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European Union and gender based violence: overview of policies and legislation

Research Brief No 2

On 4 March 2016, the European Commission has proposed for the European Union to ratify the Council of Europe's Istanbul Convention, a comprehensive international treaty on combating violence against women and domestic violence.

Domestic violence can be at the hand of both sexes. However, violence against women is predominantly perpetrated by men. Currently, 9 out of 10 victims of domestic violence within the European Union are women. Furthermore, between 12 and 35 percent of women, depending on the Member State, are victims of intimate partner violence. These figures clearly delineate the gender dimension of this serious and persistent issue in Europe. Gender-based violence is a brutal form of discrimination and a violation of the victim's fundamental rights. It is both a

cause and a consequence of inequalities between women and men. Not only does it affect women's health and well-being, but it can hamper women's access to employment, thereby negatively affecting their financial independence and the economy in general¹.

In 2014, the Fundamental Rights Agency published the most comprehensive EU level survey on violence against women to date. Based on 42,000 interviews conducted in all 28 EU member states, the report reveals

¹ http://ec.europa.eu/justice/gender-equality/gender-violence/index_en.htm

alarmingly high levels of violence against women, with an average of one in three European women experiencing physical and/or sexual violence since the age of 15; one in every 10 experiencing some form of sexual violence; one in every 20 being raped; and one in every five experiencing physical and/or sexual violence from a current or former partner².

EU Law and Policies regarding gender based violence

Gender based violence can be defined as violence directed against a person because of that person's gender (including gender identity/expression) or as violence that affects persons of a particular gender disproportionately. Women and girls, of all ages and backgrounds, are most affected by gender-based violence. It can be physical, sexual and/or psychological, and includes, Violence in close relationships, Sexual violence (including rape, sexual assault and harassment or stalking), Slavery, Harmful practices, such as forced marriages, female genital mutilation (FGM) and so-called 'honour'

crimes, Cyberviolence and harassment using new technologies³.

The EU protects women and children from gender-based violence through legislation and practical measures: First the Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime was adopted on 25 October 2012 and entered into force on 15 November 2012⁴. The Directive establishes minimum standards on the rights, support and protection of victims of crime ensures that persons who have fallen victim of crime are recognised, treated with respect and receive proper protection, support and access to justice. The Directive replaces the 2001 Framework Decision on the standing of victims in criminal proceedings and considerably strengthens the rights of victims and their family members to information, support and protection and victims' procedural rights in criminal proceedings. The Directive also requires that the Member States ensure appropriate training on victims' needs

² <http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>

³ http://ec.europa.eu/justice/gender-equality/gender-violence/index_en.htm

⁴ 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.

for officials who are likely to come into contact with victims and encourage cooperation between Member States and coordination of national services of their actions on victims' rights⁵.

To ensure that the new measures of the Victims' Directive bring real change for victims in Europe, the Commission will offer its assistance to Member States to implement the Directive adequately into national legislation within the next two years, in the wider context of measures set out in the Budapest Roadmap on victims⁶.

The Daphne Programme (2007-2013) also provides essential funding for a wide range of important projects. They are focused on reaching out to children and women who experience domestic violence within the family dynamic. Whilst some positive developments have taken place in the form of recognition of children as victims of domestic violence, adolescents do not currently receive the

same consideration. Some country-specific small scale studies have taken place and have identified girls from disadvantaged backgrounds to be at particularly high-risk, but further investigation and exposure of these issues is required⁷. Since 2014, the Justice Programme (2014 – 2020)⁸ contribute to the further development of a European area of justice based on mutual recognition and mutual trust, and the Rights, Equality and Citizenship Programme (2014 – 2020)⁹ defends the rights and freedoms that people are entitled to under EU law.

The Istanbul Convention and its added value

On 4 March 2016, the European Commission has proposed for the European Union to ratify the Council of Europe's Istanbul Convention, a comprehensive international treaty on combating violence against women and domestic violence¹⁰.

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http://ec.europa.eu/justice/criminal/files/victims/guidance_victims_rights_directive_en.pdf. The Directive forms an essential part of a horizontal package of measures, launched by the European Commission in May 2011. This aims to strengthen the rights of victims of crime so that any victim can rely on the same basic level of rights, whatever their nationality and wherever in the EU the crime takes place. In addition to this horizontal Directive on rights, support and protection of all victims of crime, other Directives, such as Directive on Trafficking in Human Beings and Directive on Child Sexual Exploitation were previously adopted by the EU in order to address specific situation of victims of these crimes. More information about the "Victims Package at: http://ec.europa.eu/justice/criminal/victims/index_en.htm

⁶ Resolution of the Council of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings OJ C 187, 28.6.2011, p. 1–5.

