for action.⁷ The study and the further preparatory work of the Commission suggested the need for action in the case of rape, female genital mutilation and a limited amount of offences falling into the category of gender-based cyber violence.

The majority of the provisions of the legislative proposal, which are needed for a truly comprehensive approach, address the areas of access to justice, protection of victims, victim support, prevention and coordination and cooperation. These provisions are not conditional upon an extension of the legal basis of Article 83(1) TFEU. They are based on the legal basis of Article 82(2) TFEU, which provides for the introduction of minimum rules on the rights of victims of crime. This legal basis has been used for a number of directives addressing specific groups of victims, such as the Anti-Trafficking Directive and the Child Sexual Abuse Directive. It is also the legal basis for Directive 2012/29/EU (the ‘Victims’ Rights Directive)⁸.

⁴ 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, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.4.2011, p. 1–11.

⁵ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, OJ L 88, 31.3.2017.

⁶ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198, 28.7.2017, p. 29–41.

⁷ European network of legal experts in gender equality and non-discrimination: Criminalisation of gender-based violence against women in the European States, including ICT-facilitated violence, 2021, [5535-criminalisation-of-gender-based-violence-against-women-in-european-states-including-ict-facilitated-violence-1-97-mb](https://equalitylaw.eu/5535-criminalisation-of-gender-based-violence-against-women-in-european-states-including-ict-facilitated-violence-1-97-mb) (equalitylaw.eu).

⁸ 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. 57–73.

Concerning the Poslanecká Sněmovna's suggestion to include the provisions on victim protection and victim support in the upcoming revision of the Victims' Rights Directive or to introduce amendments to the Victims' Rights Directive through the proposal on combating violence against women and domestic violence, the Commission rather opted for following well-established precedents under Union law. With regard to specific groups of victims, the Union legislator has established separate instruments adapted to the specific needs of these victims. This concerns in particular the Anti-Trafficking Directive, the Counter-Terrorism Directive and the Child Sexual Abuse Directive. These instruments address the rights of these specific groups of victims in a more targeted manner vis-à-vis the general Victims' Rights Directive, which remains of course applicable to all victims of crime.

In its preparatory work, the Commission identified that only a targeted instrument could adequately respond to the specific needs of victims of violence against women and domestic violence. For instance, victims of domestic violence are typically in situations of dependency on the perpetrator. They are therefore in need of specific support, such as shelters and dedicated counselling to enable them to gain independence. These forms of support are not necessary for general victims of crime, such as victims of theft or fraud.

Furthermore, addressing only issues of criminalisation, access to justice, prevention and cooperation and coordination would make this proposal fragmented and not be in line with the objective to introduce a comprehensive approach. The latter was highlighted by the Poslanecká Sněmovna in its suggestion to propose an extension of the areas of crime under Article 83(1) TFEU.