⁷ Decision No 779/2007/EC of the European Parliament and of the Council of 20 June 2007 establishing for the period 2007-2013 a specific programme to prevent and combat violence against children, young people and women and to protect victims and groups at risk (Daphne III programme) as part of the General Programme Fundamental Rights and Justice OJ L 173, 3.7.2007, p. 19–26.

⁸ Regulation (EU) No 1382/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Justice Programme for the period 2014 to 2020 Text with EEA relevance OJ L 354, 28.12.2013, p. 73–83.

⁹ Regulation (EU) No 1381/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020 Text with EEA relevance OJ L 354, 28.12.2013, p. 62–72.

¹⁰ http://europa.eu/rapid/press-release_IP-16-549_en.htm

The Council of Europe Convention on preventing and combating violence against women and domestic violence is based on the understanding that violence against women is a form of gender-based violence that is committed against women because they are women¹¹. To date, the Istanbul Convention is one of the most developed conventions in criminal law. It is the first legal instrument in Europe for domestic violence against women, which defines domestic violence as a breach of human right, providing a legal basis for civil law and specialised services¹².

The Istanbul Convention is the first legally-binding instrument which "creates a comprehensive legal framework and approach to combat violence against women" and is focussed on preventing domestic violence, protecting victims and prosecuting accused offenders. It characterizes violence against women as a violation of human rights and a form of discrimination (Article 3). Countries should exercise due diligence when preventing violence, protecting victims

and prosecuting perpetrators (Article 5). The Convention also contains a definition of gender: for the purpose of the Convention gender is defined in Article 3 as "*the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men*". Moreover, the treaty establishes a series of offences characterized as violence against women. States which ratify the Convention must criminalize several offences, including: psychological violence (Article 33); stalking (Article 34); physical violence (Article 35); sexual violence, including rape, explicitly covering all engagement in non-consensual acts of a sexual nature with a person (Article 36), forced marriage (Article 37); female genital mutilation (Article 38), forced abortion and forced sterilisation (Article 39). The Convention states that sexual harassment must be subject to "*criminal or other legal sanction*" (Article 40). The Convention also includes an article targeting crimes committed in the name of so-called "honour" (Article 42)¹³.

¹¹ <http://www.coe.int/en/web/istanbul-convention/home>

¹² http://ec.europa.eu/justice/newsroom/files/gender-equality/factsheet_istanbul_convention_web_en.pdf

¹³ <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168046031c>

The Istanbul Convention is a “mixed agreement” meaning that, if EU ratifies it, it will bind both the Union and the Member States¹⁴. Furthermore, the ratification of the Convention by the Union would encourage Member States as well as non-Member States of the EU, to ratify the Convention, increasing the prominence of the Convention worldwide. Ratification of the Convention would enhance its role in EU law, because it could more easily be used as a parameter for the interpretation and validity of EU legislation¹⁵. For asylum cases, Article 60 of the Convention makes clear that gender-based violence is a ground of persecution. This is more explicit than the EU’s qualification Directive¹⁶, which says that ‘gender-related aspects shall be given due consideration’, with further reference in its preamble to specific practices like genital mutilation¹⁷. EU accession to the Convention will bring among others the following additional benefits: a) A mandate for better data collection at EU

level: Currently, there is not enough data to show the extent and nature of violence against women. EU accession to the Convention would oblige Member States to collect and send accurate and comparable data to Eurostat, the statistical office of the EU. Better understanding the phenomenon will help tackle it, and b) Accountability for the EU at the international level: The EU will report through the Convention’s monitoring body on the proper and effective application of the aspects of the Convention for which it is responsible. This will also enhance the role of the EU in fighting gender-based violence on the international stage¹⁸.

Concluding Remarks

The proposal to accede to the Istanbul Convention will be discussed in the Council of Ministers and in the European Parliament, whose consent is needed for the conclusion of the Convention by the EU. 12 Member States (Austria, Denmark, Finland, France, Italy, Malta, Netherlands, Poland, Portugal, Slovenia, Spain and Sweden) have already ratified the Convention. A further 13 Member

¹⁴ <http://eulawanalysis.blogspot.gr/2016/03/violence-against-women-what-will-be.html>

¹⁵ <http://eulawanalysis.blogspot.gr/2014/04/should-eu-ratify-istanbul-convention-on.html>

¹⁶ Council Directive 2004/83/EC of 29 April 2004 on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted

¹⁷ <http://eulawanalysis.blogspot.gr/2016/03/violence-against-women-what-will-be.html>

¹⁸ http://europa.eu/rapid/press-release_IP-16-549_en.htm

States have signed it but not yet ratified. More signatures and ratifications are expected over the coming months¹⁹.

Gender-based violence is rooted in and reinforces gender inequalities and it cannot be understood outside the social structures, gender norms and roles that support and justify it. Gender-based violence is a human rights violation and one of the most pervasive forms of gender-based inequality. The elimination of violence against women involves challenging the ways in which this inequality is perpetuated through institutions at all levels of society²⁰.

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